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Placing the law: The socio-spatial impact of legal norms beyond mere compliance

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Abstract

This paper explores the complex ways in which a legal norm can influence a socio-spatial context. More precisely, the paper aims to contribute to the theoretical investigation of the nexus between law and space in the field of legal geography by proposing an analytical framework for the study of the spatial operativity of law beyond compliance. To do so, this work relies on the concepts of *nomotropism* (namely, “acting in light of the rule”) and *effectiveness-as-operativity*. They imply that (1) any legal norm that has a causal relation with an action can be deemed effective regardless of whether such action conforms with or transgresses such norm, and (2) the impact of a norm is not confined to mere compliance. The paper then articulates the analytical framework derived by these theoretical insights with reference to different kinds of norms (*law in actu* and *law in intellectu*; *law in books* and *law in practice*). The relevance of the resulting theoretical structure for the investigation of complex socio-spatial phenomena is finally exemplified through the analysis of a conflictual process for the establishment of a Muslim place of worship in Italy.

KEYWORDS

effectiveness, illegality, law, legal geography, mosque, norms

1 | INTRODUCTION: LEGAL SPACES

Today, 1 September 2021, while we work on revising this paper, some (few) people in Italy are demonstrating against the so-called Green Pass at the main train stations. The Green Pass is a digital document introduced in August 2021 by the Italian government as part of measures to contain the spread of the pandemic; it is issued to people who have completed their vaccination course against COVID-19. The Green Pass is required to access events and closed spaces (for example, concerts, museums, or to dine inside restaurants). As of today, it is also mandatory on non-local transportation and to enter schools and universities. Protesters are opposing the new pervasiveness of COVID-19 norms limiting access to spaces: they protest against the concept of the Green Pass itself, against the extension of its use, and against the methods of its implementation.

Consider now the very different case of a Muslim group in Italy, which files a request to a local administration asking for a permit to use a former warehouse for religious purposes. Facing rejection, the Muslim group does not give up and

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registers as a socio-cultural association so that – thanks to some loopholes in Italian law – it can use the warehouse for prayer despite the administrative rejection. However, such religious use is not officially recognised, so the space appears to be an informal (somehow illegal) place of worship.

Even if these two examples seem to have nothing in common, they share more than meets the eye. In fact, they both bring evidence of how individuals and groups constantly navigate an intricate spatio-legal landscape in a creative manner in order to pursue their own ends (e.g., opposition to vaccinations or desire to gather for collective prayer). Both examples show how legal norms are not simply complied with or transgressed, but also opposed (through protests), twisted (thanks to some “loopholes”), and, more generally, intimately inhabited beyond mere compliance. It is as a result of such a multi-faceted relation among personal (and collective) motifs and normative instances that many places are used and moulded in specific ways, and law becomes (spatially) operative.

If the extraordinariness of COVID-19 laws has highlighted in a paroxysmal way how legal norms are “spatial entities” that substantially affect, in a direct or indirect manner, how space can be used and under what conditions (Lorini & Loddo, 2017), the use of normative artefacts to curtail the possibility of using space is ancestral (for a fascinating historical picture, see Schmitt, 2003 [1950]) and ubiquitous in contemporary societies. Yet, notwithstanding the intrinsic connection between space and legal norms, the law–space tangle has only rather recently become the subject of intense academic scrutiny. On the one hand, the spatial dimension of norms¹ – where not limited to the use of a common terminology of scale, mapping, or boundaries (Philippopoulos-Mihalopoulos, 2011) – has long received little attention from legal scholars. On the other hand, scholars dealing primarily with space – that is, geographers in particular – have poorly regarded the question of norms for a long time. Consequently, even today, despite legal geography² being a rapidly expanding and vibrant line of scholarship (Delaney, 2016), there is still a certain tendency for geography in general to be prone to lawlessness (Delaney, 2015).

Therefore, regardless of the growing awareness of the limits of a discrete approach to the law and the socio-spatial context, the road to better understanding the intimate complexity and co-constitution of “law and geography” (Blomley & Labove, 2015) remains long and winding. The required journey is not only empirical – to discover the contingencies of the nomosphere³ (Delaney, 2010) – but also speculative, to articulate and refine theoretical arguments (Orzeck & Hae, 2020). Indeed, as Braverman et al. emphasise, “the core categories and definitions of law and space ... require even more careful attention than we have previously afforded them” (2014, p. 15). As we share this idea, this paper aims to contribute to the progress of (legal) geography by proposing a refinement of the conceptualisation of a limited, but relevant, aspect of the law–space tangle: *the effectiveness of legal norms*. In fact, even though several authors have looked closely at how the law is “worlded” (Braverman et al., 2014), thus shaping the socio-spatial sphere, we think that an adequate theoretical systematisation of the concept of (spatial) effectiveness of the law is still missing. To this end, this paper looks at how norms work through the interrelated concepts of nomotropism and effectiveness-as-operativity. Three interlaced questions drive our reasoning: where do behaviours stand in relation to norms? When is a norm considered to be effective (or to have an impact) in a given socio-spatial context? And finally, how does the effectiveness of different kinds of norms materialise? In an attempt to answer such questions, this paper presents a theoretical toolkit that goes beyond the dichotomy of “compliance vs non-compliance,” thus allowing for a more accurate understanding of the way in which the law takes, and makes, space (Bennett, 2016).

For this purpose, this paper is structured into five sections. Section 1 is this introduction. Section 2 presents the theoretical framework of reference (mostly related to legal geography), identifying the dominant approaches to the question of norm effectiveness and stressing the need to go beyond a narrow understanding of the impact of the law. Section 3 elaborates on the concept of nomotropic action, highlighting its implications for a nuanced understanding of effectiveness and its applicability in relation to different types of norms. Section 4 shows the relevance of this theoretical toolkit in the analysis of complex urban phenomena through the fictional, yet realistic, case study of the process of accommodating the religious needs of Muslim migrants in Italian cities. Some concluding remarks then follow.

2 | QUESTIONING THE SPATIAL OPERATIVITY OF NORMS THROUGH ALTERNATIVE PARADIGMS OF EFFECTIVENESS

While the relevance of norms not only to society (Friedman, 1975) but also to spatial phenomena (Braverman et al., 2014; Delaney et al., 2001) is currently a shared principle across disciplines, law and space have long been understood as poorly related, and their nexus unworthy of any specific inquiry (Blomley, 2003). Despite some early works that

appeared in the 1960s (for an overview, see Braverman et al., 2014), things only started to change in the 1980s and 1990s (Delaney, 2015), when several authors – among them, the pioneering work of geographers such as Nicholas K. Blomley and Gordon L. Clark is notable (Blomley, 1989, 1994; Blomley & Clark, 1990; Clark, 1985, 1989) – started dismantling the analytical separation of law and space, unveiling the dense net connecting the legal and the (socio) spatial (for a review, see: Blomley & Labove, 2015; Delaney, 2015; Orzeck & Hae, 2020). So, it is mainly thanks to the line of enquiry that is usually referred to as *legal geography* that law and space, which were initially conceived as analytically separate domains, are now seen as mutually constituted (Delaney, 2015). Not only are most spaces seen as “packed” with legal references (Sarat & Kearns, 1995), but scholarly understanding of socio-spatial entities such as the home, the environment, or territory is also inherently legal, meaning that each space’s configuration largely depends on the way in which they are named, categorised, and ruled by norms (Braverman, 2013). In addition, the law is conceived as deeply spatial and intrinsically geographical (Blomley, 1989; Pue, 1990): “Although a norm cannot ‘materially’ occupy a physical space, it cannot but make reference to space. ... According to Kelsen, it is the fact itself that the conduct regulated by the norm takes place in a physical space that is the basis of the relationship between space and a norm” (Lorini & Loddo, 2017, p. 203).⁴

Although the co-constitutivity of the legal and spatial spheres has been reasserted several times by research in legal geography, some aspects remain debated and others neglected. For instance, some works contend that the legal should not entirely be reconducted to material aspects (Bennett & Layard, 2015) or that urban space should not cannibalise all the attention of legal geographers (O’Donnell et al., 2019). Others (Bennett, 2020) stress the need of moving “beyond legal geography” (Braverman et al., 2014, p.10), looking closely to how the legal blends with the non-legal in contingent and situated realities.

Within this framework of several neglected, underdeveloped, and debated aspects of the law–space tangle, the gap we wish to explore concerns the lack of a sophisticated understanding of the spatial operativity of legal norms. Put differently, the question is when, why, how, and under what conditions a certain legal norm produces a (socio)spatial effect, which influences the production, conformation, use, and perception of space.

In this regard, two traditionally alternative approaches can be recognised. The first approach is called either instrumentalist (Garth & Sarat, 1998) or deterministic (Benda-Beckmann, 1989). It favours a top-down view, where the law – usually conceived as a simple, coherent, and determinate ensemble of meanings (Blomley, 1989) – is perceived as “external to the social practices it regulates” (Sarat & Kearns, 1995, p. 27). To a greater extent, the working of norms here corresponds to the occurrence of law “actually being applied and obeyed” (Kelsen, 2006 [1949], p. 40). According to this approach, a norm is expected to produce effects only when some action is undertaken in order to – literally and rather passively – comply with its prescriptions (or when sanctions are applied for its violation) (Benda-Beckmann, 1989). This exemplifies a narrow and semantic understanding of a norm’s effectiveness.

The second approach is referred to as constitutive (Garth & Sarat, 1998). Here the working of law is conceptualised as simultaneously being more ambiguous and more pervasive than in the previous approach and it is understood mostly as a norm’s capability to create social meanings. The main focus is on its ability to shape attitudes and beliefs, becoming an integral part of the everyday experience. “So conceived, law is inseparable from the interests, goals and understandings that comprise social life” (Sarat & Kearns, 1995, p. 30). According to this approach, the working of norms is not intended as limited to the immediate and passive fulfilment of a given directive (Blomley & Clark, 1990); instead, it embraces a more encompassing and creative experience made of the different and unexpected (even unconscious) ways in which people embed the law into their daily activities, by interpreting, stretching, negotiating, adjusting, and internalising it. In short, this approach rejects an idea of society as a “homogenous plain peopled by an *abstract homo juridicus*” (Blomley & Clark, 1990, p. 441); on the contrary, it sees it as a “multifaceted normative landscape” (1990, p. 441) populated by human beings who experience legal spaces “and experiment within it, through a process of acting in the world and responding to the outcomes of such actions” (Blomley, 2014, p. 80).

Recognising the relative reasons and merits of these two approaches, this paper proposes to look at the working of norms in a way that, while paying attention primarily to the impact of norms on socio-spatial contexts and not vice versa (as suggested from the instrumentalist approach), overcomes the limits implied in the compliance/non-compliance dichotomy. As suggested by the constitutive approach, the current paper accomplishes this task by systematically scrutinising the eclectic and contingent ways in which the law is creatively inhabited (Mahmood, 2005) and actions are constantly adjusted so as to account for its existence (Mnookin & Kornhauser, 1979). In this perspective, the working of norms is no longer to be solely interpreted as an attribute of the norm, but primarily as one of behaviour (Di Lucia, 2002). In sum, even if compliance and transgression are crucial categories, we agree with Friedman when writing that not every action can “be put into these pigeonholes so easily” (2016, p. 73). Therefore,

we need different concepts and categories for an accurate analysis of how people relate, use, and spatialise the law in temporally, geographically, and socio-culturally situated realities. The core question of our theoretical journey is consequently: what types of logical relations connect the law to (spatial) action if compliance and transgression are deemed insufficient explanatory categories?

The complexity of the ways in which a norm can impact the socio-spatial context has been recognised by several scholars in the field of legal geography. For instance, Blomley argues that assuming law to be “simply a punitive or restrictive code, constraining the actions of individuals in a unidimensional manner ... ignores another vital dimension of law which is the power of law not only to command but also to redefine, to empower or even to obfuscate” (1989, p. 522). The point raised here is that law, as a constituent of socio-spatial life, plays many different functions – such as definitional, status conferring, and facilitative (Chiodelli & Tzfadia, 2016) – which influence behaviours to varying degrees. However, how exactly does the law perform such different functions, thus becoming locally meaningful (Cooper, 1995)? Many scholars have investigated the complexity of the impact of legal norms on people’s agency (Cooper, 1995), stressing the need to transcend any simplistic binary understanding such as obedience/transgression or legality/illegality (for instance, several works on urban informality share this perspective, such as Chiodelli & Moroni, 2014; Herbert, 2021; Hilbrandt, 2021). This has been done mainly through rich and manifold empirical investigations of contingent situations, while the theoretical reflection to enrich the conceptual toolkit for the analysis of the effectiveness of the law is comparably less intense. Several relevant concepts – such as grey spacing (Yiftachel, 2009) and a-legal spaces (Hughes, 2019) – have been developed, making our comprehension of the spatial impact of norms deeper; nevertheless, “much of the how, the how come, and the so what of their [the legal and the spatial] intertwinings remain but dimly perceived” (Delaney, 2004, p. 8). In short, a systematic speculative investigation of the specific ways a norm can be deemed (spatially) effective beyond the compliance–noncompliance pair remains to be accomplished. It is this gap that is addressed in the next section; to do so we extensively rely on two concepts – namely, nomotropism and effectiveness-as-operativity – developed by some Italian philosophers of law (Conte, 2000; Di Lucia, 2002, 2014; Fittipaldi, 2002, 2013; Lorini, 2020; Passerini Glazel, 2011, 2012).

3 | BEYOND MERE COMPLIANCE

3.1 | Introducing the idea of nomotropism

The term nomotropism was introduced in the scholarly debate in the early 1990s by an Italian philosopher of law, Amedeo Giovanni Conte (Conte, 1993, 2000, 2003). It is a neologism composed of the Greek words “νόμος” [νόμος], which means norm, and “τροπος” [τροπος], which indicates a turn. Nomotropism refers to acts taken in light of the rule (Conte, 2003); thus, it can be used in reference to all those situations in which a relation of causal derivation of actions from norms is identified. As Fittipaldi states, “every action on which a norm is acting causally” can be defined as nomotropic (2017, p. 60).

To clarify the notion of nomotropic action, Conte offers several examples. He mentions the case of card sharps: “the card sharp is acting on the ground of rules (the ... constitutive game’s rules) to which he does not conform. Paradoxically, the card sharp applies those same rules whose actions he fails to conform to” (Conte, 2000, p. 23). The card sharp, in fact, acknowledges and credits the game’s rules (for instance, the rules concerning the card values, such as the relevance of the ace in the game of poker) and plans his scam precisely in light of them. If these rules had been different or if the card sharp did not know them, then the card sharp would have acted differently.⁵ A second example is that of conscientious objectors: “In USA, during the Vietnam war, some objectors burnt the draft-card that had been sent to convene them. This behaviour was (i) neither in violation, (ii) nor in compliance of the norm obliging to serve in the military. Nevertheless, it was exactly because of that norm that objectors were burning their draft-card” (Conte, 2003, p. 296).

Expressing what can be inferred from these examples in more general terms, Fittipaldi (2017) clarifies that an action can be defined as nomotropic in relation to a given norm if it changes depending on the norm’s very existence (and on the agent-related awareness of it). Identification through the notion of nomotropism of the existence of a relation of causality connecting the action to the norm happens in a value-neutral mode (Friedman, 2016), that is, it does not contain any indication of the quality of such causal relation (e.g., there is no mention of whether we are referring to situations of compliance or not).

3.2 | From nomotropic action to effectiveness-as-operativity

Among its merits, the concept of nomotropism helps articulate a sophisticated understanding of law effectiveness which transcends, without rejecting, the categories of mere compliance and mere non-compliance (Figure 1), thus opening up to a non-binary, nuanced, conceptualisation of effectiveness (Figure 2). Such nuanced conceptualisation makes it possible to better elucidate, in a theoretically detailed manner, the complex process through which the law is “worlded” (see section 4).

One of the implications of nomotropism is that effectiveness cannot be reduced to mere compliance (Di Lucia, 2002). Said otherwise, compliance is neither a necessary nor a sufficient condition for a norm to be considered effective.

Compliance is not a necessary condition for effectiveness since, as the examples of the card sharp and the conscientious objector suggest, a norm can influence a behaviour also when it is not conformed with. In effect, compliance is only one among the possible instances of impact (Friedman, 2016).⁶ It follows that embracing the idea of effectiveness as the causal impact of a norm on an action which conforms to it (that is, *nomic compliance* – Figure 2) requires considering at least two additional classes of relations. **First, *nomic non-compliance*, meaning acts that, although influenced by the existence of norms, occur in their violation. Second, *mere nomotropism* (Fittipaldi, 2017), meaning actions that, while shaped by the existence of norms, neither comply with nor transgress them. In both these eventualities, the action is linked through a relation of causality to the norm, which can therefore be considered effective (see Figure 2). While in the case of *nomic compliance* we can speak of *effectiveness-as-consistency* (i.e., the norm operates on the behaviour so that the action actively**

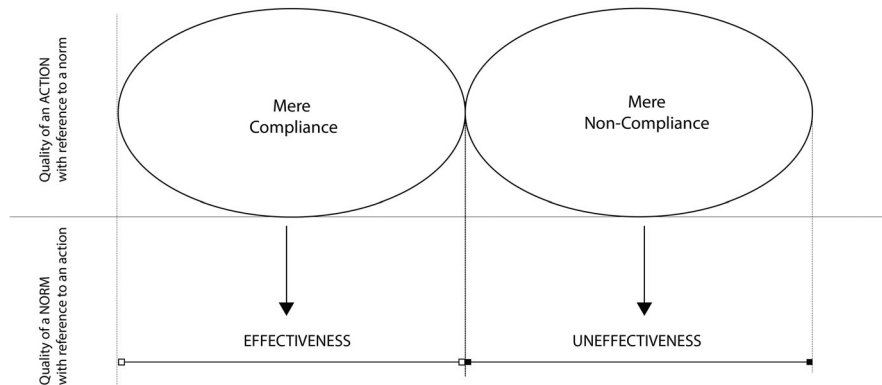


FIGURE 1 Compliance–effectiveness relation under a binary approach

Source: Authors

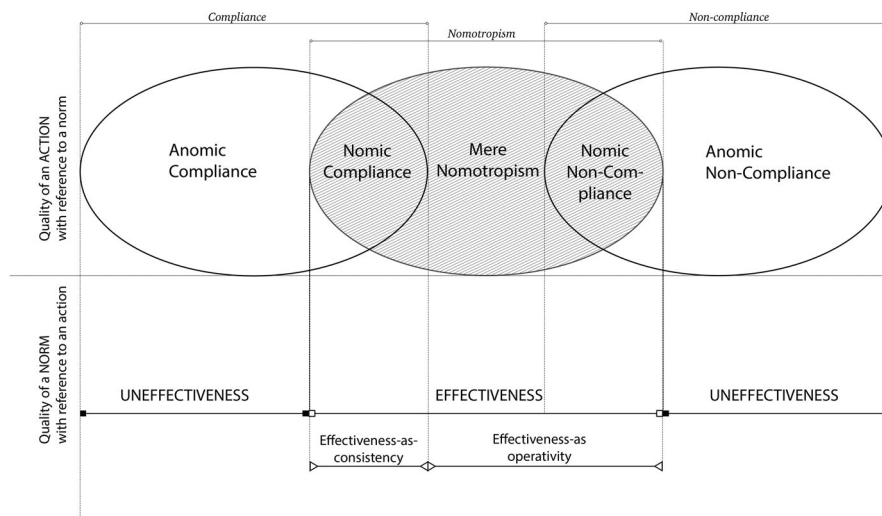


FIGURE 2 Compliance–effectiveness relation as articulated through the concept of nomotropism

Source: Authors, adapted from Fittipaldi (2017)

conforms with the prescription of the law), in both cases of mere nomotropism and nomic non-compliance we must speak of effectiveness-as-operativity of the norm (i.e., the norm operates on the behaviour, even if this latter does not conform to the prescription).

For greater clarity, we can exemplify these categories referring to the example of a card player. In the case of *nomic compliance*, a player engaged in the game of poker would play by knowing the rules and carefully following them. Norms would then be effective through compliance. The case of *nomic non-compliance* is instead exemplified by the card sharp who, although relying on the game's rules, acts by transgressing them (e.g., he hides an ace up his sleeve). In this case, the game's rules, while being violated, continue to exercise some influence on the agent and can therefore be understood as being effective. In the case of *mere nomotropism*, a hypothetical player aware of poker rules refuses to sit at the table because he is conscious that, being both unable to cheat and not good at playing poker, he would lose money. His choice occurs neither in compliance with nor in transgression of the rules. Indeed, his choice transcends both these categories, but, nevertheless, poker rules influence the decision and are therefore effective.

Under a nomotropic understanding of the relation among behaviours and norms, not only is compliance a non-necessary condition of effectiveness, but it is also a non-sufficient one. This is exemplified by the case of *anomic compliance* (Conte, 2002; see Figure 2). Here an action conforms to what is prescribed by a norm by chance or for reasons other than the need (or will) to respect the norm in question. As a consequence, norms lack any direct relevance in determining the action itself (i.e., they are ineffective). Following on from the previous example, a player could sit at the poker table even without a clear knowledge of the rules. Despite this, the player casually wins a round. In this case, even if he appeared to be acting in compliance with the game's rules, he was unaware of the rules used to rate the score and won mainly thanks to luck. As a consequence, rules cannot be said to be effective, even if the action, from an external viewpoint, appears to comply with the rules of poker.

The range of different categories is completed by *anomic non-compliance* (Figure 2). This occurs when an agent transgresses a norm without taking it into any consideration (for instance, because he is not aware of the existence of such a norm); thus, the norm does not have any direct influence on the agent's behaviour. This occurs, for instance, if a player is unaware of poker rules and he/she shows his/her cards to another player.

To summarise, if the concept of effectiveness is read through the lens of nomotropism, compliance results as only being a subcategory of effectiveness of a norm. "Impact, in other words, is more than the degree of obedience; it is the total effect of a legal act on behaviour" (Friedman, 1975, pp. 45–46, cited in Fittipaldi, 2017, p. 65).

Before moving on to the next session, a clarification is needed. Our reasoning on the different qualities of action with reference to a norm is independent from any consideration of enforcement. In fact, the different ways in which the enforcement of a legal norm takes place (in terms of enforcing actors, mechanism, tools), while being a crucial aspect of the analysis of the materialisation of the legal (see Section 3.3 and Table 1; for several examples, see O'Donnell et al., 2019), do not modify the aforementioned theoretical categorisation, but only the chance (or the way) an agent's behaviour is compliant, non-compliant, or merely nomotropic to a certain norm.

3.3 | Effectiveness of different types of norms

The previous reasoning on nomotropism provides an analytical toolkit to clarify both the relation between socio-spatial behaviours and the law, and the concept of a norm's effectiveness. This toolkit can be further refined by considering an additional question: what kinds of legal norms are we referring to when speaking of effectiveness? Although this is not the place to present and discuss the various existing typologies of legal norms (Moroni, 1999), it is still worth considering two sets of norm types, which are particularly useful when analysing urban phenomena.

The first set is *laws in actu* (in force) and *laws in intellectu* (in mind).⁷ The former term stands for all valid legal norms, namely all those approved by a legitimate public authority.⁸ The second term indicates a norm that exists only in the mind of a person, without being (yet) objectively valid. Virtually any law can be considered to be *in intellectu* – indeed, what is operative is not the law *per se*, but its representation in the mind of the agent (Kelsen, 2006 [1949]; Passerini Glazel, 2018), regardless of its accuracy. Here, however, by *law in intellectu* we refer to the specific case of a norm that an agent thinks is likely to be approved by a legitimate authority (thus, it is likely to become *law in actu*). The point we mean to stress is that a norm does not need to be approved to be effective. It is sufficient that it is deemed close to approval in order to influence action.

The second set – which is a further specification of the *law in actu* category – is *law in books* and *law in action*. This binomial has been object of contested understandings (Nelken, 1984); here we refer to the original interpretation proposed

TABLE 1 The varied effectiveness of norms with reference to different kinds of laws

| EFFECTIVENESS | | | |
|--------------------------|--|---|--|
| | Nomic compliance | Mere nomotropism | Nomic non-compliance |
| <i>Law in actu</i> | <p>I have the Green Pass and I dine inside restaurants</p> <p>Since I believe we should all respect the law, I only go in restaurants where owners check the Green Pass</p> | <p>I decide to get vaccinated</p> <p>As restaurateur, I decide it is more convenient to work only with “take away” than to risk sanctions due to eventual problems with the clients’ Green Pass</p> | <p>I ask a friend who has a Green Pass to send me his Green Pass so that I can enter restaurants even if I do not comply with requirements</p> <p>Since I don’t have the Green Pass, I only go in those restaurants where I am sure nobody asks for it</p> |
| <i>Law in books</i> | <p><i>It is forbidden to dine in restaurants in absence of Green Pass</i></p> | | |
| <i>Law in action</i> | <p><i>Since it is not clear who should control the Green Pass, many restaurants avoid strict controls</i></p> | | |
| <i>Law in intellectu</i> | <p><i>On the news, there is talk of an upcoming decree tightening restrictions, requiring the Green Pass also to access some job positions (such as teaching in schools)</i></p> | <p>So far, I avoided vaccination. However, being a teacher, I decide to get vaccinated to avoid any problem at work, when these new restrictions will apply</p> | <p>I believe requiring the Green Pass to work is wrong and unnecessary, so I participate in demonstrations against the proposal</p> |

^aThe category of nomic non-compliance is not relevant with respect to *law in intellectu*.

by Pound (1910): *law in books* indicates legal norms as written by law-makers in a politically constituted society, while *law in action* indicates norms as implemented by law-enforcers (e.g., public officials). This differentiation stresses the fact that normative activity is not limited to the legislative sphere, but *de facto* continues during the implementation process. Therefore, behaviours can relate not only to written laws, but also to the nomosphere produced by public officials in their daily action. Public officials, in fact, do not mechanically implement the law as it is reported in books, but often construct a normative framework through their daily practice which differs, even significantly, from the one constituted by written legal norms (Hilbrandt, 2021). This “*law in books* and *law in action*” gap is not only the product of casualty, but also one of conscious manipulation, which is deliberately and instrumentally twisting *laws in books* so to make them functional to reach contingent goals (for an extensive discussion on the use of laws as expedients, see Tamanaha, 2006). In daily urban reality, there are several instances in which laws are systematically applied differently depending on the place or the subject in question, and this occurs deliberately, relying, for instance, on the available margins of flexibility and discretion of public officials (for several examples, see Chiodelli et al., 2021).

Against this backdrop, the aforementioned theoretical framework on the effectiveness of norms can be made more accurate for the investigation of socio-spatial phenomena by its intersection with the ‘*law in actu/law in intellectu*’ and ‘*law in books/law in practice*’ sets (we use “law in practice” as a synonym for “law in action,” in order to avoid confusion with “law in actu”). An example of the relevance of this intersection is provided in Table 1, with reference to real situations following the aforementioned introduction of the Green Pass in Italy. As Table 1 shows, the three ways a norm can be effective on behaviour (e.g., nomic compliance, mere nomotropism, and nomic non-compliance) can materialise in different actions (and spatial outputs). Behaviours, in fact, are not only influenced by norms valid on paper. They can also be influenced by norms which are believed to be approved soon (for instance, by triggering mobilisations against their approval) or by specific recurrent patterns of actions in the daily implementation of a certain law (e.g., controlling, or not, the Green Pass in restaurants).

4 | READING MUSLIM SPACES IN ITALIAN CITIES THROUGH THE LENSES OF NOMOTROPISM AND EFFECTIVENESS-AS-OPERATIVITY

This section shows how the theoretical framework outlined so far can be applied to the analysis of complex urban phenomena. In particular, our analytical toolkit allows a more fine-grained comprehension of the materialisation of legal norms in a variety of spatial acts (see the different “steps” in Table 2) and objects (see the different “spatial outcomes” in Table 2). To this end, the operativity of the law in the establishment of Muslim places of worship in Italian cities will be analysed. In fact, both the authors of this paper have previously worked on the accommodation of minority religions in Northern Italy (see Chiodelli, 2015; Chiodelli & Moroni, 2017; Moroni et al., 2019; Morpurgo, 2021) and realised that, in order to interpret this process of location, it is necessary to account for the varied ways different norms are embedded in spaces and become effective (also) beyond mere compliance.

For this purpose, this section will, first, briefly outline the presence of Muslims in Italy and, second, provide a step-by-step analysis of a fictional, yet realistic, case.

4.1 | The Muslim struggle for space

Over the last few decades, Italy has been experiencing rapid diversification in terms of the religious composition of its population (Pace, 2013). Today, with over 1.6 million Muslims (ISMU, 2019), Islam is the second religion of the country. Despite the increasing demographic relevance of Muslims in Italy, Islam cannot be said to have gained a proper place. On the contrary, its presence in the urban space remains deeply contentious (Chiodelli, 2015). Each time the broader public becomes aware of a proposal for the opening of a Muslim place of worship, tension generally follows (Saint-Blancat & Schmidt di Friedberg, 2005). With very few exceptions, the place-making aspirations of Muslims remain unfulfilled, as testified by the fact that Italy has fewer than ten purpose-built mosques, with most groups still gathering in poorly retrofitted industrial or commercial spaces, located in urban outskirts and characterised by dubious legal legitimacy (Allievi, 2009). To many, these sites are standing outside the law and Muslims are either seen to be ignoring the norms or deliberately opposing them.

From a legal perspective, the issue of places of worship for minority groups appears to be a thorny one. On the one hand, religious freedom is a constitutional right in Italy and this, on paper, means that anyone can practise their own

TABLE 2 The varied effectiveness of different norms in the story of the Venetian Al-Nour Cultural Centre

| Step | Description | Real case of reference | Quality of the action with reference to the norm | Quality of the norm with reference to the action |
|--|---|---|--|--|
| A Muslim group [MG] needs a dignified space to pray | | | | |
| 1 | The MG asks to rezone an area | Thiene | NOMIC COMPLIANCE (in light of land use law) with reference to LAW IN BOOKS | CONSISTENCY |
| 2 | The municipality refuses the MG request | Thiene | NOMIC COMPLIANCE (in light of the norms on minimum standard requirements) with reference to LAW IN BOOKS | CONSISTENCY |
| 3 | The MG turns to a lawyer | Thiene | MERE NOMOTROPISM (in light of the administration's refusal) with reference to LAW IN PRACTICE | OPERATIVITY |
| 4 | The lawyer suggests that the MG register as a socio-cultural association | Thiene | MERE NOMOTROPISM (in light of land use and private cultural associations laws) with reference to LAW IN BOOKS | OPERATIVITY |
| | | | MERE NOMOTROPISM (in light of the lawyer's knowledge of how administrations tend to behave) with reference to LAW IN PRACTICE | OPERATIVITY |
| 5 | The MG registers as the Al Nour cultural association | Thiene | MERE NOMOTROPISM (in light of the possibilities opened by the law on private cultural associations) with reference to LAW IN BOOKS | OPERATIVITY |
| A | | | | |
| The MG rents a former warehouse and establishes the Venetian Al Nour Cultural Centre | | | | |
| 6 | The MG diversifies its activities | Thiene/Venice | NOMIC COMPLIANCE (in light of what is required by the law in relation to private cultural associations) with reference to LAW IN BOOKS | CONSISTENCY |
| 7 | The Municipality threatens displacement | Oppeano/Venice/Arcole | MERE NOMOTROPISM (in light of land use law) with reference to LAW IN BOOKS | OPERATIVITY |
| 8 | The MG fails to ask permits for construction work | Venice/Arcole | NOMIC NON-COMPLIANCE (in reference to laws on construction work) with reference to LAW IN BOOKS | INEFFECTIVENESS |
| | | | MERE NOMOTROPISM (in light of the Municipality threat) with reference to LAW IN PRACTICE | OPERATIVITY |
| The Veneto Region opens a discussion on a new law regulating places of worship | | | | |
| 9 | The MG organises a petition to oppose the new law | Bergamo | MERE NOMOTROPISM (in light of the announced new law regulating places of worship) with reference to LAW IN INTELLECTU | OPERATIVITY |
| 10 | The Regional government draws the law in such a way as to prevent a rejection on behalf of the Constitutional Court | Veneto Region, driving on the experience of Lombardy region and on Constitutional Court sentence n. 63/2016 | MERE NOMOTROPISM (in light of the previous verdict of the Constitutional Court) with reference to LAW IN PRACTICE | OPERATIVITY |
| The Veneto Region approves the law on religious buildings (L.R.12/2016) | | | | |
| 11 | Neighbours and xenophobic parties start a protest | Thiene | MERE NOMOTROPISM (in light of the approval of the new regional law on religious buildings) with reference to LAW IN BOOKS | OPERATIVITY |

(Continues)

TABLE 2 (Continued)

| Step | Description | Real case of reference | Quality of the action with reference to the norm | Quality of the norm with reference to the action |
|------|---|--|--|--|
| 12 | The Municipality sends an inspection | Venice/Oppeano | MERE NOMOTROPISM (in light of the new regional law on religious buildings) with reference to LAW IN BOOKS | OPERATIVITY |
| 13 | The Municipality orders that the MG cease using the cultural centre for religious use | Oppeano/Arcole | NOMIC COMPLIANCE (in light of planning and building laws) with reference to LAW IN BOOKS | CONSISTENCY |
| 14 | The MG refuses to cease its activities | Oppeano/Arcole | ANOMIC NON-COMPLIANCE (in light of the order by the administration) with reference to LAW IN BOOKS | INEFFECTIVENESS |
| 15 | The Municipality forces the closure | Oppeano | NOMIC COMPLIANCE (in light of the planning and building laws) with reference to LAW IN BOOKS | CONSISTENCY |
| B | The MG remains without a space and starts praying in a parking lot | | | |
| 16 | The MG claims its right to have an appropriate space of worship | Oppeano/Arcole | MERE NOMOTROPISM (in light of the Italian Constitution and of the closure of their headquarters) with reference to LAW IN BOOKS | OPERATIVITY |
| 17 | The MG starts a case against the Municipality | Oppeano/Arcole | NOMIC COMPLIANCE (with respect to the judiciaries' norms) with reference to LAW IN BOOKS | CONSISTENCY |
| | | | MERE NOMOTROPISM (in light of the closure of their cultural centre by the Municipality) with reference to LAW IN PRACTICE | OPERATIVITY |
| 18 | The judge deliberates in favour of the Municipality | Oppeano/Venice (for example, TAR Veneto 0286/2019) | NOMIC COMPLIANCE (in light of norms on private cultural associations and religious buildings) with reference to LAW IN BOOKS | CONSISTENCY |
| 19 | The MG participates in an auction for the sale of a former Catholic church and wins | Bergamo | NOMIC COMPLIANCE (in light of the requirements needed for places of worship and of the auction norms) with reference to LAW IN BOOKS | CONSISTENCY |
| 20 | The Region exercises their right to pre-emption | Bergamo | NOMIC COMPLIANCE (in light of the norms regulating hierarchies of pre-emption) with reference to LAW IN BOOKS | CONSISTENCY |
| 21 | The MG appeals to the court | Bergamo | NOMIC COMPLIANCE (in light of judiciary norms and the Constitution) with reference to LAW IN BOOKS | CONSISTENCY |
| | | | MERE NOMOTROPISM (in light of the Region's pre-emption) with reference to LAW IN PRACTICE | OPERATIVITY |
| C1 | The MG wins the case and a mosque is created in the former church | | | |
| C2 | The MG loses the case and the members disperse | | | |

belief(s), both in individual and collective form. On the other hand, however, such possibility must unfold within the limits of what is allowed by the municipal spatial regulation (Constitutional Court sentence No. 67/2017): places of worship cannot be located just anywhere, but only in areas identified for collective facilities in local land use plans. By law, municipalities are required to ensure a minimum footage per inhabitant to be dedicated to collective facilities, including religious facilities and spaces. However, once that minimum number is reached – as it generally

is due to the sheer number of Catholic churches – no other obligation must be fulfilled by the municipality. This means that if a local administration fails to envision an area devoted to new religious needs (typically, the religious needs of migrants who are non-Catholic), it is, *de jure*, not committing an act of religious discrimination. However, it is *de facto* nullifying a Muslim groups' right to legitimately establish a mosque and any other solution adopted by the Muslim community to create that space will be condemned for occurring 'outside the law' (Chiodelli & Moroni, 2017; Morpurgo, 2021).

4.2 | Realising a place of worship in light of the law: a storytelling

This subsection illustrates the fictional, yet realistic, story of a Muslim group trying to access a formal place of worship within an Italian municipality. Such story is constructed through the assemblage of different portions of real cases, which were the subject of an in-depth qualitative investigation conducted by the two authors between 2015 and 2020. The cases are: Venice, Bergamo, Thiene (Vicenza), Cittadella (Padua), Arcole and Oppeano (Verona) (Table 2). In the same vein, the normative framework of reference of the entire story is real: it is represented by the regional planning law currently in force in the Veneto region (Regional law 12/2016), coupled with some national norms (e.g., on municipal collective facilities and spaces and on socio-cultural associations) and several court rulings.

The choice to make use of a fictional story has been made in the awareness that this practice, even if unusual in geography, is not wholly unexplored (Rabbiosi & Vanolo, 2017). Although "true stories," born out of empirical investigation, are more frequently employed, the construction of a fiction can be an effective tool for various scientific purposes: it "may serve to communicate research outcomes, to explore specific topics and to build meaningful arguments, in ways that effectively take into account and connect multiple events, diverse perspectives, non-linear chronological structures, downplaying 'grand scholarly stories,' in favour of small stories and everyday lives" (2017, p. 274; on the active role of different kind of stories in social science research, see also Gelman & Basbøll, 2014). In our case as well, a fictional story, obtained from an assemblage of true events and thus fictional only as a whole, is an effective descriptive device. Our aim is not to gain a profound understanding of a singular specific case (e.g., creation of a Muslim place of worship in the city of Bergamo), but rather to show the relevance of our theoretical framework to disentangling the complexity of a more *general urban phenomenon* (i.e., the process of locating minority places of worship in Italy). Mobilisation of multiple case studies would be more customary to attain this goal; nevertheless, this approach would result in an unnecessarily lengthy and dispersive manuscript, with the risk of missing the focus on the theoretical framework while favouring specific empirical narratives. The 'fictional but realistic' story is a methodologically coherent operative stratagem within this framework. It does not undermine the epistemological value of the story when analysing the empirical phenomenon in question (i.e., creation of mosques in Italy) or exemplifying the geographical relevance of the theoretical framework. At the same time, this approach allows us to show the spatial operativity of the law more concisely and straightforwardly than through a separate analysis of the six cases composing our story.

Following this methodological clarification, we can now present *The story of the Venetian Al-Nour Centre*.

Once upon a time (at the beginning of the 21st century), there was a medium-sized town of the Veneto region, Italy, where the number of Muslims had been steadily growing for some years. Initially, the Muslims were only there to work, often in temporary positions; however, their stability grew and, as a consequence, they started to discuss the need for a dignified space to pray and perform other religious activities. The private apartments they had used up to this point as informal prayer rooms could not be a permanent solution for their religious needs. Acknowledging the obligation to comply with local land use regulation for building a mosque, in 2010 they forwarded a request to the Municipality, asking for an area to be rezoned to accommodate religious facilities, thus allowing for the construction of a Muslim place of worship (*step 1*; see Table 2). The Municipality – governed by a right-wing coalition led by *Lega Nord* [the Northern League], a populist, xenophobic party – refused such rezoning, for mere ideological and electoral reasons. The legal basis for refusal was provided by the norm on minimum standard requirements for religious public facilities, according to which the Municipality already had a sufficient number of places of worship, thanks to pre-existing Catholic churches (*step 2*).

Faced with this refusal, the Muslim group turned to a lawyer to explore other options (*step 3*). The lawyer suggested registering the group as a private socio-cultural association (*step 4*). In fact, according to a national law, socio-cultural associations can settle in any kind of building, without having to comply with specific land use norms or ask the Municipality for specific permits. In order to be considered a socio-cultural association, the activities conducted in its headquarters need to be diversified (e.g., it needs to offer language courses or organise sports events). Praying can be one of these activities, but not the prominent one.

Equipped with this information, the Muslim group agreed that this seemed to be their only possibility to gain access to a sufficiently large and dignified space. Hence, the Muslim group registered as a socio-cultural association, the Al-Nour association⁹ (*step 5*), and rented a former warehouse located in an industrial area where it established its headquarters, the Venetian Al-Nour Centre (*spatial outcome A*; Table 2). The space was used by the local Muslim community for prayer and several other activities, such as Arabic language classes and traditional cooking courses (*step 6*). Everything went smoothly for several months, until a post on Facebook announced the weekly activities at the “Mosque” – not at the “cultural centre,” as the place was formally registered. Some local residents protested and the Municipality warned the Muslim group of the illegality of using its headquarters as a mosque (*step 7*). Despite the threat, no practical measures were taken by the local authorities against the Venetian Al-Nour Centre and the situation soon calmed down. After some months, the Al-Nour association decided to pursue some internal refurbishing at the warehouse, in order to make it more comfortable and apt for its needs. Worried by the hostility previously shown by local authorities and fearing how any move could work as a pretext for displacing the centre, the Al-Nour association decided to renovate the centre without informing the municipal planning department (*step 8*); thus, the association conducted their refurbishing without the necessary permits.

While this was occurring at the local level, at the regional level another battle was about to begin. An animated political discussion – triggered by the *Lega Nord* majority in the regional government – began on the need to tightly regulate the spread of mosques in Veneto. In the circulating drafts, the regional law was going to forbid any religious activity outside purposely zoned areas – regardless how religious groups were formally organised, thus including those registered as socio-cultural associations. In reaction, the Al-Nour association, together with several other religious groups worried about what this law would mean to them, organised a petition to oppose it (*step 9*). Despite their efforts, the law was approved (Regional Law 12/2016). It is worth noting that the law does not refer directly to mosques, but, more generally, to new places of worship. In fact, the Italian Constitutional Court (sentence No. 63/2016) had previously declared several parts of a similar law on minority places of worship approved by the nearby Lombardy region to be unconstitutional.¹⁰ In order to avoid a similar rejection, the Veneto government framed its law carefully in order to not appear discriminatory (*step 10*).

Following the approval of the regional law, several people – mostly members of a local xenophobic political group – started to ask for the closure of the Venetian Al-Nour Cultural Centre, claiming it was a mosque and not a private cultural circle, and therefore illegal (*step 11*). Under this pressure, and encouraged by the new law, the Municipality arranged for an inspection of the cultural centre (*step 12*). Said inspection found sacred books and carpets on the floor and considered these elements sufficient to argue that the warehouse was used prominently for religious purposes and not cultural ones. Public officials also discovered that internal building works had been pursued without the required permits. On the grounds of this evidence, the Municipality issued an administrative order imposing a stop to the religious use of the cultural centre and demanding that the building be returned to its original status (*step 13*). The Al-Nour association refused to stop its religious activities (*step 14*); as a result, the administration forced the closure of the cultural centre (*step 15*).

Finding itself without a home, the Muslim group started praying in a parking lot (*spatial outcome B*), as a way to claim its constitutional right to access a place of worship (*step 16*). In the meantime, it also officially appealed to the Regional Administrative Court (TAR) against the closure imposed by the Municipality (*step 17*). After a couple of months, the TAR deliberated in favour of the Municipality and against the Muslim group (*step 18*) (for a similar decision, see TAR Veneto 0286/2019). The Al-Nour association decided to look for an alternative solution. After considering various options, they came to know of the auction of a former church. The church, already located in a purposely zoned area, was on sale. They participated in the auction and won it (*step 19*). The Region, which opposed the idea of the Muslim group using a former church, exercised its right of pre-emption (*step 20*). The Al-Nour association decided to go to court once again and filed against the Region for discrimination (*step 21*). Today the trial is still ongoing. Two possible outcomes can be foreseen. The first is a standard fairy-tale conclusion: “and they lived happily ever after.” In this scenario, the Muslim group wins the cause and legally settles into the former church, now converted to a mosque (*spatial outcome C1*). The second possible outcome sees the Muslim group losing the trial; this then leads to the dispersion of the group members, who once again start to gather informally in private apartments and small shops, without having any type of permission (*spatial outcome C2*).

As visualised in Table 2, this story is characterised by the complex entanglement of the actions of its protagonists (the Muslim group and the Municipality) and secondary characters (the Regional government, the Regional Administrative court, the local residents) with an assemblage of normative sources. Such assemblage is not only composed of different types of norms (i.e., *laws in books*, *laws in action*, and *laws in intellectu*), but it is made extremely intricate also by the

diversity of legal sources (i.e., municipal and regional levels; legislative, executive, and judicial bodies) and legal objects (i.e., bylaws and constitutional norms; permissions and obligations).

This intricate framework is the background against which human actions (rooted in different cultural references, contraposing political orientations, or varied individual needs and preferences) literally take place and materialise in specific spatial outcomes. In this way, the law becomes a constituent of space. Against this backdrop, it is worth noting how non-compliance is a minority instance of the nexus between action and the law – and, in any case, mostly takes the shape of *nomic non-compliance*, in so as therefore the law keeps being effective. Instead, *mere nomotropism* is the true protagonist of the story. Frequently, agents neither comply with nor transgress the law, but act in light of norms that, therefore, become a constituent of the socio-spatial sphere, despite not being obeyed. In a nutshell, in the story of the Venetian Al-Nour Cultural Centre, almost nothing takes place simply outside the law. The spatial manifestations of the legal are not ontologically plain and simple: they cannot be rigidly encapsulated in dichotomies such as compliant/non-compliant or legal/illegal. On the contrary, looking at the case through the kaleidoscopic lens of the concepts of nomotropism and effectiveness-as-operativity, these same socio-spatial entities appear to be the materialisation of the varied ways in which the law can be nomotropically effective.

5 | CONCLUDING REMARKS: FOR AN ACCURATE INVESTIGATION OF THE SOCIO-SPATIAL IMPACT OF THE LAW

It is likely that no one – neither those protesting against the introduction of the Green Pass, nor Muslims in Italy, nor even local politicians dealing with the issue of mosques in their local jurisdictions – has ever heard of the term nomotropism or acknowledges the difference between effectiveness-as-compliance or effectiveness-as-operativity. Most likely, they would all dismiss such issues as sterile scholarly onanism. However, this does not negate the fact that, from an analytical viewpoint, their daily actions deeply validate such concepts. In fact, the core idea remains straightforward despite the unfriendly and articulated jargon used to distinguish the different categories: space is used and modified constantly accounting for legal norms, which can therefore be said to be effective even when they are not complied with.

As the case in the previous section shows, from the initial idea of a place of worship to its establishment and use, the influence of law is continuously at play and it assumes a variety of different semblances which, largely, diverge from mere compliance. Said in a more academic fashion, if by effectiveness we identify any instance in which a norm causally influences an action, compliance is neither a necessary nor a sufficient condition for a norm to be effective. As implied in the concept of nomotropism, a norm is effective not only when it determines the compliance of an action with its prescriptions (*nomic compliance*), but also in at least two other instances: first, when an action, while transgressing a norm, is influenced by its existence (*nomic non-compliance*); second, when an action is shaped by the existence of a norm, but it neither complies with nor transgresses it (*mere nomotropism*).

This analytical framework can be fruitfully applied to the analysis of the impact of different types of norms in a socio-spatial context. In this paper, we have considered two sets of norms that are relevant for urban research. First, we distinguished *laws in actu* (i.e., laws that have been approved by a legitimate public authority and are therefore objectively valid) from *laws in intellectu* (i.e., norms that an agent thinks will be soon approved, but are not yet objectively valid). Second, we identified two more subcategories of *laws in actu*: *laws in books* (i.e., laws as written in legal codes) and *laws in action* (i.e., laws as applied by public officials). The overlapping of these analytical layers identifies a tangle – ever changing, and spatially and temporally situated – composed of different types of interactions between human behaviour (and the spatial artefacts it produces) and different types of norms. This convoluted outcome is far from a reassuringly clear and linear image, as would eventually be obtained from the application of a binary compliant/non-compliant paradigm. However, it more accurately approximates the complex way in which the legal *lato sensu* (this includes lawmakers and law enforcers, local and national laws, by-laws and constitutional norms, sanctions and permissions) is worlded and leaves spatial traces, by being taken up, twisted, and inhabited in the real world.

The realistic fictional story of the Venetian Al-Nour Cultural Centre is just one among many instances that can be presented to exemplify how the proposed interpretative apparatus provides a perspective that is relevant for the accurate analysis of existing legal geographies. Several other examples can be found in both everyday life and in existing literature, which can be easily (and fruitfully) re-read through the theoretical lens advanced in this paper to confirm its relevance – see, for instance, several works on Israel/Palestine, where the relationship between the Israeli government and some minority groups (e.g., Bedouins, Arab-Israelis, Arab Jerusalemites, Palestinians) is deeply

marked by the nomotropic (and discriminatory) functioning of legal norms (Kedar et al., 2020; Tzfadia & Yacobi, 2011; Yiftachel, 2006).

It is against this backdrop that the mobilisation of the theoretical toolkit developed in the current paper can not only contribute to the long and winding journey of legal geographers in the law-space tangle, but, more broadly, chip away at the remains of lawlessness in geography.

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DATA AVAILABILITY STATEMENT

Due to the nature of this research, participants of this study did not agree for their data to be shared publicly, so supporting data are not available.

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ENDNOTES

¹In this paper, when we mention norms, we refer to *legal norms* – that is, norms that exist in and by virtue of a legal system. Therefore, even if part of our reasoning can apply to different kinds of norms (e.g., religious norms), it refers primarily to legal norms (i.e., laws).

²“Legal geography is a stream of scholarship that turns the interconnections between law and spatiality, and especially their reciprocal construction, into core objects of inquiry. Legal geographers contend that in the world of lived social relations and experience, aspects of the social that are analytically identified as either legal or spatial are conjoined and co-constituted. Legal geographers note that nearly every aspect of law is located, takes place, is in motion, or has some spatial frame of reference” (Braverman et al., 2014, p.1).

³Delaney defines the nomosphere as “the cultural-material environs that are constituted by the reciprocal materialization of the legal and the legal signification of the socio-spatial” (2004, p. 851).

⁴This is the foundation of what Kelsen (1997) calls the *space of validity* of norms, which refers to the territory in which a norm is valid. Such concept should not be mistaken for the so-called *sphere of reference* of norms – namely, the fact that norms define spaces in which the law applies (Lorini and Loddò, 2017).

⁵It is worth noting that the card sharp does not plan the scam solely in light of the game’s rules (e.g., poker rules), but also in light of those, more general and implicit, which forbid stealing. Hence, he is acting nomotropically in the face of two different sets of norms.

⁶In this text impact is a synonym of effectiveness.

⁷The distinction between *laws in actu* and *laws in intellectu*, relevant in the case of legal norms, can become far less relevant for other kinds of norms (e.g., social norms) that are not applied by a legitimate public authority.

⁸Here we refer to the conceptualisation of objective validity advanced by Kelsen: “we can ... speak of the objective validity of a general norm inasmuch as the general norm can be applied to an individual who does not recognize it, namely, by other individuals who, recognizing the general norm, apply it by reacting to his norm – observing or norm-violating behaviour with the sanctions it decrees to be obligatory” (1991, p. 51).

⁹Invented name.

¹⁰Lombardy is a Northern Italian region adjacent to the Veneto region. During the last decade, the two regions have been governed by the same political parties and have coordinated on several issues (see Chiodelli and Moroni, 2017).

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