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Introduction

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This Special Issue reflects a very special occasion. On 13 January 2012, the Tilburg Law School marked the retirement of Associate Professor Dr. Hanneke van Schooten and the recent publication of her latest book, *Jurisprudence and Communication* (Liverpool: Deborah Charles Publications, 2011) with a special colloquium, at which Dr. Van Schooten summarised the findings of her book, and four colleagues offered responses to it.

In the pages which follow, most of the oral presentations of January 2012 have been developed further, in the form of a col-loquium, a "talking together". First, Dr. Van Schooten presents her theoretical model, together with a series of case studies discussing its application. It is a model which seeks to bring the philosophy of law into dialogue with the philosophy (and not merely the empirical study of) communication, by building upon (and where appropriate critiquing) some of the most prominent theories which have, in recent times, addressed this issue: in particular, the systems theory (and 'autopoiesis') of Teubner, speech act theory and the institutional theory of MacCormick and Weinberger, Scandinavian Legal Realism and Semiotics. Throughout, van Schooten insists that it is fact which gives meaning to law, rather than (with Kelsen in particular, but also, some might argue, in some aspects of institutional theory) law which gives meaning to fact. Moreover, she stresses the non-verbal aspects of legal thought: rules and their verbal expressions are not fully accounted for by their linguistic expression and the logical/semantic interpretation of such expressions. The "images" of behaviour which the facts evoke play an important cognitive role.

It is this latter aspect of Van Schooten's model which is taken up by Professor Bert van Roermund, Professor of Philosophy at Tilburg University. He regards 'visualization' of legal rules not merely as a supplement to our account of traditional legal interpretation, but as providing the basis of an alternative account. Inspired by

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Wittgenstein and Merleau-Ponty, he sees the interpretation of legal rules in aesthetic terms, where artistic performance is rooted in rehearsal (rather than argumentation) and where every such performance involves a personal judgment based on detecting the 'depth-clues' in a rule. But while Wittgenstein saw following a rule in standard cases as a non-reflective "drill", van Roermund, in common with others, applies his model to the (apparently) hard cases raised by 'no vehicles in the park'.

The second response is provided by Professor Willem Witteveen, Head of the Department for Public Law, Jurisprudence and Legal History of the Tilburg Law School, and a member of the Dutch Senate. Taking up Van Schooten's central claim, that the legal rule forms the *indiscernible, imaginary intermediary* between institutional and consequential facts (the former transforming 'brute facts' into facts cognisable by the legal system, the latter being the legally-endorsed consequences of those facts), he asks what kind of fictions are helpful in sustaining the idea that it is possible to follow laws while not really understanding them (in line with much socio-linguistic research, which also problematises the conception of legal communication as a linear flow of information). He offers, as part of the answer, a Benthamite conception of the fictions underlying the ideology of the Rule of Law, seen as advancing a Platonic agenda in political philosophy which recognises that the context of all legal communication is not merely social relations but "a common regime of power relations".

This, indeed, is recognised in Van Schooten's case studies, particularly the Eric O. case, where she describes the different approaches to a "peacekeeping mission" in Iraq (which resulted in civilian deaths) taken by the prosecuting authorities on the one hand, the courts on the other. This case is the starting point for my own response. I ask whether the different approaches taken by the two different "legal institutions" are reflective of different images of warfare (a semantic difference) or of the different images each group holds of its own role (a pragmatic difference). Role-images (and how they are constructed) are a central concern of Greimassian semiotics, transcending socio-cultural divisions of a political or professional nature. In this context, I discuss the "communication deficit" identified by Van Schooten in traditional models of legal communication (including that of H.L.A. Hart)—and thus engage also with issues of the Rule of Law and legal interpretation raised by van Roermund and Witteveen. I then turn to comparable issues which arise in my other research area, Jewish Law, which reflects quite different ideological premises. Paradoxically, perhaps, that system rests at base on trust rather than objective truth. Trust, too, is a form of meaning, but it is something we attribute to persons rather than propositions; it thus resides fundamentally at the pragmatic level of communication. I suggest, in conclusion, that this is an issue which should be treated more seriously in the theory of secular law and legal communication: perhaps it is the real 'elephant in the room' (which underlies even Witteveen's Benthamite fictions).

The last word, appropriately, goes to Van Schooten. In her Postscript, she replies directly to some of the theoretical points made. This is no "defensive" reaction, but rather an acknowledgement that the model is capable of further development and improvement.

Through this “col-loquium”, issues are more precisely defined and contextualised, and the range of possible responses to them further refined. We hope that readers of this Special Issue will join the conversation.