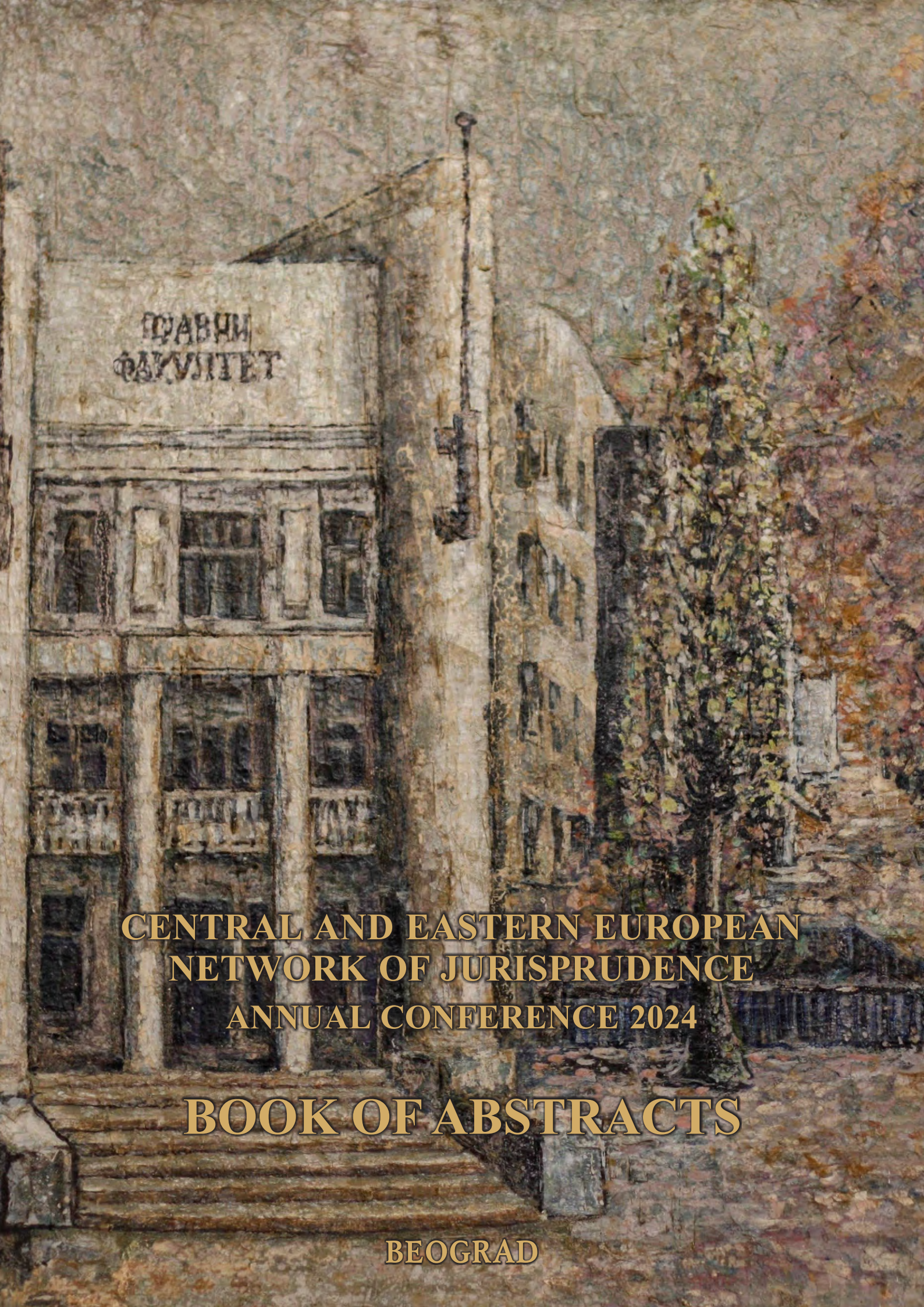

CENTRAL AND EASTERN EUROPEAN NETWORK OF JURISPRUDENCE

ANNUAL CONFERENCE 2024

BOOK OF ABSTRACTS

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Jasminka Hasanbegović & Tanasije Marinković, Eds.

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NOTE ON THE (CEE) NJ

We started as the Central and Eastern European Network of Jurisprudence, but over time, the network has expanded not only outside of Central and Eastern Europe but also beyond Europe. The Network has also expanded to include everyone dealing with jurisprudence, legal philosophy or theory of law in the broadest sense of these terms, or with related, kindred disciplines and legally relevant phenomena, i.e. everyone who is willing to share the results of their work in those fields. Our informal network is coordinated by the International Advisory Board which selects the applications for each and every conference. So far, contributions to the whole gamut of jurisprudential issues – from legal philosophy and theory to social, psychological, economic, linguistic or other theories of law – have been welcomed. Dogmatic (doctrinal) and empirical (historical, sociological, economic, literary, and other) studies of law with a strong conceptual content have been also accepted.

At the conferences we listen to the presentations of each others current research results ('work in progress') and then discuss them. That is why the CEENJ conferences do not have a specific theme, nor do they envisage the publication of the papers presented at them. However, we are pleased to inform all participants that they can submit their conference or other papers for publication to the *Annals* of the Faculty of Law in Belgrade (i.e. *Belgrade Law Review*), indexed in the Web of Science Emerging Sources Citation Index and Scopus.

There has never been CEENJ conference fee. Participants bear their own travel and accommodation expenses. Technology now allows us to participate online too. But we still adhere to the traditional conference ethics and have no other motivation to gather than to advance our professional knowledge.

CEENJ was founded more than twenty years ago. We meet at least once a year, usually at a new university each year. This Belgrade conference is an exception as it is the second Belgrade CEENJ conference. The first one was held in 2010. The previous CEENJ conferences were held in Pécs (Hungary), Osijek (Croatia), Graz (Austria), Rijeka (Croatia), Maribor (Slovenia), Belgrade (Serbia), Sarajevo (Bosnia and Herzegovina), Skopje and Ohrid (Macedonia), Łódź (Poland), Brno (Czech Republic), Vilnius (Lithuania), Riga (Latvia), Zagreb (Croatia), Bratislava (Slovakia), Bucharest (Romania), Warsaw (Poland), and Padua (Italy). The host of every new annual conference is always decided informally by the International Advisory Board members present at the last held conference.

Jasminka Hasanbegović
Tanasije Marinković

TABLE OF CONTENTS

Ivan Padjen (Professor of Law & Senior Fellow in Political Science, University of Rijeka & University of Zagreb, Croatia, *ivan.l.padjen@gmail.com*)

THE LAW AND A RIGHT: THE NON-USE AND OVERUSE OF PHILOSOPHY

Abstract

The problem of the presentation is twofold. On the one hand, it is the conceptual puzzlement in the relation between the law (*le droit objectif*, *das objektive Recht*) and the right (*le droit subjectif*, *das subjektive Recht*) in both law and legal thought. On the other, it is the overuse and non-use of philosophy as the cause of the puzzlement and its therapy respectively.

The source of puzzlements in thought about law. A notorious example may suffice. Jean Villey argued that Roman Law strictly speaking did not have iura, i.e. rights, and used the terms *res*, *dominium*, etc. instead. However, he failed to ask whether Roman law, which operated by the maxim *omnis definitio in jure civili periculosa est*, used the terms to refer, however vaguely or even confusedly, to institutions, i.e. interactions and inherent norms. Brian Tierney criticized Villey's thesis that theories of individual rights depend on a specific philosophy (Ockham's nominalism). But Tierney dwelled, like Villey, on the relation between *ius* and a right, without distinguishing it from either a natural right or doctrines thereof. Although 'Villey's treatment of *jus* is marred by an exaggerated distinction between *jus* and *lex*', Tierney failed to clarify the relation as a tool of research into law, either past or present. Instead, Tierney offered the following lame comparison: "We can define the relationship of parents and children in terms of an objectively right order […] But we could also define the same relationship by saying that parents have a right to the respect of their children". Is 'an objective right order' the objective law or a higher order right, both rights being independent of the objective law?

Philosophy can have two uses in law and legal scholarship: as a benchmark of rationality; as the identification of philosophical presuppositions. The non-use of philosophy in the study of law, which is common among core legal scholars, fails to achieve benefits of the uses. The over-use is bound to fail like a house of cards. A case in point is a philosophical speculation akin to religion, which immunizes its core creed by an endless chain of assumptions.

This inquiry into the relation between the law and the right makes use of philosophy but within a different disciplinary framework. It is legal theory, which formulates basic constructs about law as ideal types. They are useful for the purpose at hand rather than true of false. This inquiry performs the first of the following two pair of tasks. The first is constructive

(1). It includes the definition of the ideal type as a tool of inquiry (1.1) and the formulation of the conceptual framework for the scanning of the propositions (1.2). The framework stipulates the relation between the law and the right (1.2.1), and outlines their religious and social context (1.2.2-1.2.3). The second pair is resolutive (2). It includes the identification and analysis of the existing propositions of legal thought, and indirectly of law, on the relation between the law and the right. The identification consists in understanding the propositions in terms of the culture to which they belong (2.1). The analysis consists in the scanning of the existing propositions on the basis of the conceptual framework (2.2). The first pair makes use of philosophy primarily as benchmark of rationality. The second pair makes use primarily of history of philosophy. The first pair of tasks avoids new while the second par removes inherited conceptual puzzlements.

The key is the framework (1.2). It conceptualizes law, whose synonym is a legal order, as a complex institution, which consists of more elementary legal institutions, every single one being analysable up to a point into the following two principal dimensions, natural and social, the latter being analysable into social relationships and reasons for acting. A concrete rather than an abstract legal institution is the primary building block of law, approximately in the way it is in Karl F. von Savigny's *Pandectistics*. There is a plurality of legal orders. The most important ones are the international legal order, national / state legal orders, and social legal orders of religions, localities, trades, universities, professions, parties, corporations, etc. Some of the latter are legal orders in disguise, presenting themselves increasingly as ethical.

The concept of law as an institution makes it possible to provide a solution of the problem (1.2.1) in two steps. The first is the return of legal subjects, esp. humans, who have been reduced by analytical philosophy/theory of law to empty points qualified by any properties, back to law and legal scholarship. They are returned as a part of the condition of a legal rule (and legal principle), the other part being the occasion of application. The second is the trivialization of the problem by finding, now by using analytical theory as a function of institutional theory of law, the lowest common denominator of the law and the right. The trivial result is that the right (also trivialized to a right) is an individual legal rule whose occasion of application obtains. The non-trivial result is that the problem is not the relation of the right to the law. It is who, why, and how counts as a legal subject (as discerned already by Villey).

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ARGUMENTATIVE NATURE OF THE RULE OF LAW ARGUMENT

Abstract

The main task of my presentation is connected with Professor Postema's statement that the nature of the rule of law argument is argumentative. This is also Professor Neil MacCormick's thesis. My ambition is to present the main elements of the rule of law argument which have to be substantiated.

The presentation time doesn't allow me to be exhaustive. I will speak about the concept and the elements of a state governed by the rule of law and about the rule of law argument as a legal principle.

A state governed by the rule of law is a modern state where the actions of state bodies are legally determined and where fundamental rights are guaranteed. The design of the modern state governed by the rule of law is a result of historical development, with the most intensive contributions coming from English (later also North American) and European continental law. The original elements of the English (common law) rule of law are the supremacy of the parliament in relation to other state bodies, equality before the law, and the protection of fundamental (human) rights before courts. Fundamental rights exist already before that power and thus, as the substantive principle, define the limit that the state power must not violate. This insight was also accepted by the continental (especially German) variant of the state governed by the rule of law, which originally put more emphasis on the legality itself of the state organisation (hence the expression *Rechtsstaat*) and the subordination of the administration to statutes passed by the representative body. It is generally accepted in modern theory that there are no essential differences between the European-continental *Rechtsstaat* and the Anglo-American rule of law. Even more clearly: the rule of law is the result and the aim of both systems and they understand it very similarly as regards its contents, while they approach it in different ways depending on the differences between the two families of law.

The rule of law argument is, by its nature, a legal principle, which differs from a legal norm. One can say for legal principles that they are value criteria directing the definition of legal norms as regards their contents, their understanding, and the manner of their enforcement.

A few examples will follow to illustrate how legal principles (also the rule of law principle) are used in practice. The legislature (the lawgiver) has the most leeway; its duty is to remain within the limits of the legal principle, but at the same time it is the one to concretize

the principle as regards its contents and to operationalize it. It (co)depends on the contents where the principle ends and where its limit is. Similar is the role of the constitutional court when it judges whether a statute or some other normative legal act is in accordance with a legal principle (e.g. the rule of law principle). When the constitutional court decides on a constitutional complaint, it judges whether a concrete decision is in accordance with a corresponding fundamental right. The duty of the constitutional court is to consider those constitutional principles (again e.g. the rule of law principle) that co-determine single fundamental rights regarding their contents, at the same time it must gauge the fundamental rights themselves which are under discussion. Many of fundamental rights have largely the nature of legal principles if they contain value standards (e.g. the principles of human dignity, and of trust in law), which are characteristic of legal principles. Before regular courts (and other state bodies) it is, as a general rule, impossible for a decision to be directly based on fundamental legal principles (legal gaps are an exception). Regular courts use legal principles indirectly, i.e. via legal norms on which they directly base their decisions. Here, the rule of law principle can have an important role; its influence is especially felt in pre-criminal and criminal proceedings, before administrative bodies, and before the administrative court (e.g. the question of using one's power of discretion).

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DEMOCRACY IN KOREA AT THE EDGE OF HISTORY

Abstract

Modern democracy is achieved through a representative system that delegates the majority's will to politicians and political parties, and it can be said that the rule of law has been established through the political process of democracy. Democracy can be most clearly identified as "all the members are […] treated (under the constitution) as if they were equally qualified to participate in the process of making decisions about the policies the association will pursue", as defined by Robert Dahl in *On Democracy* (Yale University Press). Just as democracy and the rule of law have a close relationship, democracy and social systems are closely interrelated too. Examining democracy in Korea would be meaningful considering there are many challenges related to democracy in the country's history and politics.

In Korea, people over a certain age are given equal voting rights, and there appears to be no major issues with this formal means of representation. However, in reality, centralization is amplified by the intersection of elite structures and geographic centralization. For example, in all major spheres of society, including politics, economy, society, culture, and education, a few so-called SKY university graduates (where SKY is an abreviation for Seoul National University, Korea University and Yonsei University – the three most prestigious South Korean universities, located in Seoul), so a few SKY university graduates head almost every sector of Korean society. Secondly, the Korean electorate has formed heuristics about the structure of party competition using conflicting concepts such as left-wing parties versus right-wing parties, parties representing the Yeongnam region versus parties representing the Honam region. It is necessary to replace these heuristics with heuristics that show differences in policy positions as mentioned by Woojin Moon in *How Korean Democracy Works* (Korea University). In other words, the discussion of various policies could be explored rather than insisting on historically prevalent positions among voters in Korea, and other aspects of politics could be examined.

In *Politics as a Vocation* Weber writes: "Politics means a strong but slow drilling of hard boards with passion and a sense of proportion at the same time. […] Only someone who is certain that it will not break him when, from his standpoint, the world looks too stupid or too mean for what he wants to offer it, and that in spite of everything he will be able to say: 'But, *still*!' – only he has the 'call' for politics!" However, Weber also mentions in this article that a lawyer with a rational mind has the right qualifications to be a politician. Nevertheless, there is

still a risk which democracy can cause based on the fundamental principle of majority rule. Overcoming this risk wisely will be one of the operating aims for achieving the rule of law. It will be an important task for humanity to think about ways to overcome problems while realizing the ideals of democracy and the rule of law.

Considering the relationship between democracy and the rule of law in Korea, the several questions are raised. First, do lawmakers who represent the people properly embody the will of the people? Second, do bureaucrats perform their duties reasonably? Third, can political leaders implement politics rationally and responsibly? Fourth, can the people vote for their political leaders more fairly?

The development, enrichment, and strengthening of democracy's own ideological, institutional, and substantive resources would be crucial, as opposed to seeking to support ideologies such as liberalism or republicanism in the case of Korea, as mentioned by Jang-Jip Choi in *Democracy After Democratization: The Korea Experience* (Humanitas). Likewise, even though the democratic aspect can be emphasized differently within liberalism and republicanism, the right practical answers to the questions above might contribute to the better representation of the people in Korea.

Gülriz Uygur (Professor, Ankara University Faculty of Law, Turkey, *gulrizuygur@gmail.com*)
Nadire Özdemir (Associate Professor, Ankara University Faculty of Law, Turkey, *naozdemir@ankara.edu.tr*)

APPLIED PHILOSOPHY OF LAW: NEW NAME FOR OLD WORKS

Abstract

We have decided to start a new doctoral course this year at the Department of Philosophy and Sociology of Law of the Ankara Faculty of Law. This initiative emerged from our observations of how field research on access to justice – conducted both collaboratively and independently – contributes to the philosophy of law. Indeed, the application of abstract philosophical discussions in real-world contexts has provided a platform for exploring applied philosophy of law. Concepts such as law, justice, access to justice or equality, which have long been subjects of legal philosophical debate, have gained a deeper dimension through the integration of concrete, empirical data. Our study of access to justice at both conceptual and normative levels has enhanced our understanding of the practical barriers to justice in a non-ideal context.

Experimental jurisprudence (or experimental philosophy of law, or XJUR for short) is defined as "scholarship that addresses jurisprudential questions with empirical data, typically data from experiments" (Kevin Tobia, The University of Chicago Law Review, 89:3, 2022, p. 736). This research often focuses on laypersons' perceptions of legal concepts (Karolina Prochownik, "The Past and Future of the Experimental Philosophy of Law", In Advances in Experimental Philosophy of Law, (Eds) Karolina Prochownik and Stefan Magen, London: Bloomsbury Publishing, p. 1). Some studies in this field address specific questions related to particular legal theories and practices, while more recent research has explored broader philosophical issues of legal and conceptual significance (Prochownik, p. 1).

Though experimental jurisprudence is not a new area of study, the use of empirical methodologies in jurisprudence has become more prominent in recent years (Tobia, p. 761). We also, have conducted two experimental jurisprudence studies on women's access to justice.

One of these studies is by Gülriz Uygur, titled "Understanding Barriers to Women's Access to Justice and Legal Aid in Turkey" (https://rm.coe.int/understanding-barriers-to-women-s-access-to-justice-and-legal-aid-in-t/1680a967d7). Uygur's research examines the legal aid system in Türkiye from multiple perspectives – legal framework, governance structure, budget, and delivery models – and evaluates how it affects women in practice due to existing gender inequalities. The study offers proposals based on its findings.

The other study, conducted by Nadire Özdemir, is titled "The Impact of Earthquakes in Turkey: Barriers to Access to Justice After the Earthquakes" (https://eca.unwomen.org/sites/default/files/2024-03/her_aftermath_barriers_to_access_to_justice_after_the_earthquakes_december_23_en_0.pdf). This field study aimed to identify women's legal priorities following the earthquakes. It highlights the most significant challenges women face in exercising their rights after a disaster and provides insights into how to support women in fully asserting their rights before competent authorities (Özdemir, p. 6.).

Both studies have significantly contributed to our understanding and re-evaluation of key concepts and principles in legal philosophy that we have previously explored in theory or taught in classes. In this presentation, we aim to discuss how experimental jurisprudence can enrich legal philosophy courses by fostering a dynamic and insightful discussion environment with colleagues.

Isabel Trujillo (Professor, University of Palermo Faculty of Law, Italy, *isabel.trujillo@unipa.it*)

THE LEGAL VIRTUE OF REFLEXIVITY

Abstract

Within the huge debate on virtue ethics, it is possible to distinguish two different approaches. On the one hand, we have the orthodox view of virtue ethics, a classic approach, that consists of a generalist view of human capacities and their related virtues. This approach produces taxonomies and classifications of virtues (cardinal, intellectual, moral) to be tested and applied in the different contexts. Starting from this picture, there would be a standard virtue ethics approach to apply to care, medicine, business, research, teaching, and law. In other words, once we have an idea of which human traits are virtues, a similar scheme is applicable to different human activities and professional roles. On the other hand, there is an alternative that starts from the practice of law and its virtue (the rule of law). From this starting point, it looks for specific legal virtues, those better fitting with its nature.

In the light of a virtue approach that starts from the social practice of law and takes the specificity of the legal practice seriously, reflexivity plays an important role. A first field in which reflexivity is prospering today is international law. In this context, reflexivity is understood as indicating the scope of scholars' contribution to the practice of law. The debate seems inspired by the more general reflexive turn in research. Reflexivity is a common feature in social research, where methods used to describe phenomena contribute to the construction of phenomena themselves. Not all the ways of understanding and practicing legal science are reflexive. The idea of legal science as a value-free explanation of merely existing law, eventually offered to those who will make political decisions on it, will perhaps be considered scientific, but not reflexive. To contribute to the construction and practice of law, legal science must distance itself both from merely descriptive readings of facts, and from external – in other words, manipulative, ideological – readings of law. Legal science needs to do justice to the specific duality of law, between facts and values. Mere descriptive readings do not recognize the value aspiring dimension of law, whereas manipulative and ideological readings impose external values to aspire at from outside. In the light of reflexivity, the task of legal science is to articulate the best possible version of law, where 'best' is referred to its value (law as it should be), and 'possible' is referred to its factual existence (law as it is).

The rule of law, as the main virtue that law could have, is the best candidate to play the role of internal regulative ideal of law. The rule of law is the goal of those established practices, but, at the same time, it constitutes the immanent (implicit or explicit) parameter to criticize

those practices. Reflexivity is the ability of making explicit or implicit appeal to the rule of law in the practice of law. This approach raises the problem of the content of the rule of law that could precisely be dealt by reflexivity. As it is well known, the different checklists (or laundry lists), but also the different legal traditions of the rule of law, seem to cast a shadow on the content of the rule of law for its possible equivocal different formulations. Reflexivity helps to find an organic and holistic meaning for the rule of law in its different manifestations, understanding the specific instantiations as originated in a core ground, that is its goal. The rule of law can adapt to differentiated forms of law and to their evolution.

Reflexivity is for sure a virtue of those taking part in the practice of law as officials. Whereas reflexivity is a cognitive ability, fidelity is a solid commitment to the task of realizing the rule of law. It is a question of promises: fidelity is grounded on the promise that the law makes to those that accepts its governance – the promise to offer protection against arbitrary powers – and it is normally solemnly grounded on the promise that legal practitioners make when they accept the duties of their roles. Fidelity is the root of reflexivity. Ordinary people tend to expect justice from law, simply looking at whether and how justice is done by legal practitioners. Without reflexivity it is hard to understand that the success of the practice depends on every actor's involvement, as a mark of the internal point of view. In their case, reflexivity leads not only to uphold the rules by respecting them as part of their contribution to the rule of law, but also to demand accountability and transparency from those who exercise the power.

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JURISPRUDENCE AND THE CHANGING LANDSCAPE OF LEGAL PROFESSIONS

Abstract

With legal technology progressing at an unprecedented rate, future legal professionals will be required to adapt to new roles that combine legal expertise with technological fluency, as well as acquire other competences necessary for practicing law successfully. Emerging professions, such as legal technologists, cybersecurity lawyers, and blockchain attorneys, demonstrate how the fusion of law and technology is becoming essential. In addition, the demand for roles like legal design thinkers, legal process analysts, legal project managers, and legal data visualizers is also expected to increase (R. Susskind 2023, "Tomorrow's Lawyers. An Introduction to Your Future", Oxford University Press), reflecting the diversification of skills that legal professionals must master to remain relevant in a rapidly changing legal landscape.

This next generation of legal professionals will be at the forefront of addressing issues related to digital rights, data protection, intellectual property, AI ethics, and cybersecurity. Therefore, they must be equipped with a broad range of competencies, including legal fluency, technical literacy, ethical discernment, and interdisciplinary skills that allow them to combine traditional legal knowledge with new technologies. This skill set will also help them gain a deeper understanding of the essence of law and justice, enabling them to navigate complex, technology-driven legal environments.

The presentation explores how jurisprudence is integral to the development of future legal professionals in a technology-driven world. Through literature review, it demonstrates that jurisprudence provides the ethical grounding, critical thinking, and interdisciplinary skills required to address the challenges posed by AI and other emerging technologies.

The presentation concludes that the integration of jurisprudence into legal education and professional development plays a crucial role in fostering the competencies required for the future legal professions. A strong foundation in jurisprudence may help to understand not only the technical aspects of law but also the underlying ethical and philosophical principles that guide legal decision-making since it provides the intellectual framework to address the moral and ethical dilemmas posed by emerging technologies.

Jurisprudence studies also fosters critical thinking and conceptual clarity, which are essential for grappling with the complexities of emerging legal fields. Therefore, professionals

equipped with a deep understanding of jurisprudence may be better positioned to analyze the broader societal impacts of technological innovations and to maintain a balance between leveraging technology for efficiency and ensuring that legal decisions remain grounded in human judgment and ethical considerations.

Thus, jurisprudence, with its emphasis on moral judgment, critical analysis, and conceptual clarity, prepares legal professionals not just to adapt to technological advancements but to shape them. In this way, jurisprudence plays a crucial role in fostering future-oriented legal competencies in times of rapid technological change.

Stefano Fuselli (Professor, University of Padua Faculty of Law, Italy, *stefano.fuselli@unipd.it*)

‘OTHERNESS’ AND ‘GOOD’ IN ARISTOTLE’S GENERAL JUSTICE

Abstract

The presentation delves into Aristotle's understanding of justice as a virtue, specifically focusing on what he terms ‘general’ or ‘legal’ justice, as discussed in the fifth book of the *Nicomachean Ethics*.

It aims to shed light on two main aspects: the significance of ‘otherness’ in justice and the type of good that general justice seeks to achieve.

This exploration is different from discussing objective aspects of justice, such as specific rules, behaviors, or values, and instead focuses on the subjective, character-based aspects.

According to the general assumption that ethical problems fall within the broader horizon of political science, Aristotle describes justice (*dikaiosyne*) as a virtue proper to the city (*Pol*. I, 2, 1253 a 38-39). In the *NE* Aristotle qualifies general justice as lawfulness and as a perfect (*teleia*) virtue. (*NE*, V, 3, 1129 b – 1130 a).

This perfection is not understood in an abstract sense but rather in terms of its orientation towards others. Justice is deemed the most complete virtue because it is not merely a disposition but also involves the active use of virtue in relation to others. Those who practice justice are capable of employing virtue not only towards themselves but also towards others, highlighting the relational nature of justice.

According to common opinion, this orientation towards the otherness is also what makes justice different from the other virtues, since as justice is the only virtue that is ‘the other’s good’. In other words, virtue (*in general*) and justice differ precisely because the latter necessarily implies relationships with others. Due to its concrete exercise in relationships with others, every virtue is comprehended in it so that this form of justice is not a part of the virtue, but is the whole virtue.

The first question I try to answer is the following:

Why is the relationship with others distinctive of justice? Justice is not the only virtue that needs this relationship.

To get an answer, justice was compared to other virtues where a relationship towards others is needed. I took two steps: the first by focusing on the relationship between justice and the other virtues, the second by focusing on the role of otherness in the different cases.

First, it is my view that, similarly to Plato’s account of justice, Aristotle’s legal justice is the entire virtue, not because it represents their common genre or because it is the result of their

concurrence, but because it is, so to speak, the whole of the virtues, the one through which each virtue can flourish.

Second, in my opinion, justice is the only virtue that makes space for *the other as the other*. There can be justice only where the otherness of the other is accepted and preserved in the achievement of their good.

The second question I deal with is about the kind of good that justice is concerned with.

There is no doubt that this good belongs to the category of useful, that is, functional (*ta sympheronta*) to the happiness of the *polis*. However, this utility can be understood as that which, by preserving the other in his otherness, at the same time also preserves that framework of relations – stabilized in the polis – in which alone and properly one can realize their humanity and thus their own *eudaimonia*. By preserving their constitutive politicalness, it also preserves the concrete conditions for their full realization.

To support my claims, at the end of the presentation I focus on the role of proportionality – *analogy* – in particular justice.

Analogy – which according to Aristotle always implies the presence of at least four terms – is an equality (*isotes*) not of terms or elements, but of their relations (*logoi*).

Therefore, analogy preserves the difference among the related in the very moment it connects them, without producing homogeneity, homologation. Like justice, analogy requires not only the presence of otherness, but that this itself be preserved.

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IS THERE A 'DIGNTIY' FOR THE DATAFIED HUMAN BEING?

Abstract

The term 'datafication' refers to 'the universal process of translating phenomena into automatically manipulable symbolic terms', where particular emphasis should be made on the terms 'universal' and 'automatically'. As human are symbolic animals (Cassirer), any strategy for organizing reality through symbolic structures that refer to it and are combinable according to shared rules could fit within this definition. However, the novelty of the concept of datafication lies not in the generic idea of symbolically manipulating aspects of reality but, on one hand, in the fact that such manipulation is performed according to postulates that allow for total automation. On the other hand, it also emphasizes the programmatically universal scope attributed to this practice following the information revolution. These aspects justify the introduction of 'datafication' as a conceptual category to understand the contemporary cultural context.

The widespread nature of this phenomenon is undoubtedly a consequence of technological evolution, particularly since the 1980s, when personal computers entered homes and enabled their use in various sectors of social and economic life. These devices were later interconnected globally and miniaturized enough to be worn as smartphones and other devices associated with the 'Internet of Things', allowing nearly every moment of life, especially in countries unaffected by the so-called 'digital divide', to be accompanied by one or more devices that translate and communicate data extracted from our specific contexts.

Datafication also serves as an essential precondition for applying tools and techniques to extract 'knowledge' to support or even determine (human or automatic) decision-making processes that modify the natural or digital reality. This modification itself is then datafied, allowing the process to begin anew, constituting what is referred to as the 'datafication cycle'.

For this system to offer the promised efficiency, the entire context – both individual and socioenvironmental – must undergo transformations to be translated into usable data. This entails constructing the world around us to optimize the functioning of machines. Of all the possible choices to modify reality, those that allow for the broadest application of machinery are favored. In other words, the term 'datafication' entails not only a descriptive meaning but also a normative postulate. This reflects the spirit of our time and the core of datafication as a concept to interpret it.

The primacy acknowledged to a machine-manageable datafied reality is advancing steadily toward the construction of highly integrated and conceptually interchangeable virtual and physical environment (called 'metaverse'): in this development, the actual replacement of data to the original reality becomes a viable option, as seen in the case of the artwork "Morons-White" by Banksy, purchased, converted into an NFT, and then physically destroyed by the blockchain company Injective Protocol.

As every aspect of existence becomes datafied or datafiable, the datafication cycle becomes a key to organizing and interpreting contemporary experience, deserving attention not only from statisticians or data analysts but also from anyone reflecting on the condition of modern humanity. From the perspective of philosophical anthropology, one might ask how it is possible to reframe "the essence and eidetic structure of man" (Scheler) within the framework of datafication. This question leads to two distinct research paths: the first considers man as an object of datafication (a *datafied* entity), and the second regards man as the subject of datafication (a *datafying* entity).

Given the constraints of this contribution, I will focus on the first line of inquiry and pose a specific yet radical question: can the legal principle of human dignity serve as an adequate safeguard against the potential complete objectification of humanity? This question is of paramount importance: although vague, the concept of human dignity is the core of current ethical and legal understandings of institutional structures based on rights, particularly in the European context. At least one kind of judicial application of that principle has to do with concepts like 'degrading the human being', 'treating like s/he is not human', and so on.

Now, 'to datafy' in the sense recalled above, means exactly 'to objectify': 'data' are all in the manipulation options made possible by the machinic application, this is the reason why the absolute precision and univocity in the symbols formation and transformation rules are paramount. An 'object' is the product of all the determinations (conscious and unconscious, individual as well as collective) taken that make something stands out from indistinction as 'a thing' distinct from a 'subjet'. In the case of 'data' this process is (in principle) completely intentional and focused strictly on the manipulation needs and abilities of artefacts.

So, is a 'datafied' man still 'a man'? Is the legal version of 'human dignity' really able to guarantee a 'human-centric' technological development?

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IS THIS CARAVAGGIO CARAVAGGIO'S? ON PROPERTY RIGHTS, CONTRACTS AND PRODUCTIVE INFORMATION

Abstract

A presumed copy of Caravaggio's painting *The Cardsharps* was sold in 2006 by Sotheby's for £42,000. The formal purchaser acted on behalf of Sir Denis Mahon, who was a lifelong Caravaggio scholar of great renown. Sir Denis carried out extensive investigations into the painting including having it cleaned and restored. In November 2007 he announced to the world that the painting was an autograph replica painted by Caravaggio himself. He was supported in this attribution by the expert opinion of an Italian scholar. As a result, the value of the painting was estimated to be £10,000,000.

The former owner, Mr. Thwaytes, sued Sotheby's in negligence and for breach of contract. He alleged that the Sotheby's experts failed to adequately research the painting and failed to notice certain features of it that should have indicated that it had 'Caravaggio potential', that is to say that it might actually be by Caravaggio rather than a copy. Therefore he alleged that if Sotheby's had performed their duties towards him properly, he could either have sold the painting for much more money or he would have decided not to sell the painting and would now own a work of art of much greater value than he received on its sale. His claim was dismissed in Thwaytes v. Sotheby's ([2015] EWHC 36 (Ch)).

This case evokes a standard distinction made by Law & Economics scholars in the context of contract law, namely the one between 'productive' and 'redistributive' information. It is held that productive information ought to be legally protected, for it is frequently the upshot of research investments aimed at producing more economic value. Were that information to be disclosed in the context of a transaction, the party receiving it would profit from the information without having paid for it. On one side rational economic agents would profit from it as free riders; on the other there would be no incentives to look for that kind of information in the first place, given that others would benefit from it once it is disclosed. So, it is economically good not to have a legal obligation to disclose that information in a transaction. On the contrary, merely redistributive information does not need to be legally protected. For it just makes the slices different, not the pie larger.

However, the application of the distinction proves to be somewhat puzzling. It is hard to find cases of purely redistributive information. Insider trading can be a case in point. In fact,

a standard account has it that when information is mixed it should be treated as productive information, so as to protect the latter and the investments that were made to find it. In addition, relevant information is usually found at some cost. Very rarely it is found by pure chance. So, in the absence of a measurable threshold dividing the negligible costs from the significant ones, and given that information is almost never purely distributive, the standard distinction risks to be useless.

In *The Cardsharps* case, did Sir Denis act on productive or redistributive information? Was the sale more profitable to him because of the productive information he had? Was his expertise to be qualified as productive information? Or was it just redistributive? If it was productive, the property rights on the painting were correctly allocated and the contract was worth enforcing.

Mr. Thwaytes in fact didn't try to have the sale set aside. His lawsuit was against Sotheby's, for he claimed that the auction house had been negligent. However, it is interesting to speculate on the invalidation chances he had. This might contribute to a better understanding of the economic account of such issues and, in particular, of the distinction at stake. The economic argument about productive and redistributive information needs rethinking.

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THE CRISIS OF THE JUDICIARY SYSTEM IN POLAND – SEARCHING FOR SOLUTIONS OR STAGNATION IN JURISPRUDENCE?

Abstract

The rule of law is a universal meter for how democracy operates, one which ought to apply to all European countries. European Union member state since May 2004, Poland has in recent years (2015 – 2023) been repeatedly challenging fundamental values and principles of European Union law. Current experience with the rule of law, destruction and restoring the judiciary may well serve as a warning for other European countries.

Multidimensional and controversial action taken by individual centres of power formed part of so-called constitutionality of 'positive change', i.e. abusive constitutionality expressed in ostentatious negligence of the rules and principles of law. Blatant exemplars thereof included modified practices of applying the Constitution, reformulated interpretations of sovereignty, and manipulative and subversive propositions of the Constitution's primacy over international agreements. The instrumental abuse of provisions underlying the state's government and political system and destruction of international relations were accompanied by efforts to antagonise the public, obtuse and omnipresent propaganda, pressure, hate speech and harassment.

The judiciary is one of the areas to the greatest extent affected by far-reaching violations. Legislative changes in Poland had been intended to challenge the independence of the judiciary by politicising the course and manner of electing justices. We have serious doubts according to the capacity for proposing independent and impartial candidates for judicial positions in Polish courts of law. Issues of judicial appointments and consequences of individual adjudication have become a trigger for the majority of prevailing doubts. It ought to be concluded that Poland has become a stage for a systemic and not easily resolvable issue of a politicised judicial appointments process.

Poland's parliamentary elections of October 15th 2023 brought a change in government, the established majority facing the task of restoring the rule of law and remedying the judiciary. The country is facing the need to repeal former and create new statutory regulations, conforming to the spirit of the rule of law and values proclaimed throughout the European Union member states' family. Primary importance and priority ought to be given to systemic issues: activities and measures affecting the form and functioning of constitutional bodies, and organisation of the broadly defined judiciary.

It was obvious that the process of remedying and restoring the rule of law in Poland will be a lengthy one. Wide-ranging, comprehensive legislative and organisational measures will be mandatory, their consistent implementation certainly requiring time and difficult decisions alike, the effort to restore rule of law in Poland a multi-stage, complex and time-consuming task. Under such circumstances, a quest for temporary, provisional legal solutions will give rise to a temptation to simplify and shorten the winding and intricate path currently faced by Polish legislators.

The paper will present the current situation and problems after the first year dedicated to 'restoring the Democracy'. It should be said whether we are searching for important and brave solutions or still staying in troublesome stagnation.

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SOME THOUGHTS ON JEREMY WALDRON'S *THOUGHTFULNESS AND THE RULE OF LAW*

Abstract

In recent years, several highly significant books on the rule of law have been published. Among them, Jeremy Waldron's *Thoughtfulness and the Rule of Law* (2023) stands out for its importance (without diminishing the value of the contributions written by other authors). Waldron is one of the most prominent contemporary theorists of the rule of law, a concept he has been intensively dealing with for more than two decades. Although the articles published in the book are not novel (they were already published during the period of last fifteen years), the collection as a whole demonstrates a sort of synergistic effect. As some authors point out, the essays collected in this book "resolve into a whole that is more impressive than the sum of its parts" (A. Huq 2024, "The Dignity of Legal Subjects", *Oxford Journal of Legal Studies*, 44/2, pp. 461–481, p.461). As a comprehensive overview of Waldron's influential conception of the rule of law, the collection is unique and relevant source for all scholars exploring this elusive concept.

This presentation will explore various elements of Jeremy Waldron's account of the rule of law. The concept of the rule of law, as Waldron notes, is multifaceted. In one of his earlier papers, not included in this collection of essays, he described it as an essentially contested concept (although, as he points out in the introduction of this book, it "does not mean that it is hopelessly confused" – Waldron 2023, p. 2).

In the first part of the presentation, the nature of Waldron's teaching on the rule of law will be examined from the perspective of a classification into formal and substantive rule of law theories (as well as other, more elaborated typologies suggested in the theory and philosophy of law). His conception of the rule of law is sometimes described as 'dignitary'. As Waldron points out (following Fuller), the rule of law "expresses a powerful commitment to dignity and respect for the dignity of human agency in the forms and procedures it requires for law" (Waldron 2023, p. 4). Dignity requires recognition of a person as having the ability to control and regulate his/her actions in accordance with norms and reasons that apply to him/her. It assumes he/she is capable of giving and entitled to give an account of himself/herself that others should pay attention to. And it means that he/she is entitled to demand that his/her agency and his/her presence among other human beings be taken seriously (Waldron 2023, pp. 76-77). However, Waldron's understanding of the rule of law is relatively thin. The 'laundry list' of the rule of law

principles he proposes ('laundry list' is the term Waldron uses to describe the 'listish' character the rule of law theories such as Lon Fuller's, Joseph Raz's, or John Finnis's) consists mainly of procedural requirements. This section of the presentation will also analyze the relationship between Waldron's concept of the rule of law and the elements of substantive morality embedded within substantive theories of the rule of law.

The presentation will conclude by examining dilemmas that arise from the application of artificial intelligence in legal decision-making in relation to the fulfillment of Jeremy Waldron's principles of the rule of law. Although Waldron did not specifically address the impact of AI on the rule of law, his interpretation of the rule of law requirements offers valuable framework for analyzing challenges raised by AI-based systems applications in legal field. The justifiability of AI applications will be explored through the lens of Waldron's demand for thoughtfulness in government affairs.

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SOVEREIGNTY OF LAW AS POSTEMA'S ELEMENT OF THE RULE OF LAW – CRITICALLY RECONSIDERED AND SPECIFIED

Abstract

In the third chapter of Gerald J. Postema's *Law's Rule*, he stipulates that the sovereignty of the law is an element of the rule of law: "According to the UN report, the rule of law is a principle of governance according to which all entities that exercise power, public or private, govern with and are governed by law. We must not fail to appreciate the boldness of the rule of law's claim. Its unequivocal demand is for law alone to rule." But how law – as the sovereign and ruler – should be conceived? As a legal order, or as a set of all legal regulations in a country, i.e. encompassing the constitution and statutes and by-laws, or just as a constitution in terms of the basic law of a country, by which all entities are ultimately legally determined and governed, or in any other more or less similar or different way, implying so many thin and thick conceptions of the rule of law?

When we analyze Andrei Marmor's article "The Rule of Law and Its Limits" in greater detail, it becomes clear that its author sees the rule of law similarly as German authors saw the *Rechtsstaat* from its first theoretical definitions until the beginning of the post-Second World War era, or as Lon Fuller sees the internal morality of law: as ruling by general, publicly communicated, non-retroactive, clear, non-contradictory, implementable, stable, and consistently applied laws.

Only with such a conception of the rule of law that equates the rule of law with legalism per se in a narrow sense, Marmor can declare "even if the rule of law is a good thing, too much of it may be bad". Following an initial shock, it leaves us speechless. But, when one considers this opinion in line with Spinoza's advice "*non ridere, non lugere, neque detestari, sed intelligere*," (i.e. "not to ridicule, not to lament, or detest, but to understand"), one can notice two things: First, if the rule of law is reduced to legalism per se, then the rule of law is an unnecessary concept from the aspect of both legal theory and legal practice, since the concept of legality per se then suffices, where it – in a wider sense – includes constitutionality per se and legality per se, thus making the concept of the rule of law redundant because it represents only a different name for already familiar and identified legal concepts and phenomena of constitutionality and legality. The second important thing is that such concepts of the rule of law are devoid of any content, though it is a well-known fact that world views and ideologies – primarily political

ideologies – are determinative and decisive for legal order, so that they may lead to completely different applications of even identically formulated legal provisions, as it has been demonstrated and proven in many relevant legal studies.

Here the question arises: What is the relationship between the rule of law and sovereignty? If sovereignty is understood as the legal unlimitedness of the state, which is a traditional understanding of the sovereignty, as the power that establishes or changes the existing law, or establishes and amends the existing legal regulations, then the rule of law and sovereignty are incompatible, irreconcilable. So, in that view, the sovereignty of law cannot be an element of the rule of law, or the law's rule, in Postema's wording.

But, if sovereignty is understood just as legal supremacy, but not as legal unlimitedness, hence, as supreme but limited authority to establish and amend existing law, existing legal regulations, then and only then are the rule of law and sovereignty compatible, reconcilable.

And now we face another question: Who or what is to limit the sovereign in the rule of law? Or, rephrased, the question is: In order to have the rule of law, what legal limitations should be imposed on politically sovereign authority which has legal supremacy on a state territory? These limitations should be human rights constituting human rights law.

Human rights law limits the sovereign and anybody else too in the social and (supra)national orders of the rule of law, although the sovereign remains the supreme legal authority in such a community, polity or state. In other words, human rights law is the higher law (i.e. the highest law), with which all the other laws – as well as all other decisions and actions (both by those in power and all other subjects) within a specific order – must be aligned for that order to be qualified as the rule of law. Hence, it could be said that human rights law is politically and legally sovereign within such an order since it limits everybody and everything within it, including the supreme legal authority, i.e. constituent or legislative powers, as the legally highest, but still limited state powers.

In the rule of law there is no complete parallelism between the legal and state hierarchy. We will elucidate it in more detail in the presentation.

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JUDICIAL CULTURE AFTER COMMUNISM

Abstract

The term "culture" has had multiple meanings depending on the disciplines and contexts. One of its major senses is "the values, customs, beliefs and symbolic practices by which men and women live" (Eagleton). Within this meaning the term culture includes subjective concepts, such as values, beliefs, attitudes, orientations, underlying assumptions; but also, "objective notions, including customs, practices, human relations and institutions" (Huntington). In this presentation I look at judicial culture in the post-communist states, as a subjective-objective phenomenon, meaning the customary ways judges think and behave when interpreting and applying the law. And, from another perspective: to what extent they perceive themselves and act as a governmental power in their own right.

Cultural approach in legal studies is not a novelty. However, its relevance has increased after many European countries have regressed in the third wave of democratization. It became ever more obvious that both the democratic institutions and the rule of law ones need to be studied contextually – with a full knowledge of history and social practices of the given polities – for the constitutional borrowings and legal transplants to be meaningful. The time has come to go beyond doctrinal, selective, intra-legal analysis of court rulings (comparative constitutional law) "toward a more holistic approach to the study of constitutions across polities (comparative constitutional studies) that appreciates the tremendous descriptive depth and explanatory potential of the social sciences with respect to the constitutional universe" (Hirschal).

Yet, the study of the quality of reasoning of judicial decisions can be quite revealing of the attitude of judges within the wider separation of powers context. More specifically, whether they see well established, argued and harmonized case law, manifested in clear, consistent and regular referrals to their previous decisions, as an effective instrument of their self-empowerment. In other words, whether they act as a governmental power and even more than that, as a *contre-pouvoir* (Hourquebie); or they act as a contentious branch of the executive power, in contrast to the administration, which applies the law in non-contentious cases. It follows, that rule of law can do its job of constraining the abuse of power only if a certain ethos takes root in the political community – "the ethos of *fidelity*" (Postema). Reasoned, predictable and fair judicial decision-making, meaning decisions made on the basis of sound arguments, as

well as the effective accountability of those exercising power, including the judicial power (Mak, Graaf, Jackson), are some of the indications that there is in place 'the ethos of *fidelity*'.

The judicial culture of the Central and Eastern European countries of the Cold War period is generally described as simplified legal dogmatism, or as ultra-formalism: "The Socialist ideal of judicial reasoning became a dogmatic textual exegesis. Legal opinions were written in a clearly cognitive way; through their reasoning, judges came to the one 'right' answer" (Kuhn).

Interestingly enough, this was not entirely the case with the formerly Yugoslav judges. In the period after the Second World War the courts in Yugoslavia showed social progressiveness and professional capacity to act as a true governmental power, although they were functioning officially in the system of unity of powers. For instance, in the absence of the Law on the Obligations, which was adopted only in 1978, the courts "have developed a general rule on strict liability for abnormal, atypical, elevated risk of damage to others, where the source of elevated risk may present itself either as a dangerous object under the liable party's guard, or as a dangerous activity conducted by the liable party. This flexible solution was codified by the Yugoslav legislator in 1978. After the dissolution of the Federation, the same rule was retained by the legislators of the newly formed states" (Karanikić Mirić).

My focus in this presentation is on the quality of reasoning of judicial decisions of the post-Yugoslav states, relying primarily, but not exclusively, on the judgments of the European Court of Human Rights rendered against these states with respect to the right to a fair trial – right to a reasoned judicial decision (Article 6 (1) of the European Convention on Human Rights).

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THE POLITICAL FUNCTION OF THE RIGHT TO DO WRONG

Abstract

According to political realism, at least in modern societies, the political field is run by deep disagreements even when it comes to fundamental questions. An eloquent illustration of value pluralism is the minorities in court decisions. Any attempt to ignore the reality of value pluralism in the name of some moral principles of, say, justice leads straight to moralism. Hence the conclusion: politics is not related to morality. I will argue that an answer to the challenge of value pluralism can be sought in Immanuel Kant's doctrine of moral autonomy and hence politics is tightly related to morality, albeit dissociated from moralism.

According to Kant, every human being should be treated by others as a moral person. This duty stems from the duty each one of us has towards the moral law. If we accept Kant's thought, the most fundamental duty of a person is to obey the moral law. Herein lies her freedom. However, things become complicated since, while Kant does not recognize the freedom of a person to act against the dictates of moral law, he considers that others have the duty to treat her with respect even when she engages in actions against the dictates of moral law. Furthermore, Kant holds that to this duty of each other corresponds the claim of the wrong doer not to be treated with respect. In other words, Kant recognizes a genuine right to do wrong: the wrong doer has a claim against any other individual not to interfere in her personal sphere of action.

The direct implication of the validity of such a right is that is not permissible to put a wrong doer under the magnifying glass of the excessive blame of others. Moral blame, although acceptable or even required, runs up, for moral reasons, against certain limits: it may not go as far as the complete contempt and denial of any moral worth to the wrong doer. A person is allowed to commit moral errors and to disregard any form of moral pressure exercised, par example, under the form of an objectivist morality, social ethics or the ethics of the majority.

The right to do wrong is an essential component of the very notion of a right. By virtue of the right to do wrong every person is endowed with a space of personal autonomy, within which she is not subject to duties towards other individuals and, subsequently, has the liberty to disagree with them and to act according to her own personal values.

A question that can be raised concerns the content of this alleged right to do wrong. Is it related solely to questions of good, i.e. questions of the meaning of life or the fundamental

values of a person? Or is it related also to questions of right, the way persons interact with each other and organize their common life? My hypothesis is that Kant opts for the second horn of the dilemma and holds a broad conception of the right to do wrong.

Hence, based on Kant we are in position both to converge and to diverge from political realism. On the one hand, we can accept political realism's contention that modern societies are riddled with deep disagreements. On the other hand, we can still hold that the political field is not exempt from morality: it is for moral reasons that the right to do wrong should be respected. In sum, Kant provides us with the conceptual means to acknowledge the special weight of value pluralism without ignoring the moral imperatives that structure the political field. Moreover, in doing so he allows us to avoid the pitfalls of moralism.

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PHILOSOPHY AND THEORY OF FREEDOM AND EMPOWERMENT IN THE DIGITAL ENVIRONMENT

Abstract

At the beginning of the 21st century, the life of the modern individual is increasingly shaped by the global digital space, whose rapid development has been driven by advances in information and communication technologies, the emergence of the internet, and the convergence between computer technologies and devices, and telecommunications networks. Every day billions of users engage with social media and a wide range of online services allowing them to communicate instantly with others around the globe and to create, share, and access content in multiple formats, such as text, audio, and images. Since the creation of the internet and the digital space in the 1980s, political philosophers and technology experts have seen them as opportunities for rediscovering and reinforcing a global culture of individual freedom and empowerment. Nevertheless, the revelations by Julian Assange and Edward Snowden, the Cambridge Analytica case, and the ongoing tensions between various states and social media highlight the risks in the digital space related to personal privacy and public security, the spread of disinformation and fake news, and their impact on political processes in democratic countries. Therefore, the question is whether the digital space has genuinely become a foundation for enhancing individual freedom and empowerment, or if this idea is merely a philosophical illusion/myth.

To explore this question, the presentation aims to reconstruct the political and philosophical environment during the creation of the internet and its subsequent development in the United States and Europe. Through the lenses of legal science, this means tracing the development of the concept of human rights, as well as the role of international and supranational law and their interaction with the national legal systems in shaping the policies and legislation related to the digital space. From this perspective, the main characteristics of the two most influential governance models for regulating the digital space – those of the United States and the European Union – will be identified and justified. Further, we will seek to identify practices that enable an assessment of whether there has been a shift in the perception of the nature of human rights and development of a global culture that promotes individual freedom and empowerment.

Part One: The 1990s, when the internet was created, is often recognized as the period in which liberal democracy emerged as the dominant global political model, grounded in two fundamental concepts: a free market economy and human rights. By then, human rights had already been transformed from purely philosophical concepts into normative principles of positive law through international treaties established by major international organizations, such as the United Nations and the Council of Europe, and had become an integral part of national constitutions. Despite the international recognition of human rights, there is an increasing tension between the idea of their universality and the particularity in their interpretation at the national level. Moreover, the 1990s are marked by the political changes experienced by Eastern Europe – a transition from a state-controlled economy to a free market and from a collectivist approach to human rights to the philosophy of individualism. In this outlined context, the presentation analyses the ideas of cyber-libertarians, recognized in legal theory as cyber-anarchism, and cyber-realism in the United States. Following this, it examines Habermas's theory related to the potential emergence of a global democratic society and also focuses on the European understanding of human rights and economic regulation.

Part two: This section defines the key characteristics of the regulatory models of the United States and the European Union for managing the digital space. It emphasizes the deregulatory approach in the U.S. and the EU's gradual steps towards legislative regulation based on self-regulation and co-regulation, as an attempt to combine public and private regulation.

Part three: The final section examines and analyses the specifics of the Meta Oversight Board as a self-regulatory effort to establish global regulation in the digital environment, navigating between national legislations.

Conclusions: The internet, social networks, and the digital environment have created a global society in which freedom of expression and access to information are widely established and support individuals in their economic, political, and social activities. However, this global society is not homogeneous but culturally determined. In this society, the significance of national borders and states is less prominent compared to the physical world. The question is which new influential factors are the social determinants, and to what extent societies will maintain the state's distant role in regulating the digital environment.

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BETWEEN NATURALISM AND LEGAL INTERPRETATION: MODERN DEBATES ON THE NATURE OF LEGAL REALISM

Abstract

Contemporary debates on the nature and development of the realistic theory of law are based on "naturalistic turn" and interpretation of Quine's epistemological arguments. One of the most significant factors underlying the evolution of the legal epistemology in this direction was the effect of the ideas and arguments of classical legal realism on the explanation of the legal reality and the essence of law.

Modern discussions show the uncertainty of the notion "naturalism", which has various specific meanings and each of the meaning is applicable to different areas such as legal positivism, legal realism, and theories of natural law. In particular the term "legal naturalism" is applicable to metaphysical concepts of natural law, where the natural law is viewed as a form of manifestation of the laws of nature, or rational representations of natural human rights. In this case, the classical concepts cannot be naturalized within the frames of epistemology because they are based on a conceptual grounds and arguments that are not related to empirical methods of the final conclusions of justification.

The interpretation of legal norms in the course of decision-making by officials and judges is required. In legal realism the traditional methods of philosophical and legal reasoning do not apply, while the judicial decision is explained by the analysis of facts performed by a judge on the basis of the existing legal norms (Hart's concept), which are not defined in its content and expand the possibilities of judicial discretion.

B. Leiter claims that the epistemological foundation of legal realism is based on philosophical ideas of naturalization, while the process of scientific research of legal phenomena should be based on empirical facts such as the actual procedures for decision-making by judges and practical activity of the administrative government bodies. The uncertainty of the boundaries of judicial discretion causes the legal realists to refuse the standard model of legal explanation, where the content of the legal norm is determined by the judges. Instead of the standard model, they formulated a descriptive concept of a judicial decision that functions as a tool to predict the actions of a judge in making a decision depending on social and psychological factors, which serve as empirical evidence of the truth. Thus, the theory of law in the naturalized perspective turns into a scientifically-based theory of judicial decision-making.

What is the foundation of the judicial discretion and possible forecasts? In actual judicial practice the discretion of the judge in regards to the interpretation of laws can be based on the existing economic model or on the attempt to make the best decision in given social and economic conditions. Thus, the naturalized realistic theory of law preserves the traditional conceptual grounds, but it can use the empirical facts of the social sciences to study the social mechanisms of making judicial decisions. Therefore, other concepts and terms in the legal sphere are subject to conceptual analysis, and this slightly distinguishes the views of legal realists on the legal reality from the views of positivist.

Thus, the versions of the development of the naturalized epistemology of law described above are based on the application of Quine's arguments by analogy in the area of legal philosophy, but with certain limitations. Refusal to comply with formal legal rules turns the process of judicial decision-making and law enactment into a political process due to the influence of ideology and current moral concepts, and prevents the possibility of compliance with legal principles and development of the effective legal system. Thus, in the naturalized perspective, the uncertainty of law is only increasing.

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SOME INCONVENIENT THOUGHTS ON 'THE CRISIS OF LIBERAL DEMOCRACY' AND ITS SCHOLARLY (RE)PRODUCTION

Abstract

"Liberal democracy is in crisis: 'But do we know what it is?' [...] The confusion of terms", argued Helena Rosenblatt, "impairs liberals' understanding of their own principles and weakens their politics", so that "their opponents easily exploit the verbal ambiguities" – which is why it is "high time that we clarify what the term 'liberal democracy' means and what it stands for." While understandable, hoping that a mutually agreed upon definition of democracy might resolve the terminological cacophony that plagues the debates about democracy across humanities and social sciences is misplaced since the meaning of liberal democracy cannot be separated from a specific objective that one seeks to achieve by demanding to know what it is. A different answer will be given to a question which asks 'What *exactly* do you mean by liberal democracy?' (Could you please be more specific!) What do you *really* mean by 'liberal democracy'? (Come on, tell me what you honestly think!) What do you *actually* mean by liberal democracy? (Could you please stop providing me with superficial and distracting accounts of liberal democracy) – all of which in one way or another hinge on the question about the true, real, basic, central or ultimate tasks of liberal democracy as a particular form of government.

Taking any of these questions seriously is unfortunately destined to give rise to a gamut of even more inconvenient ones: 'Was there ever' – as Alan Ware asked in a 1992 article – 'a single form of liberal democracy?' If not, how many, morally and politically co-equal forms of liberal democracy are there in the world today? If it is true that liberal democracy as a form of government, is it as fragile as a fragile flower (or tender as a tender plant, as Jürgen Habermas once put it) and is that fragility inscribed in its institutional DNA? Or might it better be seen as primarily determined by extrinsic, environmental factors? Since those who exploit the evocative power of metaphors rarely take them seriously enough to ask which (further) analogies might be made on their basis, a question such as this rarely figures in the contemporary debates about the state of liberal democracy. And with good reason: to ask it openly is to encourage the audience to consider the possibility that the tenderness of tender political flowers such as democracy does not stem from their nature but from the will of those who sought to make them grow in fundamentally inhospitable habitats.

Sooner or later an open-minded theorist is destined to ask the most inconvenient question: Do the actually existing so called liberal democracies even deserve to be called liberal and democratic? ("The startling fact [about] 'numerous studies examining how and why constitutional democracies are in decline and what might be done to protect them'" – as Martin Loughlin has recently pointed out – "is that most of them simply 'assume that the regime under attack is [still a liberal] constitutional democracy?'") Those whose answer is negative might be inclined to give a new, more accurate name to presently existing democracies. What this 'solution' neglects, however, is the ineluctably polemical, opportunistic, and issue-driven nature of all politically salient conceptualizations.

Rather than seeking to answer a misleadingly straightforward question that starts with *What is* (in this case liberal democracy), it might be more productive to devote closer attention to the interplay of:

its *quotidian characterizations* (in which democracy figures as a tender plant or a precarious achievement, under the assault of malicious illiberal rivals, who exploit the gullibility, impatience, and disappointments of the populations prone to be infected by the viruses of populism);

its *historiographical confabulations* (in which democracy appears as a main protagonist in a story whose arc features an explosive rise (after the end of the First World War) followed by an equally dramatic downfall (in the interwar years) leading to its post-1945 rehabilitation and an ultimate triumph (after the end of communism in 1989);

its *background distinctions* (such as those between the public and the private realm, or the social and the economic sphere) without which the desirability of judicial review, or constitutional supremacy is hard to imagine, and which in the world of actually existing governments apply not to democracies *as such* but to democracies as they exist in the form of sovereign nation-states: i.e. as territorial forms of government which most scholars subsume under the categories that reflect;

the *combinations of familiar dichotomies*: between the republican and the monarchical form of government on the one hand, and the presidential and parliamentary on the other.

Ideally, the presentation I propose would do three things: illustrate the ways in which an interplay between these factors shapes the scholarly conceptions of liberal democracy, outline the advantages of a more disciplinarily undisciplined approach to the alleged crisis of liberal democracy and speculate on the deflationary implications this approach might have for the study of 'de-democratization' and 'autocratization' in Central and Eastern Europe.

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LATE STAGE OF RONALD DWORKIN'S PHILOSOPHY OF LAW AND LEGAL ELIMINATIVISM

Abstract

Around 2006–2007 Ronald Dworkin's philosophy took a noticeable turn, as he began to approach the relationship between law and morality more assertively. This change is evident in his 2006 work *Justice in Robes* and was fully developed in *Justice for Hedgehogs*. During this phase, Dworkin shifted his focus from traditional legal philosophy towards broader concerns of ethics and political morality.

One of the striking aspects of Dworkin's intellectual evolution was his openness to revising his methods. In *Law's Empire*, he had moved from a phenomenological approach to an interpretive one, emphasizing the importance of interpretation in legal reasoning. In his later works, Dworkin introduced what he called the 'one-system picture', where law and morality were no longer seen as separate domains but part of a single, integrated framework. This approach rejected the traditional dual-system view that treated law and morality as distinct. To Dworkin, questions like 'Is an unjust law still a law?' did not make sense longer under his unified system. He saw this one-system view as crucial for maintaining consistency with his larger ethical theory, which sought to reconcile conflicting values like freedom and equality.

At this later stage, Dworkin no longer saw a clear distinction between legal theory and political theory, treating law as inherently moral. This marked a break from the interpretivism of *Law's Empire*, where law and morality were treated as distinct yet interrelated. Dworkin justified this change by arguing that interpretivism operated on a two-system model that he no longer considered valid. Jeremy Waldron noted that in *Justice for Hedgehogs* Dworkin advanced the bold claim that legal judgments are in fact moral judgments. In Dworkin's earlier writings he recognized that law and morality were connected, but in his later work, he went further by completely blending the two.

While this shift might seem radical, it did not happen overnight. In *Justice for Hedgehogs* Dworkin made it clear that these new ideas were meant to build on, rather than replace, his earlier works like *Law's Empire* and *Justice in Robes*. There are hints of his one-system view even in *Justice in Robes*, where Dworkin expressed dissatisfaction with the traditional separation between law and morality. By the mid-2010s, discussions around the Hart-Dworkin debate had

quieted, but *Justice for Hedgehogs* reignited interest in his work, introducing a new paradigm in legal philosophy.

Dworkin's one-system view also laid the groundwork for what has become known as 'legal eliminativism' or 'new legal anti-positivism'. Eliminativists argue that the rights, obligations, and powers arising from legal practices are essentially moral in nature. Scott Hershowitz, a leading voice in this movement, argues that jurisprudence should move beyond metaphysical debates about the nature of law and instead focus on how legal practices affect moral rights. In this sense, eliminativism challenges the conceptual analysis that has long dominated Anglo-American jurisprudence, especially in the positivist tradition.

Eliminativists reject the idea that law is a distinct normative domain, instead asserting that legal norms are part of moral norms. Hershowitz suggests that the real question for jurisprudence is not how morality influences legal rights but how legal practices generate moral rights. This directly opposes the positivist claim that law is a separate entity. Other scholars – such as Lewis Kornhauser and Hilary Nye – have contributed to this movement by rethinking law's role within moral theory.

Scholars still debate whether Dworkin should be labeled an eliminativist. Some, like Nye, argue that his one-system view fits with eliminativist ideas, while others think Dworkin resisted the metaphysical approach typical of legal positivism. Either way, his later work clearly incorporates many eliminativist concepts, even if he didn't explicitly adopt the label.

In conclusion, legal eliminativism represents an exciting and promising direction in contemporary legal thought. It challenges deeply rooted assumptions about the nature of law and its relationship to morality, drawing heavily on Dworkin's later work. As scholars like Hershowitz continue to expand on Dworkin's insights, it is clear that his one-system view has left a lasting mark. The shift from traditional debates about the foundations of law to understanding law as a moral practice highlights the profound consequences of Dworkin's evolving philosophy.

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AFFIRMATIVE ACTION AS A MEANS TO ACHIEVE EQUALITY? A CRITIQUE OF THEORETICAL APPROACHES DEFENDING AFFIRMATIVE ACTION

Abstract

The aim of this presentation is to highlight that although affirmative action measures may be well-intentioned, they often fail in practice and generate inequality. This phenomenon is referred to as so-called positive discrimination, which is used as a critical description of affirmative action measures because it considers them unjust or discriminatory towards other groups. This presentation will focus on a critical reflection on the theories of affirmative action, particularly on their practical implications and why these theories often fail to achieve their stated goals of justice and equality. Different concepts, such as utilitarianism, communitarianism, and individualistic approaches, will be analyzed with a focus on how these theories justify the preferential treatment of certain groups and the problems that arise from this approach. We will point out that while affirmative action measures may have short-term positive effects, they often lead to hidden forms of discrimination, stigmatization, and do not address the underlying structural causes of inequality. This presentation thus offers a critical perspective that questions the effectiveness and fairness of current affirmative action measures and opens up space for new considerations on how to prevent unequal treatment.

In the introduction to the presentation, we will focus on the basic concepts associated with the issue of discrimination and their role in current debates on justice and equality, specifically affirmative action and treatment as equals. In this context, it is important to critically consider how equality is interpreted and guaranteed by law, and what pitfalls arise in the practical application of these principles. Ronald Dworkin, in his writings, emphasizes that merely achieving formal equality is not sufficient if, in reality, people are not treated as equals in everyday life. This brings us to considerations of affirmative action, which is often understood as a tool to achieve real equality. Affirmative action refers to various policies and practices aimed at promoting equality in society, where specific benefits or preferential

treatment are provided to individuals who are members of a social group characterized by a discriminatory feature.

Affirmative action first began to gain traction as a result of the civil rights movement and the fight against racial and gender discrimination in the 1960s in the United States, as a response to a long history of racial and gender discrimination. In continental Europe, affirmative action was introduced later and in a different form than in the USA. European countries have focused more on equality of opportunity rather than quotas (i.e., achieving equality of outcomes). However, both approaches are the subject of intense debate, with their effectiveness and fairness in achieving real equality being questioned. The significance of affirmative action is defined within various theories and approaches. Some view it as a necessary tool to achieve a more just society and eliminate structural discrimination, while others criticize its potential to create further inequality. Favoring individuals based on their general characteristics, rather than specific individual disadvantage, is often controversial, as in some cases there is no legitimate reason for differential treatment. Critics of affirmative action point out that this approach is pseudo-humanistic, addresses only a small part of the problem, and in reality, creates additional layers of inequality. An example can be seen in the introduction of quotas for women within private corporations. Such measures may represent a significant milestone for achieving gender equality, but in reality, quotas do not guarantee that women will be hired for a particular position based on their qualifications and abilities. This can lead to their presence being perceived as a result of preferential treatment rather than their own merit. Instead of ensuring true equality, hidden discrimination against other groups that do not meet the criteria for affirmative action occurs.

The societal benefit that certain affirmative actions bring outweighs the disappointment of individuals who are denied access to a particular position as a result of such measures. Such a utilitarian approach would be opposed by many authors (e.g., Nozick, Hayek), as individual rights are overlooked. A critique of the utilitarian theory may be that affirmative action can be ineffective if it does not create a real increase in overall welfare or leads to unintended negative consequences. A communitarian approach, on the other hand, would be based on the idea that affirmative action is acceptable if it promotes cultural plurality and ensures that all social groups are represented and integrated into public life. However, focusing on group identity can lead to the breakdown of social cohesion and polarization in society (e.g., the consequence of the so-called New Economic Policy in Malaysia of 1971).

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THE JUSTICIABILITY OF ENVIRONMENTAL POST–*KLIMASENIORINNEN* CLAIMS

Abstract

The effects of the climate change on human rights are by now undeniable. It is thus not surprising that courts have been facing their first climate cases, with applicants turning to human rights litigation to hold governments accountable for the effects of climate change. While relatively few climate cases have been argued on human rights grounds so far, the trend is continuing and accelerating, with some striking results. Until recently, however, the prevailing argument has been that it is not clear to what extent, if at all, implications of climate change for the enjoyment of human rights can be qualified as human rights violations in the strict legal sense, as they are usually projections about future impact. Indeed, establishing legal standing in such cases was always difficult and many applications have been rejected over the years on procedural grounds.

This paper examines the role of the European Court of Human Rights in environmental adjudication. The focus of the paper is the recent case *KlimaSeniorinnen and Others v. Switzerland* in which the Court held that the rights to private and family life (in connection with the right to life) offer protection against the effects of climate change and entail a positive obligation for states to take sufficient steps to prevent climate change. This and any subsequent cases will shape the future of human rights protection in environmental cases at both European and national levels. So, what are the effects of this judgment for the justiciability of environmental claims in Europe?

In unpacking the importance of this judgment for future climate adjudication and justiciability of environmental claims more generally, the paper focuses on the concepts of legal standing used in this judgment and that of positive obligations coupled with the margin of appreciation doctrine. The former is interesting because the Court rejected the individual applications due to the lack of individual victim status but used *locus standi* of associations in climate-change context to accept the application from *KlimaSeniorinnen*, representing inter alia the individual applicants. The Court thus provided for a unique remedy in ECHR law to applicants in climate change-related cases when they are unable to fulfil the high threshold of victim status criteria. The latter concept is important because this is the first case in which the ECtHR has provided a degree of clarity with respect to the positive obligations that emerge in

the context of climate change, i.e. the detailed due diligence obligations on the States which have previously been rather vague. Moreover, the Court has used the margin of appreciation in this case in an unusual 'split' way: The Court affords a narrow margin of appreciation in deciding whether climate change ought to be regulated, but it awards a broad margin of appreciation when it comes to specifying the response to it. Indeed, the Court held that the scientific consensus on the severity of consequences of climate change and their effect on human rights justifies a limited margin of appreciation regarding the reduction targets that states must set and implement; however, States retain a wide margin of appreciation in their 'choice of means', i.e. the policies and measures they use to achieve those targets.

As such, the *KlimaSeniorinnen* judgment marks an important step in advancing justiciability of environmental claims by allowing legal standing for associations in climate-change context and establishing a duty of care on the States to avoid harms associated with climate change. However, the judgment also points to a number of limitations in the approach adopted by the Court. The aim of this paper is to discuss the implications of the way in which the Court has conceptualised *locus standi*, positive obligations and the margin of appreciation doctrine in the judgment for future climate adjudication but also adjudication of other environmental claims as well as ECHR law more broadly.

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FOUR PARADIGMS OF KELSENISM

Abstract

Scholars widely recognize Hans Kelsen as one of the most significant legal philosophers of the twentieth century. The extensive body of literature produced over the years reflects the ongoing engagement with Kelsen's work. By examining discussions surrounding the Pure Theory of Law, one can observe certain evolving trends.

This presentation aims to outline the paradigms that have evolved around Kelsen's work and to argue that we are currently witnessing a paradigm shift. While these paradigms have changed over time, the emergence of a new paradigm does not necessarily exclude ideas characteristic of previous ones. My claim is that, at any given time, one paradigm tends to dominate. At this point, it's difficult to determine whether the recent shifts in thinking about Kelsen's work will develop into a new paradigm or if they are merely a short-term trend. However, it is worthwhile to analyse it for its potential impact.

In this presentation, I will distinguish the following paradigms represented by: debaters, students, commentators and modernizers.

Debaters. This paradigm involves those who originally engaged in debates with Kelsen. Here, Kelsen's Pure Theory of Law is directly confronted by the ideas of his contemporaries, such as in his famous debate with Carl Schmitt or Kaufmann's critique of Kelsen.

Students. This paradigm developed concurrently with, or slightly after, the Disputants paradigm. Kelsen's students can be categorized into two groups: those who were part of the Vienna School of Legal Theory (e.g., Merkl, Verdross) and those who eventually diverged from Kelsen's ideas (e.g., Voegelin).

These two initial paradigms characterize Kelsen's years in Europe. His emigration to the United States marked a new chapter. From that point onward, new paradigms began to emerge.

Commentators. This broad category includes Kelsen's students as well as other scholars who have specialized in analysing his theory, among others Robert Walter, Clemens Jabloner, Stanley. L. Paulson, Eugenio Bulygin, Ian Steward, Carsten Heidemann, and Christoph Kletzer. Their focus is on understanding Kelsen's ideas, such as his concept of the basic norm or the interpretation of normativism, along with a critical assessment of the success and impact of his theories. This paradigm emerged while Kelsen was still active, and he occasionally engaged in

discussions with these scholars (e.g., debates with Bulygin and Wróblewski). Although this paradigm continues to dominate, it appears that a new one is beginning to develop.

Modernizers. This trend is evident among younger scholars who have been influenced by the works of their mentors from the Commentators group. While the Pure Theory of Law has been extensively interpreted, with most of its weaknesses identified, it is increasingly viewed as outdated—a relic of the twentieth century. This perception motivates the new generation of Kelsenists to take the next step by addressing the identified issues within the Pure Theory of Law. These scholars employ contemporary philosophical tools, enabling them to transcend the limitations of Kelsen's original concepts. Their approach is rooted in the belief that the Pure Theory of Law is 'worth saving' but requires modernization and a gap-filling approach.

The first attempts at this modernization appeared decades ago, such as Bulygin's application of the expressive concept of norms, Jabloner's work on defining norms in *General Theory of Norms* (GTN), or Heidemann's efforts to apply Neo-Kantian philosophical tools to Kelsen's theory in a profound and updated way. However, these earlier efforts were isolated instances rather than part of a consistent approach.

Finally, as an example of this emerging paradigm, I will explore the application of scientific fictionalism to Kelsen's General Theory of Norms. Specifically, I will demonstrate how Kelsen's fictional basic norm in GTN can serve as a foundation for interpreting the Pure Theory of Law within a fictionalist framework.

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NARRATIVES AND THE QUEST FOR JUSTICE: SHARING EXPERIENCES IN LEGAL EDUCATION

Abstract

Narratives are powerful tools for understanding and interpreting the world as forms of reasoning and representation. However, narratives are powerful not only for individuals but also for societies in terms of influencing consensus and common understanding. Of course, not every narrative provides the perspective to go beyond traditional interpretations and see that otherwise is possible. Dominant narratives sometimes cause the powerful to make injustices seem natural. Even if they do not make injustices seem natural, they make people believe that it is not possible to fight against these injustices. For example, myths can be considered as a dominant narrative type in seeing and showing the world through the eyes of the powerful. Therefore, when dominant narratives sometimes open up space for learned helplessness, they break people's motivation to fight against injustices. However, in terms of providing an opportunity to fight against the mindset based on the preconceptions of the dominant culture. Alternative narratives, unlike traditional interpretations, emphasize that alternatives are possible and encourage constructions which pave the way for people to fight against injustices. Therefore, literary works and films as alternative narratives in legal education provide a perspective to see injustices. However, alternative narratives are not limited to narratives with artistic value. For example, alternative discourses developed in strategic cases, examples of court decisions that protect the rights of the weak, provide motivation for individuals and groups to seek justice. In other words, both alternative narratives with artistic value and narratives that do not have such a value but allow different voices to emerge to protect rights are quite supportive of the quest for justice.

In this context, in the law-literature courses that I teach, I try to raise awareness that it is in people's hands to fight against injustices. We select themes such as freedom, courage, hope and the like that we determine with students every year. For example, we evaluated Toni Morrison's book *Beloved* within the framework of the search for justice. The novel tells the story of Sethe, who works as a slave on a farm called Sweet Home, her children, her husband Halle, three brothers named Paul A, Paul D, and Paul F, and a crazy slave named Sixo. The farm owner Mr. Garner and his wife, who bought them as slaves, treat their slaves well compared to other slave owners. The workers are also happy with their situation. The real tragedy begins with the

death of the farm owner Mr. Garner. His wife, who is afraid of being alone with five male slaves, calls her dead sister's husband and two children to help. The man, who is a teacher, settles on the farm to bring new order to the farm and to get slaves straight. Then, men of Sweet Home begin to be insulted, beaten, and forced to work themselves to death without food or water. They can no longer stand the cruelty they are subjected to and decide to escape as a group. They make plans to escape for about a year. They buried food and sharp tools on the roads and arranged a horse-drawn carriage to ride in. In the meantime, Sethe is pregnant with her fourth child, but she wants to go with them no matter what. Finally, the expected day arrives, but things do not go as planned. Only the two Pauls manage to escape, or their fate is unknown. Sixo is killed, and Paul D is brought back with an animal bridle in his mouth and chained. Sethe, who is pregnant with a huge belly, puts her two-year-old daughter and two sons, aged five and six, in the carriage and sends them away, but she has to return herself. Because her beloved husband Halle has not come to the meeting place. But she must hurry. Her children are hungry and what they need is at the breast of their mother. When she returns to the farm, she is locked in the barn by Sethe and the teacher's two children brutally attacked her. The skin on her back is peeled off and a deep wound that will not heal for the rest of her life, resembling a blossoming tree, opens. Sethe endures this torture until the milk she has saved for her children is sucked and milked by those two teenagers. Sethe escapes whatever it costs, even knowing that she will die. But a miracle happens and she manages not to be caught by the slave hunters.

In these lessons, with the motto "If I were the judge", we work on making students aware that we are not condemned to injustice and rewriting decisions. In these studies, we work on how to make not only unjust decisions but also just decisions that are more rights-protective. Based on all these studies, my basic claim is that giving students only a critical perspective will not only motivate students to seek justice, but will also encourage them, to seek justice by alternative narratives that are both devoid of artistic value.

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INFRA-LAW, NUDGING AND THE *RULE OF LAW*: A CHALLENGING RELATIONSHIP

Abstract

Law is a mechanism for the exercise of social power. If this exercise is not to be arbitrary, the law has to meet certain formal and/or substantive conditions, such as the ones put forth by the formal Rule of Law ideal. Following Fuller, these conditions are generality, publicity, prospectivity, intelligiblity, consistency, practicability and stability. The idea is that when the law complies with them, two consequences are supposed to follow: first, the law will be able to effectively guide the behavior of its addressees; second, such guidance will be respectful of the addressees' dignity and autonomy ('standard guidance'). Furthermore, following Bruno Celano's treatment of the formal model of the Rule of Law, social power, when aligned with formal Rule of Law standards, is characterized by publicity, rationality, and non-paternalism.

In this presentation, I critically examine two sets of regulatory mechanisms that are often employed in the public administration's exercise of power, namely infra-law and nudging, and their compliance with the Rule of Law requirements. In the paper I argue that both infra-law and nudging, due to their inherent characteristics, present challenges to this model as they tend to violate the Rule of Law principles, thereby undermining the intended transparency, rationality, and respect for individual autonomy that the Rule of Law seeks to uphold.

Infra-law refers to the regulatory instruments created autonomously by lower levels of public administration, often without formal procedures or adequate transparency. These include circulars, guidelines, protocols, and even informal communications like FAQs and tweets, which can be rapidly produced and altered. While infra-law's advantage, among other things, is that it can fill gaps in statutory regulations and provide unification of interpretation of ambiguous normative provisions, its informal nature and lack of transparency tend to represent violations of the formal Rule of Law ideal, particularly concerning requirements of publicity and non-contradiction. For example, the FAQs issued during the COVID-19 pandemic for the purpose of clarifying the meaning of superior prescriptions were not officially published, lacked clarity on their authority, and were often inconsistent, all of which contributed to confusion and potentially deviated (non-standard) guidance of the addressees' behavior.

Nudging, on the other hand, involves structuring choices in a way that steers individuals toward desired behaviour without directly restricting their freedom of choice. Popularized by Thaler and Sunstein, nudging operates on the premise of 'libertarian paternalism', where the choice architecture is designed to help people make better decisions – according to the nudgers' understanding of what is beneficial. However, this approach challenges the rationality and autonomy of individuals, as it assumes limited rationality and leverages cognitive biases. Nudging can be seen as non-transparent and manipulative, particularly when it operates without the subjects' awareness, thereby contravening the publicity and non-paternalism principles central to the Rule of Law.

The presentation suggests that while infra-law and nudging are integral to modern public administration, they raise significant concerns about compliance with the formal Rule of Law. The power exercised through these mechanisms may not always be public, rational, or non-paternalistic, calling into question their legitimacy within a legal framework committed to upholding the Rule of Law. The paper concludes by inviting further discussion on whether these mechanisms can be reformed to align with Rule of Law standards without losing their effectiveness in public administration.

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THE IMPORTANCE OF RAWLS'S SOCIAL CONTRACT FOR THE FOUNDATION OF LAW AND ITS PROCEDURE

Abstract

First, we have to rise and connect three questions over the relevance of a theory of justice such as the one presented by John Rawls in his main book 'A Theory of Justice' in order to clarify how abstract suppositions can, in fact, help us construct legal systems in which people can follow laws with an intimacy sustained by rational principles. My suspicion is that even Rawls did not gave the necessary credit to his own, and by extension, all other forms of abstract argumentation. With that in mind, I aim to raise the following questions.

Within the context of the 'justice as fairness' we could argue that multicultural societies should have laws to protect minorities, following principles such as Charles Taylor's 'equal value of cultures' combined with Rawls's 'principle of difference'. However, if the inner motivation is to preserve a specific culture, there may appear some difficult contradictions, for example, the migration in Europe. This is a situation in which more than one culture should be preserved, following the mentioned political thoughts, but if certain groups are outside principles of justice, it means they are 'less just', even if they still possess an equal cultural value. Can they be considered a lesser form of organization considering the value of justice point of view? Or do they have a different social justice? That situation demonstrates that certain principles can be applicable to opposite situations, however, if they are purely political, without any rational morality behind them, they could serve antagonistic masters at the risk of becoming irrelevant. Is that a possible call for the importance of a metaphysics of justice, or, at least, a metaethics?

Why to evoke the abstract in the political thought? Because if we are talking about political problems, the Law must be transcendentally rational, not purely with a Kantian perspective, but with a notion of a "Rawls beyond Rawls", considering that cultural differences are related to emotions, so any rule of law that aims to be international should have a transcendental reference which feeds any method of arriving to reasonable principles of justice taking into account acting human emotions even after the agreement on principles of justice. In this sense, Rawls's theory has to surpass itself by admitting that justice is more 'principle' than it is 'rule', therefore his neo-social contract has a universal abstract value without

contradictions with later empirical results. The gradual revelation of the veil of ignorance takes priority over his principles. However, this leaves us with the question: What are the abstract political ideas that compose the veil of ignorance if we take this veil itself to be a metaphysical idea?

If we take the original position as a form of avoiding the discussion about the human nature, and the veil of ignorance as a form to deny our humanly imperfections, therefore, the principles of justice would be, in that sense, at a risk of being ignored along with human nature, and this is a way of making them impractical once they would have to be applied, as all practical theories that deny human imperfections tend to be, even with a coherent intern structure. Nevertheless, even if Rawls does this conceptual movement, the relevance of his proposal is undeniable. First, the conception of 'original position' is always available since it is a matter of a thought experiment, therefore always accessible for route corrections within our mental capacities for reflective equilibrium. Second, when supposing a basic structure of society, Rawls evidences that basic human necessities universally exist, even if one disagrees with what he calls as 'primary goods.' Does it mean there are some inner intelligence integrated universally in human experience? Can there be, inspired by Rawls, some kind of Kantian cultural justice?

With John Rawls political thought as the point of departure, the presentation aims at shading light to some problems in Kantian tradition, by bringing a more abstract form of hermeneutics as a special proposal of a 'jurisprudence of principles' that can be used both as foundation of national laws and rules and as an ethical and legal approach to international relations that can later reflect issues such as migration, hunger, poverty or any other that may be hidden behind as the real motives of certain forms of government.

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RESURRECTION OF OLD LEGAL ACTS, DETERMINATION OF DECISION-MAKING STANDARD AND THE RESPONSIBILITY OF CONSTITUTIONAL COURTS: SERBIAN CONSTITUTIONAL COURT IN ACTION

Abstract

On July 11th 2024, the Constitutional Court of Serbia (hereinafter: CCS) held the Decision on unconstitutionality (hereinafter: Jadar decision) of Regulation on the Termination of the Regulation on the Exploitation and Processing of Jadarite Mineral (hereinafter: Jadar II Regulation). This decision is significant for three reasons. First, for the first time (at least for the first time, unequivocally), the CCS dealt with the question of awakening (reviving, resurrecting) the old statutes. Second, the CCS missed the opportunity to define the constitutional standard of rule of law. Finally, CSS violated its own procedure, which raises the question of its responsibility.

In the reasoning of the Jadar decision, CCS pointed out that its decision on unconstitutionality does not 'revive' the previously adopted governmental Regulation on Determination of the Exploitation and Processing of Jadarite Mineral (hereinafter: Jadar I Regulation). H. Kelsen pointed out that the legal act that existed before the annulled statute shall not be entered into force automatically after the cassation of a statute. He also left it to the constitutional court to decide what to do with the old statute. Despite the CCS's unequivocal instruction, on July 16th 2024 (just four days after the Jadar decision's publication), the Government of Serbia (hereinafter: GS) adopted the Regulation on the Establishing of the Regulation of Exploitation and Processing of Jadarite Mineral (hereinafter: Jadar III Regulation). This half-page regulation has two provisions: the first revives the old Jadar I Regulation, and the second is a mere transitory provision. Such governmental behaviour raises the question of its responsibility for violating the constitutional principle of the obligatory effect of the CCS's decisions (Art. 171 of the Serbian Constitution). According to publicly available information, in 2021, several initiatives were raised before the CCS to examine the constitutionality of Jadar I Regulation, but the CCS has never considered them. While Jadar I Regulation is again legally in force, the question is whether all these initiatives are still active and whether they should be examined by the CCS. Also, during the implementation of Jadar I

Regulation in 2021 and 2022, several acts of lower legal force were adopted, so it is questionable whether they are also legally in force again.

The reasoning supporting the CSS's Decision is poor. Firstly, the examination object of Jadar II Regulation was its adoption process. The CSS found the GS violated the constitutional principle of the rule of law (Art. 3 of the Serbian Constitution) because the only *ratio* for adopting Jadar II Regulation was the 'prolonged harassment of citizens.' This raises two problems. In the first place, CCS use the broad and, according to Kelsen's terminology, 'ambiguous word' – rule of law. Yet, in this situation, the CCS should have tried to define this legal standard more precisely, which it ultimately failed to do. In the second place, the disputed *ratio* for adopting Jadar II Regulation is found in the governmental Explanation of this act. This is very unusual, given that the object of constitutional control is a legal act itself, not its accompanying act.

Due to the poor and legally imperfect decision-making, the CCS has not adequately investigated the GS's review and determination process, which was mentioned in the same sentence of the Explanation. Following the Art. 53 of the Constitutional Court Act, the CCS applied the exceptional (and shorter) procedure of examining (un)constitutionality. Furthermore, the CSS avoided conducting a public hearing, again applying the exceptional procedure referring to Art. 37 of the Act on CC. In this way, the CCS avoided the well-known rule that exceptions should be interpreted narrowly and abused the powers granted by law. Regarding its Rules of procedure (hereafter: Rules), the CSS violated several provisions of this act. Contrary to Art. 46 of the Rules and its long-established practice, the CCS did not ask the GS for its opinion regarding the contested Regulation. Furthermore, the CCS had decided on July 11th 2024, and tomorrow, on July 12th, the decision was published in the Official Gazzetta. Practically and legally (in collision with Art. 60 of Rules), it is impossible to conduct a one-day process of decision-making, decision-drafting, dissenting and concurring opinions drafting, and to merge and send all of this material to the Official Gazzetta publisher. Thus, all of this leads us to conclude that the CCS undermines the abstractness of the process of normative control and brings it closer to the process of examining the constitutional complaint. This raises the old question of who controls the guardian of the Constitution, or, in other words, to whom the constitutional judges are responsible for their misconduct.

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A COSMOPOLITAN DUTY TO NATURALIZE ALIENS?

Abstract

Cosmopolitanism is widely considered as an abstract or plainly cultural ideal. It is sometimes thought of as a luxury that only an economic or intellectual elite can possess. Acquisition of wealth and property situated in different countries or establishing close and intimate relationships with other nations and people (mixed marriages, working abroad, assuming service for foreign organizations) are prerequisites of being a cosmopolitan in this sense. The underlying thought is that actual ties with many nations, and even the pursuit of opportunities outside one's own country, contribute to thinner ties with one's own nation. Cosmopolitanism thus becomes a form or a result of individualism and appears contrary to patriotism and the collective spirit that is necessary for the latter. Nevertheless, cosmopolitan spirit, as individual virtue or trait, might be useful for nations indirectly, when services of diplomacy or inspiration for cultural renewal are needed.

In the history of philosophy cosmopolitanism emerges dynamically in the German thought of late 18th century. In a parallel but reverse course, ecumenical moral values and claims of universal validity of natural law gradually succumb to the primacy of national sovereignty. Immanuel Kant is the philosopher that will provide a ground-breaking conceptual and normative connection of cosmopolitanism with right and law. In his essay on the *Eternal Peace*, he united a cosmopolitan perception of international relations with the tradition of the – until then conceived as conditional – *ius commercium* (*or ius communicationis*). Individuals of any nationality now have a clear and adequately limited, but nevertheless meaningful, claim-right to hospitality against all states, that is not contingent upon the arbitrariness of the sovereign's will. Cosmopolitan law then rises in equal standing with state law and international law.

Kant complements *hospitality*, the universal right and corresponding duty of cosmopolitan law, with, what he calls, c*osmopolitan spirit* or *mindset* (*Weltbürgerliche Gesinnung*). A normative idea that possibly echoes the philosopher's doctrine of virtue (*Tugendlehre*), cosmopolitan mindset may provide grounds for a careful expansion of the duties of cosmopolitan right. While toleration of unauthorized settlement and aspirations of colonialism are explicitly rejected by Kant as dangerous to political autonomy, other normative ideas of Kantian philosophy may imply a more abstract duty to encourage permanent settlement of some guests and even political equality to some permanent residents.

I will argue that duties of virtue promoting the well-being of others – as identified by Karoline Reinhardt (2018), and especially duties to our collective self for the amelioration of democracy, as described by Konstantinos Papageorgiou (2017) – may offer a plausible route to reach a cosmopolitan duty that is not directly legal but neither is void of legal consequences: a duty to articulate in a way respecting publicity, generality and equality the conditions that have to be met for a person to be considered a national. This definition can delineate the general and undisputed consensus of the constitutive elements of citizenship as well as offer a roadmap for aliens towards a claim right to naturalization. A cosmopolitan minded state is then one that considers naturalization a normal way to expand and renew the body of citizens through a procedure governed by law that is above all binding to the state itself and the collective of the citizens. Lastly, I will discuss a possible objection related to Kant's limited perception of the right to emigrate, and possible ways to overcome it.

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RIGHT OF ACCESS TO COURT: A BRIEF HISTORY OF AN UNWRITTEN RIGHT

Abstract

It has been almost 50 years since the European Court of Human Rights (the European Court, the ECtHR) delivered its judgment in the case *Golder v. The United Kingdom*. The judgment in this case is considered as one of the turning points in the practice of this Court: the subject of the dispute was a right that was not expressly stipulated by Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Freedoms (the European Convention, the ECHR), so the methods of interpretation of the ECHR were extensively engaged in the reasoning of the judgment. However, starting with this judgment, the European Court expands the list of procedural guarantees that are not expressly covered by the right to a fair trial, and subsumes them under the right of access to court thus expanding the meaning and the scope thereof. The first case in line was *Airey v. Ireland*, which clarified that only effective acccess to court is in accordance with the standards of the European Convention, which may also include an obligation upon the states to provided the free legal aid to those who cannot afford court representation. Following judgments have only been recognizing further in which way the effective access to court is possible and adding them to the list of guarantees. The developments which followed the *Golder* and *Airey* significantly contributed to the interpretation of Article 6 paragraph 1 of the ECHR, but also discovered where the right of access to court may overlap with other rights such as the right to a legal remedy.

History of the unwritten right of access to court had its slight turnover in the European Union. More specifically, the drafters of the Charter of Fundamental Rights of the European Union (the Charter) relied largely on the wording of Article 6 paragraph 1 of the ECHR and the jurisprudence of the EctHR. However, they wisely avoided the risk of not regulating the right of access to court, by guaranteeing the right to free legal aid (the FLA) to those who lack sufficient resources, in drafting Article 47 of the Charter which concerns the right to a fair trial and to an effective remedy. While the right to FLA has its limited scope, its normativization may effectively enable access to court to many more people than otherwise. Moreover, the effective judicial protection, be it considered a as a structural principle or a fundamental right, may now effectively and properly be excercised and implemented.

However, the 2006 Constitution of Serbia did not regulate the right of access to court explicitly either, even though provision of Article 32, which is correspondant to Article 6 paragraph 1 of the ECHR, is much wider in its scope. Moreover, the jurisprudence of the Constitutional Court is also not completely determinative in the final definition of the concept and scope of the right to access to court, nor is legal terminology properly and uniformly used in related cases. However, despite deficiencies, the Constitutional Court in essence provides adequate protection to persons who have been victims of violation of the right of access to court in any of the domestic proceedings.

Given the development of the court practice since the *Golder* case, we propose a differentiation between the right of access to court in narrow and broad sense. Right of access to court in a narrow sense is a right to commence or initiate proceedings in order to protect rights and interests, while the right of access to court in a broad sense covers all other procedural actions and steps which follow commencement of the proceedings, in all instances, until the final resolution of the case. In view of the latter it appears that the right of access to court in its scope and meaning may easily replace or be replaced by its 'parent right', specifically the right to a fair trial, and may also overlap with the right to a legal remedy. Also, we note that the violations of the right to access to court can arise both from the substantive and procedural law, by way of their arbitrary interpretation and application by domestic judges. Finally, the restriction of the right of access to court may also be a result of the application of domestic norms whose quality and content do not fulfil the standards of the European Court or requirements of the 2006 Constitution in case of the Serbian domestic legislation.

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WE THE PEOPLE WHO ARE SOVEREIGN: CHALLENGES TO CLASSIC CONCEPT OF CONSTITUENT POWER

Abstract

The French author Olivier Beaud begins his study on constituent power with the working hypothesis that the constituent act is a contemporary act of sovereignty. The creator of this act is the sovereign people, who, in that capacity, hold constituent power. This concept, which insists on the normative omnipotence of the people as the bearer of constituent power, has remained quite established in constitutional theory to this day (Ferreres Comella 2024). Popular approval is simultaneously the legitimizing basis of the constitution. The constitution applies to a certain *demos*, and that *demos* must truly accept it (Basta Fleiner 2012). The development of this concept – from the distinction between constituent power and constituted powers (Sieyès), through introducing the categories of primary and derived constituent power (Roger Bonnard), the views on constituent power as non-legal concept (Carré de Malberg, Kelsen), the recognition of constituent power as crucial for defining the concept of a constitution (Schmitt), and discussions of practical importance, such as examining the character of the revision of the constitution – has been such that the unlimited nature of constituent power has never been questioned.

However, is it still *the people* who, in the changed circumstances of a globalized world (or, as it might be said, in postmodern time) truly create constitutions, or is the international community becoming a new, unavoidable factor? The primary aim of my presentation is to rethink the thesis of the people as (sovereign) constituent power.

In her paper, Lidija Basta Fleiner states that constituent power has once again gained epochal importance. However, unlike at the end of the 18th century, when constitution-making was truly in the hands of the sovereign people, those old conclusions cannot apply in the postmodern times. The process of internationalization of constitutional law has completely changed the content of classical constitutionalism, including the very nature of constituent power. She identifies two forms of modern constitution-making. The first is where the international community itself acts as the *pouvoir constituant*, and the second is where certain international organizations appear as a form of assistance in constitution-making. She accepts the thesis of constituent power as legally unlimited, which simultaneously implies an understanding of constitution-making as an authentic act of democratic constitutionalism. To

achieve the constitution's integrative and legitimizing function, she emphasizes, the process of its creation must be truly democratically representative.

The Constitution for Iraq, the Annan's Plan for Cyprus, the Dayton Agreement are examples where the international community acted as the constituent power. For classic theory of constituent power that is an unacceptable change of the paradigm of sovereignty of constituent power. On the other hand, the assistance of certain bodies of the Council of Europe are still acceptable because, through this, the paradigm of unlimited constituent power remains unchanged.

However, in my presentation, I will put forward the thesis that constituent power has necessarily changed its fundamental characteristics and that some limitations on the actions of constituent power necessarily exist, even if only implicitly. There are authors who radically conclude that constituent power is 'dead' (Ferreres Comella 2024), as well as arguments that sovereignty and the rule of law are incompatible with the paradigm of human rights (Hasanbegović 2021).

Postmodern constituent power can also be a positive phenomenon. After all, participation in the process of constitution-making and constitution-building is only possible if there are prerequisites that enable such participation, embodied in the existence of minimal guarantees of human rights. Therefore, any constituent power is obliged to accept this minimum, and the international community or international organizations can be of immense importance in this process. In the postmodern era, recognizing absolute and unlimited power to the *demos* could potentially jeopardize the values achieved in the process of democratization of societies since the great revolutions. Practical examples from some European countries where illiberal regimes have emerged and where the leitmotif of populist regimes has once again become the concept of popular sovereignty and the sovereign constituent people, support this statement. As Sajó notes in his analysis of such regimes, recognizing absolute and unlimited power to the people without any limitations means endangering the people themselves (Sajó 2021).

This will necessarily lead, if not to a radical change, then at least to a slight modification of the traditional concept of constituent power. The main aim of my presentation is to reconsider the thesis on unlimited constituent power.

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REGULATING MODERN INNOMINATE CONTRACTS – HOW, WHY AND WHEN

Abstract

A great number of contracts is being conducted on a daily basis in modern time, most of which implicitly and often without the knowledge of contracting parties that they are, in fact, entering into a contract. With the development of technology, the whole process of conducting contracts has changed and law has the duty to follow these changes in order to protect people from any form of misuse.

The main problem exists when conducting contracts via the internet, as these are mostly innominate contracts, and contracting parties more often than not have insufficient legal knowledge.

Since these contracts are not specifically regulated by law, when there is any miscommunication between parties, they cannot be sure how the courts will interpret their contract and which norms will be applied. I have been researching this topic and am very interested in it so I'd like to present what I find to be the problem and the possible solution to it.

I have identified a few contract types that will be discussed in the presentation. In this regard, I will talk about sponsorship agreement, influencer and brand ambassador contracts and more. I will briefly outline their basic characteristics, such as the contracting parties, main obligations and rights arising from the contracts, breach of contract and more.

The purpose of a sponsorship agreement, on the one hand, is the transfer of image achieved through the association and linkage of the sponsor with the sponsored party. This can be accomplished through active promotion by the sponsored party (such as attending events, highlighting the business name, etc.) or passively, through the actions of the sponsor (such as using the sponsor's likeness, personal name, etc.). From the perspective of the sponsored party, the purpose lies in the financial benefit obtained, which is primarily used to further their activities (e.g., achieving success in tournaments).

An influencer agreement is entered into by an influencer (an influential individual) with another party for the purpose of image transfer.

A brand ambassador agreement is a contract wherein one party (the brand ambassador) undertakes to perform communication acts for the purpose of promoting the business name

(brand), products, and services of another party (the sponsor). These communication acts may include creating and sharing content, attending marketing activities and events with the contracting party, granting rights to use the personal name, image, and other personal rights for promotional purposes, and other related activities. In return, the other party is obligated to compensate the brand ambassador and/or provide certain services.

At the core of all these contracts is the transfer of image, a legal-economic term, which I will further explain during the presentation. Some authors theorize that the causa of these contracts lies in the image transfer. This adds to the difficulty of discussing their legal nature, particularly in a domain of the contractual liability of the parties. Specific question arise from this. In my presentation I will discuss whether, based on the fact that the causa lies in image transfer, it can be argued that the sponsored party could be liable if the transfer isn't achieved. This would mean that this obligation is a performance-based obligation.

The aim of my research was to present new institutes and types of contracts that have not yet been fully developed in the Serbian legal system and to analyse their legal nature. My thesis is that all three types of contracts presented, as well as similar relationships that exist in practice, have such significant similarities and minor differences that they could be considered the same type of contract and regulated in a unified manner. To substantiate this thesis, I will compare all three contracts in the following aspects: their purpose and the nature of contractual obligations. Finally I will present my opinion on whether these contracts should be subject to a unified regulation, and what are the potential issues in the future regulation.

(CEE) NJ 2024 Conference Programme

University of Belgrade Faculty of Law, Bulevar kralja Aleksandra 67

Friday October 11, 2024

8:30 – Welcome Address: Vice Dean Nina Kršljanin & Introduction of the Participants

Morning sessions – Jurisprudential Metascience & Rule of Law

Jurisprudential Metascience – Chairing: Bojana Čučković (9:00-11:00)

9:00-9:20 Ivan Padjen, *The Law and a Right: The Non-Use and Overuse of Philosophy*

9:20-9:40 Isabel Trujillo, *The Legal Virtue of Reflexivity* **online**

9:40-10:00 Gülriz Uygur, Nadire Özdemir, *Applied Philosophy of Law: New Name for Old Works*

10:00-10:20 Anton Didikin, *Between Naturalism and Legal Interpretation: Modern Debates on the Nature of Legal Realism* **online**

10:20-11:00 Discussion

11:00-11:15 Break

Rule of Law – Chairing: Nina Kršljanin (11:15-13:15)

11:15-11:35 Marijan Pavčnik, *Argumentative Nature of the Rule of Law Argument* **online**

11:35-11:55 Jasminka Hasanbegović, *Sovereignty of Law as Postema's Element of the Rule of Law – Critically Reconsidered and Specified*

11:55-12:15 Igor Milinković, *Some Thoughts on Jeremy Waldron's "Thoughtfulness and the Rule of Law"*

12:15-12:35 Matija Žgur, *Infra-Law, Nudging, and the Rule of Law: A Challenging Relationship*

12:35-13:15 Discussion

13:15-15:00 Lunch (Professors' Club)

Afternoon sessions – Democracy & Justice in Contracts

Democracy – Chairing: Tanasije Marinković (15:00-16:30)

15:00-15:20 Jin-Sook Yun, *Democracy in Korea at the Edge of History*

15:20-15:40 Zoran Oklopčić, *Some Inconvenient Thoughts on 'The Crisis of Liberal Democracy' and Its Scholarly (Re)Production*

15:40-16:00 Aleksandar Cvetković, *We the People Who Are Sovereign: Challenges to the Classic Concept of Constituent Power*

16:00-16:30 Discussion

16:30-16:45 Break

Justice in Contracts – Chairing: Bojana Čučković (16:30-18:00)

16:45-17:05 Giovanni Tuzet, *Is This Caravaggio Caravaggio's? – On Property Rights, Contracts, and Productive Information* **online**

17:05-17:25 Petra Stanojević, *Regulating Modern Innominate Contracts – How, Why, and When*

17:25-17:45 Matheus Garcia Drawin, *The Importance of Rawls's Social Contract for the Foundation of Law and Its Procedure* **online**

17:45-18:15 Discussion

19:00 Dinner (Restaurant *Na ćošku /At the Corner/* Beogradska 37)

Saturday October 12, 2024

8:30-8:55 –Jurisprudential Morning Coffee or Tea

Morning sessions – Law–Technology & Justice in Theory

Law–Technology – Chairing: Bojana Čučković (9:00-10:00)

9:00-9:20 Claudio Sarra, *Is There a 'Dignity' for the Datafied Human Being?*

9:20-9:40 Denitza Toptchiyska, *Philosophy and Theory of Freedom and Empowerment in the Digital Environment*

9:40-10:00 Discussion

10:00-10:15 Break

Justice in Theory – Chairing: Nina Kršljanin (10:15-13:15)

10:15-10:35 Stefano Fuselli, *'Otherness' and 'Good' in Aristotle's General Justice*

10:35-10:55 Vassilis Voutsakis, *The Political Function of the Right to Do Wrong*

10:55-11:15 Konstantinos Farmakidis-Markou, *A Cosmopolitan Duty to Naturalize Aliens?*

11:15-11:35 Sofya Koval, *Late Stage of Ronald Dworkin's Philosophy of Law and Legal Eliminativism* **online**

11:35-11:55 Olcay Karacan, *Narratives and the Quest for Justice: Sharing Experiences in Legal Education*

11:55-12:15 Monika Zalewska, *Four Paradigms of Kelsenism* **online**

12:15-13:15 Discussion

13:15-15:00 Lunch (Professors' Club)

Afternoon sessions (15:00-18:30) – Justice in Practice & Justice in Action

Justice in Practice – Chairing: Tanasije Marinković (15:00-16:30)

15:00-15:20 Tatiana Machalova, Martin Bukovič, *Affirmative Action as a Means to Achieve Equality? A Critique of Theoretical Approaches Defending Affirmative Action*

15:20-15:40 Šejla Imamović, *Justiciability of Environmental Post-KlimaSeniorinnen Claims*

15:40-16:00 Milica Novaković, *Right of Access to Court: A Brief History of an Unwritten Right*

16:00-16:30 Discussion

16:30-16:45 Break

Justice in Action – Chairing: Bojana Čučković (16:45-18:45)

16:45-17:05 Tanasije Marinković, *Judicial Culture After Communism*

17:05-17:25 Tadeusz Zembrzuski, *The Crisis of the Judiciary System in Poland – Searching for Solutions or Stagnation in Jurisprudence?* **online**

17:25-17:45 Jolanta Bieliauskaitė, *Jurisprudence and the Changing Landscape of Legal Professions*

17:45-18:05 Đorđe Marković, *Resurrection of Old Legal Acts, Determination of Decision-Making Standard, and the Responsibility of Constitutional Courts: Serbian Constitutional Court in Action*

18:05-18:45 Discussion

20:00 Dinner (Restaurant *Zlatni bokal* / *Golden Jar* / Skadarska 26)

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We started as the Central and Eastern European Network of Jurisprudence, but over time, the network has expanded not only outside of Central and Eastern Europe but also beyond Europe. The Network has also expanded to include everyone dealing with jurisprudence, legal philosophy or theory of law in the broadest sense of these terms, or with related, kindred disciplines and legally relevant phenomena, i.e. everyone who is willing to share the results of their work in those fields. Our informal network is coordinated by the International Advisory Board which selects the applications for each and every conference. So far, contributions to the whole gamut of jurisprudential issues – from legal philosophy and theory to social, psychological, economic, linguistic or other theories of law – have been welcomed. Dogmatic (doctrinal) and empirical (historical, sociological, economic, literary, and other) studies of law with a strong conceptual content have been also accepted.

At the conferences we listen to the presentations of each others current research results ('work in progress') and then discuss them. That is why the CEENJ conferences do not have a specific theme, nor do they envisage the publication of the papers presented at them. However, we are pleased to inform all participants that they can submit their conference or other papers for publication to the Annals of the Faculty of Law in Belgrade (i.e. Belgrade Law Review), indexed in the Web of Science Emerging Sources Citation Index and Scopus.

There has never been CEENJ conference fee. Participants bear their own travel and accommodation expenses. Technology now allows us to participate online too. But we still adhere to the traditional conference ethics and have no other motivation to gather than to advance our professional knowledge.

CEENJ was founded more than twenty years ago. We meet at least once a year, usually at a new university each year. This Belgrade conference is an exception as it is the second Belgrade CEENJ conference. The first one was held in 2010. The previous CEENJ conferences were held in Pécs (Hungary), Osijek (Croatia), Graz (Austria), Rijeka (Croatia), Maribor (Slovenia), Belgrade (Serbia), Sarajevo (Bosnia and Herzegovina), Skopje and Ohrid (Macedonia), Łódź (Poland), Brno (Czech Republic), Vilnius (Lithuania), Riga (Latvia), Zagreb (Croatia), Bratislava (Slovakia), Bucharest (Romania), Warsaw (Poland), and Padua (Italy). The host of every new annual conference is always decided informally by the International Advisory Board members present at the last held conference.