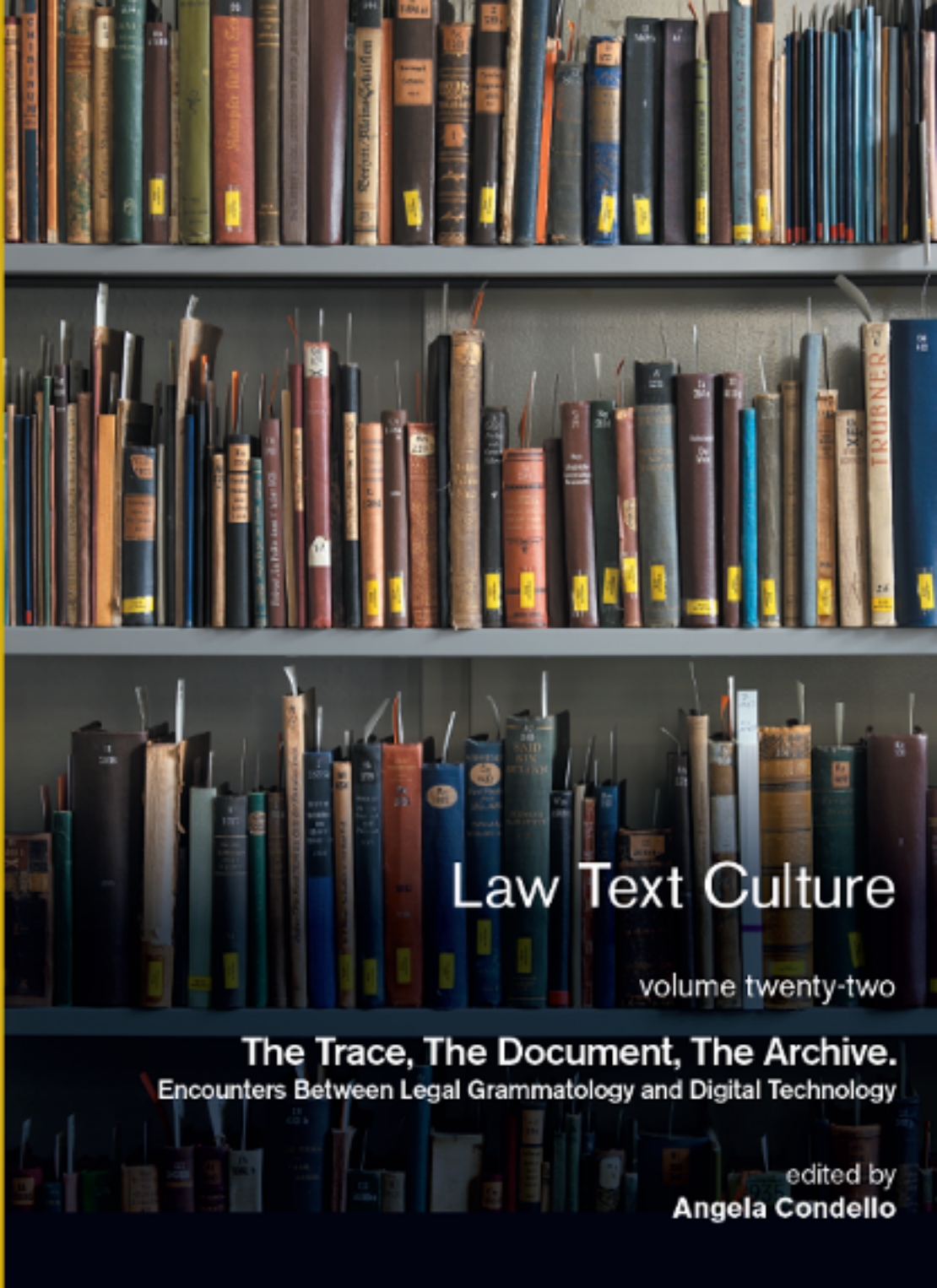

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volume twenty-two

The Trace, The Document, The Archive.

Encounters Between Legal Grammatology and Digital Technology

edited by

Angela Condello

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Introduction
Inhabiting the Archive: 'Techno-Logos' of a Normative Reality

Angela Condello

Since the first informal discussion I had with Marett Leiboff a couple of years ago, this special issue was conceived as an attempt to rephrase the relationship between the system of concepts and questions that mark Derrida's reflections on grammatology, the archive, and the trace - on the one hand, and the languages through which normativity can be expressed, on the other. I intentionally use the term 'normativity', which is broader than 'law', to engage with a legal-theoretical reflection on a series of transformations that characterize our time, and especially those transformations produced by the emergence and introduction of digital technologies and the internet. Through the lens of a symbolic language composed by the archive, following Jacques Derrida's concept of 'grammatology' and Maurizio Ferraris' concept of 'documentality', the connections between law and technology show a double bind with both the materiality of the codes on which normativity is inscribed, and with the symbolic dimension that attributes authority to the inscriptions. The contemporary 'technological turn' is producing changes at an anthropological, existential and social level, and it also reflects on this double bind (material-symbolic) connecting law and technology; in other words, the current transformation and the 'total mobilization' characterizing contemporary life complexify the relationship between law and grammatology, hence the idea to rephrase the relationship

between traces, documents, archives and law.

This new *techno-logos* is explored in this issue through six essays, one conversation-dialogue, two short stories, and the presentation of an artistic project. In different ways, all the pieces contained in the issue interpellate the use of technologies - old and new - in relation to the form and the content of legal norms. With a diachronic eye, all these works can be seen dynamically as sections of an intentionally deconstructed history of normative inscriptions. What I called a 'double bind' (between law and technology) is, in fact, an intrinsic correlation that I represent, in my essay, through the circular movement *nomoi-grammata*-technology: without technology there would be no normativity, yet, technology has its own capacity to produce responsibilities and obligations. This progression, represented through a circular movement, brings into the *arcanum* of legal authority a labyrinth of symbolic legitimization for which laws need inscription (*codices*) to exist, and then remain connected to those inscriptions (*codices*) in time. New media (e.g. smartphones) convey information through recordings, so they are both media *and* archives: thus, the nature of the archive is changing. Three of the essays contained in this volume address this change: Goodrich, Haverkamp, Terrone. As Goodrich writes, 'the most holy temple of justice is a text and like any such it is vulnerable and hence the guards, the secrets, the secretion'.[1] The beginning, the act of archiving a norm *as* a norm is an erasure of what is outside the content of that specific norm; the beginning is an erasure: all preservation entails destruction.

The internet and digital media relocate the archives: this relocation concerns legal norms as well, and the movement of externalisation from the library-archive to the digital-archive requires an act of redefinition and of reflection. All Aristotelian causes are involved in the contemporary technological revolution: the material cause (the digital is different from the dusty archive), the formal cause, the efficient cause (the subjectivities and intentions behind the normative act), the final cause (the reason for doing something).

If Derrida's grammatology had produced a disturbing new form

of materialism, provoking interdisciplinary reflections on the border between forms and contents, the present issue aims at approaching the contemporary coexistence of different linguistic registers that encounter one another, *à la* Lacan. The registers represented in the volume are: the archive, the reflection on documents and law, the reflection on new media and their normative force produced by the coexistence of information and communication in the same *medium*. In particular, this coexistence is discussed in Enrico Terrone's essay, in which he shows how digital technologies challenge a number of conceptual distinctions that underlie, almost as dogmas, most current discussions on media. He deconstructs the following distinctions: communication/recording; medium/archive; vehicle/store; act/object; content/form. The digital revolution, in particular, disrupts the distinction between recording and communication, and confuses the two domains. The digital medium reveals an archive structure: the digital medium is an archive that records for a limited time, the archive is a medium that communicates over a long period.

Anselm Haverkamp and Peter Goodrich re-signify this archive in relation to the contemporary age: decades after Derrida's works on grammatology and about 24 years after the book on the archive fever, the switch from memory to archive has become evident. The archive produces the memory of the authority and it has an intrinsically technological nature that emerges clearly with the internet. Where originally there was textuality, Haverkamp explains referring to the ancient Roman tradition, there is now a broadened system of inscriptions that are often out of the subject's control: however, textuality and inscriptions determine the archive. And the archive is the space of the possibility of the *nomos*.

Goodrich recalls Vismann's image of the archive as that which does not speak, the *arcanum*, the necessary *arcanum* of the power. The mystical foundation of the legal authority is as well produced by an act of '*mise en archive*', deserting what is kept out of the archive and external to the mysteries of record, text and law. This movement of selection of what can be inside and what remains out of the archive changes with new technologies: is there really something that remains outside? The

internet does look like an immense, infinite (and thus indistict) archive.

This indistinction, which is characteristic of the contemporary, is central in Alberto Andronico's essay, in which he discusses Derrida's *Rogue States* and the epistemic, ontological and authoritative confusion produced by events like September 11th. We are immersed in temporal and spatial indistinction, where it is hard to discern between past and future, and inasmuch between inside and outside. We *inhabit the archive*. And thus, as Ferraris points out and as I also try to recall in my paper, the sources of normativity must be rediscussed. As aforementioned, all the Aristotelian causes - material, formal, efficient, final - are at play: this is where the deconstruction of contemporary grammatology brings us. In their conversation, Mark Antaki and Richard Janda discuss an app developed by Janda and his research students; the app is supposed to help people become aware of their patterns of consumption, even their modes of life, and help them to become more responsible for their choices. And so they address the question of how technology impacts our existence and also how it can become the source of obligations, rules, and thus patterns of normativity.

The second section of the issue is dedicated to creative works, and in particular it contains the presentation of various artworks by artist Maria Eichhorn and the short stories written by Tiziano Toracca and Raffaele Donnarumma, two Italian scholars working in the field of literary theory. Eichhorn's work reflects an engagement with the material life of documents and of historical documents concerning ownership in particular. The two short stories reflect and depict the principal feelings and states of mind related to the use of digital media in contemporary lives and societies. This second section, too, reflects the new nature of grammatology, understood as the system of signs and traces that constitute social reality, in relation to new technology: also from these, the indistinction between information and recording, and between outside and inside, emerges clearly.

Notes

1. See Goodrich, in this present volume, 57.

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Alberto Andronico is Full Professor of Legal Philosophy at the University of Catania and he is co-director of "Teoria e Critica della Regolazione Sociale". He has published widely on Derrida and legal normativity.

Mark Antaki is Associate Professor at McGill University's Faculty of Law and an active member of the Association for the Study of Law, Culture, and the Humanities. Much of his work involves attending to language and transforming shorthand into keywords.

Angela Condello is Adjunct Professor of Legal Philosophy and PI of the Jean Monnet Module "Human Rights Culture in the EU" at the University of Torino. She teaches within the Law and Humanities Program at the University of Roma Tre and directs LabOnt Law (Turin).

Raffaele Donnarumma is Associate Professor of Contemporary Italian Literature at the University of Pisa and executive director of "Allegoria".

Maria Eichhorn is an artist, she lives in Berlin. Her art practice of displacement and redirection to that which is not normally evident perpetually generates documents that in turn become essential components of the very projects that produced them. These documents may be put on display in the form of know-show or be stored (as no show) for future reference and use. Yet, in both cases they operate as records of past events whose legacies impact the present and will surely continue well into the future.

Maurizio Ferraris is Full Professor of Theoretical Philosophy at the University of Torino. He is the President of the Center for Ontology (LabOnt) and of the Institute for Advanced Studies in the Humanities and New Technologies Scienza Nuova.

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