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Some Reflections about Unity of Law and of Normative Systems

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Abstract

This paper aims to analyse the philosophical premises on which the idea of unity of law (identity of legal system) is based. In the history of legal philosophy this idea found its main arguments in the presumption of totality of legal regulation. Such totality translated the philosophical tenets of holism according to which law is not limited to the positive-law rules and institutes, and transcends to the supreme values priming over the legal instruments human beings and collectives create for regulation of their mutual behavior. This argument implies one of the highest values (that of justice) under which all the social relations can be subsumed and which finally gives the binding force to positive law. The author argues that this line of thought is based on philosophical objectivism and naturalism, and can easily lead to primacy of the social over the individual. To substantiate the idea of systemacity of law, one can turn to the modern debates about logic of social cohesion (Searle) and construct a legal system identity as a purely intellectual hypothesis necessary for thinking about law. In the terms of Foucault's analysis of power relations, this integrity can be described as a unity of discourse, or as a unity of societal practices, as proposed by Kuhn. This reconstruction of integrity of law can be extended by appealing to the basic ideas of normative philosophy of law (from Hart and Kelsen to Raz and Marmor) 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 system

Introduction

For decades, the problem of legal system integrity (In this paper we will treat the terms «integrity of legal system» and «unity of law» as equivalent, although we admit that they can be separated with a view to other theoretical research tasks) has been an almost unchallenged preserve of jurists attempting to rationalize and to universalize the forms of their professional discourse, where law is conceived of as a system or a unity. But this restriction of scope was not always characteristic and is again ceasing to be so. The body of literature devoted to legal system integrity was mainly known to antique and medieval philosophers. The recent development of this issue in a variety of approaches (Joseph Raz or Eugenio Bulygin) is clearly an aspect of wider theoretical concern in legal logic. The literature considered in this article indicates a variety of possible approaches to the analysis of legal systems. It points to the significance of legal discourse coherence and also to those serious ambiguities in theoretical debates that make the development of a rigorous theoretical approach to unity of law a pressing need.

Our major objective in this paper is to reassess the idea of unity of law in the light of some philosophical doctrines. No attempts, however, will be made to describe particular theories; only general trends are discussed and references to particular examples are intended to illustrate 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, the idea of unity of law is not something conceptually monolithic, as in the legal and social philosophy it used to convey various thoughts and inspirations: logical unity of propositions, epistemological unity of the phenomena unified under the term «law»; factual unity of societal regulation, axiological unity of a hierarchy of legal values, procedural unity of legal argumentation and reasoning, etc. This idea has always been present in Western legal philosophy and has been posited in one way or another by those philosophers who sought to reveal what the nature of law is. In this paper we confine ourselves only to this aspect, as an analysis of this idea in the legal philosophies of India, China and other non-Western civilizations would require extensive research. Considerations such as these seem to demand a different view of law and its appropriate 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 comprising varied types of social regulation.

From this standpoint, law as an institutionalized entity does not necessarily appear as a monolithic unity but might be better thought of as complex interweaving layers of social and intellectual realities. A caveat should be added here: we 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, our 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 unity of law–at least, conceptually, legal thinking requires supposing that there is a more or less unified entity behind the term «law» which is not a natural entity. From this perspective, this issue appears as one of the central areas for the 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 of legal principles and policies being established by interpretation through rational debate among members of an interpretive community shows the limits within which a rationalist and individualist legal philosophy is confined to search for the unity of its object–law. The mysticism penetrating Durkheim's legal sociology

is characteristic of the perils of Communitarist social philosophy where law is conceived as an «external index», symbolizing the nature of social solidarity. Western law has been dependent on the apparent fusion of a rational system of rules, values, justice and order. Various thinkers have offered their conceptions of unity to make the diversity of legal life compatible with the requirements of law's systematic rational nature through proclaiming adherence to some broad fundamental values.

In the history of legal philosophy, the thesis of legal system identity has traditionally been postulated from metaphysical standpoints. This history can be traced from the implications made by Plato that law is justice, and justice is something that is whole, encompassing in it all the aspect and that is not diversity (rather opposed to it). For Plato, it is an idea that allows us to consider diverse and factually different phenomena as conceptual entities; this is also the case of law which is not only a heterogeneous set of rules and propositions, but also the whole representing the idea of justice. From this standpoint, a legal order would fall apart if we took the idea of justice out of it. As Hans Kelsen masterly shows, Plato did not exactly differentiate law (just norms of behavior) and the laws (formally binding statutes) [1] and neither did Aristotle [2]. This approach in the history of Western legal philosophy was reiterated by numerous adherents of the natural-law doctrine. For them, identity of law was a logical sequence from social cohesion, i.e. the solidarity of people who create a society. Based on the unity of the virtues presumption, Plato claimed that all of the virtues are somehow one, as they make up a kind of knowledge [3]. This knowledge belongs to a particular stratum of people, the philosophers, who would rule in the ideal state. This logic of integrity led Plato to postulate a 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" [4]. This logic of holism is characterizing for most of the natural-law doctrines, as we will try to demonstrate below.

Aristotle criticized Plato's conception of the factual unity of social life, as "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" [5], 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" [Ibid., 1261a22-24]. Nonetheless, Aristotle did not abandon the conception of unity, just transposing it from the factual into 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" [Ibid., 1253a38]. Aristotle's political ideal was polity which occurs when many rule in the interest of the political community as a whole. Any political and legal structure is 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 inevitably shall be based on specific values of justice and sociability. Social existence presupposes that various human representations about these values are necessarily shaped by some metaphysical entities such as ideas (for Plato) or forms (for Aristotle). These conceptions gave quite plausible explanations for unity of law in the terms of the antique social philosophy in which the social by far primed over the individual (as Benjamin Constant famously reasoned in 1816 in his «*The Liberty of Ancients Compared with that of Moderns*»).

Later, partly based on the Plato-Aristotle philosophical tradition, there emerged a natural-law doctrine which first was outlined by Cicero and the Stoics and developed by the Fathers of the Christian Church. 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' 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 used to think the ancient Greeks. 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 promote, 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 depended on a range of ever changing variables). This doctrine already contained detailed conceptual elaborations of justice and order which specified the range of choice of actions available to individuals and the scope of human personality and its expression.

We can skip the consequent development of similar political ideas in the Early Middle Ages when political and legal systems were largely dispersed and decentralized, but often seen as manifestations of a certain unity. This unity in the West implied in that the époque of 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 of social totality spiritually united by common faith. What this involved is highly complex and often obscure but two aspects are important. The first is summed up in Aquinas' conception of an omnipresent legal order, which includes divine, natural, everlasting, and positive law. Thomas Aquinas brought together elements of the Antique and Christian mental outlooks which both were based on the presumed unity of Universe and (for Christians) the belief in predestination of this world subject to the will and reason of its Creator. In Aquinas' synthesis, 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 Realists and Nominalists where the unity appeared either as factual, or as intelligible. This debate has considerably influenced Western political philosophy, and different conceptions of unity of law were afterwards formed with a view to the two aforementioned basic philosophical positions [6]. The history of this debate has merely paralleled the history of the process of coming to terms with the political perturbations of the Western society, which later led to the birth of a new type of modern state with its omnipresent law. This picture of law as of a spiritual unity subsisted throughout Modernity, finding its most characteristic examples in the ideas of Hegel (law as a manifestation of Absolute Spirit) and of the historical school of law in Germany which considered law to be an expression of a people's spirit (Volksgeist). The Hegelian solution was a final transcendence of the subject-object differentiation, subject and object becoming one, so that diverse perspective would merge into the unfolding of the absolute Idea, a single perspective that would eventually unite all people and its societal practices. For Savigny and

his school, unity of legal regulation and of 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.

A somewhat different model of political and legal philosophy was developed in the Byzantium and the Eastern (Orthodox) culture which we have endeavored to describe elsewhere [7]. In this culture, the idea of unity of political and legal regulation in society 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" [8]. Here the opportunity and freedom for all members to be involved fully and actively in determining the nature and projects of the whole are praised. This process serves the value of justice by infusing a calculated moral content of mutual concern into social regulation, guaranteeing thereby the inclusion of all members into the collective welfare. An emphasis on community regulation does not lead to the emasculation of state legal authority, as the unity is based not on the coherence of will and reason of a governor(s), but on coordinating communities within the political society as a whole. But here we cannot go into details of this conception and shall revert to the evolution of debates about unity of law in the last two centuries in Western legal thought.

In the 19th century, the natural-law picture of unity of law started falling apart under the attacks of positivists such as John Austin or Jeremy Bentham. They asserted that unity would result from rationally guided legislative action specifically seeking to submit a mass of subjects. After ruining the natural-law doctrine, the positivist legal philosophy had either to reconsider the postulate of unity of law (legal system) in different terms, or to discard it. The latter solution did not fit well the paradigm of law as it was conceived in the Enlightenment philosophy where (state) law was conceived of as an instrument of reason. In so far as reason (thinking, perception) is necessarily coherent and united, law could not be otherwise. In this perspective, state or professorial law (*Professorsrecht*) was opposed to customary or traditional law exactly insomuch as the former was an integrated, reasonable and coherent unity in opposition to the spontaneity and incoherence of the latter [9]. On this base, a new conception of unity of law was formed, according to which, identity of legal system could be explained as a function of unity of lawmaker's will. Although, this will was nothing more than a disguised voice of reason and objective values. Austin's commitment was that 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. After John Austin (who understood law as "command issued by the uncommanded commander–the sovereign"), some other representatives of legal positivism tried to develop this conception [10]. In the legal philosophy of the 20th century, a series of attempts were undertaken by some influential positivist authors (such as Hans Kelsen or H. L. A. Hart) to explain the unity of law differently than through the lenses of lawgiver's will. Joseph Raz intensely analyzed this development in the 1970s [11]. For Kelsen, the unity of law was guaranteed by the fact that it is authorized by the basic norm of the system [12,13], which is a hypothetical condition of legal cognition. The unity of legal system can be described in terms of law's form (norms) and their relationship (imputation). Hart believed that this unity is conceivable if a legal system is organized according to the rule of recognition of the system [14]. For these and many other positivists, generally, law is considered 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 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 motive was central for Kelsen who believed that a science of law constructs law as its own object. Hart's conception, along with some important sociological elements, translates the same idea–the task of legal philosophy is to organize its object (law) around some pivotal axes (rules of recognition, change, adjudication, etc).

The authors who stand at different (non-positivist) philosophical positions usually describe law as a gapless consistent entity where one can find legal answers to any legally relevant issue. Ronald Dworkin's famous thesis about "one right answer" can be cited here as an example. This thesis is based on treating law as entirely a matter of discourse and in no way a matter of distinctive normative criteria. Law is a kind of the continued conversation of participants in an endless collective enterprise of interpretation; law has its own rationality capable of being elaborated through law's own discursive methods. Ronald Dworkin's idea of integrity and the associated idea that there is a «right answer» both symbolize that the legal discourse is ultimately coherent and comprehensive, is a closed world in which lawyers generate a comprehensive legal interpretation of reality. Many legal philosophers think of unity of law in the terms similar to those of Dworkin. The sources of this presumed unity can be found in certain characteristics which 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 "systemacity" of law [15]. It is suggested by these authors (Dworkin, Fuller, Alexy and others) that possible defects in law (inconsistent, redundant, ambiguous norms, gaps in law) do not refute systemacity of law, as there are policies or principles deductible from the idea of law (to wit: some kind of objective values underpinning the legal regulation). These principles and policies can be discovered through the construction and interpretation of acting law, or through philosophical speculations. Law is perceived of as having its own inherent mechanisms which allow overcoming defects without addressing other mechanisms of social control. It means 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. This dimension of legal ontology was intensely examined by A. Kaufmann, W. Maihofer and other proponents of existentialist philosophy of law.

The image of systemacity of law advocated by certain contemporary authors (T. Parsons, N. Luhmann, H. Schelsky, among others) translates, in our opinion, the old idea of unity of law which goes as far as the Antiquity and the Middle Ages. This idea implies that law is based on 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). This is the foundation from which the ideas of classical natural law grew. Iusnaturalism (the natural-law doctrine) introduced some universal values and statements (law is equity, law requires justice, etc.) into positive law and made of these values and statements supreme criteria for law making and law

enforcement. If there is any defect found in law, then it must be overruled through referring to the basic statements on which law is presumed to be founded. This is the classical image of law developed by Plato–dialectics of law as emanation of justice. And this dialectic inevitably leads to 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 law has the same characteristics.

Natural-law, sociological, and positivist approaches are classic schools of legal thought that dealt with the ontological question of unity of law. Further hypotheses were advanced, in particular psychologist ideas, and mentalist answers claiming that law is a purely mental content or intentional entity (like Leon Petrazycki and his school). There are at least two intuitions 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, an intellectual artifact. The second is this: the social and institutional aspects of law resist a purely mentalist account of it. A satisfying picture of the nature of law cannot drop either of the two. Individuals can be wrong on the community's attitudes, and in this sense also individual judges can be wrong about the law. It is impossible to be wrong about something which has no independent ontological status. This brings us closer to the Realist position (Carl Llewellyn, Jerome Frank, Karl Olivecrona, and others) whose legal conception is determined by the inferences they are involved in. Think about the example of «valid contract»: to determine its meaning, one has to determine on what conditions something is a valid contract for us and what (normative) consequences follow for us from its being a valid contract. If this is correct, legal concepts do not have an independent reference. Then a proposition about the law can have a truth value, even though the legal concept applied in it does not have an independent reference. The same is with the diction that law is what judges say law is of Oliver Holmes Jr.–here law is closed on itself, on the procedures of generation of legal decisions and rules. Unity of law is still unity of practice of law officers, a factual coherence of their activities. Although, an image of unity or integrity is alluring here as there are objective limits to which one can think about coordinated actions–they are never a unity properly said as belonging to different actors, based on different strategies and interests, being dispersed actions in the factual world.

Nothing has cardinally changed in this argumentation since the debates between Realist and Normativist schools of legal philosophy in the 20th century (one can recall as an example the controversy between Hans Kelsen and Alf Ross). 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 (Kantianism was rather based on the opposition between values and facts, which is no longer a prevailing philosophical conception). In this aspect, 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 the facticity) neutral legal science capable of building the autonomous structures of compromise between conflicting values and interests. The idea of 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 and having been unified into a phenomenon they cease analytically to be "facts" (in plural). The very purpose of legal positivism being a refutation of metaphysics, the idea of unity and integrity of law had to be abandoned by the positivists along with the belief in supreme values governing the society. As Alf Ross defined it in 1961, such a position could not be fairly positivistic and had to be qualified rather as a kind of «quasi-positivism». Without this axiological presumption, a legal positivist has no other possibility to substantiate the idea of law as of system. The factual reality does not seem to provide any admissible (from the positivist standpoint) evidence of unity and proves the opposite–law is never complete and perfect, and there are gaps and inconsistencies which can never be fully eliminated.

Luhmann, Teubner and other proponents of the autopoiesis theory tried to find out what structures of living reality law an integrated communication system which is free from the above-mentioned gaps and inconsistencies. For Luhmann, 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. Similarly, Teubner states that legal discourse invents and deals with a juridical «hyper-reality» that has lost contact with the realties of everyday life and at the same time 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 of system of communications creating its own objects, truth criteria, and canons of validity, while exchanging information with its environment. 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.

Let's turn to a successive analysis of the alternatives to explication of unity of law. First of all, we face the question about whether this unity is a fact or an intellectual construction. The first option can appear to be more attractive at least for the reason of plausibility. Legal experience (in the terms of Georges Gurvitch's legal sociology) 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 postulate that this set is united and (at least, relatively) coherent. When handling "the law", we do not deal with several norms or even with the sets of norms, but 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".

This way of explanation seems to be self-evident and it was followed by many scholars. Some sociolegal authors claimed that the law is basically a social fact. Such scholars define what counts as the law without being bound by laws. Thereby they can putatively avoid a vicious circle in argumentation as the definition seems to depend solely on certain social conditions like regularity of behavior and acceptance. To some extent, indeed, this is not only understandable but justifiable. Many of the political changes in the Western law of the past two centuries have given rise to profound alterations in the regulatory and directive strategies of the state which stands now in the centre of legal life. Law gravitates around the state and is to a large extent united by the state. Moreover, the assertion that law constitutes an integrated and autonomous sphere serves important legitimating functions and therefore is strongly maintained. But this apparently persuasive argumentation is fraught with some philosophical pitfalls which can be avoided by considering unity of the law purely as an intellectual hypothesis. This avoids naturalism of various kinds. A stronger reaction would be to claim that the models described above are not strictly definitional; their purpose is to explain how something is law. They answer the question "What is the law?" saying that it is what an authority or community takes as such and they explain how

something counts as such. From this perspective, unity of law is postulated 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 sociolegal scholars such as Durkheim, Duguit, and Parsons). Social complexity relies on the methodological individualism increasingly inadequate in many aspects and is largely replaced by a more passive confidence in impersonal systems. The transfer of reliance entails a shift from studying mutual understandings between individuals towards a stronger reliance on the general societal frameworks which in many scientific analyses act as *deus ex machina*, explaining society and its institutions through increasing social complexity.

In this discussion about metaphysical sources of unity of law is implicitly hidden also a serious philosophical problem of relative weight of values of the individuality and of the collectivity. Even the characterization given by Karl Popper to certain authors of the objectivist philosophical systems (from Plato to Hegel, Comte and Kant) as «enemies of the open society» can be somewhat exaggerated, Popper's position is worth of mentioning: emphasizing unity of 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 such intellectual environment where the value of pluralism prevails. If an individual may choose between various values none of which is presupposed to have absolute priority, this situation per se provides a system of protection of spiritual and intellectual freedom. On the contrary, a situation in which one value prevails over others logically leads to the presumption that this value has a determinate content which can be discovered by wise and virtuous (or having other outstanding qualities) agents. In other words, this value is objective. 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. The classical analysis of this situation in the context of different discourses about unity of law and their consequences for human liberty was provided in 1940s by Hans Kelsen [16].

The natural-law doctrine (not only Aquinas and other classical writers but also such contemporary representatives as John Finnis who builds his entire conception on the assumption that there is an immutable order of values serving as a foundation for social life) usually asserts that unity of law is based on a hierarchy of values this doctrine postulates (more exactly, different hierarchies that are postulated in variants of this doctrine). Although, this sounds convincing only insofar as one concedes that there is (are) objective value(s) under which are united under various rules and principles. This presumption, nonetheless, is possible only in the realm of philosophical speculation where veracity of this presumption can be postulated a priori. Analytical or empirical study of law cannot prove prevalence of any objective values in structures of law known in historical and comparative perspectives, 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. Evident fallacy of the objectivist (which is, in our 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. Arguing in favor of «natural law with varying contents», R. Stammler and other proponents of the «revived natural law» in the 19-20th centuries were forced to abandon the idea of objectivity which was a condition of unity of law according to the traditional natural-law doctrine but which was irreconcilable with the idea of variability of natural law. Variability implies that basic legal precepts are dependent on some other 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, and so with any new norm. One can draw an abstract picture of law where this set of norms will be well ordered and integrated, but for a positivist there still will be nothing more than an intellectual construction which does not guarantee congruence with the reality. In other words, induction cannot prove the integral character of legal reality. We can use the results of this induction in our intellectual schemes, or even in our legal practice, but this does not attest anything but integrity of our intellect, our reason, and not integrity of the legal reality.

Following this logic, the fact based approaches to law could hardly tackle the problem of systemacity of law. It can be inferred in this perspective that studying particular processes and facts of legal reality is incompatible with the thesis about the unity of law. In this connection one can once again refer to the normativism of Hans Kelsen. Kelsen defended a strict distinction between Ought and Is, law 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–this is the main structuring element in law without presuming which norms will fall apart. From one point of view, 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 the means of strict logic. This point provoked many controversies about Kelsen's pure legal theory; the most significant example to be cited here is the criticism formulated by Alf Ross [17] who characterized this pure theory as a «quasi-positivism».

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 [18]) or that of our language (Andrei Marmor [19]). In the last case, we still need to go beyond the empirical reality of law and to access it as a set of linguistic constructions (statements, propositions, expressions, etc.) without relating these construction with the real work of legal mechanisms (police, courts, parliaments, etc.). This approach allows bridging legal signs, symbols, words and the factual acts which are produced in the legal reality by the courts, police and other law enforcement bodies. Without such a connective link we cannot arrive at the explanation of unity of this legal activity in the scope of a legal order.

H. L. A. Hart tried to construct a rule based legal system, departing from the facts of how the judges interpret rules the way they do. Kelsen, on the other hand, examined how rules are interpreted by judges not from the view point 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 the judge's thinking, 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" [3,20]. When rules are followed, either by the virtue of an interpretation given by the 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 to obedience [14]. But does a *Grundnorm* have to be part of this internal aspect of systemacity of law? 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 [21].

In the final account, we can suggest that many positivists are unanimous about the artificial character of the idea of unity of law. Austin and Hart viewed 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 to be imposed in the 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 the legal system creates law or why officials behave in a certain way. He merely assumes an epistemological postulate, 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 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) and 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 unity of linguistic or logical structures does not imply there being 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 stays metaphysical by its very nature [22].

But can we in argumentation about the law still evoke any "nature"? Are we not then back to the controversial idea of natural law which traditionally stands in direct opposition to the positivist approach? This issue leads us to the problem about veracity of our propositions about law. Propositions about the 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 were law a natural entity? When we recognize this, we commit that something in the world (not necessarily in the natural world) makes them true. But is it the nature itself? According to Kripke's theory presented in «Naming and Necessity», strictly speaking, proper names do not have a meaning, but have a reference. They are rigid designators [23]. Now, 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 acting in this country.

Two great epistemological systems of the 20th century can be taken here to explain two different strategies of explaining unity of law. Thomas Kuhn and Michel Foucault proposed two systems that are particularly instructive as to the explanation of unity of discourses, the latter in the modern (or postmodern, if this term is to be preferred) philosophy serves as the key term for social interaction (the terms «discourse» or «communication» have ramifications across a broad swath of the 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 its 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. To understand unity of disciplines (for our analysis here, law can be seen as a framework of practices), one should examine the history of power relations that formed discourses and what is embodied in them, expressing itself through the modes of thought and argument underpinning at a given time communication between those engaged in the discourse [24]. Kuhn also stresses the collective self-validation of societal practices but does it otherwise than through the description of common adherence to rules of discourse by members of the community as does Foucault in his «Archaeology of Knowledge». Kuhn mentions the «disciplinary matrix» of an intellectual field. This matrix 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 sustainers of a specific discipline. In Kuhn's analysis, there are legitimate and commonly accepted practices that unify human activities in a certain field. If these exemplars (paradigms) cease to be credible because of paradigms development in a neighbouring field or because of intense conflict between progressive and regressive fields, there might be (scientific) revolutions that involve a change of world view in this field [25]. There are some rules that are crystallized in discursive practices, and it is around these rules intellectual activities gravitate 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.

With Austin, one might say that it refers to some command of the sovereign. With Kripke, one might say that something called «law» is enacted by an authority and the relevant community continues to take it as such. With Foucault or Kuhn one views law as a variable intellectual practice with fluent cognition rules. This is a form of sound relativism which explains the assumption that propositions about the law have truth values. One can imagine some counterfactual situation in which a 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.

Given all this, one could abandon the idea of unity of law in the positivist perspective (we do not speak here about iusnaturalist paradigm as its fallacies were studied above). This theoretical conclusion can be analytically true but to what extent does it help to explain the reality of law? Without any doubts, most the legal actors (judges, lawyers, lawmakers, etc.) believe in systemacity of law–unless their attempts to fill in the 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 systemacity of law and still be aware that unity/integrity of law is only a product of our intellect, of our beliefs and paradigms. In this regard, we can construct a legal order as a "system" (this is solely an issue of word usage) and we can 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 to attribute to law the term "system" which in scientific discussions (mathematics, logic, etc.) usually refers to something which is consistent, full, gapless, irredundant. The example of this reasoning we can find in Eugenio Bulygin's works and especially in his (jointly with Carlos Alchourron) «Normative systems» [26]. Adopting this point of view, there is nothing contradictory to think of law as of a "system", stripping this term of the metaphysical properties usually attributed to it (such as completeness, consistency…). We then have a "system of law" which is only relatively integrated. In fact, 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 much such normative systems as there are actors reasoning about the law and systematizing the legal propositions (and consequently, the norms contained in these propositions). This approach allows better describing various processes in legal systems which are traditionally analyzed with reference to the idea of sovereignty [27] and can be a fruitful contribution to the debates about unity and identity of law.

Our purpose in the present paper was not to find a definite solution to the philosophical question about unity of law but rather to stress the necessity to escape the principal intellectual lures which apparently give an easy reply, but after a detailed discussion rather bring ambiguity into the strictly formalist account about the law lawyers used to refer and still refer to [28]. At the same time, we can believe in systemacity of law and still be aware that unity/integrity of the law is only a product of our intellect, of our beliefs and paradigms. Other approaches to the unity issue lead, as we see it, to naturalism which implies that law mirrors somehow the structure of reality (be it conceived of as physical, social, or psychological). 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.

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