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THE TRUTH VALUE OF SENTENCES WITH EMPTY LEGAL TERMS

A Thesis
presented in partial fulfillment of requirements
for the degree of Masters in Arts
in the Department of Philosophy and Religion
The University of Mississippi

by

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ABSTRACT

There is an ongoing debate in philosophy about whether simple sentences containing fictional names are sometimes true, always false, or neither true nor false. Ordinarily, a simple sentence containing names is true if and only if the things designated by those names are the way they are ascribed as being, and false otherwise. For example, the sentence “Faulkner lived in Mississippi” is true because the person designated by ‘Faulkner’ lived in Mississippi whereas the sentence “Faulkner lived in Costa Rica” is false because that person did not reside there. However, this analysis clearly does not work for sentences such as “Superman can fly” since there is no person designated by the name ‘Superman’ to whom the ability of flight can be truly or falsely ascribed. And yet we are still tempted to say “Superman can fly” is true whereas “Lois Lane can fly” is false. Preeminent philosophers such as Frege, Russell, and Kripke have come to very different conclusions about whether such statements are true, false, or neither. I will consider how recent work by de Ponte, Korta, and Perry suggests that the truth-value of a simple sentence containing fictional names can vary depending on whether it is used in making a fictional, parafictional, or metafictional statement. I will also consider how this analysis might apply to concepts employed in law and ethics, such as “public interest”, “legal intent” or “spirit of the law”.

TABLE OF CONTENTS

ABSTRACT.....	II
I. EMPTY NAMES IN LAW.....	1
II. DIFFERENCES IN SENTENCES WITH EMPTY NAMES.	8
A. JURISDICTIONAL SENTENCES.....	9
B. PARA-JURISDICTIONAL SENTENCES.....	15
C. META-JURISDICTIONAL SENTENCES.	18
III. CONCLUSION.....	20
BIBLIOGRAPHY.....	22

I. EMPTY NAMES IN LAW.

Back in 2018, it was of *public interest* for people to have their face exposed while standing in line to make a deposit in a financial institution. One of the main reasons for this measure was that thieves often covered up their faces when assaulting those institutions. The *public interest* then, was preventing robbery and safeguarding the users and employees present in the financial institution.

In 2020, it was of *public interest* for people to wear a mask while being in line to make a deposit in a financial institution. Given the COVID-19 global pandemic, people were supposed to have a mask on in order to prevent the spread of the virus.

Suppose we had laws for both cases. The *legislative intent* in 2018, was to prevent theft and safeguard the security of financial institution users and employees. During the pandemic, the *legislative intent* behind the law was preventing the spread of the virus, the collapse of hospitals and unwanted deaths, while trying to keep the economy from total collapse.

The two laws seem to require contradicting behaviors from the population, but in the juridical practice, we might be able to say that *the spirit of the law* is the same. Legislators are trying to protect the people they represent, and in that *spirit* of protection, they approve laws

that will safeguard the population. Let's suppose that, in both cases, the legislators decided to sanction the deviant conduct with a fine. Compliance with no face coverings in 2018 and compliance with face coverings in 2020 were of such *public interest* that legislators found it reasonable to sanction people who did not obey the commands of the law.

If those sanctions were imposed by a judge, either in 2018 or in 2020, she/he would justify herself/himself in the law, the *public interest* the law seems to protect, the *legislative intent* behind the applicable norm and, the *spirit of the law* that seems to seek for the citizenship's protection.

Haba (2010, p.237) and Engisch (1967, p.142) argue that terms such as *public interest*, *legislative intent* and *spirit of the law*, are *empty* and do not designate anything successfully. Haba (p.236) argues that these terms are *empty* in the sense that they *have large semantic fields, have polysemy, and are extremely vague*¹. Engisch (p.142), classifies these juridical concepts as *terms of free determination* because they have a vacuous semantic field that can be *filled up* by any law practitioner². From the perspective of both authors, those juridical empty terms are not able to designate because they do not to have enough *semantic content* to do so.

¹ Haba defines *large semantic fields* as the characteristic of words that are not defined with a level of determinacy. This author understands by *polysemy* that words can mean different and often opposite meanings. From these two characteristics, he deduces their extreme vagueness.

² As Haba, Engisch considers that these judicial terms vacuous because they have no strict definition. Engisch also argues that almost any definition could be employed for these terms, and that gives the legal authority who applies those concepts the chance to define the term however it wants to.

It is important to add that, from the examples given above, we may be able to think about at least 3 ways in which the alleged empty terms may be employed in sentences in the juridical practice:

1. Employed by a law³ or a judge, which will initiate the *use* of the alleged empty term (this is known in law as a *law source*). For example, a law or a judge may say: *Due to public interest, anyone in a public area should wear a mask to prevent the spread of COVID-19.*
2. Employed by law practitioners or other people, while talking about the source of law that *uses* the alleged empty term (this would be especially important for law practitioners to justify their claims in a court of law):
 - a. *The “spirit of the law” behind the mask mandate is the protection of the population.*Or:
 - b. *The “legislative intent” behind the mask mandate is to prevent the spread of the virus and its disobedience is sanctioned with a fine.*
3. Employed by law practitioners or other people, when uttering a sentence that talks about the *empty term in itself*. This category includes broader assertions about the terms themselves that are not included in category 2, which may be, assertions about their historical origin, their grammatical properties, etc. These assertions seem not to be *empty*

Also, when I talk of *law practitioner* I mean lawyers that act within the juridical system such as lawyers, judges or court auxiliaries.

³ When I use the term *law*, I am using it in the broad sense and not in the strict one. The strict sense of *law* is usually defined as juridical norm derived from the parliament.

in the way sentences in the other two categories may be. For example: *Terms such as “public interest”, “spirit of the law” and “legislative intent” seem to be legal empty terms. Or, the term “public interest” was first used in 1894.*

These examples of the juridical practice apparently differ from other sentences that seem to be *ordinary* in the sense that, they employ terms that seem to be able to designate. For example:

4. *Any driver who conducts his car over 75mph in any street, road or freeway in the country, will be sanctioned with a \$500 fine.*

From Haba’s and Engisch’s point of view, the sentence written in example 4 contains terms that have enough semantic content to be able to *designate something*, such as *driver*, *car*, and *75mph*. Of course, lawyers in their arguments may question the *semantic meaning* of these terms and argue, for example, that it is not clear *what constitutes a driver* but, semantically, those terms seem to designate in a way *public interest*, *legislative intent* and *spirit of the law* might not be able to.

Additionally, if these authors are correct in regarding certain legal terms as empty, it seems unclear how we can account for the truth or falsity of various legal claims in which they are used. Ordinarily, we take it that a sentence is true if and only if the things designated by its constituent terms are the way the sentence asserts them to be⁴. This is important for practical reasons.

⁴ When a legal judgment depends upon a finding of fact it is important to determine what the facts are. The set of facts are often understood to be coextensive with the set of true propositions. The truth of propositions, when the *things referred are part of the ordinary experience*, seems to be a *straight forward* qualification to determine. However, in a wide range of important contexts, the facts, i.e. the true propositions, must be identified when the names and predicates do not have obvious or clear referents.

For example, consider yourself in a position where you are being fined because you exceeded the speed limit on a freeway (i.e. example 4). You may be able to appeal the decision of a judge who sentenced you to pay the fine, if you were not driving above 75mph. It seems that, in this scenario, the legal terms are able to designate you as a driver and the behavior that is to be sanctioned, which gives you the tools to establish, in that appeal, that the sentence that claims that you were driving over 75mph in the freeway is *false*.

On the other hand, suppose you are getting sanctioned because, sometime during 2020, you took off the mask to drink water while being in a financial institution⁵. The judge justifies the decision in a consideration that resembles examples 2.a and 2.b, arguing that the *spirit of the law* and the *legislative intent* justify the fine. Appealing this court decision by saying those claims are *false* might not be as *straightforward* as the appeal on the speed limit case.

Haba and Engisch arguments will give us the *first piece of the puzzle*, which is, according to their view, that the *empty legal terms* used in the case that describes the fine for the disobedience of that mask mandate (i.e. examples 1-3) do not designate in the same way that

For the purpose of this essay, I will not take a stand on which theory of truth that is in force. I will speak about the semantic theoretical conditions under which a sentence is true or false given what it means. I will not address what truth or falsity are or how we know when truth or falsity are satisfied.

⁵ It might be correctly argued that there is a case in which the mask mandate is as *straightforward* as the speed limit case: you do not wear a mask and get fined.

The purpose of these examples is to convey that there are some cases in which a claim may use what Haba and Engisch called empty legal terms. Those terms, might also be used in a speed limit case. For example, we might think of a driver who is transporting a dying person in her car to a hospital. In trying to get medical attention as quickly as possible, that driver exceeds the speed limit. A judge might argue: *even though there is a deviant conduct, there spirit of the law (or legislative intent) sanctions reckless drivers. In this case, the speed limit was exceeded due to an emergency. So, the behavior was not reckless driving, therefore, no sanction is applicable.*

The problem in such a case seems to derive from the claim *even though there is a deviant conduct, the spirit of the law (or legislative intent) sanctions reckless drivers* and its correspondent determination truth, falsity or neither. These are the kinds of problems that I will address in this paper.

the legal terms used in the scenario which describes a speed limit violation (i.e. example 4). But, we still need to give an account of why legal statements involving these allegedly empty terms are true, false, or neither.

In order to do that, I am going to consider whether several treatments of empty names used in the context of fiction might be successfully redeployed to account for the sentences that contain the allegedly empty legal names⁶. First, I will argue that there are different types of sentences that use empty legal names (examples 1, 2 and 3 use empty legal names in different ways. For this purpose, I will use de Ponte, Korta and Perry's proposed framework for fiction, that divide sentences into *fictional* (like example 1), *parafictional* (like example 2), and *metafictional* sentences (like example 3) (2020, p.398).

Notwithstanding, I will argue that in the case of fictional sentences, there is no reference and, there is no truth value. My argument will be based on the Fregean account in *Sense and Reference* (2010, p.221) that ascribes no truth value to sentences with fictional *empty names*. This framework is applicable to *jurisdictional* sentences like example 1.

For *para-jurisdictional* sentences such as the ones given in example 2, I will argue that there is a truth value that can be determined. For this purpose, I will use Kripke's account, according to which, sentences with fictional terms are able to refer (2013, p.25-26). Despite this, in contrast

⁶ Edwards (2018, p.63), argues that *predicates* (which includes but is not limited to what we have called here *juridical* or *legal empty terms*), such as *corporation*, have a different function from predicates in other uses of language, such as moral use, aesthetic use, or social use (where fiction is included). For Edwards (p.63, 66), this distinction is important in order to determine the truth conditions of a proposition. I agree with the author but, for the purpose of this essay, I am applying the framework of empty names in fiction as an *analogy* (to use the juridical term) that will give us instruments in order to resolve under which semantic conditions those sentences are able to be true, false, or neither, given what they mean.

to what Kripke proposes, will argue that the legal terms in sentences such as example 2 do not refer to some entity, but rather to what I'll call their *law source*, which are legal sentences like example 1. In these cases, the determination of the truth value of the legal sentence is based on the referential network and speaker notions that underlie the use of the legal terms they contain (de Ponte et al. 2020, p. 394).

Lastly, I will concur with de Ponte et al. (2020, p.392) when it comes to legal sentences such as the given in example 3. These authors (p.392) treat analogous metafictional sentences like ordinary ones, because they refer to ordinary facts about fiction. Likewise, *meta-jurisdictional* sentences like example 3 refer to ordinary facts about laws, and thus have a truth value.

II. DIFFERENCES IN SENTENCES WITH EMPTY NAMES.

De Ponte, Korta and Perry (2020, p. 389), state that not all empty names are equally vacuous. According to these authors, *empty* terms are those that seem to *fictionally identify* people, places or objects⁷ (p. 390). To illustrate their claim, they use several examples including the cited below:

5. We met next day as he had arranged, and inspected the rooms at No. 221B, Baker Street, of which he had spoken at our meeting.

(Doyle 2010 [1887]: 4 from de Ponte et al., p. 391). [Direct quote].

6. Sherlock Holmes lived in 221B Baker Street, London, England. (p. 389)

7. Sherlock Holmes is a fictional character created by Arthur Conan Doyle. (p.392)

Sentence number 5 is catalogued as a *fictional sentence*⁸, which is defined by de Ponte et al. (2020, p. 392) as sentences used *by authors, narrators and characters in works of fiction*.

Sentence 6 is a *parafictional sentence*, which are those that *concern the fictional facts* (p. 392).

⁷ I will address this claim about *the lack of designation of empty names* stated by these authors in the next section of the essay.

⁸ For the purpose of this essay, I will use *sentence* and *statement* as equivalent. De Ponte et al. use the word *statement* when talking about the fictional, parafictional and metafictional categories.

Sentence 7 is classified as a *metafictional sentence*, which are *ordinary sentences about “facts about fiction”* (p. 392).

In accordance with this account, I propose the following division for analyzing sentences involving the alleged *empty terms* in law:

- a. Jurisdictional sentences (*iuris dictio*): these are the sentences that initiate a concept in law, usually done by public functionaries when they create a law (i.e. example 1)⁹.
- b. Para-jurisdictional sentences: these are the sentences that talk about jurisdictional sentences (i.e. examples 2.a and 2.b).
- c. Meta-jurisdictional sentences: sentences that employ the alleged empty names but seem to talk about what happens in *actuality* (i.e. example 3).

As argued in the first section of this paper, it seems that sentences in these three categories employ juridical empty terms in different ways. In the following sections, I will argue why these sentences are distinct and, why these differences are important for determining the truth values of each of the different kinds of sentences with empty legal terms (if they have one).

A. JURISDICTIONAL SENTENCES.

As stated previously, jurisdictional sentences are those employed by legislators or any other authority that is able, according to the law, to regulate a human behavior. These types of sentences are a source of law, and, as such, they might be considered as the beginning of the *referential network* upon which the meaning of the sentence is based (de Ponte et al., p. 394).

⁹ As stated in footnote number 3, *law* is used in the broad sense. This means that, a law might be *created* by the parliament, the executive branch, or any other authority that has the ability to legislate.

It is necessary to point out that, de Ponte et al. (2020, p. 393), argue that names that are not empty are able to *refer* (as they use the term) only if they fulfill three conditions: existential, referential and satisfaction. For example, the sentence *Cicero was a Roman Senator* would be true, if a person existed (existential condition) who was named *Cicero* (referential condition) and who indeed was a Roman Senator (satisfaction condition) (p.393).

The problem with the alleged empty names (in fiction and in law) seems to be that they do not satisfy the existential condition, since they seem to designate something that does not exist¹⁰. Still, the sentences that contain those empty names seem to make sense and, seem to be able to have a truth value. In this respect, de Ponte et al. argue:

We are basically referentialists about proper names. The ordinary semantic function of a proper name is to refer to an object, and to do it directly, that is, without semantically providing any identifying condition that the object should meet to be the referent. To put it differently, we agree that statements containing proper names express *singular* propositions, i.e., that their truth-conditions involve the referent of the proper name, if it exists, and not any identifying condition of it. (2020, p. 393).

These authors also argue (2020, p.394-395) that proper names refer not only to the designated object, but also, to the *network* of previous uses of the term we rely on when using it, as well as the *notions* of the speakers in this network (i.e. mental files in which we store information about

¹⁰ *Realists* about fictional names may disagree with this claim, because they think *empty names* do refer to fictional entities (Friend, 2007, p.147).

the named object¹¹). The beginning of the referential network starts when someone in the community *picks out* the designated object and *baptizes* it with a name (similar to Kripke's concept of baptism, 2013, p.13). From there on, that name will *refer*, given the conditions enumerated by de Ponte et al. (2020, p. 394).

When it comes to fictional names and the sentences that contain them (fictional, and parafictional in this case), de Ponte et al. (2020, p. 397), argue that speakers who utter them typically do not take themselves to refer to an existing person or thing. Instead, they affirm that speakers are referring to the network and notions involved in their use tracing back to the fictional works in which they occurred. And in doing so, speakers typically only *pretend* that the fictional names designate things that exist (de Ponte et al., 2020, p.398).

When it comes to law, I argue that we are able to apply these *referentialist* concepts in order to give an account of sentences with empty legal terms. Notwithstanding, when talking specifically about jurisdictional statements—which will be similar to fictional statements- it seems we might not be able to talk about them referring to *something*. Instead, I propose, to consider them as the *origin of the referential network and notions* in the *particular context of legal practice*.

¹¹ Regarding this same topic, de Ponte et al. (2020, p. 394) talk about co reference and co-co reference, saying that proper names are able to refer, co refer, and co-co refer. Co reference, for these authors, means a speaker's intention to refer to whatever others are referring to with the use of a term. The speaker does not know the *thing* others refer to by the term used and relies on their reference to employ hers (e.g. people talking about a person that is unknown to the speaker. The speaker uses the proper name to refer to that person, even though she does not know her). This discussion, while important for determining whether a proper name refers, is beyond the scope of this paper.

Every network needs to begin somewhere. In the legal context, that departure point is the jurisdictional statement, that acts like the source of law. When any authority that has the faculty of regulating human behavior through a law creates a law, this will serve as the *baptism* or the *picking out* done by someone. In this sense, the law created will start the referential network and serve as the notions for future references.

Returning to our examples, let's take into consideration the mask mandate (i.e. example 1). The authority who emits this law writes a sentence that affirms that *public interest* imposes the obligation of wearing a mask. In the context of law, I argue that this is the beginning of the referential network because, from this point on, judges, lawyers and any other person are able to start talking about the law that imposes the mask mandate due to public interest. It is the formalization of the law that introduces to society sentences such as the one in this example.

The sentence at the beginning of this referential network does not seem to have a truth value. Can we affirm that the authority who emits this law is saying something true/false? In the cases of laws that employ sentences with empty names, it seems we cannot¹². These laws are just a determination by the authority that we will have to abide to.

¹² It might be argued that, in the juridical practice, people are able to affirm that sentences in laws are false. For example, it might be argued that there is no public interest in the mask mandate. Furthermore, people might go to the Supreme Court and request for this law to be erased from the legal system.

What I wish to illustrate with this example is that, if the law is effective and firm, we are all obligated to follow it. In that scenario, speaking of a truth value seems invalid, because the social contract *commands us* to follow the laws that are effectively confirmed by our political and judicial authorities. This is precisely the origin of the referential network and notions.

It might also be argued that, *public interest*, as a term, is not originated in such a law, and therefore, it might refer to another legal text that was the one who *coined* the term (in the point in history when it was first used in a legal context). Notwithstanding, my argument concerns the totality of the sentence, that says that *due to public interest, anyone in a public area should wear a mask (mask mandate)*. This sentence, when incorporated to a source of law, would be the origin.

In other words, it seems that sentences in a law context such as example 1 are like the sentence parents use to name their children. Imagine, for example, parents with their firstborn child uttering the sentence *our child's name is Sam*. Or, think of Conan Doyle writing, for the first time, a sentences such as *The brilliant detective is named Sherlock Holmes*. It seems that, from a certain perspective, these sentences that act as a *baptism* have not truth value because, they are the ones who are baptizing their child/character with his/her proper name (of course, this name would not be empty, but this example tries to illustrate baptism). Laws that are emitted for the first time, would be similar to the baptism done by parents with their child or the baptism done by fictional writers with their characters.

From this perspective, sentences with empty names that constitute laws, that are the origin of the referential network and notions, seem not to *refer* to anything. They do not refer to anything because they are the *first* sentences in the network. In this sense, Frege's (2010, p.218) distinction between sense (connotation) and reference (denotation) might be applicable.

In *Sense and Nominatum*, Gotlob Frege elaborates a differentiation between the *sense* and the *reference* (or *nominatum*) of a sentence. For the German philosopher, *sense* can be defined as connotation and, *reference*, as denotation (Frege, 2010, p.218). Ultimately, according to Frege, the reference of every sentence is a truth value of *the false* or *the truth* (p. 221).

When it comes to sentences that contain what seems to be an *empty name*, Frege believes that there is no possibility of assigning a truth value to these statements. Frege affirms:

The sentence *Odysseus deeply asleep was disembarked at Ithaca* obviously has a sense. But since it is doubtful as to whether *Odysseus* has a *nominatum*, it is doubtful that the whole sentence has one. However, it is certain that whoever seriously regards the sentence either as true or false attributes to the name *Odysseus* a *nominatum*, not only a sense, for it is obviously the *nominatum* of this name to which the predicate is either ascribed or denied. He who does not acknowledge the *nominatum* cannot ascribe or deny the predicate to it. (Frege, 2010, p. 221).

Frege argues that, even though we are able to understand the sentence that has an empty name as a subject because it has sense, we are not able to predicate anything about that subject do to the non existence of the object it refers to (Textor, 2011, p. 377)¹³.

I argue that *jurisdictional* sentences have no truth value but, it is not because they do not have a *nominatum*. *Jurisdictional* sentences seem not to have a truth value because they are the beginning of the referential network and will serve as a reference for other sentences (i.e. *para-jurisdictional* sentences). Notwithstanding, we are able to understand the *jurisdictional* sentences because they have a sense. Thus, Frege's framework of *sense* and *reference* is useful

¹³ We are aware that this position has been opposed by Russell in *On Denoting* (2010, p.236), who considered that sentences that contain empty names should be deemed as false, because they do not denote. It is necessary to clarify that the sentences Russell had in mind when affirming his theory where the ones with a format of "S is P" or, as Wishon and Kripke describe it, sentences constituted of a *determiner followed by a predicate* (Kripke, 2005, p. 1006 and Wishon, 2017, p.360). Kripke (2013, p.59) argues that according to Russell, other sentences with empty names might have a truth value of truth, especially when speaking about ordinary uses of language. An example of this, is the sentence *Hamlet soliloquized*, if presented in an English/Literature test, should have the value of true. The sentences we are analyzing in law do not entirely meet this format.

for us because it is a tool that is able to explain why we understand the *jurisdictional* sentence that do not seem to have a truth value.

B. PARA-JURISDICTIONAL SENTENCES.

Para-jurisdictional sentences are those employed by legal practitioners or other people when talking about jurisdictional statements (i.e. examples 2.a and 2.b). In this case, I argue that para-jurisdictional sentences containing empty legal terms do *designate* and are able to have a truth value.

It is important to point out that, the designation done by para-jurisdictional sentences is done in a context of a pretense principal¹⁴, which is part of Saul Kripke's argument when addressing the problem of sentences with empty names in fiction.

According to Kripke (2013, p.25-26), when we use a sentence that contains an empty name that is located in a fictional work, we can pretend that this name refers to someone. In this case, the empty name is pretended to have all the properties and referential qualities an ordinary name has without having them in actuality (p. 26). From this point of view, sentences with empty names have a truth value that is ascribed to the *pretense* they invoke.

Kripke (2013, p.58-59), uses the example of the sentence *Hamlet thinks*, to argue that such a sentence should be interpreted to *purport a statement rather than really expressing one* (p.58). In order to determine its truth value (of true in this case), the sentence has to be

¹⁴ The pretense principal is also discussed by Kendall Walton in *Mimesis as Make-Believe* (1990), by Mark Crimmins in *Hesperus and Phosphorus: Sense, Pretense and Reference* (1998) and by Frederick Kroon in *Descriptivism, Pretense and the Frege-Russell Problems* (2004).

interpreted *within* the story (p.59) which means we are engaging in a specific universe of discourse. This is called by de Ponte et al. (2020, p.391) as pseudo statements or pretense statements, and they seem to agree with Kripke in the sense that the utterance of those sentences does not aim to refer to *something that exists*¹⁵.

In addition, de Ponte et al. (2020, p. 397) argue that para-fictional statements refer to a network and notions within that pretense principal. It is important to point out that, *reference* in the *referential view* of these authors means that a name (empty or not), when used in a sentence, has an *intention* of denoting, which includes the *set of characteristics* of what is referred to (object if the object exists, or network and reference in the case of fiction) (Korta and Perry 2011, p.12). An utterance that is able to refer also has *implications* that go beyond of what is said, which include that intention and set of characteristics that seem necessary to produce the utterance (Korta and Perry, 2011, p. 10).

From these authors' perspective, we can conclude that, a true para-fictional sentence is one that coincides with the network and reference of the universe of discourse that it was uttered in (i.e. example 6 is true). Example 6 is a para-fictional sentence that is able to refer correctly to

¹⁵ Kripke (2013, p.80-81) considers that certain empirical claims contained in sentences with empty names have a truth value because they refer to some sort of objects that exist due to people's activities. The example this philosopher utilizes to depict his argument is the sentence *Large numbers of people in English fiction have been in love* (p.80). In addition, Kripke compares the existence of these objects to that of a *duck toy* in contrast with the existence of real objects, which will be a *real duck* (p. 80-81). In this pretense principal, when talking about fiction, Kripke argues that we are able to *refer* to something as a *toy duck*. This view coincides with what Friend calls *realism* (note 8), that grants the existence of some entity that empty names refer to.

I will not discuss this point of view, because my argument is that the reference of para-jurisdictional statements is the source of law, which is a jurisdictional statement. In this sense, there is no need for a *fictional entity* in order to have reference.

a network, to notions and that has *implications*, all which are circumscribed in Sir Conan Doyle's fictional novel (Sherlock Holmes did live in 221B Baker Street).

When it comes to law, speakers arguable rely on an analogous *pretense principal*. For example, following the mask mandate and obeying the mask mandate implicates, among other things, that people are granting authority to a human being to impose a required behavior. We allow this because, in the *universe of discourse of law*, we *pretend* that this person has an authority to regulate behavior, bestowed by a *social contract*. We have granted, in this *universe*, that the person is able to produce a law and that we shall obey it (for our case of empty legal terms, that law is a jurisdictional statement).

Using this framework, we might also affirm that a jurisdictional statement *implicates* a *spirit of the law* and a *legislative intent* that also characterizes them, which is also included in the reference of the para-jurisdictional sentence. The legislative authority does have an *intention* when he/she imposes the law, and this is what we deem as *spirit* and *intent*¹⁶.

Para-jurisdictional statements manage to refer to notions in the universe of discourse of law. Given they are fulfilling these conditions, we are able to affirm that para-jurisdictional

¹⁶ I am aware this proposal has various philosophical implications. We would need to define the *meaning* of such words as *spirit of the law* and *legislative intent* in order to see if the para-jurisdictional sentences uttered match the notions and the network given by jurisdictional ones. My argument is that, from a certain perspective, we can determine that there is a reference of the para-jurisdictional to the jurisdictional, and that would enable us to determine the truth value of the para-jurisdictional.

Another issue that can be raised from this proposal is that, what empty names in law *mean per se* is still to be defined. As said, I am focusing on the sentence as a whole. The problem of legal empty terms seems to be a problem that expands throughout legal practice because, much of the legal terms we use, seem to depend on internal states for their meaning (*intent*, *malice*, etc.). Examining this problem should be done in another essay.

sentences do have a truth value, that would be determined by the reference and notions they refer to in the context of law (which includes the implications and characterizations that go along with the reference). These network and notions are rooted in the jurisdictional sentences from which they originate. In the case of 2.a and 2.b, they seem to have the truth value of truth, because, the jurisdictional statement was intended to protect the well-being of the population.

C. META-JURISDICTIONAL SENTENCES.

De Ponte et al. (2020, p. 392), define metafictional sentences, as *ordinary statements* about *facts about fiction* (i.e. example 8). Following this definition, meta-jurisdictional sentences are *ordinary statements* that talk about jurisdictional statements (i.e. example 3).

When uttering meta-jurisdictional sentences, we are *outside* the pretense principal, we are not engaging in the particular universe of discourse of law and, we are not making a baptism. It seems that, the utterance of a meta-jurisdictional statement, is trying to affirm something that *is in actuality*, such as: *public interest seems empty*¹⁷. Meta-jurisdictional sentences do not *refer* to something that *is in the jurisdictional universe of discourse*.

The consequence of this view is that, meta-jurisdictional sentences with empty names do have a truth value that can be determined. In this sense, we ought to use the reference, network and existential conditions required by ordinary statements to be true. In the case of example 3, the existential condition would be that there is a term such as *public interest* and that that term seems empty. This coincides with the network and the reference of *the world* outside the

¹⁷ As established in note 8, realists would oppose this. What we are arguing is that, the utterance of the sentence tries to make a claim of something in the *world*, outside the pretense principle and the universe of discourse.

discourse of law which would make the sentence with the empty name have the truth value of truth.

The other example given is *The term “public interest” was first used in 1894*, speaks about a *historical occurrence* about the term *public interest*. When the speaker utters a sentence such as this one, she is not employing the pretense principal or engaging in a universe of discourse. on the contrary, when the speaker utters such a sentence, she is trying to assert *how things are*.

In both cases, it seems that these meta-jurisdictional statements intend to refer to a network, notions, and existential conditions, which allow us to determine whether their claims are true or false. In the case of example 3, this existential condition seems to be that there is a *term* such as *public interest* that *seems to be empty* or, that there is a term such as *public interest* that was first used in 1894.

In these scenarios, the use of the seemingly empty legal name is different from jurisdictional sentences, because it is not making a baptism and it is not the origin of the word that might be use for future references. Since there is no engagement in the pretense principal nor g in a particular universe of discourse, the *jurisdictional sentence* should be understood as any ordinary statement. Therefore, its truth value, should be determined as such.

III. CONCLUSION.

It seems that, in some cases, legal terms do not have enough semantic content to be able to designate *something*. This has been called by Engisch and Haba as *empty legal terms*, and the some of the examples discussed in this paper are: *public interest*, *spirit of the law* and *legislative intent*.

In legal practice, this may give rise to several problems, especially when we try to give an account of how to determine the truth value of sentences that use such terms. This is important for the practice of law because those terms are often used as a foundation for what is argued in the different scenarios that occur (a judge's sentence, a law stipulation, a lawsuit, doctrine etc.).

These different scenarios seem to employ different types of sentences that require different treatment in order to be evaluated. For that, my proposal is to use a division based on the fictional account of empty names carried out by de Ponte et al. (2020). Applied to law, I argue that we should divide the sentences into: jurisdictional, para-jurisdictional and meta-jurisdictional.

Jurisdictional statements, that are the ones employed by a law source, seem to be the beginning of the reference network and notions. They are the ones who baptize. In this sense, they seem to have no truth value because they initiate the network and notions.

Para-jurisdictional statements, usually employed in the daily legal practice (trials, contracts, lawsuits, etc.) refer to jurisdictional statements. From this perspective, the para-jurisdictional statements have a truth value that would be determined by their coincidence with the jurisdictional statements they refer to (this includes network, notions, implications and characterizations). This is done under a pretense principal within the universe of discourse of the law.

Meta-jurisdictional sentences seem to be ordinary statements that *refer* to something of the world. They are outside the pretense principal and should be evaluated, for their truth value, under the scope of the referential network, notions and existential conditions. This operation does not differ from the task someone would do (in the referentialist context) when trying to determine the truth value of a sentence that does not employ an empty legal term.

BIBLIOGRAPHY

- de Ponte, María ; Korta, Kepa & Perry, John (2020). Truth Without Reference: The Use of Fictional Names. *Topoi* 39 (2):389-399.
- Frege, Gotlob. (2010). Sense and Reference. In Martinich, A.P. (comp). *The Philosophy of Language* (International Fifth Edition edited by Martinich, A.P., p.217-229). New York: Oxford University Press.
- Friend, Stacie (2007). Fictional characters. *Philosophy Compass* 2 (2):141–156.
- Korta, Kepa, and John Perry. (2011). *Critical Pragmatics: An Inquiry into Reference and Communication*, Cambridge University Press. ProQuest Ebook Central: <https://ebookcentral.proquest.com/lib/olemiss/detail.action?docID=803014>.
- Kripke, Saul A. (2005). Russell's Notion of Scope. *Mind* 114 (456):1005-1037.
- Kripke, Saul A. (2013). *Reference and Existence. The John Locke Lectures*. New York: Oxford University Press.
- Russell, Bertrand. (2010). On Denoting. In Martinich, A.P. (comp). *The Philosophy of Language* (International Fifth Edition edited by Martinich, A.P. p.230-238). New York: Oxford University Press
- Textor, Mark (2011). Sense-only-signs: Frege on Fictional Proper Names. *Grazer Philosophische Studien* 82 (1):375-400.
- Wishon, Donovan (2017). Russellian Acquaintance and Frege's Puzzle. *Mind* 126 (502):321-370. DOI: [10.1093/mind/fzv193](https://doi.org/10.1093/mind/fzv193).

VITA

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