POROUS WALLS AND SPECTRAL NUISANCES CONDOS, INTERCULTURAL LAW AND SPATIAL JUSTICE

MURI PERMEABILI E DISTURBI SPETTRALI DI CONDOMINIO, DIRITTO INTERCULTURALE E GIUSTIZIA DELLO SPAZIO

Actualidad Jurídica Iberoamericana Nº 16 bis, junio 2022, ISSN: 2386-4567, pp. 420-453

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ARTÍCULO RECIBIDO: 18 de enero de 2021
ARTÍCULO APROBADO: 22 de marzo de 2022

RESUMEN: Nella vita quotidiana, l'incontro nello spazio è un incontro di personalità attive. Non avviene nel vuoto, ma piuttosto all'interno di una dimensione relazionale plasmata da scalpelli semantici e intessuta di storie, narrazioni, ricordi "reali" e "immaginari". Queste caratteristiche della vita quotidiana sono particolarmente evidenti all'interno di contesti di convivenza multiculturale. Al loro interno, la percezione di qualsiasi oggetto, evento o soggetto è una sintesi delle sue contiguità spaziali e semiotiche, formata da sequenze di relazioni e connessioni che portano al suo verificarsi. Il significato di ogni entità che "occupa" lo spazio è l'epitome, la condensazione, delle esperienze precedenti attualizzate attraverso la memoria così come le possibili implicazioni future "rappresentate" dall'immaginazione. Pertanto, ciò che "è" e il suo spazio di esistenza dipendono dalla configurazione del contesto di esperienza e di significazione.

Gli spazi vissuti sono, tuttavia, spazi sociali, e come tali sono bersagli di proiezioni assiologiche, teleologiche e normative. Comprendere lo spazio della convivenza implica, quindi, un'analisi delle sue connessioni con le "scansioni" categoriali e normative che danno "ritmo" al suo uso e ne plasmano il significato. Il risultato di tali "lavorazioni semiotico-spaziali" sarà proattivamente incarnato dalla percezione culturale, psicofisica e irriflessiva dello spazio, generando così la sua "coseità" (o "thingness"). Le implicazioni reciproche tra soggettività, spazialità e categorizzazione possono essere efficacemente comprese attraverso lo spettro di una tipica fonte di conflitto nella convivenza abitativa: la legge sul disturbo.

Il risultato di tale analisi porta a riconoscere i diritti umani e il loro uso interculturale come un'interfaccia adatta a veicolare la traduzione e la compenetrazione tra spazi di esperienza fisici e culturali, vicini e lontani. Tali pratiche traslazionali e transazionali permettono l'emersione di uno spazio di convivenza multiculturale dotato dell'efficacia inerente alla normatività del diritto. Essa appare come una dimensione "corologica", all'interno della quale segno e materia, soggetto e spazio, categorie e geografia/topografia, insieme, riarticolano le loro connotazioni lungo un continuum di senso ed esperienza che trova nel condominio e nel suo processo di "apart-ment" (separazione/esclusione) sia una metafora che un laboratorio per le possibilità di coesistenza globale, cioè un "worldominium".

PALABRAS CLAVE: Geografia legale; Legge sul disturbo; Coesistenza urbana; Corologia legale.

ABSTRACT: *In quotidian life, the encounter in space is an encounter of active bodies. It does not occur in a void, but rather within a relational dimension that has been shaped by semantic chisels and interwoven with stories, narrations, and both "real" and "imaginary" recollections. These features of quotidian life are especially apparent inside contexts of multicultural coexistence. Within them, the perception of any given object, event, or subject, is a synthesis of its spatial and semiotic contiguities, formed by sequences of relations and connections that bring about its occurrence. The significance of each entity which "occupies" space is the epitome, the condensation, of previous experiences actualized through memory as well as the possible future implications "presentified" by imagination. Therefore, that which "is" and its space of existence depend on the configuration of the context of experience and signification.*

Lived spaces are, however, social spaces, and as such are targets of axiological, teleological and normative projections. Understanding the space of coexistence implies, therefore, an analysis of its connections with categorical and normative "scansions" that give "rhythm" to its use and mold its meaning. The result of such "semiotic-spatial workings" will be proactively embodied by the cultural, psycho-physical and irreflexive perception of space, so engendering its "cosality" (or "thingness"). The reciprocal implications between subjectivity, spatiality and categorization can be effectively understood through the spectrum of a typical source of conflict in housing coexistence: nuisance law.

The outcome of such an analysis leads to the recognition of human rights and their intercultural use as an interface suitable for conveying translation and interpenetration between physical and cultural, close and remote, spaces of experience. Such translational and transactional practices allow for the emersion of a space for multicultural coexistence endowed with the effectiveness inherent in the normativity of law. It appears as a "chorological" dimension, within which sign and matter, subject and space, categories and geography/topography, together, re-articulate their connotations along a continuum of sense and experience that finds in the condominium and its process of "apartment" (separation/seclusion) both a metaphor and a laboratory for the possibilities of global coexistence, that is, a "worldominium."

KEY WORDS: *Legal Geography; Nuisance law; Interculture; Urban Coexistence; Legal Chorology.*

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I. PROLOGUE.

In quotidian life, the encounter (in and across space) is a bodily one. However, it does not occur in a void but is always intermingled with narrations, images, "real" or "imaginary" stories[1]. In addition, space is imbued with categorizations. Categories, in turn, come out of pro-active synthesis and epitomize the psychological processes that embody experience. Embodiments and narrations of space, if understood as features of quotidian life, are particularly apparent within the micro-spaces of coexistence carved out by the architecture of condominiums whenever people from different cultures live in them. Right where the separation intrinsic in the idea of *apart-ment* yields its conceptual and pragmatic threshold towards the condo's micro-territories—the so-called *common property*—space and meanings are prone to coalesce into one another. In these cases, spatial proximity weakens the cartographies of coexistence rooted in each culture. Simultaneously, however, the physical continuity between the different semantic landscapes projected by inhabitants from different cultures and origins shapes new inter-spaces of life. And just there, in such inter-spaces, the geographically "remote" (precisely because known, remembered, and acted by people) ends up acquiring semiotic proximity.

The factors that serve as bridges between inside and outside, the distant and the close, transfiguring the categorical borders of each of these elements, are the "etcetera" of the human, that is, everything that arises from the multi-sensoriality inherent in the encounters prompted by the (inevitable) sharing of everyday life. Within this set one can enlist smells, stink, sounds, voices, noises, invasive emissions, discharges, propagations, emanations, vibrations, etc. In short, all that is capable of crossing borders and barriers, making perceptible and obtruding the physicality of subjects and their signs beyond walls, bulkheads and boundaries. Like ghosts, these clues of human presence, declined in its reciprocal Otherness, re-map, just as occurs in our dreams, what is "in here" and "out there," and therefore the "coherent" and the "incoherent," the "simultaneous" and the "asynchronous": in other words all the grammar of ownership and/or possession.

1 Cfr. Valentine G.: "Living with Difference: Reflections on Geography of Encounter," *Progress in Human Geography*, 2008, 32, pp. 321 ff.

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In this remolded but only apparently oneiric dimension of life, the impossible becomes possible, the unpredictable becomes certain, and frantic conflicts between subjectivities bereft of their previous semantic coordinates take place. Both coexistence and the hope of carrying it out pacifically envisage, as a unique perspective for their feasibility, the intercultural translation between different lexicons of spatiality embedded inside the knowledge and habits of condos, that is, the "co-owners" of condominiums. Spaces and claims for space, in the middle of this game of connection and competition between different cognitive Otherness, become only one continuous dimension that is to be polyphonically understood, at least if people are to become able to live peacefully within it.

In such situations, the different cultural landscapes of people seem to be, in a sense, conflating in a shrunken ubiquity. So, the threads of an intercultural and inter-spatial translation between them appear to be an exercise in the multilateral re-writing of subjectivity. In the midst of the crossed contextualizations necessary for an intercultural translation, the morphological differences between behaviors and perceptions can turn into categorical continuities, and vice versa. This is because the same values or ends can be implemented and substantiated by means of actions, objects, emanations, etc. that are morphologically very different from each other. Consequentially, what looks different, contrary or annoying, can subsequently appear to comprise semantic and axiological connotations placed along a *continuum,* capable of surfacing and generating new forms and categories resulting from similar processes of intercultural translation.

In quotidian experience, each connotative element included in the categorical schemas, taken as a measure of diversity and intolerance of the Other, can evade and overcome a rigid in/out logic, so as to open inter-categorical and inter-spatial bridges and pathways. In these *ventures* space transfigures, thus, in *chora*,[2] that is, a synthesis between meaning and matter, as if it were a semantic-material unity of the experience and, at the same time, its generative source. The re-writing of anthropological subjectivities of co-owners or condos, induced and compelled by physical proximity and coexistence, cannot, therefore, be anything other than an intercultural chorology.

In any condominium, however, legal experience also takes its place. So, the development of a lexicon concerning intercultural coexistence from different cultures among condos will inevitably have to cross paths with the legal cartographies

2 See Sallis, J.: *Chorology: On Beginning in Plato's Timaeus*, Indiana University Press, Bloomington and Indianapolis, 1999; Sallis, J.: 2000, *Force of Imagination: The Sense of the Elemental*, Indiana University Press, Bloomington – Indianapolis, 2000. A very interesting use of "chorology", as a semantic-spatial continuum (or connotative continuum, which is simultaneously semantic and spatial), can be found in Rohrbacher, G. P.: *The Architectural Details of Alvaro Siza: A Chorology*, Thesis (M.S.)--Massachusetts Institute of Technology, Dept. of Architecture, free download available at *https://dspace.mit.edu/handle/1721.1/69751*, 1998, and his analysis of Alvaro Siza's architectural work.

of social action. The creolized spatiality embodied and co-engendered by subjects and their actions can find a lever for its efficacy in the most general axiological-legal patterns—especially human rights—so as to use them as mirrors and as means to figure out and normatively shape new features of subjectivity.

Once again by means of intercultural translation, actions (perceived as) morphologically incompatible with each other could be thus included in the categories of legal language. This effect will renew the previous semantic borders of legal statements and, therefore, their pragmatic and spatial consequences. Ends and values, by virtue of their semantic plasticity, will serve, then, as axes for the legitimation of differences and, through the normative and socially shaping action of law, trigger a chorological change, and mold new kinds of spatial experience. In this way, the claims prompted by cultural difference can be inscribed within the meshes of legal language. Consequentially, they can acquire socio-political effectiveness and determine, through the institutional "power" of discourse on rights, a kind of "collapsing in on themselves" of the very same categories used by the "power" of dominant groups to establish and reproduce themselves.

Perhaps and surprisingly, the law's words could generate within the mini-world of condominiums or, more icastically, within "worldominiums," a lexicon and an experience of inter-subjectivity capable of promoting planetary ubiquity: an opportunity not to be missed.

I. INVASIVE EMISSIONS, NUISANCES, AND SPATIALITY

Space and culture are coextensive in both common and legal languages. The spatial "scansions" also include within them categorical schemas and coordinates of sense. But categorical schemas, in turn, give rhythm to the spatial experience[3].

3 On relationship between meaning and embodiment of experience considered from the angle of categorization processes, see the following theoretical pathway (organized in thematic rather than chronological terms): Bruner, J. S., Goodnow J. J., Austin G. A. and Brown R. W.: *A Study of Thinking*, John Wiley & Sons, New York – London – Sidney, 1956: (trad. it. *Il pensiero. Strategie e categorie*, Armando Editore, Roma, 1973); Johnson, M.: 1987, *The Body in the Mind: The Bodily Basis of Meaning, Imagination and Reason*, The University of Chicago Press, Chicago 1987.; Johnson, M.: *The Meaning of the Body: Aesthetics of Human Understanding*, The University of Chicago Press, Chicago – London 2007; Lakoff, G.: *Women, Fire and Dangerous Things: What Categories Reveal About the Mind*, The University of Chicago Press, Chicago, 1987; Gibson, J. J.:*The Ecological Approach to Visual Perception*, Houghton Mifflin, Boston, 1979; Csordas, T. J.: "Introduction: The Body as Representation and Being in the World," in T. J. Csordas (ed.), *Embodiment and Experience: The Existential Ground of Culture and Self*, Cambridge University Press, Cambridge 1989; Langacker, R. W.: *Foundations of Cognitive Grammar: Theoretical Prerequisites*, Stanford University Press, Stanford, 1987; Langacker, R. W.: *Grammar and Conceptualizations*, Mouton de Gruyter, Berlin – New York, 2000; Langacker, R. W.: *Concept, Image, and Symbol: The Cognitive Basis of Grammar*, Mouton de Gruyter, Berlin – New York, 2002; Gibbs, R. W. 1994: *Poetics of Mind: Figurative Thought, Language, and Understanding*: Cambridge University Press, New York, 1994; Gibbs, R. W.: *Embodiment and Cognitive Science*, Cambridge University Press, Cambridge, 2005; Talmy, L.: *Toward a Cognitive Semantics: Vol. I, Concept Structuring Systems*, MIT Press, Cambridge (MA), 2003; Violi, P.: *Significato ed esperienza*, Bompiani, Milano, 1997; Ziemke, T., Zlatev, J., Frank, R.M.: (eds.), *Body, Language, and Mind. I. Embodiment*, Mouton de Gruyter, Berlin, 2007; Franck R.M., Driven R., Ziemke T., and Bernárdez E.: (eds.), *Body, Language, and Mind. II. Sociocultural Situadness*, Berlin: Mouton de Gruyter, Berlin, 2008; Goodwin, C.: *Il senso del vedere*, Meltemi, Roma:

Both of these statements are matched by an article of the Italian Civil Code, which can serve as a sort of axis to rule the continuous crossover of the spaces condos live in and through. The text runs as follows:

Immissioni. Articolo 844 cod. civ.

Il proprietario di un fondo non può impedire le immissioni di fumo o di calore, le esalazioni, i rumori, gli scuotimenti e simili propagazioni derivanti dal fondo del vicino, se non superano la normale tollerabilità, avuto anche riguardo alla condizione dei luoghi.

Nell'applicare questa norma l'autorità giudiziaria deve contemperare le esigenze della produzione con le ragioni della proprietà. Può tener conto della priorità di un determinato uso.[4]

Invasive emissions. Art. 844 Italian Civil Code.

The owner of land cannot prevent the emission of smoke, heat, fumes, noises, vibrations or similar propagation from the land of a neighbor unless they exceed normal tolerability, with regard also to the condition of the sites.

In applying this rule the court shall reconcile the requirements of production with the rights of ownership. It can also take into account the priority of a given use.

I will attempt to explain the problems of spatiality and sharing of space that constitute the subject of this statement[5]. These are the same problems that, in turn, originate from this legislative text because of the interplay between its provisions and the cultural patterns implicitly enshrined in the assertions it includes. Before

Meltemi (traduzione di scritti vari a cura di A. Duranti), 2003; Gregory, R. L.: *Eye and Brain*, Oxford University Press, Oxford-New York (trad. it. *Occhio e cervello. La psicologia del vedere*, Raffaello Cortina, Milano) 1998, spec. 7 ff.; Andreas, S.: *Six Blind Elephants,* Real People Press, Lafayette (CA) (trad. it. *La costruzione del significato. I sei elefanti ciechi*, Roma 2008: Astrolabio – Ubaldini Editore), 2006; Farnell, B.: *Dynamic Embodiment for Social Theory: "I move therefore I am"*, Routledge, London – New York, 2012; Bauman, Z.: *Modernity and Ambivalence*, Polity Press in association with Blackwell, Cambridge, 1991 (trad. it. *Modernità e ambivalenza*, Torino 2010: Bollati Boringhieri, e ibidem spec, pp. 11 ff., 30 ff.); Blumenberg, H.: *Theorie der Unbegriffchkeit*, Suhrkamp, Frankfurt am Main 2007 (trad. it. *Teoria dell'inconcettualità*,: due punti edizioni, Palermo 2011). These works are coordinated, in my perspective, with the semiotic-pragmatist approach developed by Charles Sanders Peirce, William James, and John Dewey.

4 It is worth considering that the above cited article, as indeed the whole Italian Civil Code, was written and enacted in 1942.

5 As for an overview of the invasive emissions (immissioni) in Italian law, see Mazzola, M. A.: *Immissioni e risarcimento del danno*, Wolters Kluwer, Milano, 2009. With regard to a comparative analysis as concerns invasive emissions, carried out through a compassion among different Western legal systems, see the research, albeit not very recent, carried out by Traisci, F. P., *Le immissioni fra tutela proprietaria e tutela della persona. Modelli a confronto*, ESI, Napoli, 1996. Comparative legal analysis turned up no evidence of salient differences with regard to the theoretical approach to the space that underlies this essay. The above remarks concerning the article 844 of Italian Civil Code can be extended, in many respects, also to the regulations provided by other Western countries such as, for instance, the "tort of nuisance" of Common Law systems, even if the category of *nuisance* is different in its structure from the Italian "immissioni."

I continue, however, it is to be highlighted that the above statement has been deemed extensible also to condominium relationships, although its text cites exclusively the "land of a neighbor."

Article 844 is titled "Immissioni," best translated into English by the expression "Invasive Emissions," which both evokes and focuses on the idea of "introduction." With this formula, the statement seems to refer to the situation in which somebody is introducing something into a space (which is part of another's property). The focus of the rule is not, therefore, on the emission of something taken in and of itself but rather on the "attitude" of such an "entity" to penetrate into a *given* other's space. In some respects, this terminological and normative choice is quite plausible. The statement is placed within the section of the Italian Civil Code on rights *in rem*, that is to say "the prerogatives and ways of possessing things" (understanding this formula as broadly as possible), from property to lawful possession in its strict sense, and other kinds of rights in rem such as usufruct, use, detention, tenure, etc. Furthermore, Article 844 refers to the "owner of land" as the subject entitled to claim the legal remedies. Nonetheless, the emphasis placed on the occurrence of an "introduction" or "penetration"—namely the invasion of a space by something that is alien or unrelated to it—conveys the idea of a "populated spatiality": as if that which the norm rules over were a "full" space, already filled with the pragmatic projections of categorical scansions. In other words, the target of the statement seems to be not an empty space but rather a lived space, already conceptualized symbolically as well pragmatically. To use a very current divide often invested with a sort of ontological signification, one could say that Article 844 refers to the *place* where ownership take its shape rather than to the *space*[6].

In light of this categorical divide, it would remain to be seen, however, to what specific place the substance that allegedly penetrates or is introduced belongs. Does it perhaps migrate from an indistinct space into a place? And then, what *kind* of space would such an indistinct space be? Furthermore, to what extent could this space be considered indistinct, and thereby dialectically different from the place that is subject to ownership? Whatever answers we might be able to imagine, however, we cannot help considering the "invading entity" as a connotative element. So, we should question if its simple presence, inside the space it comes from, does not tend to discount the supposed indistinctiveness of that same space. The basic assumption in the commonly agreed space/place distinction is that space is un-connoted and, in any case, its connotations have no connection with human experience. However, it is very hard to understand how connotations can be an object of *thinking* outside of any relation to human experience, including the

6 On the space/place divide – albeit, as will be seen below, not shared in this text – see, among the first to propose it, Tuan, Y. F.: 1, *Space and Place: The Perspective of Experience*, University of Minnesota Press, Minneapolis, 1977.

"experiences of knowing and representing;" on the other hand, it seems to be equally difficult to think of any kind of space devoid of connotations. Unlike space, all places should be specifically connoted and related to human and even personal experiences. What about, however, if more than one place or several places share the same connotations so as to result in a *continuum of places*? Is it no true that such a *continuum* compels us to perceive and conceptualize it as a *space* – despite its non-lack of connotations?

The sequence of questions raised here, even only within the spectrum of a safeguarding from invading emissions, would seem to undermine the consistency of the space/place divide, so showing, if anything, its merely heuristic significance (providing that it can always assume it), that is to say practical, but surely neither ontological nor absolute. This observation becomes rather obvious when we consider that any invading penetration presumes an emission. Such an emission, actually, originates in another place. What is more, to investigate and hold the emission responsible, and thereby to take it as a pre-condition of a future behavior compelled by law and targeted to eliminate penetration or invasion, we have to relate this emission to another place where someone lives and "acts." To clarify further, we could analyze the following paradox.

Could we reasonably consider the presence of oxygen (in the quantities ordinarily existing in the Earth's atmosphere) in someone's land as a consequence of an invading and unlawful emission? Oxygen, within the range just considered, exists in all places and spaces—with the understanding that such a terminological distinction between place and space is used here in order to include in this mental experiment the space/place divide. If it so, then we could conclude that the substances or entities capable of *giving place* to an unlawful penetration into *other places* must correspond with something specific, not-common, consequentially inherent in another space in any case, and at least connoted by those same substances and their productive sources: in short, another *place*.

If, however, a substance connotes a place by means of its presence, what does it produce when it penetrates into another place? The more intuitive answer would seem to be: "it is in motion," thereby the correct answer is "a crossing." But along with such a crossing, it would transplant a connotation from one place to another, that is, in crossing it re-connotes the second connotation. The matter at stake is, thus, whether it produces such an event or effect lawfully. However, the legitimacy or unlawfulness of the material-connotative moving/transplanting both testifies to and presupposes the legitimacy of the distinction between the involved places: therefore, the basic issue becomes whether a place, taken as such and with respect to a specific substance or entity, is to be considered as a place distinct from another or not. Yet, was it not the "indistinctiveness" between

different places the connotation, or better the meta-connotation, assumed at the basis of the configuration of space as dissimilar from place? If it so, the inter-place shifting seems thus to occur along the slippery and blurred axes of distinctiveness/indistinctiveness, which has its hub in the physical and semantic ubiquity (lawful or unlawful) of a connotation embodied by the substance *presumed to be invading*.

To fully realize all the implications of the last statements, I propose a few further questions. Where does the movement of the emitted invasive substance occur? Could it be in a space void? Or, rather, always and (however) within and through spaces already made dense with connotations, which, in turn, are punctuated, separated, ruled, distinguished, and gathered up within categorical and experiential sets and their borders? In other words, is space not, always and in any case, saturated by actual or potential places? Is the invasion or penetration not a snapshot of the moment in which the emission and its space of pertinence penetrate into another space, thus engendering an inter-space? An interspace that is, in turn, nothing but the transformative dimension continuously underlying spaces/places, if captured and understood in their inevitable precariousness and contingency?

The inter-spatial "transversality" of substances appears intrinsic to and even coextensive with the subjective side of any invasion caused by emissions, at least as I have just re-configured them, that is, as the focus moment of a dynamic of spaces. What qualifies the unlawful penetration is precisely the perception of an intrusion, the occurrence of a break into a lived space, rather than the penetration or the overriding caused by a substance taken in and of itself. This means that the invasion does not take place in an objective world, a "real" reality *placed* over there regardless of human agents, but it is instead a phenomenon germinating just where the boundaries between subjects and the world dissolve, and in this way, it produces a *space of experience*. Therefore, the inter-space of the penetration/intrusion will not only host this experience but will be co-engendered by its occurrence along with the web of relationships underlying its emersion, its appearance, as a phenomenon. The cultural dimension is shown to be, thereby, pivotal to understanding the scope of Article 844. This is because the ground from which the "invading penetration" germinates, coincides with the conceptual lens put on by each individual, his cognitive habits and interactions with the environment.

The movement of emissions through spaces also brings a cultural movement. Moreover, the emitted substances are always the outcome of an action with some end in view, molded by pragmatic plans, etc. Invading substances are the exceeding "propagation" of such actions, a sort of "furthering," which protrudes, overflowing from the space, the circuit of "the emitting," and invades the others' space.

Propagation—a term employed in the same Article 844—denotes the crossing of borders (if taken in a metaphorical and immaterial sense, a sort of trespass), as well as overloading, expansion, spreading and, even pollution or contamination (nuisance)[7]—to be intended in its etymological sense as a *cum-tangere*, that is, producing a contact and "con-taminant"). So, the passage from one space to another, if configured as an annoying propagation, has to do again with the distinction and separation between lived and already occupied spaces; indeed, it presumes this distinction. Whereas if no one perceived the "alienness" of the invading substance, then there would be neither propagation nor intrusion. The other's space, the invaded space, would be already (lawfully) "inhabited" by that entity, the emitted substance, which therefore would not be an invading one. In a sense, it would be already (at least potentially) inside the other's space. In other words, the other's space would appear to be categorically and experientially continuous with the space of the neighbor who is emitting the substance.

The above articulated inter-spatial continuity is a very relevant analytical achievement. It allows us to bring to light how distinct spaces also have both common connotations and different ones, which work as sources of spatial distinction. This is, moreover, a characteristic extensible to all categorical circuits and domains. Every categorical area or frame can be seen to have connotations in common with other categories, although the latter can be distinguished from the former because of the presence within them of other, differing connotations. The game of "distinction" revolves around the degree of salience recognized by each connotation, either different or common, which is considered relevant or decisive in order to distinguish between categories and/or spaces. This conclusion leads us, however, to an important focal point. Setting the categorical axes of salience and the corresponding connotations is the result of cultural, axiological and, therefore, "subjective" choices. A crucial referral to indexes or cultural patterns, however, can also be found in Article 844, cited above. The invading emission or intrusion is considered to be annoying or a cause of nuisance, and thereby subject to inhibition, only if and when it exceeds normal tolerability. But it is actually very difficult to imagine a more intensively culture-based standard of judgment than "tolerability," even more if it is further qualified as "normal."

7 *Trespass* and *nuisance* are terms used to label the legal remedies to protect possession in Common Law. These two remedies differ, however, in one basic feature – traceable also in Civil Law systems – between the instrument provided against the infringement of ownership in a strict sense and emissions. «Trespass» concerns the cases in which someone physically invades the borders of other's property. «Nuisance» relates, instead, to the disturbance that someone produces to the detriment of the use of possession by another neighbor. As regards emissions in Common Law, see Beever, A.: *The Law of Private Nuisance*, Hart Publishing, Oxford – Portland (Or.), 2013; Sidoli del Ceno, J.: "Landlords and the Law of Nuisance," *Landlord and Tenant Review*, 2015, 9 (1), pp. 1-5; and, more recently, with a particular focus on the relationships between public and private aspects of *nuisance tort*, see Lee, M.: "The Public Interest in Private Nuisance: Collectives and Communities in Tort," *The Cambridge Law Journal*, 74(2), 2015, 329-358, DOI: 10.1017/S000819731500032X, Published online: 08 May 2015.

What is normal and for whom? And under what conditions? In accordance with what kind of cognitive or behavioral habits? All questions that seem to become even more significant, if we consider that "normality" is here anchored to tolerability. Actually, the "tolerable" presumes, even in and of itself, the existence of a previous standard of normality. On the other hand, the idea of "tolerability" also suggests the possibility of a variation or fluctuation of such a standard as a result of negotiations and transactions between the exigencies of the social actors involved in each particular situation. The flexibility of this standard increases further, however, as soon as we consider the objects and phenomena to which it relates. Article 844 is concerned with propagations of various kinds, such as smoke, heat, fumes, noise, vibrations, and so on. How do we distinguish, however, sounds from noises? And what is their degree of normal tolerability? In assessing such distinctions, much depends on subjective sensibilities, habits, education and, not least, cognitive abilities (he who plays a musical instrument and has some experience with neighbors being particularly *numb* to the beauty of music, will easily understand what I mean)[8].

What should we consider to be too hot? Does it correspond with an absolute value in Fahrenheit/Celsius, or rather is it to be assessed with respect to the general external climate conditions? And what is, then, "smoke" or "steam"? Is it distinct from the air, the condensed air, or from water vapor? And if it were the case, which features make it so? In the end, we cannot help but be concerned with the "piece de resistance": the "fumes", otherwise identifiable, in everyday language, as "stink" and "stench." What differentiates a smell from a stench? In this case, the cultural and psycho-cultural elements constitute the parameter. How can we conceive of a "stink" without considering the perceptive habits of different individuals and their cultural and subjective inclinations? On the other hand, the intermingling between culture, identity and "stink" appears very close. As with cultural habits, it is rare that someone is aware of the smell or stink he/she emanates, or is even able to perceive it. What surfaces on the stage of conscience are, more generally, only other peoples' stink. Importantly, this observation is not only an off-putting acknowledgement, but is also a clue that within our perceptions there are always cognitive constants at work. What flows into our cognitive habits and stably joins their work, tends as a rule to slip out of consciousness and operate as a background of understanding and perception. It functions as a

8 In this regard, however, art. 6-ter of Law No. 12/2009 must be taken in account, as to the parameters provided for the identification of noises not exceeding the limits of normal tolerability.: «Art. 6-ter.- (Normale tollerabilità delle immissioni acustiche). — 1. Nell'accertare la normale tollerabilità delle immissioni e delle emissioni acustiche, ai sensi dell'articolo 844 del codice civile, sono fatte salve in ogni caso le disposizioni di legge e di regolamento vigenti che disciplinano specifiche sorgenti e la priorità di un determinato uso». This is a statement including a *renvoi* to other legal rules. This article, admittedly, limits the discretion of judges in assessing the exceeding of normal tolerability. Nonetheless, the use of a statutory law to determine the intensity of sounds and noises, insofar as they can be qualified as disturbing and invasive emissions, confirms the axiological/cultural, rather than empirical character of this parameter.

relational platform underlying the production of experience and the emersion, through interactions with the environment, of that which we represent as objects or phenomena occurring in the outside world. When they appear and take shape, objects and phenomena surface from a web of relationships tacitly taken for granted, for they are previously acquired and, somehow, grafted onto the mind's processes as constants of experience. But it is just for this reason that "one's own smell or scent" to those from the places where one permanently stays for a certain length of time, end up becoming imperceptible, like environmental constants (the same environment, it should be noted, of which we are part and parcel, including what represents us to ourselves, that is, our conscious thought).

Once again, let me give a final example. Even "vibrations" and their perception can be influenced by the variability of the environment. We need only think about the vibrations that footsteps cause against the floor, or those produced by heating systems, or air-conditioner compressors—all well known to be matters of endless disagreement in condos.

The list featured in Article 844 is not, however, a closed one. The expression "and similar propagations" opens the doors, conversely, to the possibility of extensive analogical interpretations. In line with what was noted above with regard to the relationships among space, connotations, and invading emissions, the open structure of that list also implies, in turn, the openness of spatiality and its configurations, so that they will become dynamic and transformative. This latter observation —I know—could seem counter-intuitive, and this is because common sense tends to "cosify" spaces, almost if they were empirical or merely material elements[9] and, as such, identify them as a steady background upon which experiential prospects or the effects of legal discourse are projected. In the case of invading emissions, however, the precariousness, contingency, and non-solidity of spatial divides represent a sort of self-contradiction in terms and, at the same time, the precise premise of the law's (Art. 844) provisions.

Actually, the propagations taken into account so far have to do with perception. Nonetheless, their occurrence and their (assumed) coming from "another space" both look and are felt by people just as if they were animating quasi-spectral presences. Stink, vibrations, heat, smoke, fumes, all together conjure up and mean quite the opposite of the solidity of walls and the other separations inherent the exercise of ownership rights. By virtue of their capacity to propagate and invade, such intruding entities undermine the common tendency to understand property and its spatial extension as perfectly coextensive. Metonymic expressions like "this is my property," which people exclaim when facing invading emissions, lose

9 On the manifold interdisciplinary implications of a non-representational approach to the experience of space, see Anderson, B., Harrison, P.: "The Promise of Non-Representational Theories," in Id. (eds.), *Non-Representational Theories and Geography*, Ashgate, Farnham – Burlington, 2010.

their consistency both empirically and semantically. Ownership, or even better property, is not a thing, a material entity other than the owner's subject, as if it were placed over there, in the outside world and intrinsically endowed with a physical and (because of this) objective consistence. Besides, it is precisely in order to save and reaffirm such an apparently solid consistence, as well as to maintain its experiential premises, that the law provides its protection against invading emissions. Nevertheless, this protection has both a subjective basis and matrixes, which unfold, in turn, from a textual focus on the circumstance of intrusion or perceived invasion (in Italian: "immissione") rather than on the moment/phenomenon of emission. This feature recurs—as noted above—also in the cultural characterizations "affecting" all the constitutive elements of the invading emissions (again: "immissione"): from "normal tolerability" to the same list of the phenomena of propagations.

In the final result of all these considerations there is something amazing and, once again, counter-intuitive, although simultaneously almost obvious. The material boundaries of ownership and the physical spaces that host its exercise show themselves "to be the consequence" of the perceptive processes and cultural patterns used (or legally established) to categorize them[10].

II. TRANSLATING SPACES: PLURAL SPATIALITIES AND THE UBIQUITY OF CONNOTATIONS.

If something is not categorized as a noise, a stink and, in any case, it does not exceed the limits of normal tolerability, then it can cross borders and boundaries of property—walls, stairs, distances, glasses, doors, etc. But, in so doing, the substance at stake annihilates any ability of such boundaries to isolate, differentiate, break the continuity of spaces and experiences, and/or engender excluding and secluding "places" on behalf of a specific subject. As if to say that a wall may be there, but it will be of no use in distinguishing spaces when there is no unlawful intrusion or invading emission. The ghosts of Otherness, all the propagations enlisted in Article 844, can cross such barriers and nullify, therefore, their material consistence and attitude to keep people apart (apart-ment). If lawful, the invading emissions and intrusions may make the Other's action topical even in *its elsewhere*, that is to say also in the other's domains, which at that point results in an extension of the neighbor's emitting action towards, through and into a space now become/recognized as common[11]. All this is to say that the "etcetera" of "the human" can

10 With regard to this topic, see Whatmore, S.: *Hybrid Geographies: Natures, Cultures, Spaces*, Sage Publications, London – Thousand Oaks – New Delhi, 2002 and specifically the chapter titled "Reinventing Possession: boundary disputes in the governance of plant genetic resources" (*ibidem*: pp. 91 ff.).

11 The composed "become/recognized" term is only apparently oxymoronic. It is so because space and its scansions draw on experience, inter-subjective relationships and the categorization stemming from them. Since experience enfolds as a flux and comprises synthetic dynamics fostered by memory, then recognition

re-map physical space enough to remold it and change its categorical "scansions." But this conclusion has further, relevant implications.

If the effectiveness of the distinctions among spaces of coexistence, despite the extant material boundaries, depends on the ascertainment of invading emissions, if this ascertainment, in turn, is to be carried out with regard to cultural and psycho-cognitive factors, then the idea of physical spaces and their conceptualizations appears to be involved in a deep change. If grasped in their singularity or identified as *discrete* entities, spaces prove themselves to be implications of the categorical scansions of the experiences that occur and are lived in those same spaces. From the point of view of both law and spatial justice, all this seems to reveal that the (Leibnitzian) incapacity of simultaneously hosting two bodies, two related different experiences, or two ownership claims, is not due to the material sameness and uniqueness of only one space; quite the opposite, it is ownership and the consequent claims for exclusive use of space (declined according to culturally based ends and means) which are the factors that engender incompatible distinct spaces.

So, when property claims are dismissed as groundless—inevitably for reasons that are rooted in cultural and axiological patterns—then there will no longer be any distinction among spaces. As a consequence, inter-subjective relationships will have to be carried out within a unified space (or inter-space) and negotiated regardless of the extant physical boundaries and scansions. Such a conclusion, however, must not overlook the fact that the same physical boundaries, in turn, reflect other axiological-cultural schemas and consist in artifacts shaped on the assumption of those schemas as parameters for constructing action.

The struggle for space arising from disputes on invading emissions looks to be, at this point, a conflict between different experiential spaces rather than between subjects aiming to occupy a single space placed over there, a space that is objective and distinct from human beings for its proper "cosality." These cultural perspectives are not, ultimately, subjective projections cast onto an outside space. On the contrary, cognitive patterns and scripts are the generative sources of spaces, categories, and spatial experiences, which in turn can compete with each other, along with the subjectivities that act within those spaces at the same time that they are engendering them. This is why we can say that the spaces of life are "artifacts[12]."

comes out from the becoming and the same becoming, in its relational dimension, engenders forms of recognition and ascertainment of experience and its meaning. On the other hand, if caught in their semiotic signification, namely with regard to their signifying substance, both the present and the past are in any case a consequence of the future.

12 On artifacts as instances of a non-perspectival pluralism (that is, not stemming from different perspectives on a "world" —assumed as— placed *over there*) and capable of shaping experiential contexts (and thereby also spaces) *really* manifold and, at most, amenable to be reciprocally translated and transacted, see Henare, A., Holbraad, M. e Wastell, S.: "Introduction: Thinking trough Things," in Henare, Holbraad and Wastell (eds.), *Thinking Trough Things: Theorising Artefacts Ethnographically*, Routledge, London – New York, 2007.

At this point, we could ask ourselves "how" and "where" do spatial conflicts arise if "spatialities" are multiple and manifold, and therefore if they do not meet in a hosting space that is objective and distinct from them—if they in fact differ from the common sense view, which considers the struggle for space to be a competition between different perspectives on one and the same objective space? My answer to such a question is as follows. If different spaces get into a conflict, this is because some of their connotative features are ubiquitous, existing side by side within both configurations of each competing spatiality or, alternatively, are synchronically involved in the dynamics of development of the imaginary "spatialities" at stake within their respective connotative sets. Accordingly, what will shape the inter-space hosting the subjects and the conflicting "spaces" will be nothing but the semantic configuration rising up from the processes of semiotic negotiation triggered by the claims for (spatial) signification/categorization and put forward by the competing parties.

In the composition of subjective interests and their related claims for space, several factors will come into play. These can both emerge and take shape through a process of contextualized translation and axiological modeling. To put it more simply: something that is perceived as a nuisance or as an annoying intrusion by somebody could relate to interests that the subject-victim shares with the *emitting subject* and he himself pursues in his life; or, perhaps, they could embody ends and commitments endowed with axiological worthiness from a social and institutional point of view. In these cases, for reasons of consistency and generalization of the constitutive connotations of legal subjectivity, the demand for space put forward by the claimant against the alleged invading emission would likely become socially and legally indefensible. Otherwise, the same claimant would be compelled to recognize the illegitimacy of many other prerogatives he is invested with by the law itself whenever they were engrained in the same values and principles that connote and qualify the contested intrusion and consequently the allegedly unlawful emission. But once such a discursive threshold is reached, what was initially perceived—for example—as a noise by one party in the competition for space, will have to be translated and transfigured into another entity or phenomenon—perhaps as an artistic expression, aiming at the production of aesthetic value. The sounds or other kinds of emissions, which were present and ubiquitously perceived in both the spaces in competition, and exclusively claimed by the parties in conflict, are

This argument, as pointed out above, can be extended also to spaces, provided that they are intended as semantic functions, namely as dimensions of experience that are not independent of what happens, takes place, and moves within and through them. In this regard, and for further details, see Ricca, M.: "Errant Law: Spaces and Subjects" (June 30, 2016). Available at SSRN: *https://ssrn.com/abstract=2802528 or http://dx.doi.org/10.2139/ssrn.2802528;* Ricca, M.*: Klee's Cognitive Legacy and Human Rights As Intercultural Transducers: Modern Art, Legal Translation, and Micro-Spaces of Coexistence, Calumet - Intercultural Law and Humanities Review, 2016. Available at SSRN: https://ssrn.com/abstract=2931368;* Ricca, M.*: How to Make Space and Law Interplay Horizontally: From Legal Geography to Legal Chorology (March 2, 2017). Available at SSRN: https://ssrn.com/abstract=2926651 or http://dx.doi.org/10.2139/ssrn.2926651.*

to be translated, then, so as to engender a common categorical and experiential space. Inside it, the subjective perception of the assumed victim will undergo a re-categorization such that the same signification of ownership will be remolded along with the related claims to exclusivity, self-seclusion and, in the end, the way to live, figure out, and differentiate space[13].

The dynamics of semantic connotations and their attitudes to produce re-configurations within the process of categorization of physical space bring to light the contingency of material spaces and the impossibility of untangling them from the processes and streams through which experience unfolds. The objective, exterior "cosality" of physical spaces is, in other words, only an effect, an epitome of the interaction between the background constants of experience and the cognitive values involved in representing and moving through it. When such constants change, then the cartography of the spatial scansions, as result, will also be altered. The spatial-connotative *continuum* is something that perpetually underlies forms and substantiates their stability. It is coextensive with the web of connotative relationships that underpins the meaning of experience and allows it to acquire a (relatively) constant shape. This connotative "continuum" is mobile, variable, but by virtue of its dynamics, it enables the forms to display themselves and keep their contours (relatively) stable over time. Its dynamism, however, persists, lurking under the surface of experience and in the back of the social and individual mind, ready to suddenly give birth to new forms, that is, as the result of new combinations and weavings of the spatial-connotative fabric.

The above described mobile categorical/spatial *continuum* can be compared with the chorological dimension, resembling the "Kóra" postulated by Plato in "Timaeus." The Greek philosopher imagined it as an existential condition, as such existing even before the beginning of the cosmos, the "generation" of eternal ideas, and persisting within the world even after the original epiphany of the eidetic/categorical distinctions and – along with them – of Time (which is considered, in that work, the endless process through which entities are distinguished from each other, and is icastically defined as "the moving image of eternity"). Without putting into question the Platonic ontological-normative vision of forms, what matters here is to emphasize how the empirical stability of spaces corresponds to

13 In this regard, the reader could consider all the situations in which the necessity of carrying out building work or road maintenance within condominiums or urban areas forces owners and inhabitants to tolerate "noise" that otherwise would fall into the category of "disturbing and invading emissions." In such cases, the exigencies qualified as "needs" and activities labeled as "working requirements" cause a sort of categorical migration of noise. This kind of migration is engendered and conveyed on "justified grounds" that urge people to produce them. As if to say – by means of the theoretically more rough but also cognitively more proper terms of common language – that the workmen do not make noise, but rather they *are working*. Their work, in other words, is a value (also from a purely semantic point of view) that re-configures the borders of the "noise" as well as the "invasive emission" categories. These ends/values re-define, thus, the empirical category; and this, in turn, re-modulates the normative-deontic answer and, consequently, the same values. What makes the situation of "men at work" so interesting is its (relative) contingency and, therefore, also that of the categorical migrations that occur along with it.

categorical stability, which is in turn anchored to the persistence of a specific web of relations among connotations.

This persistence is unrelated to the "cosality" or materiality of the outside world, taken as distinct from the categorizations and representations which the mind produces. It is, rather, due to the relatedness inherent in the unfolding and reproducing of experience, and therefore in the interactions between subject and environment, representations and phenomena. The scripts of this interplay, however stable and objectified, can always get in tune with eventual changes occurring in the relationships supporting them. When this happens, then a re-modulation of the relationships between subject and world is also necessary. During this process, the representative/categorical schemes will be transformed. The same will occur in the phenomenal world, as a result of the turns of experience that will subsequently be oriented by the new symbolic devices. In other words, the renewing of categories will go hand in hand with the remolding of spaces, and vice versa.

Working on meanings, indeed, is coextensive to working on spaces. And this does not regard only the perception of such spaces, but also their constitutive features, which are processive, pro-active, inter-active dynamics and far from merely representational. Put in other way, this means that human beings do not just project forms onto space, they interactively and proactively engender and shape it, *also* by making use of their representative abilities through a vital process within which they act as integrated and relational agents.

Social and historical evidence of this explanation can be found in the evolving interpretation of Article 844 of the Italian Civil Code, especially with regard to the protection of human health. This hermeneutical path has its origin in decisions n. 247/1974 and 184/196 of the Italian Constitutional Court. Both these sentences ruled out the possibility of using the provision concerning invading emissions to make claims for health protection. What would have excluded such a use—the Court argued—was the criterion of normal tolerability provided precisely by Article 844. The Italian Constitutional Court observed that the right to health, guaranteed by Article 32 of the Italian Constitution, should be considered a fundamental right, therefore inalienable and not subject to negotiations or assessment of opportunity as those transpiring in the provision regarding the standard for normal tolerability. If and when there was some damage to health, there could be no room for excess tolerance nor for too broad a margin of appreciation by the judges. Facing a situation in which there was a risk for people's health, all the other interests and rights presumably underlying the emission of propagation of various kinds must be considered subordinate. Ultimately, according to the Constitutional Court,

damage to health would be protected by norms on compensations for damages (articles 2043 and 2058 of the Italian Civil Code) and not through Article 844.

This approach relied upon—inter alia—the remark concerning the "evidence" that the norm on invading emission refers to the land rather than person, the spaces and not the subjects. All this as if the connotative aspects of space were to be considered regardless of the subjects that occupy, act, and live in it. This issue, so envisaged, seems to be of considerable interest, from both a theoretical and an epistemological point of view. The subject is neither the land nor the property—this is the conceptual kernel around which the argument of Constitutional Court circles. But Article 844 is precisely ordered to assure the protection of property rights, at least according to its text. As anyone can easily note, however, the linguistic strategy intrinsically involved in these decisions makes an implicit use of the (bi-directional) semantic slippage so often recurrent in everyday language between property-as-a-right and property-as-object. In so doing, the Constitutional Court seems to overlook that the *cosified* nature of property-as-an-object is an epitome of a multifaceted process of categorization concerning the relationships between subjects and world. These relations are interactive, so that any attitude of the land to avert intrusions and oppose an insurmountable obstacle against them depends on the ways in which the owner subject acts, uses and lives in that space in order to achieve his own ends. In this context, the land is not an absolute space taken in and of itself, as if it were unrelated to the shadow that culture and human cognition cast on its shape and signification; but still less could one consider the land subjected to a property right in this way.

The metonymic-conceptual detour that the Constitutional Court embarked on is due, however, to a practical necessity tied to the different legal means at its disposal to protect the integrity of land ownership and human health (respectively) against any possible damages caused by acts carried out by other (neighboring) people. Article 844 provides an inhibitory protection, which can be activated on the application made by the landowner and is ordered to make sure that the action causing the nuisance ceases. Health is, instead, a good of persons. It is recognized regardless of any property right or other rights in rem. Furthermore, when damaged, health is the source of a right to compensation for damages, as provided by Articles 2043 and/or 2058 of the Italian Civil Code. In line with such practical necessities, the above decisions of the Constitutional Court had their follow-up in the decision of the *Cassazione Civile*, sec. II, 11 September, 1989, n. 3921. The text of this decision actually states that the claim for health damages cannot be considered to be included within the inhibitory protection provided by Article 844 because it should be contained in another claim explicitly and separately aiming to obtain compensation according to Article 2043 of the Italian Civil Code.

Emphasizing the practical reasons underlying these Constitutional and Cassazione Courts' decisions allows, now, a contextualization of the interpretative approaches on the person/space relationships analyzed above. In a way, such contextualization would seem to relativize and even devalue, in a sense, the relevance of the epistemological assumptions displayed in those decisions and related to the *cosified* representations of property and, thereby, the consequential conflation between the right and its object. This, however, seems to me not to be the case. In those decisions, judges coped with the practical necessities and utilized, perhaps not at all deliberately, the conceptual instruments at their disposal. That the legal texts, as a whole, distinguish inhibitory remedies from damages actions, respectively related to the protection of property and health, shows that the epistemological divide between spaces and subjects constitutes a sort of cultural background. The stability of such a categorical divide is, however, continually exposed to the challenges arising from experience and, therefore, also to the increasingly intrusive attitude (related to the existential spaces and the "normal" features of the property right) enabled by technological development. Here the Courts' approach has its interpretive roots, even if it was, however, both triggered and marked by a new element acquired by an issue fundamental to civil coexistence: that is, if the "normal" use of property must be regarded as infringed upon or unlawfully limited when the neighbors' use of space causes damage to the health of the owner of another parcel of land (or residence).

A sort of countercheck of the last assertion can be traced in the synchronic jurisprudential trend that moves in a completely opposing direction from the Italian Constitutional Court's interpretive approach. Since the judgement of Cassazione Sez. Unite n. 5172 on 6 October 1979, the Court undertook a hermeneutical pathway that is diametrically opposed. In this court decision, the judges of Cassazione took the view that the legal protection of health was in fact included in Article 844. This interpretive bent was subsequently followed by many decisions (see *Cass civ., sez.* II, 6 April, 1983, n. 2396 and, more recently, *Cass. civ., Sez.* II, 9 January 2013, n. 309), which added many interesting specifications as to the relationship between spatiality and subjectivity. In such decisions the Cassazione argued that the right to health is to be protected by taking into account the *spatial context* within which the alleged infringement takes place as a phenomenon. This is so, also because it is impossible to exclude a priori that even economic interests, in the case of a competition with the right to health, can prove to be worthy of legal protection and/or deserving some consideration in order to assess the claimed damages and the related responsibilities. Subjectivity and spatiality, in such arguments, seem to match one another in a dynamical, interactive way, almost as if the Court were grasping the defectiveness of an objectifying *cosification* of places as well as health, at least with regard to today's increasingly transforming relationships between subject and environment. But there is more. In judgment 2396/1983, the

Court addressed the risk that the legitimacy to claim against invasive emission, because it is exclusively applied to the landowner, can actually limit the protection of health. Therefore, the judges of Cassazione stated that the inhibitory action *ex* article 844 includes compensation for health damages and the cessation of the emitting activities; furthermore, this action can be used by everyone claiming some infringement on his psychophysical integrity.

Nonetheless, the Cassazione added to such arguments—doubtless relevant from a procedural point of view—some other very innovative considerations concerning both the practical protection of legal goods and the epistemological-categorical approach to spatial justice. In general—the Cassazione's judges observed—if someone wants to claim for health damages *ex* article 2043 or 2058 of Civil Code, he must report damages and prove fault, negligence or willful misconduct of the subject allegedly held accountable for those damages. In the absence of such a report, the judge cannot provide anything, not even by means of emergency measures *ex* article 700 of the Italian Code of Civil Procedure, to inhibit said emissions. Conversely, Article 844 does not include any reference to actual damages but only to normal tolerability. It points to an objective requisite that does not, however, consist in a connotation of invasive emissions tied to the occurrence of empirical facts—in this case, qualified as health damage—but rather to its non-correspondence to abstract parameters of tolerability. In other words, Article 844 might also be used to inhibit emissions that are only potentially damaging to health, but which could be considered unlawful because they exceed the limits of normal tolerability. This interpretive approach would allow, therefore, the preventive protection of property spaces as well as the environment and people living in it against invasive emissions not yet definitively proven to be harmful or noxious.

The latter hermeneutical conclusion reached by the Cassazione might suggest a resurgent cosification of space, which in some respects appears inconsistent if compared with the dynamic coordination between subjects' health and scansions of spatiality envisaged even in the same judgment. From the point of view of the relationships between culture and spatial categorizations, such an issue looks different, however, in another light. Although health seems to be declined in objective terms and irrespective of an actual damaging event, in the perspective assumed by Cassazione it is always considered to be a connotation inherent to the subject and never (absurdly) to the lived space in and of itself. Nonetheless health is assumed as an objective parameter, although only indirectly and negatively, precisely in order to define the legitimate use of space, and thereby of the spatial and inter-spatial actions carried out by people. But this ends up showing, once again, the relational, interactive, experiential and processive features of spatial scansions and categorizations. Their objectivity and exteriority are only a consequence of

the stability or normativity of those interactive relationships, ways of experience, and ultimately the cultural process and its progressive unfolding.

Another important observation as regards Article 844 has to do with the notion of "proximity." The text explicitly refers to the "neighbor's land." But what does it mean by "neighbor"? In the past, problems have already arisen regarding whether the "land of neighbors" was to be considered only and necessarily to apply to that which is physically or topographically contiguous. Gradually, however, courts have opted for a broad interpretation of the concept of "proximity," especially for sound emissions (see, in this regard, also framework law n. 447/1995 relating to noise pollution). This discourse may be applied also to electromagnetic propagations, in respect of which the courts have referred more frequently to Articles 659 and 674 of the Italian Penal Code[14]. As can be seen, the extensive interpretation of the word "proximity" embodies a chorological modeling of the common spatial scansions, which is due precisely to the ineffable features of the intruding substances and their capacity to impinge on the interests of landowners. The danger of being exposed to intolerable noises, even if they originate from places that are not technically contiguous, appears to be enough to enable the categorization as "contiguous" also of places that from a merely physical point of view should be considered as "distant." This is a very relevant aspect—as will be shown below—with respect to a chorological approach to human rights and their protection when the competition for space within condominiums breaks out between people from different cultures and of differing origin.

An additional connotation that seems to be salient for a spatial justice analysis can be traced in the referral, expressed in Article 844, to the possibility reserved to the judge to take into account previous uses in order to qualify an emission as intolerably disturbing and unlawful. This provision would seem to evoke, once again, the cultural features of spatial cartography[15]. Furthermore, time is

14 Art. 659, cod. pen.: Disturbo delle occupazioni o del riposo delle persone.
1. Chiunque, mediante schiamazzi o rumori, ovvero abusando di strumenti sonori o di segnalazioni acustiche, ovvero suscitando o non impedendo strepiti di animali, disturba le occupazioni o il riposo delle persone, ovvero gli spettacoli, i ritrovi o i trattenimenti pubblici, è punito con l'arresto fino a tre mesi o con l'ammenda fino a 309 euro.
2. Si applica l'ammenda da 103 euro a 516 euro a chi esercita una professione o un mestiere rumoroso contro le disposizioni della legge o le prescrizioni dell'Autorità.
Art. 674, cod. pen.: Getto pericoloso di cose.
Chiunque getta o versa, in un luogo di pubblico transito o in un luogo privato ma di comune o di altrui uso, cose atte a offendere o imbrattare o molestare persone, ovvero, nei casi non consentiti dalla legge, provoca emissioni di gas, di vapori o di fumo, atti a cagionare tali effetti, è punito con l'arresto fino ad un mese o con l'ammenda fino a lire quattrocentomila.

15 On this topic it is possible to navigate a vast literature in geographical studies. See Olsson, G.: *A Critique of Cartographic Reason*, Chicago University Press, Chicago – London, 2007; Olsson, G.: "Mapping the Taboo," in S. Daniels - D. Delyser - J. N. Entrikin - D. Richardson (ed.), *Envisioning Landscapes, Making Worlds. Geography and the Humanities*, Routledge, London - New York, 2011 spec. pp. 35 ff.; Farinelli, F.: *Geografia. Un'introduzione ai modelli del mondo*, Einaudi, Torino, 2003; Farinelli, F.: *Crisi della ragione cartografica*, Einaudi, Torino, 2009; Pickles, J., *A History of Spaces: Cartographic Reason, Mapping, and the Geo-Coded World*, Routledge, London-New York, 2004 e *ibidem* for further bibliography.

therein considered as a constitutive connotation of space. Actually, "lived time" and the tracks it leaves, like pragmatic stratifications in the use of experienced space, influence the ways in which property and its protection are structured and "spatialized." Although this provision can seem easy to interpret, it has extraordinary significance and epistemological scope. It tells us that time and space are not unrelated to each another. And they are not because spatial categorization is inherently a semantic-experiential activity, and categorizations of experience are the result of synthesis and abstraction from the phenomena that unfold through the flow of time and populate it. Space and time, in short, are semantic categories. It is, therefore, completely subsequent to their features if the connotations of sense result in modifications of temporal and spatial schemes; and, in the same way, if changes in the stream of spatial and time experience give rise to semantic-categorical re-modeling and renewing[16].

Another criterion strictly tied to time priority is the contextualization of parameters of tolerability with regard to the conditions in the area, that is, in the surroundings of the particular place in which the alleged invasive emission occurs. So, for example, noise parameters will have to be assessed by taking account of the average background noise in the area in which the land or the apartment is placed; the background noise will have to be subtracted from the absolute degree of the contested noise emission. But also in this case, time and space end up overlapping and conflating as much in the categorization of the annoying entities as in the distinction of the spatial frames involved in the exercise of property rights.

All these assessments are overarched—it is worth noting—by the judge's margin of discretion in determining the actual scope of normal tolerability. By virtue of his interpretive ability concerning both environmental conditions and normative criteria, the judge is to mold, along with the parties, spaces and their scansions. But also in this case, Article 844 address space, time and semantic categories not so much as things or entities placed outside the subjects, but rather as signs. It is not putting it too strongly to say that through dynamics and processes of inter-subjective experience, Article 844 seems to have been written by an expert in semiotics. Its text demonstrates how a modulation of signification can engender and regenerate space and time scansions; and, moreover, how observing and mapping space implies, in all circumstances, a cognitive effort that reflects, in the end, on the categorizations and ways by which we make sense of the world. Article 844 shows that the chorological *continuum* extant between space and categories, although counter-intuitive, conversely gives rhythm to the unfolding of experience. But this is precisely the same process by which humans produce meaning. It goes along with the interweaving of relationships coextensive

16 On the reciprocal implication between time and space in law, see Ricca, M.*: How to Make Space and Law Interplay Horizontally, cit., spec. p.* 36.

to experience and it is oriented to consolidations, subsequently, in more or less established forms and objectified things, although remaining *vulnerable* to changes.

III. THINGS, WORDS, SPATIAL JUSTICE: A CHOROLOGICAL GAZE.

On a more general level, the reciprocal implication between space and categories, and then between spatiality and culture, leads to a very important achievement with regard to the relationships among cultural differences. Every culture comprises a universe of signs and meanings integrated and embodied in experiential practices and encyclopedias of know-how. The encounter and the intermingling between different ways of experiencing the world produce conflations of dissimilar connotative landscapes. But this phenomenon is to be intended in a chorological sense, so as to draw the connotative platforms suitable to engendering new categorical frames.

The Otherness that breaks into existential space propagates, immediately, across all the categorical circuits and domains, relativizing their semantic borders and—one way or another— producing their modification, which is also a sort of estrangement. However, the categorical variation, for the reasons elucidated above, also implies some spatial re-mappings as a consequence of the cognitive, embodied and pro-active functions of categories. So, distant places can suddenly turn into semantically close spaces. This (apparently) strange effect is almost inevitable insofar as those distant places serve as the semantic basins of connotative features that are indispensable to deciphering the sense of what happens within the everyday circuits of another place where people from a (geographical or cultural) elsewhere live. On the same grounds, the approaching of new subjects, and then the new spaces they project through experience, will inevitably bring about categorical variations. Hence, we could sum up all the above considerations by saying that the alteration of spatial scansions modifies the categorical implications and their symbolic geography; and, conversely, that the alteration of categorical implications remolds spatial scansions. This confirms that working on meanings includes dealing with, as well as shaping spaces, and vice versa.

These last assertions, if re-contextualized within the framework of spatial justice and then at the crossroads between law and space, seem to subvert in many respects the assumption of *Legal Geography* and *Critical Geography,* developed in a Foucaultian sense and committed to an analysis of the relationships between space and politics[17].

17 As regards Legal Geography see Blomley, N.: *Law, Space and the Geographies of Power*, The Guilford Press, New York – London, 1994; Blomley, N.: *Unsettling the City. Urban Land and the Politics of Property*, Routledge, New York – London, 2003; Blomley, N.: "From 'What' to 'So What?'. Law and Geography in Retrospect", in J. Holder, C. Harrison (ed.), *Law and Geography*, Oxford University Press, Oxford-New York, 2003(a) and spec. pp. 17 ff.; Blomley, N, Delaney, D., and Ford, R. T.: (eds.), *The Legal Geographies Reader*, Blackwell,

These approaches focus on the character of spatial categories that is only surreptitiously empirical. This is their key argument: spatial categories are often used by power groups, which avail themselves of their false evidence, as devices to legitimate their symbolic structures. But such use of spatial concepts and words—so they continue—is only a mystification and a pseudo-naturalistic discourse. Conversely, in many cases the cosifying and naturalizing categorizations are mere consequences of symbolic projections arranged by institutions, organisms tasked with socio-political control and legal language; and all of this is only on behalf of dominant groups and their interests. In this way, the misleading empirical evidence of those categorizations enables institutions to camouflage power under a sort of force of facts, so as to produce huge normative implications consisting in rights, prohibitions, sanctions: in short, all the apparatuses used by power groups to control bodies and minds. Unmasking the symbolic, cultural, and political substance of spatial cosifications would be in itself a deconstructive action liable to produce an emancipatory effect. Law, then, cannot be presented as a means to rule the social world according the "nature of things," but rather as a material force that engenders things, a thing among the other things of the world and, therefore, part and parcel of modifiable relationships.

Such readings of social and legal experience are often proposed as critical and demystifying decipherments of the tactics of dominance orchestrated by power. They reveal, however, some grey areas. Once the hidden implication between the teleological use of legal language and the categorization of social spaces is acquired, what still remains to be grasped, however, is a viable path to undertake a pacific and argumentatively negotiable transformation of the cartography of social spaces and their related cognitive schemas. To assert that symbolic activity and physical space are co-implicated, only to then cut off the first part of this relationship, can run the risk of creating a strategy of blindness rather than emancipation. A blindness that could give birth to the most stultifying and obtuse conflict, a struggle for space, or better for *spac*es, to maintain and assert one of them to the detriment of the other.

My analysis of Article 844 and its interpretive transformations shows that rather than reducing law to a cosal (material) factor in a cosal (material) world[18]it

Oxford-Malden (MA), 2001; Delaney, D.: "Law as a Thing of this World," in Holder, Harrison, *op. cit.*; Delaney, D. 2010, *The Spatial, the Legal and the Pragmatics of World-Making: Nomospheric Investigations*, Routledge, Abingdon - New York, 2010; Delany, D.: "Legal Geography: I. Constitutivities, Complexities and Contingenties," in *Progress of Human Geography*, 2014, pp. 1-7; Bravermann, I., Blomley N., Delaney D., and Kedar A.: "Expanding the Spaces of Law," in Id. (eds.), *Expanding Spaces of Law: A Timely Legal Geography*, Stanford University Press, Stanford, 2014; see, from an anthropological perspective, Benda-Beckmann, F., Benda-Beckmann, K., and Griffiths, A.: "Space and Legal Pluralism: An Introduction," in Id. (eds.) *Spatializing Law: An Anthropological Geography of Law and Society*, Ashgate, Farnham - Burlington (Vt.), 2009. See, moreover, as to a specific focusing on the urban dimension and administrative territorial powers, Layard, A.: "Shopping in the Public Realm: A Law of Place," in *Journal of Law and Society*, 37, 2010, pp. 412 ff.

18 In this sense, see Delaney, D.: "Law as a Thing of this World," cit., p. 67.

is much more profitable to put language, values, space and time on and along a horizontal plane of overall immanence, within a horizon of experience intended as an universe populated by relationships among signs. Once this step is taken—which consists, first of all, in becoming aware of what happens everyday even in the folds of Court practice—we can begin a process of reconfiguring spatiality, and thereby spatial justice, to include polyphonic participation. The level of chorological relationships and discourse – that is, the level on which we can think and act in light of a pre-acquired awareness of the spatial-categorical *continuum* – can support requests and efforts to re-categorize and re-*spatializ*e social experience. But this will be possible only if we turn the criticism against the strategic and pseudo-naturalizing cosifications into a process of deliberate transformation.

I will try to give some concrete examples to make the methodological approach I propose less abstract. One of the "topoi" of spatial criticism is "prison"[19]. As legal geographers have noted, it is sufficient to displace people and bodies inside such a place for their forms of conceptualization and the related legal prerogatives to undergo a sort of transfiguration. Inside prison, human dignity, freedom, self-determination, health, hygienic and food exigencies, etc., change their (normal) social and legal meaning. It is almost as if the displacement into that place were capable—merely by virtue of its meta-phenomenal force—of producing a sort of metamorphosis of bodies and subjectivities[20]. Actually, people and bodies are always the same. And yet, the mere evocation by the law of the word "prison" seems to endorse and perform their transfiguration.

Such remarks are even more than applicable on an ethical level. Nonetheless I have some issues with their cognitive and/or epistemological premises, at least for the ways in which the theoretical currents cited above configure them. "Prison" is not only a place but, indeed, also a word. What makes that place "different," "apart," from the circuits of "normal life" are its connotative implications. In turn, such implications engender the place "prison" and, once it is created, they themselves are underpinned and confirmed by its existence. It is a circle: through it law's words and their connotative implications self-produce the practical and spatial verification of their cognitive efficacy and axiological correctness. However, it is not impossible to challenge the categorical boundaries of the word "prison." This can be achieved by bringing to light the connotative continuities extant between what is outside and what is compelled to stay inside the word and the place "prison." To this end, values might be used as metaphorical and translational metaphors, and this will be enough to see a new semantic and experiential horizon rise to the surface of conscience. At the same time, as these processes of

19 See Delaney, D.: "The Spatial, the Legal and the Pragmatics of World-Making," cit.

20 A symbolic and astonishing account of such a phenomenon —but also of its potential opposite— can be found in Dostojevsky, F.: *Memoires from the House of the Dead*, (or. 1861-1862), Oxford Paperback: Oxford 2008.

semantic re-modeling are initiated, the poignancy/cosality of the place taken in its materiality, becomes recessive or, however, vulnerable to the possible claims for their re-categorization.

To wit: I am not suggesting that such attempts at semantic and practical transformation are always successful. I merely suggest that they represent, on both cognitive and axiological levels, the way to articulate a constructive criticism against the mystifying use of spatial cosality. I think, for example, of how the "perception" of the place "prison" irresistibly changes in the social imagination as soon as some work activities, ordinarily performed also outside prisons, take "place" also within their walls and are practiced by detainees. Seeing a prisoner who "makes bread and desserts manufactured for sale outside the prison walls, put on shows open to the public," and so on, spurs almost automatically a sort of re-connotative wave—as it were—capable of investing both the word and the place "prison" with new connotations and legitimate uses. All of that, however, is nothing but the consequence of a semiotic migration, a re-configuration of the categorical borders or domains and the related experiential, spatial implications. Limitations and restrictions imposed on bodies and minds involved in the experience of prison change their significance, so that the previous scansions of sense can collapse in on themselves and draw, in this way, the coordinates of their possible self-transformation.

Just to provide another example, well known and already proposed in the analysis of spatial justice, we can imagine the case of a seat at the theatre for which two individuals have the same ticket for the same show on the same day[21].

Many people could implicitly assume by relying on common sense that the cause of the presumable conflict between the two ticket owners stems from the scansions inherent in the empirical space. How can two distinct bodies simultaneously occupy the same space? Besides, law, and especially modern law, recognizes abstract prerogatives like property, exclusive use, etc., and grafts them onto the natural spatial scansions, which in turn are the result of prior acts of categorization. From a post-modernist point of view, only a radical deconstruction of these cognitive tools and a related epistemological approach could allow for the

21 Here, the referral is to a recent essay written by Philippopoulos-Mihalopoulos, A.: The Movement of Spatial Justice (Il movimento della giustizia spaziale), in *Mondi Migranti*» 8, 2014, pp. 7-20; the same topic is addressed in Philippopoulos-Mihalopoulos, A.: *Spatial Justice: Body, Lawscape, Atmosphere*, Routledge, London-New York, 2015, e spec. pp. 174. The same author has made other important contributions to the "Spatial Justice" issue: Philippopoulos-Mihalopoulos, A.: "Spatial Justice: Law and the Geography of Withdrawal," *International Journal of Law*, 6, 3, 2010, pp. 1-16. With regard to sociological-philosophical analysis concerning the relationship between politics and space, see Lefebvre, H.: *La production de l'espace*, Anthropos, Paris, 1974; De Certeau, M.: *L'invention du quotidien, vol. I, Arts de faire*, Gallimard, Paris, 1990 (trad. it. *L'invenzione del quotidiano*, Edizioni Lavoro, Roma 2005); Soja, E.: *Thirdspace: Journeys to Los Angeles and Other Real-and-imagined Places*, Blackwell, Malden – Oxford, 1996. On Henri Lefebvre's (not only spatial) thought, see Butler, C.: *Henri Lefebvre. Spatial Politics, Everyday Life, and the Right to the City*, Routledge, Abingdon, Oxford-New York, 2012.

aversion of an otherwise inevitable conflict between the two spectators. It is also true, however, that such a radical deconstruction of spatiality and spatial categories could unleash the specters of anomy. The dive into post-modernity could thus result in a withdrawal from any attempt of control and provision, an abysmal giving up of themselves to the case, to the contingent creativity, to the mere opportunity intended as "kairós."

But is this attitude really the most efficient and—if you'll allow—authentically human remedy to the defectiveness of categorizing and generalizing thought or against the sclerotic ossifications produced by an eternalizing and idolatrous vision of reason and its potentialities, so typical of modernity? I believe not. I think that it is possible to support this assertion also on the grounds of what has been observed above with regard to Article 844 of the Italian Civil Code. In my view, the conflict for the seat at the theater is not a competition between two subjects who contend for one only physical space, that is, a single space remaining *over there*, distinct from human action. Rather, I believe that this is a confrontation between multiple spaces, as such projected and engendered by the involved subjects according to the (in this case: conflicting) categorical scansions of ownership. What matters, however, is that such scansions are by no means immune to criticism and semantic-categorical re-modeling. But who else but ourselves—even if this is a problem for us alone, entirely a cultural one—has the tendency to "cosify" (reify) property and conflate it with its object—in this case a seat, which is envisaged, in turn, according to value-oriented categorical assumptions? If it is impossible that more than one individual can occupy a seat at the theater, this depends on a cultural and axiological assumption about the world of objects. This assumption is not an unavoidable consequence descending from some heteronymous and universal structure of that world. The exclusive and excluding use of the seat is a semiotic implication rather than an individual and unrelated fact. Actually, why should we give up the possibility that two spectators cannot sit on top of each other to see the show? Who excludes that they might take turns sitting? Conversely, who can say that if one spectator books all the tickets of the whole theater, at least on one evening, other aspirant spectators could potentially sit only because there is no physical coincidence between the seat occupied by the first legitimate spectator and the other seats targeted by the untitled ones? Who established that there would be no rule to determine whether both the tickets in the above example are valid? Could we not imagine a criterion based on the ascertainment of who was the first spectator to acquire the ticket?

In any case, doesn't the plausibility of all of the above questions and proposals show the pro-active, cultural character of the *space-seat* and the claims for its use? I could go on indefinitely with similar deconstructing questions. But what is important to emphasize concerns, rather, the possibility of re-categorizing

the word "ticket" and its experiential, pragmatic implications. By doing so, we would see new possible configurations of the space "seat" appear. And, maybe, these could serve to avert the conflict, to make it dissolve and become no longer categorized as a conflict or, at least, as an ineluctable struggle caused by the self-evident space-time coincidence between two bodies claiming a single space-seat. In turn, a re-categorization of the space could trigger a sequential process regarding the re-categorization of the subjective prerogatives. All this until a stage of stabilization will have taken "place"—even if it will remain always and, in every case, exposed to the beginning of a possible, further process of semantic motility.

Such issues can undergo an amazing dramatization when the competition for space is between people from different cultures. An interesting example—which a PhD student once recounted to me—regards a conflict arisen between a lady from Sub-Saharan Africa, immigrated in Sicily, and a scheduled coach driver. Here is—as if it were at present—a narration of that event.

The lady seeks to stop the bus departure, with outcries and noisy complaints, claiming that she is a victim of an unwarranted discrimination. The reason for the disagreement stems from the driver's refusal to allow the woman to access the coach so that she can begin her trip, because of the lack of free seats. In the eyes of the lady this is, however, an incomprehensible and groundless denial, and thereby suspicious. This is for the very simple reason that in the coach there is a huge space capable of hosting her… standing up. Given the empirical self-evidence of the (spatial) situation, the driver is surely dissimulating discriminatory intentions, probably due to her "blackness"—typical of many people from Africa—and her migrant status. It is perhaps even superfluous, at this point, to inform the reader about the failure of all the attempts carried out by the driver to explain to the lady that the restriction of access to the coach is determined by safety standards and the related necessity to assure a seated position to all the travelers. In the lady's view, these objections are pure nonsense, unrealistic stories, utterly contradicted by the clear evidence of a huge empty space at her disposal for taking her trip. So, she has every reason to rant and rave and refuse to get off the coach so that the driver may carry out his transport service.

The matter, in the eyes of many "western" people, could seem grotesque, at a minimum. In fact, to resolve the unfortunate predicament the driver had to wait for the police to arrive. Only the menace of a compelling intervention of authority succeeded in overcoming the resistance of the lady. In the end, she desisted from continuing her loud protesting more because of her fear of the authorities than because her convictions had changed.

At the root of the conflict, however, there was a problem of cognitive distance and dystonia. The everyday experience of many inhabitants of Africa, especially

in rural zones, goes completely against the "self-evident spatial reasons" adduced by the driver. The vision of space-coach "practiced" in rural Africa is on average incommensurable to the Italian one. Without any thoughtful striving to make an intercultural translation and, therefore, a crossed re-categorization of spaces, the possibilities of reaching a peaceful and shared solution to the disagreement between the driver and the lady were inevitably doomed to fail. Only an intercultural and bi-directional re-semantization of the criteria regarding the availability of tickets and transport service would have allowed the lady to "see" the lack of space inside the coach and the driver to find the communicative path to understanding the reason of his counter-part's fury. To undertake an intercultural translation, however, the driver should have realized that the lady in front of him was putting forward a claim conceptually rooted in an imaginary and geographical "elsewhere," in a "distant" circuit of experience and signification. She was performing the counter-intuitive encounter between two different spaces and raising the related claim to make it so that one of them (precisely hers) could penetrate inside the other. Without the ability to understand and decipher this situation, the driver and the lady could never have realized that the way out had necessarily to go through the engendering of a new cultural and practical space.

Something similar occurs in the condominiums that host "multiculturality." They are "privileged" places for the likelihood of such conflicts and their reproduction. The presence of migrants within condominiums and their behavior according to cultural schemes that can be much different from those of natives, "make place" from distant spaces within these contexts of coexistence. Gathering their stories shows how conflicts are (in most cases) not for the same space, but rather are triggered by different spaces that compete with each other because of some of their common or dissimilar connotative elements. The field work can afford an almost immediate perception of the theoretical arguments developed thus far and proposed, what is more, starting from the interpretation of a legal statement endowed with an intrinsically pragmatic and socio-politic efficacy: none other than, Article 844 of the Italian Civil Code.

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