The concept of truth is central for legal theory and legal practice (along with others such as validity or effectiveness) as well as in norm creation context and in legal adjudication. Perhaps, the concept of truth does not play the same role in each of those contexts. One question is if truth plays a unitary role across all legal context and if so, what is that role? Or on the contrary if truth plays different and distinctive roles in each legal context and if so, what are those roles and why to identify them.

These issues imply an important set of questions:

i) A “history of legal truth”.

To begin with, it could be recall that the central role of the concept of truth in the legal domain is exclusively a feature of Modern Law or, more precisely, of the ideal of rationality associate it with as opposed to other older forms of social conflict resolution such as private war or orderlies.

As rightly observed by the philosopher Michel Foucault, the history of the State is inseparable from the history of “truth-finding techniques”: The way in which truth is to be "established" (i.e., procedures designed for its investigation or discovery, and the criteria adopted to determine its acquisition or knowledge) is particularly revealing of the nature of political power.

From Truth (Aletheia) as Memory (Mnemosyne)¹-that belongs to the magical-religious world vision of the poet, the seer, the justice-king, of archaic Greece, where mythos prevails and the "effective word" governs - to Truth (Aletheia) as an objective relation between language and reality, obtain by rational methods – the secular world vision of the democratic polis of classical Greece where logos prevails and the "thetic word" governs--, which is the source of our modern conception of truth.

The interest for truth, has not always present the same intensity and relevance throughout the history of Western culture, and when the interest has been significant, it has been combined with the development of specific techniques for its inquiry and determination. It is in Europe with the birth of modern states that the interest for the pursuit of truth comes to play a central role in the architecture of criminal procedure and to a different extent in the civil procedure and other areas of law. This process of transformation is directly linked to the introduction of the inquisitorial criminal procedure under the influence of Canon Law, which emerges between the midst of the Twelfth century and the first half of the Thirteenth century.

¹ The Omniscience that in nature is divination (i.e., the mantic knowledge “of what it is, what will be and of what it was”). The assertorhic discourse that confers existence to its objects (i.e., that which is brought about by the Mnemosyne) when it is pronounced. Cf. in this regard, Marcel Detienne, Les Maîtres de Vérité dans la Grèce archaïque (Paris: Le Livre de Poche, 2006).
Indeed, Church and its doctors using the discovery of Roman law in the late Eleventh century, especially the inquisitorial process in the Late Empire, established the *enquête*, a procedure in which judges carry out a written and secret ex-official investigation.

Thus, the evolution of Roman law is a keystone in this transformation, which has seen some setbacks: "barbaric" and feudal law. This is why we must inquire into the transformation of the very notion of truth throughout Western history and the role it has played (or has not played at all) throughout the history of Law. This inquiry is to be carry out with caution.

For if we use our modern legal concepts (creation, identification, adjudication, procedural law, quaestio facti, evidence) to review the past we may seriously misunderstand it if not totally destroy it.

ii) The Nature of Law and of Legal Knowledge.

A second issue one inevitably encounters when inquiring about the role of truth is the conceptual framework employed by lawyers (even within the more limited lifespan of Modern Law) in the Nature of Law.

Indeed, we believe that any serious attempt to answer the question of legal truth has two requisites: (1) an inquiry into the different theories of the Nature of Law and (2) the distinction of certain levels of analysis. As for the first requisite, it is proposed to critically examine different conceptions of Law, for instance, positivists and anti-positivist theories in its variants, and defend one of them as a preliminary step before analyzing the problem of truth in the law.

An analysis of truth in law will inevitably assume a concept of law: what law is, how can we determine its existence and content, what facts (if any) are associated with law. A logical structure of Law Propositions will be assumed also, along with a catalog of Law Propositions. Its our believe that, unless the problem of the Nature of Law and Legal Knowledge is considered in an explicit manner, any inquiry will arrive to unwarranted conclusions or to aporias.

Each conception of the Nature of Law and of Legal Knowledge will determine at least in part, the levels of analysis for the problem of Legal Truth.

We now give a classification of the theories of the Nature of Law for the analysis of the problem of Legal Truth. Basically all theories can be classified either as positivism or as anti-positivist.

Because the expression "legal positivism"\(^2\) is used to name very different thesis, we must distinguish these thesis.

The doctrine of positivism can be defined on the basis of the adoption of: (1) the thesis of the social sources (which implies, in turn, the thesis of the no identifying connection and the boundary thesis, which is an specification of the thesis of the separation between Law and Morality: the rejection of all kinds of necessary connection between Law and Morality) and (2) the thesis of epistemic neutrality. According to the Boundary Thesis, when courts resolve a case to which the Law is undetermined, they unavoidably will base their decisions (at least partially) in extra-legal considerations.

Thus, the right is determined as legally binding sources provide the solution. However, if a legal issue is not solved by standards derived from legally valid sources, the law is indeterminate, and there isn’t a legal response.

According to the thesis of non-identifying connection, identifying what the law establishes about a particular issue do not depends or demands any evaluation or assessment, nor moral or any other class, so it can’t be identified as law simply because is evaluated or considered positively and nothing can be longer identified as law because it is assessed or evaluated negatively.

Finally, the thesis of epistemic neutrality would read something like the following: the definition of the concept of law and other legal concepts such as legal right, obligation, authority, contract, marriage, etc... must be defined through non-evaluative or evaluative properties, and without making any assessment or evaluation, and without the need for the theorist, to assume an internal point of view regarding the law.

However, the social sources thesis can be specified in more than one way. One is the Hart’s conventional normativism. Some of its key features are:
1) Law is basically a set of rules whose existence and contents depends on conventional social practices (i.e., complex practices of acceptance and obedience of rules).
2) Law normatively determines human behavior; it qualifies a behavior as permitted or forbidden. 3) Legal determination of the behavior depends on a systematic reconstruction of the regulatory material, i.e. that the law is a system of rules; 4) It is possible to formulate descriptive statements about the Law and, more specifically, that such statements serve to inform about the content of the norms that constitute the Law. All these four theses (except for the thesis that the existence and content of the Law depend on certain social practices of acceptance) may very well characterize the legal positivism of Kelsen (from a more orthodox reading of its theory) and that of Alf Ross – Although there are some remarkable differences between Hart, Kelsen and Ross as to the conception of a legal system, legal norms and the logical structure of Law propositions.

The Antipositivist Theories, on the other hand, are those who reject all or some of the defining thesis of legal positivism. The Antipositivist Theories can be classified in two categories, those who are of a Natural Law flavor and those who reject the Natural Law doctrine.

A Natural Law theory is generally accepted to sustain two thesis: 1) There are principles justice and morality universally valid; and 2) A legal system or a legal norm is to be considered legally valid if it doesn’t contravene those principles of justice and of morality (also known as the conceptual or the semantic thesis of natural law theories). One can label classic natural law theory to a doctrine that adheres to both thesis. A contemporary natural

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4 The non-identifying connection thesis should not be confused with the non-justifying connection thesis. This last thesis denies that there is a connection between Law and Morals in the decision making process. The opposite implies the justification of a decision about what is to be done in a particular case – to act for or against, even if the course of action is not freely taken – implies a practical reasoning. In this practical reasoning legal rules are auxiliary reasons and the operative reason is a moral reason. In other words, a legal decision is justify if it is taken according to certain moral principles. The identifying connection thesis is a conceptual thesis about the nature of legal justification. Although it is incompatible with the more general formulation of the separation thesis (i.e., the rejection of any kind of necessary –conceptual– connection between Law and Morals), it is compatible with the social sources thesis and the epistemic neutrality thesis: any justification process of legal decision cannot start without previously identifying the legal norms.
law theory will reject the conceptual thesis of natural law and defend instead a normative thesis: any legal norm (or system) that contravenes the universally valid principles of justice and morality is still legally valid but there is no duty to obey them. The only morally binding Law is the positive law that doesn’t contravenes or derives from the universally valid principles of justice and morality. Among the contemporary natural law theories there are the ones defended by John Finnis and by Michael Moore. A paradigmatic example of an Antipositivist theory but not of a natural law flavor is the one defended by Ronald Dworkin.

A common idea among Antipositivist theories is that the identification of the legal solution for a particular case depends on the solution obtained from a moral principle.

Thus, from a certain conception of Law – one that conceptualize Law as a system of norms and legal knowledge as the information about the legal status of an action from the content of the legal system – there are three levels of analysis for the problem of legal truth. One level is to inquire if general norms of a legal system have truth-value and if there are logical relations between norms (a Logic of Norms). In either case there are arguments for and against it and a discussion on these debates could be of interest.

A second level of analysis is the problem of the truth of descriptive statements about the law. The issue at hand is the logical structure of law propositions and what are their truth conditions – if possible at all. Of course there are some legal theories that deny the possibility of attributing truth-value to law propositions. A defense – or criticism – of these point of views on the possibility of truth values for general norms see, Anna Pintore, Law without Truth (Liverpool: Deborah Charles Publications, 2000). For an account of the different attempts to justify the possibility of truth values for general norms see, Anna Pintore, Law without Truth (Liverpool: Deborah Charles Publications, 2000).

1) The contemporary natural law theory assumes a particular philosophical stand: there are principles of justice and of morality universally valid. The legal positivist theory is neutral on that regard: it does not need to accept or to reject that there are those universally valid principles of justice and morality. 2) The normative thesis, the moral judgment on the applicability and binding moral force of a legal norm in a case is something the legal positivist theory refrains to inquiry about. Thus, the contemporary version of natural law theories and the legal positivism theories does not differ in a relevant way as to the question of the truth conditions of law propositions.

Antipositivist theory but not of a natural law flavor is the one defended by Ronald Dworkin.

A vast discussion on this issue can be found in German Sucar, Concepciones del derecho y de la verdad jurídica (Barcelona: Marcial Pons, 2008).
view is highly relevant because the issue at hand is the possibility – and the status – of legal knowledge in general. Those who defend the possibility of attributing truth-value to law propositions must clarify what counts as a truth condition for law propositions. This in turn depends on the adoption of a particular conception of law: natural facts like the efficacy of a norms (extreme American Realism theories), moral norms (Natural Law theories) or the inclusion of a legal norm as part of a legal system (Conventionalist-Normative Positivist theories). To this last theory it becomes particularly relevant the concept of a legal system as to determine the truth-value a of particular law proposition. The determination of the inclusion of a norm into a legal system (and of its applicability to a legal case) is fundamental for the truth conditions of law propositions.\footnote{Cf. José Juan Moreso & Pablo Eugenio Navarro, «Applicability and Effectiveness of Legal Norms,» Law and Philosophy 16 (1997): 201-219; José Juan Moreso & Pablo Eugenio Navarro, «The Reception of Norms and Open Legal Systems,» Normativity and Norms: Perspectives of Kelsenian Themes, ed. Stanley Paulson (Oxford: Oxford University Press, 1998) 273-292.; Pablo Eugenio Navarro, et al., «La aplicabilidad del derecho,» Analisi e Diritto, Ricerche di Giurisprudenza Analitica (Torino: Giappichelli, 2000) 133-152.; German Sucar, Concepciones del derecho y de la verdad jurídica, op. cit, pp. 423-444.}

Equally fundamental is the determination of the nature of the so-called theories of the case or the theories of legal scholars, so often employ in legal arguments: the theory of strict liability, the theory of legal person, the theory of unlawful acts, the theories on the nature of punishment. Another type of theoretical body is composed by theories around the nature of the State and of the Government, the nature of the Constitution and some moral concepts associated with those theories: liberty, equality, fairness or justice.

In practice, the problem of determining what the Law requires for particular case may include a variety of theories of different types and levels of abstraction and not only the interpretation of legal texts. In fact, the factively of interpreting a legal statute or text is not confined to the meaning of the text. Thus, lies a new problem to inquire: the nature of the varieties of theoretical corpus that is deploy for lawyers and practitioners when arguing a case. The variety of theories may serve a variety of purposes to be determined: explain, justify, describe, evaluate; and given an specific purpose if they are reducible to a set of legal norms. The inquiry for the nature of these theories is of particular interest for us in regard to the relationships with the concept of truth and of legal knowledge.

A third level of analysis is the relationship between the legal decision process and truth. This level is twofold; on the one hand there is the question of ascribing truth to the discourses that arise within legal adjudication. On the other hand, there is the problem of the truth-value of factual statements argue in legal adjudication (quaestio facti)\footnote{Cf. Anna Pintore, Law without Truth, op. cit.: preface, XVII.}.

In modern legal systems judicial – an official decision in general – must be justified. The practical reasoning behind the adjudication process contain a variety of premises different in nature: general legal norms, statements about facts, normative adherence statements,
statements about the findings of an official investigation, expert opinion, witnesses testimonies, statements about the applicability of a norm. The decision is the conclusion of the practical reasoning and is obtained from “true” or “correct” premises and if the argument is logically sound, then the decision is considered “lawfully justified”.

The question for the roll truth plays has to be asked for each of the different types of premises that compose the complex reasoning behind legal adjudication. In turn, to examine the roll of truth for each of these types of premises assumes that truth plays some role in the decision-making process, that is that truth is relevant for practical reasoning. What is supposed is that our decisions can be guided – by rules, beliefs, standards or a combination of the above – towards selecting a particular course of action.

If it is accepted that decisions in legal context can be guided by rules, standards or beliefs, only then makes sense to distinguish three places to look for the relevance of truth: (1) General norms; (2) Statement about facts and (3) Normative Statements. Legal adjudication includes the problems of truth of general norms and the correct identification of the Law, which implies the problem of the quaestio juris (which is no other that the problem of the truth of law propositions).

Another set of problems is related to the statements used in legal adjudication contexts by legal authorities (i.e. courts, judges) and that constitute the core of what is called the quaestio facti.

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16 If one distinguish between theoretical (believes) and practical (courses of action) reasoning then truth can be related to actions in one of three ways: (1) If a form of moral objectivism is accepted then what is right to do may – but not necessarily will – assume a theory of truth and of reference. (2) If the quality of a course of action is influence by the relevant information available to the decision maker, then to distinguish between true or false information may contribute to a better decision – although to possess true information does not guaranty a correct course of action. (3) If one denies that rational agents can distinguish between correct and incorrect decisions, then truth plays no role in practical reasoning. In all three ways truth relates to decision-making and thus it is relevant to our inquiry. Cf. Richard Moran, Authority and Estrangement (Princeton: Princeton University Press, 2001). Cristine, M. Korsgaard, Creating the Kingdom of Ends (Cambridge: Cambridge University Press, 1996).

17 There are some arguments against the distinction between quaestio juris and quaestio facti. (1) The statements about facts in legal contexts are instances of the general terms used in legal rules. The statements about facts brought before court must be connected with the conditions set forth in the legal rules. Because if they were not related to legal rules, that is if the statements about facts are not instances of the legal predicates then they are irrelevant to legal adjudication. But, if they are instances of the legal predicates in legal rules, then they are not a matter of fact (quaestio facti) but a matter of law (quaestio juris). This argument is based on a distinction made by MacCormick between problems of relevance and problems of interpretation. Cf. Neil MacCormick, Legal Reasoning and Legal Theory, New Edition (Oxford: Clarendon Press, 1994). (2) All statements about facts, presented by the parties in a trial are not factual in nature. This is so, because in every trial there is always a judge or a jury who will determine what the facts are; not because they will find the real facts but because they will define the facts of the case. Thus, there is no quaestio facti but an act of will that establishes the relevant facts in every case. When the judge or the jury decides the relevant facts of a case truth has relevance. This line of argument can be traced to Kelsen to whom all relevant facts of a case and relevant norms are determined by the judge. Cf. Kelsen’s Pure Theory of Law, especially the Chapter on Interpretation. Hans. Kelsen, Teoría pura del derecho, trans. R.J. Vernengo, Décima quinta reimpresión (México: Porrúa, 2007). (3) The quaestio facti is determined in a legal case subjectively by the parties and by the authorities. This activity is evaluative in nature and does not relate in any way with truth-values. There is an inevitable lack of objectivity in all statements about facts in legal adjudication. The judge or the jury evaluates the quaestio facti using their prejudices, personal experience, personal history, cultural background and political, ideological and religious ideology. Cf. Eduardo J. Couture, Estudios de derecho procesal civil (Buenos Aires: Editorial Bibliográfica Argentina, 1950).
Some argue that there is no difference between the statements about facts in legal contexts and in other contexts (social or scientific)\(^{18}\). The apparent difference resides on the sources of knowledge employ to find the truth about a particular statement\(^{19}\). A careful analysis of this position may reveal that different problems are involved: the problem of the definition of truth, the problem of the knowledge of truth (and thus the idea of proof) and the problem of the ontological structure of the reality.

On the other hand, there are some who argue that the statements about facts in legal contexts are different in nature from the statements about facts in other contexts. This line of argumentation is grounded in a particular conception of the adjudication process: all legal trials are a narrative reconstruction of an historic event. The parties involved in a trial will offer one (among many) possible narrations of the *quaestio facti*. The judge or jury will choose among two *stories* that may or may not correspond to the actual facts of the case. Truth is not a property to be attribute to the narratives in an adjudication process.\(^{20}\)

Finally, a third type of statement different from the law propositions and statements about facts are normative statements. Those statements are exhibit when jurist use norms to demand, formulate claims, criticize or justify decisions\(^{21}\).

iii) Two radical conceptions: the special nature of legal truth and the irrelevance of truth for the Law.

A third question in our inquiry for the role of truth in legal contexts is if there is an special and restricted concept of truth. Legal truth is not related to the concept of truth as it is employed in common language or in scientific contexts; legal truth is *sui generis* and there is a philosophical task to reveal this special nature of *legal truth*\(^{22}\) (and of legal knowledge as well). However, there is room for another radical position, one that argues that truth is totally irrelevant for Law (*tout court*). This position has been defended from different theoretical

\(^{19}\) Legal systems usually set rules of evidence that restrain and confine the permitted ways to find out truth. It also contains rules that set the conditions to assert that a given statement is to be considered as *if it were true* (standards of proof, burden of proof and legal assumptions). The legal regulation on evidence and the way the acquirer and evaluate may have a significant *epistemic deficit*: legal standard of evidence may not be the adequate standard to *know* the truth about facts. Cf. Beltrán, Jordi Ferrer, *La valoración racional de la prueba* (Barcelona: Marcial Pons, 2007), William Twinning, *Rethinking Evidence. Exploratory Essays*, 2nd Edition (Cambridge: Cambridge University Press, 2006) en especial el Cap. 6. y Larry Laudan, *Truth, Error, and Criminal Law: An Essay in Legal Epistemology* (Cambridge: Cambridge University Press, 2008).
\(^{21}\) Cf. For example, German Sucar, *Concepciones del derecho y de la verdad jurídica*, op. cit.
\(^{22}\) There are some that argue that legal a practice does not employ the concept of truth to settle legal disputes. Within a legal case, a statement under dispute is evaluated using a community (consensual) standard of acceptance – that plays a similar role of the concept of truth. The community standard is associated to an specific argumentation scheme that is rhetorically obtained. Cf. K. M. Saunders, «Law as Rhetoric, Rhetoric as Argument,» *Journal of Legal Education* 44.4 (1994): 566-78. The opposite conception will deny the *special* nature of legal truth: the concept of truth as it is employed in scientific context *can* and *must* be employed in legal methodology for solving problems (both theoretical and practical). This position stands for a naturalistic turn in legal theories and extends some of the theses once defended by American Realism. Cf. Brian Leiter, *Naturalizing Jurisprudence Essays on American Legal Realism and Naturalism in Legal Philosophy* (Oxford: Oxford University Press, 2007).
and thus without truth-value. Cf. that serve, as reference is determined for the same purpose. Thus, there is a manipulative use of the linguistic statement to be evaluated as true is formulated from an ideological (political) purpose and the facts there is a unique correspondence function that fixes the reference of the statements to be true. In legal contexts, an illocutionary act that is incompatible with the concept of truth. Some authors point out that for Kelsen, even fashion to direct and prescribe the behavior of their subjects. The legal norms and legal texts are the product of an illocutionary act that is incompatible with the concept of truth. Some authors point out that for Kelsen, even the meta-statements about law (the statements use to describe the content and existence of Law) are normative and thus without truth-value. Cf. Chaim Perelman, «The New Rhetoric: A Theory of

Practical Reasoning,» The Great Ideas Today

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Legal practitioners and scholars use the concept of truth when they describe the contents and existence of the Law. However, truth is ultimately irrelevant to legal authorities because they use their legal powers in an illocutionary fashion to direct and prescribe the behavior of their subjects. The legal norms and legal texts are the product of an illocutionary act that is incompatible with the concept of truth. Some authors point out that for Kelsen, even the meta-statements about law (the statements use to describe the content and existence of Law) are normative and thus without truth-value. Cf. Chaim Perelman, «The New Rhetoric: A Theory of

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Traditions: Kelsen\textsuperscript{23}, the Critical Theory of Law\textsuperscript{24}, Law as Rhetoric\textsuperscript{25} and the Expressive Theory of Law\textsuperscript{26}.

Last, there is another way in which truth play no role: that human decisions cannot be rule-guided and thus finding the truth about instances of rules is irrelevant (Hume). The concept of truth plays no role in legal decisions because plays no role in any decision being legal or of other kind. To sustain the irrelevance (total or partial) of the concept of truth in the legal domain must be analyzed within different legal contexts. (1)

\textsuperscript{23} Cf. Sergio Ulises Schmill, Lógica y derecho, 3a Edición (México: Fontamara, 2001). For Schmill, truth and logic play the same role as within other scientific contexts (Biology, Physics or Mathematics): it is a useful criterion to systematize and organize in a coherent way a set of statements (meta-language statements). Legal practitioners and scholars use the concept of truth when they describe the contents and existence of the Law. However, truth is ultimately irrelevant to legal authorities because they use their legal powers in an illocutionary fashion to direct and prescribe the behavior of their subjects. The legal norms and legal texts are the product of an illocutionary act that is incompatible with the concept of truth. Some authors point out that for Kelsen, even the meta-statements about law (the statements use to describe the content and existence of Law) are normative and thus without truth-value. Cf. Chaim Perelman, «The New Rhetoric: A Theory of

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\textsuperscript{24} Some critical theories of law object on the use of some version of the correspondence theory of truth. Some version of the correspondence theory of truth assumes that there is an objective meaning for language and that there is a unique correspondence function that fixes the reference of the statements to be true. In legal contexts, the linguistic statement to be evaluated as true is formulated from an ideological (political) purpose and the facts that serve, as reference is determined for the same purpose. Thus, there is a manipulative use of the correspondence theory of truth: it is a mean to impose and privilege a certain view of the world shield by the reputation of objectivity and neutrality associated with truth-talk. On the other hand, it is said that the concept of truth provides a very poor picture of the legal phenomena, one that reduces the legal tasks and problems of the jurist to correlate descriptive statements and social facts. The analysis of the legal phenomena should be much wider because the legal phenomenon is more complex than the picture presented using the concept of truth. In fact, the role truth play in an adequate picture of the legal phenomena is so marginal that we may proscribe it from our conceptual schema. Cf. Unger, Roberto Mangabeira, What Should Legal Analysis Become (New York: Verso, 1996). M. Davies, Asking the law questions: the dissolution of legal theory, 3rd Edition (Sydney: Thompson Lawbook Co., 2008), Cap. 8.

\textsuperscript{25} The objection the conception of Law as Rhetoric offers derives from the idea that legal reasoning is a kind of rhetoric reasoning because Law is a social practice define by a practice of persuasion. To persuade an audience is not to find the truth about certain facts but to achieve the general acceptance of a discourse; to persuade means to justify certain statements before an audience. The selection of the relevant legal materials, the election of the meaning of the selected materials and the determination of the relevant facts of a case are all persuasive activities. Truth is irrelevant because it is not a goal to achieve within legal adjudication. Truth may play a role a part of the rhetoric arsenal employ to achieve persuasion of a given audience. This idea is a very old one and can be trace back (at least) to the arguments of Plato in the Gorgias (454 d-e). Perelman follows a similar argument to state that Law is Rhetoric and thus truth is irrelevant Cf. Chaim Perelman, «The New Rhetoric: A Theory of Practical Reasoning,» The Great Ideas Today (Chicago: Encyclopedia. Brittanica, 1970) 272-312, p. 304.

\textsuperscript{26} The expressive theories of law (when interpreted as a theory of the nature of Law) argues that the legal phenomenon (composed by norms and norm production activity) determines social behavior because legal norms express certain values, generate social expectations and provide with new standards of the correct behavior. This expressive role of Law is accompanied by direct cost (sanctions) and transaction costs (regulations). There are two kinds of expressive theory of Law, the instrumentalist expressive theory of law (The New School of Chicago) and the revealing expressive theory of law (Anderson and Pildes). For both theories the concept of truth is relatively irrelevant it is more important to identify what the law does or to identify what is the standard that will produce in the social interaction. The only role truth may play is to determine if the causal statements about the effects of Law in the social behavior are true. However, this role is to be further discussed because the expressive function of the Law is pragmatically identified and most concepts of truth are semantically ascribed. The identification of the expressive function of Law is done without the use of the concept of truth. If the institutional messages express by the law are pragmatically identified they their effects are produced in a pragmatic fashion as well. Cf. L. Lessig, «The New Chicago School,» Journal of Legal Studies 27 (1998): 661-673. Cf. E. Anderson and R. Pildes, «Expressive Theories of Law: A General Restatement,» University of Pennsylvania Law Review 148 (2000): 1503–1575.
The social practice of rule making (either general rules or particular rules), within the legislative process or the adjudication process; and to determined the irrelevance of the concept of truth for statements about facts, law propositions and normative statements. (2)

Legal doctrine and jurisprudence.

iv) Theories of truth.

The fourth question in our inquiry for Law and Truth is the concept of truth: what concept of truth is accepted or defended, what is the criterion of truth and what entities (if any) constitute the truth bearers, and if there is a structure in the reality of our world that constitutes the concept of truth (or there is not a property in relation to which truth can be defined). There are many questions to be asked under the title “theories of truth” not all questions have the same purpose and they are not of the same nature. It is useless to ask for the problem of truth in the legal domain without previously clarifying (even preliminarily) the concept (or conception) of truth that is to be employ in our inquiry.

Sincerely

The Editors.

Jorge Cerdio.

Germán Sucar.

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27 Both of these types of statements are admitted only if it is assumed that the claims formulated by lawyers and the decisions of courts (because they ought to be justified and derived from the positive law) imply a cognitive task, which is that something is the object of legal knowledge.

28 To sustain the irrelevance of the concept of truth (total or partial) must be distinguished from the position that states that truth is relevant but not primarily relevant. To say that truth is relevant but not primarily relevant is to say that there are other values, goals and objectives that the law seeks besides the search for truth in legal adjudication. For example, one can state that truth is relevant but not all truth finding techniques are admitted: torture, intimidation or extortion. Another example is the rules of evidence concerning search warrants or confessions without consent. Additionally the relevance of truth can also be conditioned to the impact of the standard of proof in the distribution of error and the social costs of a given distribution (false versus true convictions). For an analysis of this and other related issues see Juan Carlos Bayón Mohino, «Epistemología, moral y prueba de los hechos: hacia un enfoque no benthamiano» to appear in Analisi e Diritto.