Some Remarks about Legal Systems Integrity

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Abstract

This paper aims is to analyse the philosophical premises on which the idea of unity of law (the identity of legal systems) is based. In the history of legal philosophy, this idea found its main arguments in the presumption of totality of legal regulation. Such totality affected the philosophical tenets of holism, according to which law is not limited to positive-law rules and institutes. Law refers to supreme values, which supersede legal instruments created by human beings and collectives to regulate their behaviour. This argument implies that there are higher values, such as justice, good, etc., which underlie all social relations and which provide the binding force for positive law. The author argues that this line of thought is based on philosophical objectivism and naturalism, and can easily lead to the primacy of the social over the individual. To substantiate the idea of the systematicity of law, one can turn to modern debates on the logic of social cohesion and construct a legal system identity as a purely intellectual hypothesis necessary for thinking about law. This integrity can be described as a unity of discourse, or as a unity of societal practices. This reconstruction of the integrity of law can be extended by appealing to the basic ideas of the normative philosophy of law (from Hart and Kelsen to Raz and Dworkin) and is reconcilable with the conception of normative systems of Bulygin–Alchourron.

Keywords

normativity; social control; legal system; positivity of law; unity of law; identity of legal systems.

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For decades the problem of legal systems' integrity[1] has been an almost unchallenged preserve of jurists, who attempted to rationalize and universalize the forms of their professional discourse, with law conceived of as a system. But this restriction of scope has not always been characteristic, and, currently, is losing favour again. The body of literature devoted to legal systems' integrity has expanded following the development of *ius commune* in Western Europe in the Middle Ages[2]. This literature points out various dimensions of integrity and suggests

[1] In this paper I treat the terms 'integrity of the legal system' and 'unity of law' as interchangeable, although, of course, they can be separated with a view to applying to other theoretical research tasks.

[2] E.g., Cairns J.W. and du Plessis P. (eds.) The Creation of the Ius Commune: From Casus to Regula. Edinburgh: Edinburgh University Press, 2010; *Bellomo M*. The Common Legal Past of Europe: 1000–1800. Washington: Catholic University of America Press, 1995.

rich perspectives of unity in contemporary legal systems[3]. The recent revival of this issue in a variety of approaches suggests that there is wider theoretical concern in legal logic. The literature considered in this article points to the significance of the coherence of the legal discourse and also to serious ambiguities in theoretical debates that make the development of a rigorous theoretical approach to unity of law a pressing need[4].

The major objective of this paper is to reassess the idea of unity of law in light of some principal philosophical doctrines. No attempts, however, will be made to describe particular theories; only general trends will be discussed, with references to particular examples illustrating these trends. It would be unrealistic to try to provide a full survey of the voluminous literature related to this topic. At the same time, it should be mentioned that the idea of unity of law is not something conceptually monolithic and allows for different readings. In legal and social philosophy it is used to convey various thoughts and inspirations: logical unity of legal propositions[5]; epistemological unity of phenomena unified under the term "law"[6]; factual unity of societal regulation[7]; axiological unity of a hierarchy of legal values[8]; procedural unity of legal reasoning[9], etc. This idea has always been present in Western legal philosophy and has been posited in a variety of ways. In this paper, I consider only this Western aspect, as the analysis of this idea in the legal philosophies of India, China and other non-Western civilizations would require much more extensive research. Such considerations demand a different view of law and its relationship to government from that of simple legal instrumentalism. Unity of law becomes something more than a truism when we adopt a view of law that treats it as a combination of varied types of social regulation[10].

From this point of view, law, as an institutionalized entity, does not necessarily appear as a monolithic whole, but might be better thought of as a complex structure of interweaving layers of social and intellectual realities. A caveat should be added here: I do not assert that this theme is omnipresent to the extent that *each* legal philosopher was/is anxious to investigate this idea of unity. Rather, my conviction is that a philosopher who sets out to understand the nature of law should (if he or she wants to be coherent and conclusive) deal with the issue of the unity of law — at least conceptually, legal thinking requires an assumption that there is a more or less unified entity behind the term "law"[11], which itself is not a natural entity[12]. From this perspec-

[3] Dyzenhaus D.(ed.) The Unity of Public Law. Oxford: Hart Publishing, 2004.

[4] See *Luhmann N.* Law as a Social System. Oxford: Oxford University Press, 2004.

[5] *Alchourrón C., Bulygin E.* Normative Systems. Berlin, New York: Springer, 1971; Beltrán J., Ratti G. (eds.) The Logic of Legal Requirements. Essays on Defeasibility. Oxford: Oxford University Press, 2012.

[6] E.g., *Teubner G.* How the Law Thinks: toward a Constructivist Epistemology of Law. 23(5) Law and Society Review, 1989, pp. 727–758.

[7] E.g., *Bourdieu P.* The Force of Law: Toward a Sociology of the Juridical Field. 38(5) Hastings Law Journal, 1986, pp. 814–853.

[8] E.g., *Furton E.* Restoring the Hierarchy of Values to Thomistic Natural Law. 39(1) American Journal of Jurisprudence, 1994, pp. 373–395.

[9] *Stone J.* Legal System and Lawyers' Reasoning. London: Stevens, 1965.

[10] See different readings of the problem of the closure of legal systems (which is tantamount to the problem of legal system integrity) in: *Cotterrell R.* Sociological Perspectives on Legal Closure in idem, Law's Community. Oxford: Clarendon Press, 1995, pp. 91–100. Cotterrell distinguishes normative and discursive closures as two main ideal types of legal systems' integrity.

[11] This term usually implies the broad sense of right (*ius*) and the narrow sense of coercive commands (*lex*). See *Hart H.* The Concept of Law. Oxford: Clarendon Press, 1994, pp. 207–212.

[12] *Schauer F.* Thinking Like a Lawyer: A New Introduction to Legal Reasoning. Cambridge: Harvard University Press, 2009.

tive, this issue appears to be one of the central cornerstones of legal philosophy. A fundamental problem lies in the difficulty of identifying unifying elements that would make it possible to speak of a legal community or of a legal system. Dworkin's research[13] of legal principles and policies, which are established by interpretation through rational debate among members of an interpretive community, shows the limits of legal philosophy, confined to search for the unity of its object — law. The mysticism penetrating Durkheim's legal sociology[14] is characteristic of the perils of communitarist social philosophy[15], which conceives of law as an "external index" symbolizing the nature of social solidarity[16]. Various scholars have offered their conceptions of unity in order to make the diversity of legal life compatible with the requirements of law's systematic rational nature. I begin my study with the analysis of some of these conceptions[17].

In legal philosophy, the legal system identity thesis has traditionally been described from a metaphysical point of view. This can be traced to the implications made by Plato that law is justice, and justice is something that is whole and encompasses all aspects. For Plato it is an idea that allows us to consider diverse and factually different phenomena as conceptual entities. This is also the case with law, which is not only a heterogeneous set of rules and propositions, but is also the whole that represents the idea of justice[18]. From this perspective, a legal order would collapse without the idea of justice underpinning it. As Hans Kelsen masterly shows, Plato did not exactly differentiate between law (just norms of behaviour) and laws (formally binding statutes)[19], and neither did Aristotle[20]. This approach in Western legal philosophy was reiterated by numerous adherents of the natural-law doctrine[21]. To them identity of law was a logical sequence arising from social cohesion, i.e. the solidarity of people who create a society[22]. On the basis of the unity of virtues, Plato claimed that all of virtues were somehow one, comprising a certain kind of knowledge[23]. This knowledge belonged to a particular stratum of people, the philosophers, who rule in the ideal state. This logic of integrity led Plato's thesis of political unity. In this view, "the whole community must become as one large family, in which every member regards all others as family relations"[24]. This logic of holism characterizes most natural-law doctrines, which I demonstrate below[25].

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[13] *Dworkin R.* A Matter of Principle. Cambridge: Harvard University Press, 1985); idem. Law's Empire. Cambridge: Harvard University Press, 1986); idem. Justice for Hedgehogs (Cambridge: Harvard University Press, 2011).

[14] See *Cladis M.* A Communitarian Defense of Liberalism: Emile Durkheim and Contemporary Social Theory. Stanford University Press, 1994.

[15] See *Etzioni A.* New Communitarian Thinking (Charlottesville: University of Virginia Press, 1995); *Tams H.* Communitarianism: A New Agenda for Politics and Citizenship. Basingstocke: Macmillan, 1998.

[16] See *Durkheim E.* The Division of Labor in Society. New York: Free Press, 1997.

[17] *Adams D.* Philosophical Problems in the Law. Wadsworth: California State Polytechnic University, 2000.

[18] *Schofield M.* Plato on Unity and Sameness. 24(1) The Classical Quarterly, 1974, pp. 33–45.

[19] *Kelsen H.* Platonic Justice. 48(3) *Ethics* (1938–1939), pp. 367–400.

[20] *Kelsen H.* Aristotle's Doctrine of Justice. Walsh J. (ed.) Aristotle's Ethics. Wadsworth, 1967. Pp. 102–119.

[21] *D'Entréves A.* Natural Law: An Introduction to Legal Philosophy. London: Hutchinson, 1952.

[22] *Peláez F.* The Threads of Natural Law: Unraveling a Philosophical Tradition. New York etc.: Springer, 2013).

[23] *Devereux D.* The Unity of the Virtues in Plato's Protagoras and Laches. 101(4) The Philosophical Review, 1992. P. 765–789.

[24] *Sayers S.* Plato's Republic: An Introduction. Edinburgh: Edinburgh University Press, 1999. P. 46.

[25] Although it can also be characteristic for positivism, as a holistic concept of law can claim that it is the legal order that gives rise to legal consequences, so that the declaration of the will is only a precondition that

Aristotle criticized Plato's conception of the factual unity of social life because "the nature of a state is to be a plurality, and in tending to greater unity, from being a state, it becomes a family, and from being a family, an individual"[26], so that, "we ought not to attain this greatest unity even if we could, for it would be the destruction of the state. Again, a state is not made up only of so many men, but of different kinds of men; for similars do not constitute a state"[27]. Nonetheless, Aristotle did not abandon the conception of unity, instead transposing it from a factual into an ideal, intellectual dimension: "The virtue of justice is a thing belonging to the city. For adjudication is an arrangement of the political partnership, and adjudication is judgment as to what is just"[28]. Aristotle's political ideal was a polity which occurred when many ruled in the interest of the political community as a whole. Any political and legal structure can be considered just when it corresponds to the innate human striving for sociability (to recall Aristotle's famous characterization of a human being as a *zoon politikon*, a political animal). Despite some important discrepancies in their respective philosophical systems, both great thinkers asserted, though somewhat differently, that societal regulation will inevitably be based on specific values of justice and sociability. Social existence presupposes that various human representations of these values are necessarily shaped by some metaphysical entities, such as ideas (for Plato) or forms (for Aristotle)[29]. These conceptions gave quite plausible explanations for unity of law in the terms of historical social philosophy in which the social superseded the individual, as Benjamin Constant famously reasoned in 1816[30].

Later, partly rooted in the Plato-Aristotle philosophical tradition, the natural-law doctrine, first outlined by Cicero and the Stoics and developed by the Fathers of the Christian Church, emerged. This doctrine sought to explain rationality of political and legal life through their unison in immutable precepts of Nature and the Universe. Law is a reflection of a higher ideal order created either by Nature or by God. Law thereby acquired a double perspective: a timeless order (divine and eternal law in Aquinas's legal conception) and a reproduction of this order in factual reality (natural and positive law in the same conception). The connotations of order and justice therefore imply a continuum of values which extend far beyond procedural values directly reflected in the forms of adjudication and the application of law, as conceived by ancient Greeks[31]. In light of the emphasis on the individual in the new Christian doctrine, it could be suggested that unity of law depends ultimately on the belief of individual actors that law promotes, within the limits imposed by its "essential" spiritual nature as a consistent and comprehensive rational system of regulation, what is most fundamental between the values of justice and order (surely, in fact, the final choice depends on a range of ever-changing variables). This doctrine already contains detailed conceptual elaborations of justice and order, which specify the choices available to individuals and the scope of human personality and its expression[32].

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has to be fulfilled (see: *Postema G.* Law as Command: The Model of Command in Modern Jurisprudence. 35(1) *Noûs*, 2001. Pp. 470–501).

[26] *Aristotle.* Politics. New York: The Modern Library, 1943. 1261a16–20.

[27] Ibid. 1261a22–24.

[28] Ibid. 1253a38.

[29] *Fine G.* On Ideas: Aristotle's Criticism of Plato's Theory of Forms. Oxford: Oxford University Press, 1992.

[30] *Constant B.* The Liberty of Ancients Compared with that of Moderns (1816), in: idem, *Political Writings*. Cambridge: Cambridge University Press, 1988. Pp. 308–328; see also: *Fontana B.* Benjamin Constant and the Post-Revolutionary Mind. New Haven: Yale University Press, 1991.

[31] *Wiltshire S.* Greece, Rome and the Bill of Rights. London: Norman, 1992.

[32] *Rosmini A.* Principles of Ethics. London: Gracewing, 1988.

We can skip the consequent development of similar political ideas in the early Middle Ages[33], when political and legal systems were largely dispersed and decentralized, but often seen as manifestations of a certain unity (in the form of the Frankish, and later the Holy Roman, Empire, or of the Pope as a symbol of religious unity). This development resulted in the amalgamation of the idea that law is dictated by Nature with the idea that social totality is spiritually united by common faith. The merger of these ideas is highly complex and can often be obscure, but two aspects are critically important. The first is summed up in Aquinas's conception of an omnipresent legal order, which includes divine, natural, everlasting, and positive law. Thomas Aquinas brought together elements of the Antique and Christian outlooks, which were based on the presumed unity of the Universe and (for Christians) the belief in predestination, subject to the will and reason of the Creator. As John Finnis wrote: "The basic forms of good grasped by practical understanding are what is good for human beings with the nature they have. Aquinas considers that practical reasoning begins ... by experiencing one's nature from the inside, in the form of one's inclination ... by a simple act of non-inferential understanding one grasps that the object of the inclination is an instance of a general form of good, for oneself."[34]. In Aquinas's conception, this presumed unity was described as resulting both from a factual dispersion of things in the empirical reality and from their ideal unity in the intelligible reality.

This distinction led to the famous debates between the realists and the nominalists, with unity conceived of as either factual or intelligible[35]. This debate has considerably influenced Western political philosophy, leading to the introduction of different conceptions of unity of law in light of the two aforementioned basic philosophical positions[36]. This debate has paralleled the process of coming to terms with the political perturbations of Western society, which later led to the universalism of moral philosophy and science[37]. One of the consequences of this evolution is the birth of a new type of modern (Hobbesian) state, which espouses the idea of omnipresent law. This conceptualization of law as spiritual unity was popular throughout modernity, finding its most characteristic examples in the ideas of Hegel (law as a manifestation of the Absolute Spirit) and the historical school of law in Germany, which considered law to be an expression of the people's spirit (*Volksgeist*). The Hegelian solution was the final transcendence of the subject-object differentiation, with subject and object becoming one, so that diverse perspectives would merge into the unfolding of the absolute idea, a single perspective that would eventually unite all people and their societal practices[38]. For Savigny and his school of thought, unity of legal regulation and legal development in general were presupposed rather than explained, as unity was *conditio sine qua non* for portraying a people's spirit which underpins all society[39].

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[33] See: *Schroder J.* The Concept of Law in the Doctrine of Law and Natural Law of the Early Modern Era. Daston L., Stolleis M. (eds.) Natural Law and Laws of Nature in Early Modern Europe. Farnham: Ashgate, 2008. P. 57–71.

[34] *Finnis J.* Natural Law and Natural Rights. Oxford: Oxford University Press, 1980. P. 34.

[35] *De Waal C.* The Real Issue between Nominalism and Realism, Peirce and Berkeley Reconsidered. 32(3) *Transactions of the Charles S. Peirce Society.* 1996. Pp. 425–442.

[36] *Cohen M.* Law and the Social Order: Essays in Legal Philosophy. N.Y.: Harcourt: Brace and Company, *1933*.

[37] *Wallerstein I.* European Universalism. The Rhetoric of Power. N.Y.: The New Press, 2006.

[38] "The state in and by itself is the ethical whole, the actualization of freedom; and it is an absolute end of reason that freedom should be actual. … The basis of the state is the power of reason actualizing itself as will. In considering the Idea of the state, we must not have our eyes on particular states or on particular institutions. Instead we must consider the Idea, this actual God, by itself." (*Hegel G.* Philosophy of Right. Oxford: Oxford University Press, 1942. § 258.

[39] *Reimann M.* Nineteenth Century German Legal Science. 31 Boston College Law Review. 1990. Pp. 837–897.

A somewhat different model of political and legal philosophy was developed in the Byzantium and the Eastern (Orthodox) culture, which I describe elsewhere[40]. In this culture, the idea of unity of political and legal regulation found its realization in the conception of symphony, which "characterizes a political theory in which the power of secular government is combined with the spiritual authority of the church"[41]. Here the opportunity for and freedom of all members to be involved fully and actively in determining the nature and projects of the whole is praised. This process addresses the value of justice by infusing calculated moral content of mutual concern into social regulation, thereby guaranteeing the inclusion of all members into a collective welfare system. Proponents of this approach underscore the fact that community regulation does not lead to the emasculation of state legal authority because the unity is based not on the coherence of will and reason of a governor(s), but on the coordinating communities within the political society as a whole[42]. Here I cannot go into details of this conception and shall revert to the evolution of the debates about unity of law over the last two centuries in Western legal thought.

In the 19th century the natural-law picture of unity of law began disintegrating under the attacks of positivists, such as John Austin or Jeremy Bentham. They asserted that unity would result from rationally guided legislative action[43]. After getting rid of the natural-law doctrine, the positivist legal philosophy had to either reconsider the hypothesis of unity of law (legal system) or discard it[44]. The latter solution did not fit well with the paradigm of law, as it was conceived in the enlightenment philosophy, whereby statute (state law) was considered an instrument of reason. Insofar as reason (thinking, perception) is necessarily coherent and united, law could not be otherwise. From this perspective, state or professorial law (*Professorsrecht*) opposed customary or traditional law because the former was an integrated, reasonable and coherent unity contrasting the spontaneity and incoherence of the latter[45]. On this basis, a new conception of unity of law was formed, according to which the identity of the legal system could be explained as a function of the lawmaker's will. However, this will was nothing more than a disguised voice of reason and objective values. Austin's contribution was that the acceptance of legal authority could be grounded in informed reason — informed of at least leading principles of ethics and "practiced in the art of applying them" so that subjects would "be docile to the voice of reason, and armed against sophistry and error". The unity and integrity of legal systems are still based on reason. Also Bentham argued: "What is a law? What the parts of a law? The subject of these questions, it is to be observed, is the logical, the ideal, the intellectual whole, not the physical one… By the word law then, as often as it occurs in the succeeding pages, is meant that ideal object, of which the part, the whole, or the multiple, or an assemblage of parts, wholes, and multiples mixed together, is exhibited by a statute; not the statute which exhibits them"[46].

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[40] *Antonov M.* Du droit byzantin aux pandectistes allemands: convergences de l'Europe occidentale et de la Russie. Karuso A. (ed.). Identita del Mediterraneo: elementi russi. Cagliari: AM&D Edizioni, 2012. P. 253–263.

[41] *Romocea C.* Church and State: Religious Nationalism and State Identification in Post-Communist Romania. London etc.: Continuum International, 2011. P. 78.

[42] *Solovyov V.* The Justification of the Good. New York: Cosimo Classics, 2010.

[43] *Tusseau G. Positivist Jurisprudents Confronted: Jeremy Bentham and John Austin on the Concept* of Legal Power (2). Revue d'études benthamiennes, 2007. Pp. 23–37.

[44] *Detmold M.* The *Unity of Law and Morality:* A Refutation of Legal Positivism. London: Routledge, 1984.

[45] *Morigiwa Y.*, *Stolleis M.*, *Halperin J.* Interpretation of Law in the Age of Enlightenment: From the Rule of the King to the Rule of Law. Berlin: Springer, 2011.

[46] *Bentham J.* Introduction to the Principles of Morals and Legislation. London: Althone Press, 1970. P. 301.

Other representatives of legal positivism tried to develop this conception after Austin and Bentham[47]. In 20th legal philosophy, a series of attempts were undertaken by some influential positivist authors, such as Hans Kelsen and H. L. A. Hart, to explain the unity of law from a different perspective than that of the lawgiver's will[48]. For Kelsen, the unity of law was guaranteed by the fact that it was authorized by the basic norm of the system,[49] which is a hypothetical condition of legal cognition. The unity of the legal system can be described in terms of the form of the law (its norms) and the relationship between these norms (imputation)[50]. Hart believed this unity to be conceivable if a legal system was organized in recognition of the system[51]. For Kelsen, Hart and many other positivists, generally, law was perceived of as a field of experience, as a variety of diverse practices loosely arranged by certain societal authorities. As a means of adjustment to ever-changing political conditions, these practices are contingent and are likely to be transient and inconsistent. A lawyer's job is to subject these practices to systematic organization within the framework of rationally ordered, unified, normative knowledge. This motivation was central to Kelsen who believed that a science of law constructs law as its own object. Hart's conception, along with some important sociological elements, is similar: the task of legal philosophy is to organize its object (law) around some pivotal axes (rules of recognition, change, adjudication, etc.).

Hart constructs a rule-based legal system, departing from the facts of how judges interpret rules. Kelsen, on the other hand, examines how rules are interpreted by judges not from the viewpoint of why they thought such and such a primary rule should be interpreted in such a way, but merely in terms of whether judges are required to adjudicate primary rules or norms. The former looks to the internal logic of a judge's thinking, while the latter looks to the application of a judge's decision (the famous "dynamic system of legal order"). For Kelsen, the very notion of an obligation is derived from a norm. Facts do not create norms. Facts per se can be part of a legal norm, but if they are, then they must be viewed as objective indicators of specific actions required by the law: "Law is not, as it is sometimes said, a rule. It is a set of rules having the kind of unity we understand by a system"[52]. When rules are followed, either by virtue of an interpretation given by judges, or because they are understood as binding by their addressees, Kelsen's norm-rule effect takes us beyond the narrow habitual obedience model of the commands theory. As Hart suggests, a rule-based legal system requires an internal element of obedience[53].

The authors who occupy different (non-positivist) philosophical positions usually describe law as a gapless consistent entity, which can provide legal answers to any legally relevant issue. *Iusnaturalism* (the natural-law doctrine) introduced some universal values and statements (law is equity, law requires justice, etc.) into positive law and made these values and statements the supreme criteria for law-making and law enforcement[54]. If any defect is found in law, it

[47] *Rumble W.* D*oing Austin Justice*: Reception of John Austin's Philosophy of Law in Nineteenth-century England. London etc.: Continuum, 2005.

[48] *Green M.S.* Hans Kelsen and the Logic of Legal Systems. *54 Alabama Law Review, 2003. P. 365–413; Payne M. Hart's Concept of a Legal System. 18(2) William and Mary Law Review.1976. P. 286–319.*

[49] *Hart H.* Kelsen's Doctrine of the Unity of Law. Kiefer H., Munitz M. (eds.) Ethics and Social Justice. N.Y.: University of New York Press, 1970. Pp. 171–199.

[50] *Raz J.* The Concept of a Legal System. 2nd ed. Oxford: Clarendon Press, 1980. P. 95–109.

[51] *Hart H.* The Concept of Law. P. 92–120.

[52] *Kelsen H. General Theory of Law and State.* N.Y.: Russell, 1945. P. 3.

[53] *Hart H.* The Concept of Law. P. 31.

[54] "The tradition of natural law theorizing is not concerned to minimize the range and determinacy of positive law or the general sufficiency of positive sources as solvents of legal problems. Rather, the concern of the

must be overruled through a reference to the basic statements on which law is presumed to be founded[55]. This is the classical image of law developed by Plato — dialectics of law as emanation of justice. This dialectic inevitably leads to the integrity of law: if a part belongs to the totality, then this part shares the property of this totality. As society is based on justice, and is a totality, then it follows that law can have the same characteristics. Ronald Dworkin's famous thesis about the "one right answer" can be cited here as an example[56]. Dworkin's thesis treats law entirely as a matter of discourse and not a matter of distinctive normative criteria. Law is a kind of conversation of participants in an endless collective enterprise of interpretation. Law has its own rationality, elaborated through law's own discursive methods. Dworkin's idea of integrity and the related idea that there is a "right answer" to any legal question both symbolize the legal discourse as ultimately coherent and comprehensive, a closed world in which lawyers generate a comprehensive legal interpretation of reality[57]. Here law is conceived of as a field of experience with moral integrity elaborated through law's own discursive method.

It is tempting to think of unity of law in similar terms to Dworkin's. The sources of the presumed unity can be found in certain characteristics that are common to all legislative rules and norms and which can be discovered also in the principles, values, and ideas implicitly present in law (such as human rights, equity, and so on). It could be justice, as in the traditional natural-law philosophy, or societal cohesion, or discursive unity of legal argumentation. To describe this dimension of law lawyers sometimes use the term "system" and speak of the "systemacity" of law[58]. Some authors, including Dworkin, Fuller, Alexy and others, suggest that possible defects in law (inconsistent, redundant, ambiguous norms, gaps in law) do not refute law's systemacity, as there are policies or principles deductible from the idea of law (to wit, some kind of objective ethical values underpinning the legal regulation). These principles and policies can be discovered through the construction and interpretation of acting law, or through philosophical speculations[59]. Law is perceived of as having its own inherent mechanisms, which allow overcoming defects without addressing other mechanisms of social control. It implies that law has an objective structure, which exists independently of discretion and knowledge of the participants of law (judges, lawmakers, lawyers), or of their moral or religious principles[60], or of conventional practices of language uses[61]. Niklas Luhmann, Gunter Teubner and other sup-

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tradition ... had been to show that the act of 'positing' law (whether juridically or legislatively or otherwise) is an act which can and should be guided by «moral» principles and rules; that those moral norms are a matter of objective reasonableness, not of whim, convention, or mere 'decision'" (*Finnis J.* Op. cit. P. 290).

[55] "This apparent hedging of bets on the moral obligation to obey unjust laws can be understood as an attempt to work out realistically the idea that the authority of a legal system as a whole is founded on its dedication to the common good. Hence even where some laws are unjust, obligation to the system may remain in so far as it is of sufficient worth to justify its being protected against adverse effects arising from the corrupting example and disorder of law breaking" (*Cotterrell R.* The Politics of Jurisprudence. London: Butterworth, 2003. P.121).

[56] See *Dworkin R.* A Matter of Principle. P. 119 ff.

[57] *Dworkin R.* No Right Answer? Hacker P., Joseph Raz (eds.). *Law, Morality* and *Society:* Essays in Honour of H. L. A. Hart. Oxford: Clarendon Press, 1977. Pp. 58–84.

[58] *Waldron J.* 'Transcendental Nonsense' and System in the Law. 100(1) *Columbia Law Review*, 2000. P. 16–53.

[59] See a short but informative account: *Gardner J.* Ethics and Law. Skorupski J. (ed.) *The Routledge Companion to Ethics.* London: Routledge, 2010. Pp. 420–430.

[60] Brian Leiter famously insists that "the law is metaphysically objective insofar as there exist right answers as a matter of law". Leiter B. (ed.) Objectivity in Law and Morals. Cambridge: Cambridge University Press, 2001. P. 3.

[61] *Fish S.* Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies. Durham: Duke University Press, 1989.

porters of the autopoietic conception of law took similar approaches when considering law as an entity that "autonomously processes information, creates worlds of meaning, sets goals and purposes, produces reality constructions"[62].

The image of systemacity of law advocated by certain contemporary authors (T. Parsons, N. Luhmann, H. Schelsky, among others) can also be seen as reinterpreting the old idea of unity of law, which dates back to antiquity and the Middle Ages. This idea implies that law is based on the principle of the common good, on the will of a divinity, or on other transcendental sources of its integrity. This presumption that law is a "system" corresponds to the thesis of unity of the universe (law as a part of the world order retranslates all the properties of this world order, including systemacity)[63].

There are at least two approaches that must be preserved and articulated among various approaches to law. The first is that law is an intentional entity or, to put it differently, is an intellectual artefact. The second is that the social and institutional aspects of law resist a purely abstract account of it. A satisfactory interpretation of the nature of law cannot drop either of the two. Individuals can be wrong about a community's attitudes, and, in this sense, individual judges can also be wrong about the law. It is impossible to be wrong about something that has no independent ontological status. This brings us closer to the realist position (Carl Llewellyn, Jerome Frank, Karl Olivecrona and others), whereby the conception of law is determined by inferences they are involved in. Think about the example of the term "valid contract": to determine its meaning, one has to determine the conditions that make something a valid contract and what (normative) consequences follow from it being a valid contract. If this is correct, legal concepts do not have an independent reference. However a proposition about law can have a true value, even though the legal concept applied within it does not have an independent reference. The same goes for the idea that law is what judges say law is — here law is closed on itself, on the procedures of generation of legal decisions and rules. Unity of law is still the unity of practice of law officers, a factual coherence of their activities[64]. Although an image of unity or integrity is alluring because there are objective limits to coordinated actions, they are never a whole that can be said to belong to different actors, based on different strategies and interests, and be dispersed actions in the factual world.

Nothing has cardinally changed in this argument since the 20th century debates between realist and normativist schools of legal philosophy. In contemporary jurisprudence, classical values were replaced by the term "principles of law", which has the same meaning as the ancient beliefs in justice and in common good and which challenges Kantianism based on the opposition between values and facts. From this perspective, to study law and its structure it suffices to examine only the legal forms without going into their content and nature. This makes possible the preservation of a "purified" (from facticity) neutral legal science, capable of building autonomous structures of compromise between conflicting values and interests[65]. The idea of

[62] *Teubner G.* How the Law Thinks: Toward a Constructivist Epistemology of Law. 23 Law and Society Review, 1989. Pp. 727–757.

[63] This aspect was noted by many positivisticly minded legal scholars. So, Cohen has characteristically labeled this kind of reasoning as "*transcendental nonsense*" (*Cohen F. Transcendental Nonsense and the Functional Approach.* (35) Columbia Law Review, 1935. Pp. 809–849. See also: idem. Ethical Systems and Legal Ideals: an Essay on the Foundations of Legal Criticism. Westport: Greenwood Press, 1933).

[64] *Stewart H.* Contingency and Coherence: The Interdependence of Realism and Formalism in Legal Theory. 30 Valparaiso University Law Review, 2011. Pp. 1–50.

[65] Compare with the general idea of Proctor: "Science in this view is a great and neutral arbiter, an impartial judge to whom social problems may be posed and from whom "balanced" answers will be forthcoming. Sci-

studying law as based on, and only on, facts is hardly reconcilable with the thesis of unity of law as far as facts are disperse realities, which, having been unified into a phenomenon, cease analytically to be "facts" (in plural). Because the very purpose of legal positivism is the refutation of metaphysics, the idea of unity and integrity of law had to be abandoned by positivists along with the belief in supreme values governing the society. As Alf Ross wrote in 1961, such a position could not be fairly positivistic and had to be qualified rather as a kind of "quasi-positivism"[66]. Without this axiological presumption, a legal positivist has no other opportunity to substantiate the idea of law as a system. The factual reality does not seem to provide any admissible (from the positivist standpoint) evidence of unity and proves the opposite — law as a fact is never complete and perfect, and there are gaps and inconsistencies which can be tackled through communication[67].

In this vein of communication theory, Luhmann insisted that law is cognitively open, but normatively closed as far as all operations within the legal reality always reproduce the system. The legal system as such attributes or denies significance to certain communications in accordance with its own imperatives and criteria[68]. Similarly, Teubner states that legal discourse superimposes new realities, so that law becomes autonomous from general societal communications and becomes a self-referential system. In these terms, unity of law appears as unity of an autonomous discourse, creating its own objects, truth criteria, and canons of validity, while exchanging information with its environment[69]. Luhmann's and Teubner's versions of autopoiesis conceptualize discursive closure, which at the same time is discursive unity of law and a means of self-reproduction of law.

Turning to the analysis of alternative explanations of unity of law, we face the question of whether this unity is a fact or an intellectual construction. The first option can appear to be more attractive, at least from the point of view of plausibility. Legal experience (using Georges Gurvitch's legal sociology[70]) bears evidence that every lawyer works with a law ("our law", "our system of law", etc.) but not with "law" without a qualifier. To consider some set of rules as "the law" a lawyer needs to decide that this set is united and (at least, relatively) coherent. When handling "the law", we do not deal with several norms or even with sets of norms, but rather with a colossal structure, which brings about a "legal order", a coherent "system of regulation", to which some rules belong. If it were a multitude of different competing and colliding rules and standards, it would not bring about a comprehensive whole that lawyers call "the law"[71].

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ence provides a neutral ground upon which people of all creeds and colors might unite, on which all political contradictions might be overcome. Science is to provide a balance between opposing interests, a source of unity amidst diversity, order amidst chaos" (*Proctor R.* Value-Free Science? Purity and Power in Modern Knowledge. Cambridge: Harvard University Press, 1991. P. 7–8).

[66] *Ross A.* Validity and the Conflict between Legal Positivism and Natural Law (1961). Paulson S. and Litschewski B. (eds.) Normativity and Norm. Oxford: Oxford University Press, 1998. Pp. 147–163.

[67] *Krawietz W.* Legal Communication in Modern Law and Legal Systems. A Multi-Level Approach to the Theory and Philosophy of Law. Wintgens L. (ed.) My Philosophy of Law. The Law in Philosophical Perspectives. Dordrecht; Boston: Kluwer, 1999. Pp. 69–120.

[68] *Luhmann N.* Operational Closure and Structural Coupling: The Differentiation of the Legal System. 13 Cardozo Law Review, 1992. Pp. 1419–1441.

[69] *Teubner G.* Autopoiesis in Law and Society: A Rejoinder to Blankenburg. 18 Law and Society Review, 1984. Pp. 291–301.

[70] See: *Banakar R.* Integrating Reciprocal Perspectives: On Georges Gurvitch's Theory of Immediate Jural Experience. 16(1) Canadian Journal of Law and Society, 2001. Pp. 67–91.

[71] *Raz J.* Ethics in the Public Domain. Oxford: Clarendon Press, 1994. Pp. 261–309.

This explanation seems to be self-evident, and allows for the claim that law is basically a social fact, as well as the definition of what counts as the law without being bound by laws. Thereby one can supposedly avoid a vicious circle in argumentation because the definition seems to depend solely on certain social conditions, such as regularity of behaviour and acceptance. To some extent this is not only understandable, but is justifiable. Many of the political changes in Western law in the past two centuries have given rise to profound alterations in the regulatory and directive strategies of the state, which have become central role to legal life. Law gravitates around the state and is to a large extent united by the state[72]. Moreover, the assertion that law constitutes an integrated and autonomous sphere serves an important and legitimating purpose, and, therefore, is strongly maintained[73]. But this apparently persuasive argumentation is fraught with some philosophical pitfalls (naturalism of various kinds), which can be avoided by considering unity of law purely as an intellectual hypothesis. A stronger assertion would be to claim that the models described above are not strictly definitional; their purpose is to explain how something can be considered law. They answer the question: "What is the law?" and define it as what a specific authority or community takes as such, explaining how something counts as such. From this perspective, unity of law is assumed as a fact. It is possible as far as this unity imposes itself as a function of sociality, which is intrinsically united (according to the accounts of most of socio-legal scholars, such as Durkheim, Duguit, and Parsons)[74]. Social complexity relies on methodological individualism's increasing inadequacy, which has been largely replaced by a more passive confidence in impersonal systems[75]. This transfer of reliance entails a shift from studying mutual understandings between individuals towards a stronger reliance on general societal frameworks, which in many scientific analyses act as *deus ex machina*, explaining society and its institutions through increasing social complexity.

In this conception of reality is implicitly intertwined a serious philosophical problem of relative weight of values of the individuality and of the collectivity. Karl Popper's characterization of certain authors of the objectivist philosophical systems (such as Plato, Hegel, Comte and Kant) as "enemies of the open society" can be somewhat exaggerated[76]. However, Popper's position is worth mentioning. He argued that the unity of the social whole above the individual leads to totalitarianism. The subordination of individual interests, goals, and freedom to some alleged greater qualities of the whole (solidarity, unity, social harmony) can result in subordinating the individual to the whole. From this point of view, Popper was, at least, partly right in asserting that holist reasoning often goes hand in hand with totalitarian ideas — individuality can be protected from the dictate of collectivity only in an intellectual environment where the value of pluralism prevails. If an individual has the ability choose between various values, none of which is presupposed to have absolute priority, this per se provides a system of protection of spiritual and intellectual freedoms. Contrastingly, a situation in which one value prevails over others logically leads to the presumption that this value has determinate content which can be discovered by wise and virtuous (or having other outstanding qualities) agents. In other words, this value is objective[77].

[72] *Levy J.* The State After Statism: New State Activities in the Age of Liberalization. Cambridge: Harvard University Press, 2006.

[73] *Foucault M.* Discipline and Punish: The Birth of the Prison. N.Y.: Vintage Books, 1995.

[74] *Stone J. Social Dimensions of Law and Justice.* London: Stevens, 1966.

[75] *Jervis R.* System Effects: Complexity in Political and Social Life. Princeton: Princeton University Press, 1998.

[76] *Popper K.* The Open Society and Its Enemies, 2 vols. London: Routledge, 1945.

[77] See a critical reassessment: *Kennedy D.* Legal Education and th**e** Reproduction of Hierarchy: A Polemic Against the System. 32 Journal of Legal Education, 1982. Pp. 591–615.

This situation is more disposed to any kinds of suppression of the individual to the collective, namely to those who claim to represent the collective. Hans Kelsen provided an analysis of this situation in the context of different discourses about unity of law and their consequences for human liberty[78].

The natural-law doctrine usually asserts that unity of law is based on a hierarchy of values this doctrine postulates (more precisely, different hierarchies that are postulated in variants of this doctrine). It is not only Aquinas who builds his entire conception on the assumption that there is an immutable order of values, which serve as a foundation for social life. Other contemporary writers, such as John Finnis, take the same position[79]. Although, this sounds convincing only insofar as one concedes that there are objective values which are united under various rules and principles. It is nonetheless possible only in the realm of philosophical speculation, when the veracity of this presumption can be postulated *a priori*. The analytical or empirical study of law cannot prove the prevalence of any objective values in structures of law, as these structures with their infinite variability prove the contrary: most legal systems are ordered according to principles which vary through time and in this sense are not objective[80]. The evident fallacy of the objectivist (which is, in my opinion, at the same time naturalist) argument about a pre-established unity of law in the natural-law doctrine was one of the reasons this doctrine was discredited in the 19th century[81]. Arguing in favour of "natural law with varying contents", Rudolf Stammler and other proponents of the "revived natural law" in the 19–20 th centuries were forced to abandon the idea of objectivity, which was a condition of the unity of law according to the traditional natural-law doctrine, but which was irreconcilable with the idea of the variability of natural law[82]. In this sense Max Weber insists that modern law has lost its metaphysical dignity and is revealed as no more than the product or the technical means of compromises of conflicting interests[83]. Variability implies that basic legal precepts are dependent on external contingent factors and thereby cannot claim objectivity.

If a positivist legal scholar accepts that the law is a set of norms, then every new norm created in this legal order shows that this order had not been fully integrated before this norm was created. This follows with any new norm. One can draw an abstract picture of law where this set of norms is well-ordered and integrated, but for a positivist there will still be nothing more than an intellectual construction that does not guarantee congruence with reality. In other words, induction cannot prove the integral character of legal reality[84]. We can use the results of this induction in our intellectual schemes, or even in our legal practice, but this does not attest to anything but the integrity of our intellect, our reason, rather than the integrity of the legal reality.

Following this logic, the fact-based approaches to law can hardly tackle the problem of the systemacity of law. It can be inferred that studying particular processes and facts of legal reality is incompatible with the thesis of the unity of law. In this regard, one can once again refer to the normativism of Hans Kelsen. Kelsen defended a strict distinction between Ought and Is, law

[78] *Kelsen H. The Natural-Law Doctrine* before the Tribunal of Science. 4 Western Political Quarterly, 1949. P. 481–513.

[79] *Finnis J.* Human Rights and Common Good. Oxford: Oxford University Press, 2011.

[80] *Bulygin E.* Objectivity of Law in the View of Legal Positivism. Analisi e diritto. 2004. P. 219–227.

[81] *Waldron J.* The Decline of Natural Right. Wood A. (ed.) Cambridge History of Philosophy in the 19th Century/ Cambridge: *Cambridge* University Press, 2012. P. 623–650.

[82] *Haines C.* The Revival of Natural Law Concepts. Cambridge: Harvard University Press, 1930.

[83] *Weber M.* Economy and Society: An Outline of Interpretive Sociology. Berkeley: University of California Press, 1978. P. 874–875.

[84] *Van Hees* M. Legal Reductionism and Freedom. Dordrecht: Kluwer, 2000.

being incorporated into the realm of Ought. Law is understood as a reality *sui generis* (of modal statements, linguistic constructions, etc.), which is not tantamount to the empiric reality of law (legal relations, juristic practice, and so on). If, following Kelsen, we accept that law is nothing more than a set of norms, then unity of this set is explained by introducing a "hypothesis" ("fiction" in the latest works of Kelsen) of the basic norm[85]. This becomes the main structuring element in law without taking the presumption of which norms will fall apart. From one perspective, one could argue that this construction does not save the positivist project from accusations in metaphysics: Kelsen's basic norm does not belong to empirical reality and the existence (even in the sense of intellectual construction, as Kelsen saw it) of this norm cannot be proved by means of strict logic[86].

Most of the positivists are unanimous about the artificial character of the idea of unity of law. Austin and Hart view the law in socio-political terms. Namely, Austin sees the source of legal regulation in a sovereign, who issues commands that are habitually obeyed because of the threat of a sanction that could be imposed in a case of failure to respect the command. Similar to Austin, Hart perfects an ultimate rule of recognition that is interpreted by officials and judges as secondary rules of recognition. Kelsen does not describe how a legal system creates law or why officials behave in a certain way. He merely assumes an epistemological norm, the *Grundnorm*. Thus, for him there is no factual unity of law enforcement and there can never be any. Explaining unity of law through the unity of linguistic constructions can be formally correct (if we are persuaded that our language is a kind of intellectual unity), but because it has no heuristic value, it stays sterile. It is absolutely incapable of uniting these two realities (linguistic reality of legal norms and the reality of law enforcement) to arrive at an understanding of the facticity of law. Evidently, even if law has a specific linguistic or logical structure, this structure might have no effect on the factual reality of law (how law is made in legislative acts, how it is applied by courts, how it is construed by legal scholars, and so on). In other words, the "system of law" as a unity of linguistic or logical structures does not imply that there is any "system of law" as unity of normative propositions or legal facts. To suppose congruence of these two systems, we still have to introduce an initial hypothesis that these two "systems" make or are capable of making one "system". This hypothesis cannot be proved by facts, and remains metaphysical by its very nature[87]. Joseph Raz asserts that laws "are normative because they consist of rules" and, therefore, the existence of rules does not by necessity require any ultimate or basic norm justification[88].

The later versions of legal positivism sought to escape the difficulties of a purely normative understanding of law and to substantiate integrity of law by referring to unity of reasoning processes (Chaim Perelman[89]) or that of our language (Andrei Marmor[90]). In the last case, we still need to go beyond the empirical reality of law to access it as a set of linguistic constructions (statements, propositions, expressions, etc.) without relating these construction to the real work of legal mechanisms (police, courts, parliaments, etc.). This approach allows bridging

[85] *Paulson S.* The Great Puzzle: Kelsen's Basic Norm. Gardner J., Green L., D'Almeida L. (eds.) Kelsen Revisited: New Essays on the Pure Theory of Law. Oxford: Hart Publishing, 2013. P. 43–62.

[86] *Bulygin E.* An Antimony in Kelsen's Pure Theory of Law. 3 (1) Ratio Juris, 1990. P. 29–45.

[87] *Detmold M.* The Unity of Law and Morality: A Refutation of Legal Positivism. London: Routledge, 1984.

[88] *Raz J. Reasoning with Rules,* idem. Between Authority and Interpretation. Oxford: Oxford University Press, 2009. P. 204–220.

[89] *Perelman C.* Legal Ontology and Legal Reasoning. 16 Israel Law Review, 1991. P. 356–367.

[90] *Marmor A.* The Language of Law. Oxford: Oxford University Press, 2014.

legal signs, symbols, words and factual acts, which are produced in the legal reality by courts, police and other law enforcement bodies. Without such a connective link, it is problematic to arrive at the explanation of the nature of this legal activity.

But, in debating the conceptualization of law, can we still evoke any "nature"? Do we not then return to the controversial idea of natural law, which traditionally stands in direct opposition to the positivist approach? This issue leads us to the problem of veracity of our propositions about law. Propositions about law can be true or false, even if the principle of bivalence does not hold with respect to them. How could any propositions be true where law is a natural entity? When we recognize this, we commit to the fact that something in the world (not necessarily in the natural world) makes them true. According to Kripke's theory presented in "Naming and Necessity", strictly speaking, proper names do not have a meaning, but have a reference[91]. Can we give a similar account of non-natural kind terms? In fact, if it is true that law is a social phenomenon, the term "law" refers to a non-natural kind of thing. To put it differently, it refers to an artefact, like "the Russian system of law", which is not a natural entity but an intelligible reconstruction of a presumed coherence of rules and principles in this country.

Two great epistemological systems of the 20th century can be used here to explain two different strategies of explaining the unity of law. Thomas Kuhn and Michel Foucault proposed two systems that are particularly instructive in providing an explanation of the unity of discourses, the latter in the modern (or postmodern, if this term is preferred) philosophy serves as the key term for social interaction (the terms "discourse" or "communication" have ramifications across a broad swath of contemporary social sciences). For Foucault, discourse reveals common modes of thought that unify different facts and factors involved in the practice of a particular scientific discipline (of a special set of intellectual and factual practices). These practices exist each according to their own canons, and each constructs its own field of knowledge and experience. The underlying discourse is what makes these practices more or less unified and autonomous. Kuhn also stresses the collective self-validation of societal practices, although he does not do so through a description of a common adherence to rules of discourse by members of the community as does Foucault in his "*Archaeology of Knowledge*"[92]. Kuhn describes the "disciplinary matrix" of an intellectual field, which is composed of four elements: symbolic generalization, models, values, and exemplars (or paradigms). The latter are examples of good practices and problem-solving, which cement the supporters of a specific discipline. Kuhn's analysis identifies legitimate and commonly accepted practices that unify human activities in a certain field. If these exemplars (paradigms) cease to be credible because of paradigm development in a neighbouring field or because of intense conflict between progressive and regressive fields, this may lead to (scientific) revolutions that result in a change of worldview in this field[93]. There are some rules that are crystallized in discursive practices, and it is around these rules intellectual activities center and according to which factual material is gathered and classified. These rules themselves are changeable, and in the final account are shaped and structured by their relevance to particular configurations of power[94].

Austin, one might say, refers to some command of the sovereign, while Kripke stipulates that something called "law" is enacted by an authority and the relevant community contin-

[91] *Kripke S.* Naming and Necessity. Cambridge: Harvard University Press, 1980.

[92] *Foucault M.* The Archaeology of Knowledge. London: Routledge, 2002.

[93] *Kuhn T.* The Essential Tension: Selected Studies in Scientific Tradition and Change. Chicago: University of Chicago Press, 1977.

[94] *Bourdieu P.* Language and Symbolic Power. Cambridge: Polity, 1991.

ues to take it as such. Foucault or Kuhn view law as a variable intellectual practice with fluent cognition rules. This is a form of sound relativism, which explains the assumption that propositions about law have true values. One can imagine a counterfactual situation in which norm-formulation is enacted in a legal system different from the actual one, and in which it is interpreted differently. Still, "law" would continue to refer to the same kind of thing, namely to the same norm-formulation.

This theoretical conclusion can be analytically true, but to what extent does it help explain the reality of law? Without any doubt, most legal actors (judges, lawyers, lawmakers, etc.) believe in the systemacity of law — otherwise, their attempts to fill in gaps in law, to introduce new norms, to eliminate inconsistencies from law would be devoid of sense. Is it possible to reconcile this empirical reality of intellectual attitudes with the strict analysis of this reality (i.e. by examining the reasons behind these attitudes)? This task does not appear to be unrealistic. We can believe in the systemacity of law and still be aware that unity/integrity of law is only a product of our intellect, our beliefs and paradigms. As Alchourrón and Bulygin wisely suggest: "There is nothing paradoxical about a consistent description of an inconsistent normative system"[95]. In this regard, we can construct a legal order as a "system" (this is solely an issue of word usage) and follow here the tradition which attributes legal order to the term "system" as if order and system were synonyms.

Accepting this, we are no longer able to attribute to law another meaning of the term "system" to law, as "systems", in scientific and practical discussions (mathematics, logic, etc.), usually refers to something which is consistent, full, gapless, and irredundant. As follows from Gödel's first theorem, any consistent effective formal system is incomplete. Adopting this point of view, there is nothing contradictory about conceiving of law as a "system", stripping this term of the properties usually attributed to it (such as completeness, consistency, etc.)[96]. We then have a "system of law" which is only relatively integrated and defined[97]. Law can be united only to a certain degree, depending on the extent of political integration of any community. This could be a point of tangency where legal theory and logic can effectively work together. This approach seems to be quite reconcilable with the basic idea of "normative systems" by Bulygin-Alchourron — the idea that all the normative sets can be imagined as independent entities which are united solely by (more or less) logical reasoning by judges, law-enforcement officers and law professors, and that there can be as many such normative systems as there are actors reasoning about law and systematizing legal propositions (and consequently, the norms contained in these propositions)[98]. As Roger Cotterrell puts it: "Law can be seen sociologically as a field of experience in which actors explain to themselves and others the meaning, structure, or significance of this [legal] field and their situation within it"[99]. This approach allows for a better description of various processes in legal systems, which are traditionally analysed with reference to the idea of sovereignty, and can be a fruitful contribution to the debates about unity and identity of law[100].

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[95] *Alchourrón C., Bulygin E.* Normative Systems. *P.* 123.

[96] *Bulygin E.* On Legal Interpretation. Alexy R., Dreier R. (eds.) Legal System and Practical Reason. *Stuttgart:* Steiner Verlag, 1993. P. 11–22.

[97] *Raz J.* The Identity of Legal Systems. The Authority of Law: Essays on Law and Morality. Oxford: Clarendon Press, 1979. P. 79–102.

[98] See also *Raz J.* From Normativity to Responsibility. Oxford: Oxford University Press, 2011.

[99] *Cotterrell R.* Sociological Perspectives on Legal Closure. P. 104.

[100] *Antonov M.* Theoretical Issues of Sovereignty in Russia and Russian Law. 37 Review of Central and East European Law, 2012. Pp. 95–113.

The purpose of the present paper was not to find a definite solution to the philosophical question of unity of law (legal systems' integrity), but rather to stress the necessity of escaping the principal intellectual traps, which may seem to provide an easy reply but, after a detailed discussion, bring ambiguity into the strictly formalist account of law used by lawyers. At the same time, we can believe in the systemacity of law and still be aware that the unity/integrity of the law is only a product of our intellect, our beliefs and paradigms. Other approaches to the issue of unity lead, as I see it, to naturalism, which implies that law somehow mirrors the structure of reality (be it conceived of as physical, social, psychological, or metaphysical). What matters here is that this belief is rational and not based on irrational faith in a pre-established harmony of law and its mystical congruence with reality.

References

Adams D. (2000) *Philosophical Problems in the Law. 3rd ed.* Wadsworth: California State Polytechnic University.

Alchourrón C., Bulygin E. (1971) *Normative Systems*. N.Y.: Springer.

Antonov M. (2012) *Du droit byzantin aux pandectistes allemands: convergences de l'Europe occidentale et de la Russie*. Karuso A. (ed.) *Identita del Mediterraneo: elementi russi*. Cagliari: AM&D Edizioni, pp. 253–263.

Antonov M. (2012) Theoretical Issues of Sovereignty in Russia and Russian Law. *Review of Central and East European Law*, vol. 37, pp. 95–113.

Aristotle (1943). *Politics*. N.Y.: The Modern Library.

Banakar R. (2001) Integrating Reciprocal Perspectives: On Georges Gurvitch's Theory of Immediate Jural Experience. *Canadian Journal of Law and Society*, vol. 16, no 1, pp. 67–91.

Bellomo M. (1995) *The Common Legal Past of Europe: 1000–1800*. Washington: Catholic University of America Press.

Beltrán J., Ratti G. (eds.) (2012) *The Logic of Legal Requirements. Essays on Defeasibility.* Oxford: Oxford University Press.

Bentham J. (1970) *An Introduction to the Principles of Morals and Legislation. London*: The Althone Press.

Bourdieu P. (1991) *Language and Symbolic Power*. Cambridge: Polity.

Bourdieu P. (1986) The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal*, vol. 38, no 5, pp. 814–853.

Bulygin E. (1990) Antimony in Kelsen's Pure Theory of Law. *Ratio Juris*, vol. 3, no 1, pp. 29–45.

Bulygin E. (1993) *On Legal Interpretation*. Alexy R., Dreier R. (eds.) Legal System and Practical Reason. Stuttgart: Steiner Verlag, pp.11–22.

Cairns J., Du Plessis Paul J. (eds.) (2010) *The Creation of the Ius Commune: From Casus to Regula*. Edinburgh: Edinburgh University Press.

Cladis M. (1994) *A Communitarian Defense of Liberalism: Emile Durkheim and Contemporary Social Theory*. Stanford: Stanford University Press.

Cohen F. (1933) *Ethical Systems and Legal Ideals: an Essay on the Foundations of Legal Criticism*. Westport: Greenwood Press.

Cohen F. (1935) Transcendental Nonsense and the Functional Approach. *Columbia Law Review,*

vol. 35, pp. 809–849.

Cohen M. (1933) *Law and the Social Order: Essays in Legal Philosophy.* N.Y.: Harcourt, Brace and Company.

Constant B. (1988) *Political Writings*. Cambridge: Cambridge University Press, pp. 308–328.

Cotterrell R. (1995) *Law's Community*. Oxford: Clarendon Press.

Cotterrell R. (2003) *The Politics of Jurisprudence.* 2nd ed. London: LexisNexis Butterworth.

D'Entréves A. (1952) *Natural Law: An Introduction to Legal Philosophy.* London: Hutchinson.

Detmold M. (1984) *The Unity of Law and Morality: A Refutation of Legal Positivism*. London: Routledge.

Devereux D. (1992) The Unity of the Virtues in Plato's Protagoras and Laches. *The Philosophical Review,* vol. 101, no 4, pp. 765–789.

Durkheim E. (1997) *The Division of Labor in Society.* New York: Free Press.

Dworkin R. (1985) *A Matter of Principle*. Cambridge: Harvard University Press.

Dworkin R. (2011) *Justice for Hedgehogs*. Cambridge: Harvard University Press.

Dworkin R. (1986) *Law's Empire*. Cambridge: Harvard University Press.

Dworkin R. (1977) *No Right Answer?* Hacker P., Raz J. (eds.) Law, Morality *and* Society*: Essays in Honour of H. L. A. Hart*. Oxford: Clarendon Press, pp. 58–84.

Dyzenhaus D. (ed.) (2004) *The Unity of Public Law*. Oxford: Hart Publishing.

Etzioni A.(1995) *New Communitarian Thinking*. Charlottesville: University of Virginia Press.

Fine G. (1992) *On Ideas: Aristotle's Criticism of Plato's Theory of Forms*. Oxford: Oxford University Press.

Finnis J. (2011) *Human Rights and Common Good*. Oxford: Oxford University Press.

Finnis J. (1980) *Natural Law and Natural Rights*. Oxford: Oxford University Press.

Fish S. (1989) Doing What Comes Naturally: Change, Rhetoric and the Practice of Theory in Literary and Legal Studies. Durham: Duke University Press.

Fontana B. (1991) *Benjamin Constant and the Post-Revolutionary Mind*. New Haven: Yale University Press.

Foucault M. (1995) *Discipline and Punish: The Birth of the Prison*. N.Y.: Vintage Books.

Foucault M. (2002) *The Archaeology of Knowledge*. London: Routledge.

Furton E. (1994) Restoring the Hierarchy of Values to Thomistic Natural Law.*American Journal of Jurisprudence*, vol. 39, no 1, pp. 373–395.

Gardner J. (2010) *Ethics and Law*. Skorupski J. (ed.) The Routledge Companion to Ethics. London: Routledge, pp. 420–430.

Green M. (2003) Hans Kelsen and the Logic of Legal Systems. *Alabama Law Review*, vol. 54, pp. 365–413.

Haines C. (1930) *T*he Revival of Natural Law Concepts. Cambridge: Harvard University Press.

Hart H.L.A. (1970) *Kelsen's Doctrine of the Unity of Law*. Kiefer H., Munitz M. (eds.) *Ethics and Social Justice*. New York: University of New York Press, pp. 171–199.

Hees M. van. (2000) Legal Reductionism and Freedom. Dordrecht: Kluwer.

Hegel G.W.F. (1942) *Philosophy of Right*. Oxford: Oxford University Press.

Jervis R. (1998) *System Effects Complexity in Political and Social Life*. Princeton: Princeton University Press.

Kelsen H. (1967) *Aristotle's Doctrine of Justice*. Walsh J. (ed.) *Aristotle's Ethics*. Wadsworth, 1967, pp. 102–119.

Kelsen H. (1945) General Theory of Law and State. N.Y.: Russell.

Kelsen H. (1939) Platonic Justice. *Ethics*, vol. 48, no 3, pp. 367–400.

Kelsen H. (1949) The Natural Law Doctrine Before the Tribunal of Science. *Western Political Quarterly*, vol. 4, pp. 481–513.

Kennedy D. (1982) Legal Education and the Reproduction of Hierarchy: A Polemic Against the System. *Journal of Legal Education*, vol. 32, pp. 591–615.

Krawietz W. (1999) *Legal Communication in Modern Law and Legal Systems. A Multi-Level Approach to the Theory and Philosophy of Law*. Wintgens L. (ed.) *My Philosophy of Law. The Law in Philosophical Perspectives*. Dordrecht: Kluwer, pp. 69–120.

Kripke S. (1980) *Naming and Necessity*. Cambridge: Harvard University Press.

Kuhn T. (1977) *The Essential Tension: Selected Studies in Scientific Tradition and Change*. Chicago: University of Chicago Press.

Leiter B. (ed.) (2001) *Objectivity in Law and Morals*. Cambridge: Cambridge University Press.

Levy J. (2006) *The State After Statism: New State Activities in the Age of Liberalization.* Cambridge: Harvard University Press.

Luhmann N. (2004) *Law as a Social System*. Oxford: Oxford University Press.

Luhmann N. (1992) *Operational Closure and Structural Coupling: The Differentiation of the Legal System*, in: (13) *Cardozo Law Review*, vol. 13, pp. 1419–1441.

Marmor A. (2014) *The Language of Law*. Oxford: Oxford University Press.

Morigiwa Y., Stolleis M., Halperin J. (2011) *Interpretation of Law in the Age of Enlightenment: From the Rule of the King to the Rule of Law*. Berlin: Springer.

Paulson S. (2013) *The Great Puzzle: Kelsen's Basic Norm*. Gardner J., Green L., D. 'Almeida L. (eds.) *Kelsen Revisited: New Essays on the Pure Theory of Law*. Oxford: Hart, pp. 43–62.

Peláez F. (2013) *Threads of Natural Law: Unraveling a Philosophical Tradition*. Dordrecht, Springer.

Popper K. (1945) *The Open Society and Its Enemies*; 2 vols. London: Routledge.

Postema Gerald J. (2001) Law as Command: The Model of Command in Modern Jurisprudence.

Noûs, vol. 35, no 1, pp. 470–501.

Proctor R. (1991) *Value-Free Science? Purity and Power in Modern Knowledge.* Cambridge Harvard University Press.

Raz J. (2011) *From Normativity to Responsibility.* Oxford: Oxford University Press.

Raz J. (2009) *Between Authority and Interpretation.* Oxford: Oxford University Press.

Raz J. (1980) *The Concept of a Legal System.* 2nd ed. Oxford: Clarendon Press.

Raz J. (1979) *The Authority of Law: Essays on Law and Morality* Oxford: Clarendon Press.

Raz J. (1994) *Ethics in the Public Domain*. Oxford Clarendon Press.

Reimann M.(1990) Nineteenth Century German Legal Science. *Boston College Law Review*, vol. 31, pp. 837–897.

Romocea C. (2011) *Church and State: Religious Nationalism and State Identification in Post-Communist Romania.* London: Continuum International.

Rosmini A. (1988) *Principles of Ethics.* London: Gracewing.

Ross A. (1998) *Validity and the Conflict between Legal Positivism and Natural Law***.** Paulson S. and Litschewski B. (eds.) *Normativity and Norm*. Oxford: Oxford University Press, pp. 147–163.

Rumble W. (2005) *Doing Austin Justice: The Reception of John Austin's Philosophy of Law in Nineteenth-century England*. London: Continuum.

Sayers S. (1999) *Plato's Republic: An Introduction*. Edinburgh: Edinburgh University Press.

Schauer F. (2009) *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* .Cambridge: Harvard University Press.

Schroder J. (2008) *The Concept of Law in the Doctrine of Law and Natural Law of the Early Modern Era*. Daston L. and Stolleis M.(ed.) *Natural Law and Laws of Nature in Early Modern Europe*. Farnham: Ashgate, pp. 57–71.

Solovyov V. (2010) *The Justification of the Good*. N.Y.: Cosimo Classics.

Stewart H. (2011) Contingency and Coherence: The Interdependence of Realism and Formalism in Legal Theory. *Valparaiso University Law Review*, vol. 30, pp. 1–50.

Stone J. (1965) *Legal System and Lawyers' Reasoning*. London: Stevens and Sons.

Stone J.(1966) *Social Dimensions of Law and Justice*. London: Stevens and Sons.

Tams H. (1998) *Communitarianism: A New Agenda for Politics and Citizenship.* Basingstocke: Macmillan.

Teubner G. (1984) Autopoiesis in Law and Society: A Rejoinder to Blankenburg. *Law and Society Review*, vol. 18, pp. 291–301.

Teubner G. (1989) How the Law Thinks: Toward a Constructivist Epistemology of Law. *Law and Society Review*, vol. 23, pp. 727–757.

Tusseau G. (2007) Positivist Jurisprudents Confronted*:* Jeremy Bentham and John Austin on the Concept Legal Power. *Revue d'études benthamiennes*, no 2, pp. 23–37.

Waldron J. (2000) 'Transcendental Nonsense' and System in the Law. *Columbia Law Review,* vol. 100, no 1, pp. 16–53.

Waldron J. (2012) *The Decline of Natural Right*. Wood A. (ed.) *Cambridge History of Philosophy in the 19th Century*. Cambridge: Cambridge University Press, pp. 623–650.

Wallerstein I. (2006) *European Universalism: The Rhetoric of Power*. N.Y.: The New Press.

Weber M. (1978) *Economy and Society: An Outline of Interpretive Sociology*. Berkeley: University of California Press.

Wiltshire S. (1992) *Greece, Rome, and the Bill of Rights*. London: Norman Publishing.