

## **Jenő Szmodis: On Law as a Multidisciplinary Phenomenon**

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### **I. Introduction**

As Ortega wrote, only the scientist specializes, but science itself does not.<sup>1</sup> Inter- and multidisciplinary approach have got foreground recognizing this circumstance. And I distinguish interdisciplinarity from multidisciplinary 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 possible different 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 no-legal approaches according to our positivistic 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 the law has not been logic, it has been experience.<sup>2</sup> It is also clear, that the essence of law is in its function and this function can be realized just by the operation of law. The conceptual approaches are not able to catch this operation by analysis of the concepts. However the functional approaches of law can take us along to a concept of law theoretically. Of course, the analytical-conceptual way can be highly helpful in cognition, but it is true first of all at such developed legal systems, which build themselves by concepts. We should not forget, that our modern legal systems have not been built by only concepts and theoretical categories. Namely these systems are continuation 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 cannot 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.

That is also clear, that legal philosophy is an interdisciplinary area, because this domain is situated between territory of the law and field of the philosophy. In spite of this fact, the acceptance of inter- and multidisciplinary proved to be significantly harder in jurisprudence (as in humanities in general) than in natural sciences. Although this phenomenon can have various causes, however I tend to think that the most probable reason for this is in nature of humanities. Namely natural science is organized on the basis of expediency, whereas ideological momenta have a bigger role in the human disciplines and cultural evolution.<sup>3</sup> These contain such belief-like elements (imagination and ideas) which resist more strongly new thoughts and approaches than pragmatic-rational reflections.

From these aspects the traditional, analytical-conceptual attempts are especially interesting in approaches to the phenomena of normativity and validity. Also that is thought-provoking, how the categories of phenomenon and the concepts can get confused in this inquiry in certain measure. Moreover, certain paradox gets into these researches. We can expound only 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 philosopher, 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 in the concept necessarily. 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 rooted deeply in the complex of the human behavior (this is a special conglomerate of characteristics of human

behavior),<sup>4</sup> especially in obedience.<sup>5</sup> 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.<sup>6</sup> Thus, the concept of the normativity (or 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 the 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 will of 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 we create concept subsequently. Frankly speaking, if we examine the men-created law and its validity and normativity, it is expedient to know the real nature of humankind, and not only which we wish to see about mankind and its law. However in this case we open wide the door of the legal philosophy and we have to look into the disciplines of the human nature. And we cannot be sure, that we see, it will be identical our previous ideological expectations about humanity.

## **II. From natural law to nature of law**

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 works of Ludwig Gumplowicz<sup>7</sup> and Max Weber<sup>8</sup>, further enlarging the perspective of legal philosophy. Also the revolution of the psychology, researches of Pierre Janet, Sigmund Freud, Alfred Adler and Carl Gustav Jung did not leave legal philosophy intact and untouched. The existence of the 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 come into existence too, while the scientific analysis of the literature formed the stream of „law and literature”, and economy laid the foundation of the economical analysis of law. However the traditional questions and problems of the 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 summarize the problems of the law (as an autonomous phenomenon) in a so attractive way, and Stammler, Radbruch, Verdross, Rawls, Messner argued for the theory of the natural law so originally, that the tension of this two characteristic standpoints influenced with a special force the discussion of the 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 activist character has limited to the chances of this tendency in paradigmatic renaissance and regeneration of legal philosophy.

In the middle of the 20<sup>th</sup> century a new discipline came into being again, namely ethology. On the basis of researches of Konrad Lorenz and other scientists not only animal's behavior has been examined, but the scientific interest has been spreading on areas of human nature and behavior 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 especially lively exposed human behavior, which is in the 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<sup>9</sup> on the basis of biological determination of the human behavior, and such excellent legal scholars joined her efforts as Wolfgang Fikentscher.<sup>10</sup> Thus, a new inspiration of legal thought arose again in the German cultural area after Pufendorf, Kant, Hegel etc., but this tendency could reach break-through only in America. Gruter completed a pioneering work by her fundamental books, foundation of Gruter Institute, and by initiating international conferences. Owen D. Jones continues Gruter's way not only by excellent writings,<sup>11</sup> but he managed to systematize evolutionary jurisprudential efforts by the organization 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<sup>12</sup> 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 institutions.

The common aspects of the law and the 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 the culture. In 1990s reorganized Interdisciplinary Academic Programs of the University of Chicago Law School 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 a many-sided approach of the 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 legal-related issues by more meetings. Especially remarkable are researches of David Garland at the New York University School of Law, which map the connections between punishment and culture.<sup>13</sup> However in Europe also there are some ambitions to break out from our traditional concepts and theories, eliminating boundaries between legal and non-legal phenomena. John Bell properly has warned „The study of all legal subjects need to be informed by theory and perspectives non-legal disciplines.”<sup>14</sup> Related to the change of thinking Maurio Zamboni's article is very considerable, which marks acclimatization of evolutionary theory in the domain of legal theory.<sup>15</sup>

With some superficiality we can establish that in the theoretical researches of law the cultural approach, biological-evolutionary interpretations,<sup>16</sup> and in general multidisciplinary tendencies gain more and more ground.<sup>17</sup> The biological tendency is fundamentally related to that 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 base the examination of the law on old and ideological thought.

As an explanation for the multidisciplinary approach of law it appears in the most cases, that lawyers have to prepare themselves for certain special knowledge relating to that profession, rules of which will be used by them. Although it is true, there are two more cardinal reason for changing view. Firstly, a general inter- and multidisciplinary tendency of the science, secondly the legal positivistic idea about the autonomy of law, as among others theory of Langdell drafted, is less and less tenable. These circumstances touch first of all practice,

legislation and application of the law. However we should know, the multidisciplinary legal research, and multidisciplinary analysis of law are important in the 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 behavior. Of course, this basis permits several, often conflicting, solutions, but from 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 also could be complemented by horizontal viewpoints. We will return to these later.

### **III. Multidisciplinary cogitations**

Some years ago I attempted to outline the spiritual origin of the Roman law, which undoubtedly constitutes the basis of Western law, especially of the continental legal systems.<sup>18</sup> At the beginning it was clear for me that in the Roman law the strictly controlled forms not only restrict prevalences 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.

In Greece and in Rome in the public meetings not a formal concept of justice and law dominated. Where did the rituality and a strict and anxious form-centered thinking derive from, as they are visible at „mantipatio”, at „stipulatio” and at „in iure cessio”? Where did the fatalistic morale appear from, which attaches serious consequences to defective contractual words and expressions? On the basis of Kirkegaard’s thoughts<sup>19</sup> and theories of modern psychology (namely on the basis of obsessive-compulsive disorder)<sup>20</sup> I presumed connection between the anxiety and adherence to formality and rituality.

Simultaneously I took Jung’s warning into account, that autonomous complexes exist as fundamental structures of the unconscious Psyche.<sup>21</sup> That this is true, is shown excellently by superstitious practices of numerous people, especially by the superstitions of actors. When they are before difficult tasks, they often cling stubbornly to certain objects or activities for success. They are in general not neurotic people, at least not more so than others. On the other hand we should not forget that cultural systems and processes can select and strengthen certain phenomena of human behavior. Thus, some elements of manner of the elite group, which elements exist in this group habitually and instinctively, can spread wholly in cultural or social way by conscious or unconscious imitation, sometimes giving special senses to these elements. A peculiar characteristic, which derives from psychical function, can influence other people by social and cultural mechanisms. Peoples, who are fundamentally not determined by these phenomena. Thus, it seems, there is no characteristic demarcation line between so-called normality and psychotic conditions.

The Roman formalistic and fatalistic view could not originate from such Indo-European religion, about which Coulanges wrote,<sup>22</sup> because Diaus-Pitar (Zeus-Iuppiter) represented an active force. However we know, Etruscans respected highly the power of the Fate, and their

oracles prophesied among others the decline of Etruscans themselves by strictly determined processes.<sup>23</sup> We have numerous reasons to suppose that the formality of the Roman law originated from the Etruscan culture, which had a special fatalistic and very formalistic religion with a lot of misgivings and anxiety. For understanding of this important connection between the Etruscan religion and Roman law, which determines our modern law, we should consider such elements of Roman cultural area, which can enlighten that Etruscan culture formed the deepest layer of Roman civilization.

As it is also well known, Etruria was a sacred alliance of twelve cities, and it significantly influenced Roma from the earliest beginning.<sup>24</sup> It is considerable too, „Roma” (or Ruma) is a name of an Etruscan tribe, and the names of Roman tribes (Ramnes, Tities, Luceres) originated from Etruscans too.<sup>25</sup> Romulus and Remus decided the right to establish the Urbs by Etruscan augurium. The winner, Romulus spotted twelve eagles according to Etruscan sacred number, as opposed to the decimal system of so-called Italics (for example Latins, Sabins), but Remus only half of them, six.<sup>26</sup> The historical authenticity of this story is indifferent, but it is very important and significant that legend preserved the story of establishment of the Urbs so and by such symbols.

That is also significant circumstance, the wolf, which looked after the twin babies, was especially respected by the Turkish nations in Central-Asia, but was not too much liked by Indo-Europeans.<sup>27</sup> Also that is not quite recognized moment, that Vergil made the Romans' forefather originate from Asia in the Aeneis. As it is supposed, this continent likely was the home of Etruscans before their arrival to Italy.

Etruscans susceptibility to symbols is also reflected by another moment of legend. Namely Remus had to die, because he for fun flipped symbolical wall of the town,<sup>28</sup> which was just a furrow drawn by plough in Etruscan way.<sup>29</sup> This event, without revenge, must have been an unfavorable omen relating to defense of Urbs.

The sacred number of Etruscans,<sup>30</sup> which expressed the totality (see twelve agreeing gods, twelve seven-years-lasting periods of human life) got also outstanding significance in Rome: the first Roman coin consisted of twelve uncia, the law of XII Tables, which was enforced by the (fundamentally Latin and Sabin) plebs, and which was carved on ten tables in the first version. Etruscan influence on Rome is well known from the lictors over the toga to the architecture. However different characters of Etruscan and Italic legal ideas is excellently illuminated by the story of Horatians and Curiatians, wherein patrician duumvirs (encultured fundamentally in the Etruscan way) decided formally, but public meeting, which consisted of mainly Italics, made its decision fairly and with equity.

It is also characteristic of this dynamic cultural relation that Roman law began getting equity, when (Latin and Sabin) plebeian and Greek ideas gradually penetrated it. Typically this is the period of emancipation of plebs, when sacerdotal offices, which were at this time jurisdictional charges (College of Pontiffs, praetors), opened for plebeians. This circumstance and in general the prosperity of the plebs had consequences in the foreign policy of Rome. Namely the fatalistic, defensive attitude gradually was replaced by the more offensive attitude of religion of Italic Quirinus, and in the 3rd century Rome began the conquests.

Roman law has left its formalistic religious background, but it preserved its relatively formal separation, and its formality became a secular-rational structure. It is a very important moment that this law could be separated because of the Roman moral duality. The patrician law involved and preserved a fatalistic-formalistic morale, but the ideas about justice remained in non-formal condition in the plebeian cultural area. The „immoral, but legal” positivistic conception and principle take its origin from here. Namely our law, especially continental law, is founded on a system (Roman law), which wears marks of a fatalistic and formalistic religious morale. On the other hand our morality is impregnated by Indo-European, Turkish and Christian active, non-fatalistic spirit. Without consideration of this

circumstance we can hardly get a clear view relating to such duality of legal positivism versus natural law, which is not known so sharply in other legal cultures.

Moreover, previous researches ignored connection between the Etruscan religion and the Roman law despite religious determination of Roman law had been well known from Demelius<sup>31</sup> to Max Weber,<sup>32</sup> Wolff<sup>33</sup> and McCormack.<sup>34</sup> On the other hand, that 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 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 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 connected with the concrete discipline best. Consequently, multidisciplinary legal research, at least for me, is not only a theoretically acceptable possibility, but it is a practically tested and imperative method.

#### **IV. On system of multidisciplinary legal thinking**

In the Western culture a quite holy and idealistic view existed, because of a long domination of the Christian morality. This notion was followed and pushed to the background by a secular-rational vision about the human. Reformation, and its rational attitude played an eminent role in this process. The irrational aspects as a consequence of the result of modern psychology came to the front in 19<sup>th</sup> century. Then a highly sophisticated human-view appeared by the emergence of ethology and human ethology. Humankind is characterized in this scientific interpretation simultaneously among others by belief-like ideas (common beliefs),<sup>35</sup> inclination to constructions, altruism, indoctrinability and tendency to imitation.<sup>36</sup> Human ethology explains human character by evolutionary factors and processes, emphasizing 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 shaping of concrete cultural forms.<sup>37</sup> General human characteristics, as sociability, sensitiveness to mutuality, obedience, so called rule-following behavior 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 means necessarily the consideration of human ethological model and facts, especially the so-called complex of human behavior. 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 whether in religion, in science and art, or relating to different social control.<sup>38</sup> 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 the slavery is not accepted by natural law, however Aristotle thought this institution coming from nature. Moreover, opposite to our modern human opinions, slavery has been and is present

everywhere, but sometimes this phenomenon is marginal, illegal and it 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 of debtors as slaves „trans Tiberim”, so to an other group; or in general sexual slavery as usual from foreign counties.)<sup>39</sup> However within groups sociability, empathy and altruism are more significant. Thus, we should know humans openly and without illusions to develop humane societies and legal systems.

On the verge of this two levels of inquiry there are psychological approaches simultaneously explaining the culturally and biologically coded phenomena. In my opinion for example the “father-complex” theory of Jerome Frank<sup>40</sup> as a paraphrase or variation of ideas of Freud, the feminist legal theory (at Critical Legal Studies),<sup>41</sup> and of course some of my ideas too, on the basis of Jung, mean among others such psychological analysis of the law. From this aspect numerous statements of Scandinavian Legal Realism are highly relevant. This psychological-legal researches discover phenomena, which have got 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 secularized and it 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, the analytical-conceptual ambitions got decisive necessarily in the 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 characterize 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 spheres of each-other.

However certain approaches are not situated on the basis of axis of the generality and the peculiarity, but they are arranged on the basis of domain of special interests. So moral-philosophical, theological, nature legal, historical, literary (and other) approaches to law could comprehend more levels of generality and peculiarity. I regard these as a horizontal system of the legal examination.

## **Rezümé**

A cikk bemutatja a jog fogalmi elemzésének korlátait, és a jog funkcionális és multidiszciplináris megközelítésében rejlő lehetőségeket. Vázolja a jogfilozófia történetének néhány állomását, és hangsúlyozza a jogfilozófia multidiszciplináris tendenciáinak terjedését. Megvilágítja a különböző tudományos megközelítések néhány összefüggését a római jog vallásos gyökereire vonatkozó egy konkrét kutatás alapján. Végül vázolja a multidiszciplináris jogi kutatások vertikális és horizontális struktúráit, amelyek az ontológiai szinteken és a speciális kutatási érdeklődéseken alapulnak.

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