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# Legal Philosophy as a Scientific Territory

Jenő Szmodis, Ph.D.
Senior Lecturer, Eötvös Lóránd University, Budapest
Faculty of Law
E-mail: szmodisj@t-online.hu

**Abstract.** The article emphasises that legal phenomena have various characters, which are discoverable just from different aspects. The article approaches the problem of multidisciplinarity on the basis of some considerations of a concrete research. After that it introduces the necessity of multidisciplinary tendencies as indirect consequences of Western analytical thinking. It outlines that the evolution of legal philosophy results in a special plurality within jurisprudence. The article attempts to sketch the structure of multidisciplinary legal inquiry.

**Keywords:** legal philosophy, multidisiplinarity, multidisciplinary legal research

## I. On some personal considerations

As Dworkin warned, if we wish to take rights seriously, we have to take into consideration not only norms, rules as texts, but we should consider legal principles and numerous morally relevant momenta. Moreover, I would suggest that we should deal with the totality of human phenomenon while we attempt to discover the world of law. As I see, there is no sharp demarcation between legal principles and moral-social principles. It is also a big question how moral-social principles can become legal principles if we suppose the existence of such a sharp border. Of course, if we think this process happens by juridical authority, we hint to a formal moment again.

We should take into account that despite this, moral principles can often be grasped conceptually, they do not take their origin from the territory of conceptuality, but they are rooted deeply in the nature of man, which has been formed fundamentally by an evolutionary process. Some moral principles just have cultural origin, so their nature is discoverable wholly from cultural aspects. Dworkin asserted "A general

theory of law must be normative as well as conceptual."[1] It may be true. However, I suppose that although all research takes place by concepts, it takes place not only by them. On the other hand, usage of concepts does not mean that objects of enquiries are exclusively concepts. Numerous legally relevant circumstances have non-conceptual, often unconscious nature. Thus, we should be highly careful with conceptual approaches, and we must strive for a varied viewpoint if we take legal philosophy seriously.

Some years ago I attempted to outline the spiritual origin of Roman law, which undoubtedly constitutes the basis of Western law, especially of the continental legal systems.[2] At the beginning it was clear for me that in Roman law the strictly controlled forms not only restrict prevalence of equity and justice, but those result in the autonomy of law, result in law as a separate phenomenon. The anxious-ritualistic attitude of the ancient Roman law was conspicuous as opposed to the collective ideas about the "Proper" of Indo-European tribes.

While I examined the ontological nature of the Western law, I had to accept there are numerous previous non-legal questions which can influence indirectly or directly the result of the legal research. Numerous particular problems emerge during the examination of the law, the answers of which fall under areas of other disciplines. Namely, law is often connected with religion, but wherein significant psychological phenomena appear. Thus, while we examine law, we have to answer in an appropriate way such problems, among others, which fundamentally belong to the spheres of history of religion or psychology.

And at this point we can meet a huge dilemma. We either ignore and neglect the non-legal problems because of our incompetence or we attempt to use properly the knowledge of other disciplines during our enquiry. However, if we do not take relevant non-legal aspects into account, we renounce in advance a duly sophisticated legal concept, but if we utilise the knowledge of non-legal disciplines carefully and circumspectly, we can theoretically reach a really scientific concept of law, and we can describe its mechanism. In my opinion, the latter option is more fruitful.

It is clear, previous researches ignored the connection between the Etruscan religion and the Roman law despite the fact that the religious determination of Roman law had been well known from Demelius[3] to Max Weber,[4] Wolff[5] and McCormack.[6] On the other hand, it has been clear for a long time that Etruscan religion had exerted influence on Roman religion. In order to see the chain of "Etruscan religion – Roman religion – Roman law" and to compare

1 Dworkin 1977. VII.
2 Szmodis 2005. passim.
3 Demelius 1856. passim
4 Weber 1978. 781–799.
5 Wolff 1951. 49.
6 MacCormack 1969. 439; 444–445.

structural similarities of Roman law and Etruscan religion, we should surpass the exclusively legal aspects and we should examine the question in historical, psychological and religious contexts.

Thus, we have to use a multidisciplinary approach, which does not take notice of the limitations of previous considerations, but that always focuses on the emerging particular problems. During this process the topical question determines, selects and chooses the viewpoint of a certain discipline. That question which is best connected with the concrete discipline. Consequently, multidisciplinary legal research, at least for me, is not only a theoretically acceptable possibility, but it is a practically tested and imperative method.

## II. On the problem of multidisciplinarity

The well known categorical attitude and analytical character of Western thinking have necessarily developed certain specialised disciplines. However, the scientific ideas, as models, have never been identical with the reality, which, although suffers from the simplification, can take revenge. Namely, in most of the cases the one-sided logic can take us along just to a special point of cognition. However, the phenomenon starts being silent from there. Thus, in my interpretation, "Multidisciplinary Legal Research" is an approach without a too restrictive methodology to support sophisticated analysis, often by syntheses.

Ortega wrote properly, only the scientist specialises, but science itself does not.[7] Inter- and multidisciplinary approaches have got foreground recognising this circumstance. And I distinguish interdisciplinarity from multidisciplinarity at this point. Namely, in my interpretation the phenomena are interdisciplinary, and the cognition of them is multidisciplinary from different aspects. The things as momenta of reality are accessible from a lot of different possible aspects. It is true even if we do not take this circumstance into account in every case. Thus, although we tend to accept the legal institutions as being separated from other phenomena and other non-legal approaches according to our positivist tradition, law and legal phenomena are interdisciplinary.

The conceptual analysis of law provides a lot of chances to discover the internal logic of a certain law. However, as we know, the life of law has not been logic, it has been experience.[8] It is also clear that the essence of law is in its function and this function can be realised just by the operation of law. The conceptual approaches are not able to catch this operation by analysis of the concepts. However, theoretically, the functional approaches of law can take us along to a concept of law. Of course, the analytical-conceptual way can be highly

7 Ortega y Gasset 1985. 101–109.
8 Holmes 1881. 1.

helpful in cognition, but this is true first of all for such developed legal systems which build themselves by concepts. We should not forget that our modern legal systems have not been built only by concepts and theoretical categories. Namely, these systems are continuations of a special ideological structure which consisted of Christian morality, an irrational (but often expedient and efficient) system of the feudal domination and the Roman law. These are the deeper bases of our legal systems. Consequently, we can not renounce the analysis and inquiry of the past phenomena during cognition of the nature of our law. The historical aspect has a special importance from this point of view.

It is also clear that legal philosophy is an interdisciplinary area because this domain is situated between the territory of law and the field of philosophy. In spite of this fact, the acceptance of inter- and multidisciplinarity proved to be significantly harder in jurisprudence (as in humanities in general) than in natural sciences. Although this phenomenon can have various causes, I tend to think that the most probable reason for this can be found in the nature of humanities. Namely, natural science is organised on the basis of expediency, whereas ideological momenta have a bigger role in human disciplines and cultural evolution.[9] These contain such belief-like elements (imagination and ideas) which resist new thoughts and approaches more strongly than pragmatic-rational reflections.

From these aspects the traditional analytical-conceptual attempts are especially interesting in approaches to the phenomena of normativity and validity. It is thought-provoking how the categories of phenomenon and concepts can get confused in this enquiry to a certain measure. Moreover, a certain paradox gets into these researches. We can only expound such elements from a concept which have been taken into that previously. Namely, a concept can not exist without its creator, although the phenomenon, which is covered by philosophers, can. We instinctively interrogate the modern concepts of normativity and validity on the basis of our democratic and rational ideology, however, simultaneously we tend to smuggle certain contents into the examined concept, contents which are not necessarily in the concept. Thus, we should distinguish phenomena of normativity and validity from concepts of normativity and validity. I suppose that the phenomenon of normativity (or validity) is deeply rooted in the complex of the human behaviour (this is a special conglomerate of characteristics of human behaviour),[10] especially in obedience.[11] Fundamentally, irrational momenta get importance in this phenomenon, but rational considerations significantly do not. Numerous efforts try to explain normativity in the context of conscious decisions, and these explanations do not take into account the irrational nature of real social processes.[12] Thus, the concept of normativity (or

9 Eibl-Eibesfeldt 1989. 12.
10 Csányi 2003–2004. 221–232; see also Csányi 2006. passim.
11 Milgram 1974. passim.
12 Eibl-Eibesfeldt 1989. 12.

validity) is not discoverable by only a conceptual analysis but its approach is possible by observation and in a descriptive way. Perhaps the duality of phenomenon and concept is the biggest trap for legal philosophers. Western thinking makes us believe the conceptual way provides the best solution for cognition.

However carefully contemplating over these things, we have to accept the circumstance that we should not use previous ideological suppositions (for example natural legal thoughts about the will of the majority or legal positivistic ideas about faultless creation of the norms and validity) if we wish to discover normativity (or validity) as a value-neutral ontological category. We should previously observe the operation of such things about which subsequently we create a concept. Frankly speaking, if we examine the man-created law and its validity and normativity, it is expedient to know the real nature of humankind and not only what we wish to see about mankind and its law. However, in this case we open wide the door of legal philosophy and we have to look into the disciplines of human nature. And we cannot be sure, this we see, that it will be identical to our previous ideological expectations about humanity.

## III. Evolution of legal philosophy

In the late periods of cultures an account necessarily comes to the front and a historical attitude too. This happened too in the Western culture in the 18th century. We can see this not only on the basis of Spengler's philosophy of history. Anyone can tell examples from his or her own life and on basis of personal experiences about how the progress of the age is connected with the shaping of a historical attitude and a nostalgic view-point. At that same time, namely in the 18th century, history became a discipline, and gradually the historical attitude determined other forms of thinking both in the questions of arts and in the problems of law. Also, legal history became an independent branch of humanities, showing the changeability of legal institutions and of law itself. Legal philosophy, which previously significantly dealt with the connection of law and morality and researched the proper law has become dubious from that time.

Although Grotius and Pufendorf reminded us of the culturally determined character of law, the plurality of legal forms and spirits of the legal systems became more and more clear by the opening of the historical (and of course geographical) perspective. The historical view and the interpretation of social processes on the basis of their reasons and causes brought a sociological view to the foreground while sociology also shaped an independent discipline. Legal sociology developed a separated direction of the research on the trails of the works of Ludwig Gumplowicz[13]

13 Gumplowicz 1909. passim.

and Max Weber[14], further enlarging the perspective of legal philosophy. Also the revolution of psychology, the researches of Pierre Janet, Sigmund Freud, Alfred Adler and Carl Gustav Jung did not leave legal philosophy intact and untouched. The existence of law appears as a special interference of conscious and unconscious, instinctive mechanisms in the works of Scandinavian and American legal realism. Theories relating to culture and anthropology have helped comparative legal research, and legal anthropology came into existence too, while the scientific analysis of the literature formed the stream of "law and literature" and economy laid the foundation of the economic analysis of law. However, the traditional questions and problems of legal philosophy revolved around legal positivism and natural law in spite of gradual multidisciplinary transformation of philosophy of law.

Austin, Somló, Kelsen and Merkl, and of course Langdell could summarise the problems of law (as an autonomous phenomenon) in a so attractive way, and Stammler, Radbruch, Verdross, Rawls, Messner argued for the theory of natural law so originally that the tension of this two characteristic standpoints influenced with a special force the discussion of legal philosophy. Some decades later in the Critical Legal Studies (a highly exciting continuation of the American Legal Realism) the psychological stream became stronger again, but its (CLS) ideological disposition and its activistic character was limited to the chances of this tendency in paradigmatic renaissance and regeneration of legal philosophy.

In the middle of the 20th century a new discipline came into being again, namely ethology. On the basis of the researches of Konrad Lorenz and other scientists not only animal behaviour has been examined but scientific interest has been spreading on the areas of human nature and the behaviour of mankind, and on the cognition and evolutionary description of humankind as a race. In this process, among others, Eibl-Eibesfeldt and such social-psychologists created lasting works who exposed human behaviour especially lively, which is in most cases independent of the cultural circumstances.

The ideological, quite idealistic and fundamentally speculative natural law got a chance to renewal from the biological, evolutionary view-point. Margaret Gruter attempted to approach the phenomena of law[15] on the basis of biological determination of human behaviour, and such excellent legal scholars joined her efforts as Wolfgang Fikentscher.[16] Thus, a new inspiration of legal thought arose again in the German cultural area after Pufendorf, Kant, Hegel, etc., but this tendency could reach breakthrough only in America. Gruter completed a pioneering work by her fundamental books, the foundation of the Gruter Institute, and by initiating international conferences. Owen D. Jones continues Gruter's way not only by excellent writings,[17]

14 Weber 1978. passim.
15 Gruter–Bohannan 1983. passim; Gruter 1991. passim; Gruter–Masters 1998. passim
16 Fikentscher–McGuire 1994. 1–20. Fikentscher 2004. passim; Fikentscher 2009. passim.
17 Jones 2004. 1697–1707; Jones 1997. 167–173.

but he managed to systematise evolutionary jurisprudential efforts by the organisation of the Society Evolutionary Analysis in Law.

However, all these ambitions and exertions exist just as alternatives of the mainstream of legal philosophy. It is also clear that the biological interpretation of law[18] is spreading in the same way, as the research of law as an interdisciplinary phenomenon. The establishment of the Southern California Interdisciplinary Law Journal was a quite early moment of the latter process in 1978. Nowadays inter- and multidisciplinary research and interpretation come to the foreground more and more at universities and institutes.

The common aspects of law and environment are accentuated at the Vanderbilt University Law School over and above evolution related researches of Jones. The Centre for Interdisciplinary Law and Policy Studies at the Ohio State University Moritz College wishes to illuminate the connections of law, nature, society and culture. The Interdisciplinary Academic Programs of the University of Chicago Law School reorganised in the 1990s properly shows the essence of multidisciplinary legal efforts, namely "the law does not exist in a vacuum". However, the Planning an Interdisciplinary Curriculum of the Vermont Law School aims at a many-sided approach of law in the same way. The Yale Law School Forum on Multidisciplinary Legal Research has facilitated intellectual exchange among graduate students with research in legal or law related issues by more meetings. Especially remarkable are the researches of David Garland at New York University School of Law, which map the connections between punishment and culture.[19] However, there are some ambitions to break out from our traditional concepts and theories also in Europe, eliminating boundaries between legal and non-legal phenomena. John Bell has warned properly: "The study of all legal subjects needs to be informed by theory and perspectives of non-legal disciplines."[20] Related to the change of thinking, Maurio Zamboni's article is very considerable, which marks acclimatisation of evolutionary theory in the domain of legal theory.[21]

With some superficiality we can establish that in the theoretical researches of law the cultural approach, biological-evolutionary interpretations,[22] and in general multidisciplinary tendencies are gaining more and more ground.[23] The biological tendency is fundamentally related to the fact that in the past half century such an amount of scientific knowledge concerning mankind has been accumulated that cannot be neglected by legal philosophy. The change of our image about human nature allows us less and less to ground the examination of law on old and ideological thought.

18 Guttentag 2009. 270–327.
19 Garland 2009. 259–269.
20 Bell 2003. 61.
21 Zamboni 2008. 515–546.
22 Guttentag 2009. passim.
23 Clark 1981. 1238–1274. See a careful new opinon: Parisi 2009. 347–357.

As an explanation for the multidisciplinary approach of law it appears in most cases that lawyers have to prepare themselves for certain special knowledge relating to that profession, the rules of which will be used by them. Although this is true, there are two more cardinal reasons for changing the viewpoint. Firstly, a general inter- and multidisciplinary tendency of science, secondly the legal positivistic idea about the autonomy of law – as among others the theory of Langdell shows it – is less and less tenable. These circumstances touch first of all upon practice, legislation and application of law. However, we should know that multidisciplinary legal research, and multidisciplinary analysis of law are important in legal philosophy too.

Moreover, legal philosophy has to clarify the structural inter-relations among the approaches of different scientific disciplines. In an optimal case various approaches to law do not coexist just incidentally, haphazardly, offering only alternative aspects. Thus, in my interpretation the multidisciplinary legal research in the long run is not only a conglomerate of the coequal viewpoints, but it is a special system from generality to peculiarity, wherein the examination is fundamentally adapted to the respective ontological, law-determining levels. Namely, really existing (thus not hypothetical and imaginary) legal systems have been built on certain biological determinants, onto the basis of the complex of human behaviour. Of course, this basis permits several often conflicting solutions, but these cultural characteristics and traditions select and shape the actual institutions.

Within the culturally determined system, of course, there is room for conceptual approaches and analyses of the law, but first of all only where the legal system exhibits a definite conceptual construct. Thus, I presume that three fundamental levels of the approaches to law can be distinguished (biological, cultural and conceptual), which could be complemented by horizontal viewpoints too. We shall return to these later.

## IV. The structure of multidisciplinary legal research

The multidisciplinary approach of law could have various reasons and aims. This approach could promote dialogue among disciplines, could prepare practising lawyers for application of such rules which concern special professions, could help legislation in shaping efficient norms. From the aspect of legal philosophy, namely from the aspects of existence and nature of law the multidisciplinary approach has a fundamental importance too. First of all the view about human nature can influence legal concepts. The different legal-philosophical standpoints always set out from certain ideas concerning the humanity, even if they do not explicate this circumstance. These notions are determined culturally, moreover,

there could be more anthropological ideas within a culture subsequently, but simultaneously too. In Western culture a quite holy and idealistic view existed because of the long domination of Christian morality. This notion was followed and pushed to the background by a secular-rational vision about the human. The reformation and its rational attitude played an eminent role in this process.

The irrational aspects as a consequence of modern psychology came to the front in the 19th century. Then a highly sophisticated view of the human appeared with the emergence of ethology and human ethology. Humankind is characterised in this scientific interpretation simultaneously among others by belief-like ideas (common beliefs),[24] inclination to constructions, altruism, indoctrinability and tendency to imitation.[25] Human ethology explains human character by evolutionary factors and processes, emphasising that characteristic elements can gain varying importance in various cultures. The environment and the above mentioned inclination to imitation and indoctrinability can get a huge significance in the shaping of concrete cultural forms.[26] General human characteristics such as sociability, sensitiveness to mutuality, obedience, the so called rule-following behaviour and distinction between own group and alien group are present in all human societies.

Consequently, during the examination of social rules and law we should set out from such scientific vision about people which describes and defines mankind as a race. This means omission of ideological views and departure from fundamentally emotionally determined approaches and concepts, and this necessarily means the consideration of the human ethological model and facts, especially the so-called complex of human behaviour. Thus, there is a fundamental biological, human ethological and evolutionary psychological level of the examination of law, which discovers for us what the human nature is in general. This human quality can create various institutions and processes, however in the reality we always meet quite definite and concrete forms of phenomena. Namely, every single culture shapes its solutions according to its own spirit and postulates them either in religion, in science and art, or relating to different social control.[27]

So, in my interpretation, the second level of examination of law must be the cultural level, wherein cultural anthropological, legal sociological viewpoints can come to the front, and aspects of philosophy of religion and history of religion, or philosophy of history could get in focus. We should take into account this natural level in order to avoid numerous intellectual and ideological traps. For example, slavery is not accepted by natural law; however Aristotle thought this institution was coming from nature. Moreover, opposite to our modern

24 Eibl-Eibesfeldt 1989. passim.
25 Csányi 2003–2004. passim.
26 Richerson–Boyd 1998. 71–95.
27 Kohler 1885. passim.

human opinions, slavery has been and is present everywhere, but sometimes this phenomenon is marginal, illegal and is named euphemistically. However, it emerges so stubbornly that it cannot be opposite to nature. Consequently, we should examine very carefully the occurrence of slavery, and we should take very seriously this phenomenon in order to know, eliminate and remove that. As I suppose, this phenomenon is connected to the distinction between own group and alien group because slavery can exist relatively lastingly in intercultural or intersexual relations. (See source of slavery from captivity; black slavery; in Rome selling debtors as slaves "trans Tiberim", so to an other group; or in general sexual slavery – usually from foreign counties.)[28] However, sociability, empathy and altruism are more significant within groups. Thus, we should know humans openly and without illusions to develop humane societies and legal systems.

On the verge of these two levels of the enquiry there are psychological approaches simultaneously explaining the culturally and biologically coded phenomena. In my opinion, for example, the "father-complex" theory of Jerome Frank[29] as a paraphrase or variation of the ideas of Feud, the feminist legal theory (at Critical Legal Studies),[30] and of course some of my ideas too, on the basis of Jung, mean among others such psychological analysis of law. From this aspect numerous statements of Scandinavian Legal Realism are highly relevant. These psychological-legal researches discover phenomena which have become significant just in certain cultures, although which take their origins from nature.

I regard the conceptual analysis of law as a third level of examination. This approach could have excellent importance in legal cultures wherein the concepts and categories have more special significance than in "average legal culture". Thus, we have to use secular-rational concepts consistently because Western law gradually became secularised and detached itself from its religious roots and possibility of religious-moral interpretation. The reception of Roman law played a major role in conceptual effort. It seems that the analytical-conceptual ambitions got decisive necessarily in Western legal philosophy.

As I have mentioned, three levels (biological, cultural, conceptual) of legal examination model the levels of reality from generality to peculiarity. This is the so-called vertical system of cognition. Biological, evolutionary phenomena characterise all humankind, culturally coded phenomena are valid within a certain culture or cultural region. However, concepts could have different meanings according to the domain of use of those concepts. Thus, the various scientific approaches are not accidental and only alternative but they are complementary shaping a special system, and they impregnate each-other's spheres.

28 Eibl-Eibesfeldt 1989. 402–421.
29 Frank 2009. passim.
30 McKinnon 1983. 635–658.

However, certain approaches are not situated on the axis of generality and peculiarity but they are arranged on the basis of the domain of special interests. So moral-philosophical, theological, natural legal, historical, literary (and other) approaches to law could comprehend more levels of generality and peculiarity. I regard these as a horizontal system of legal examination. Independently of this circumstance, certain horizontal approaches could be more firmly connected with some vertical aspects. For example, natural law could necessarily be connected with the human ethological analysis of law, the historical and literary researches with the cultural level. Of course, approaches of legal philosophy can be categorised in other ways because our categories are just models of the colourful world. However, we should in all cases consider that our current, temporary, concrete approach is just one of the huge pile of possible approaches. Nevertheless, we should take into consideration various aspects and approaches of law if we take legal philosophy seriously.

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