



THE DEVELOPMENT OF THE PHILOSOPHIES OF SCIENCE AND LAW: PARALLELISMS, RECIPROCIETIES, PERSPECTIVES

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Annotation. *The paper presents an inquiry into analogies, reciprocities and influences between the two domains of philosophy – philosophy of science (modern epistemology) and philosophy of law (jurisprudence) – as well as an analysis of the development of jurisprudence through the prism of approaches and criteria that come from modern epistemology. Starting with the general estimation of the relation between developments of epistemology and jurisprudence, the research focuses on highlighting of the incoherencies of the different schools or conceptions of jurisprudence in the 20th century. The basic exponent of the incoherency is the fluctuation between two main strategies in the articulation of the foundations of law – empiricist/naturalistic/inductive and logocentric/rationalistic/deductive – found also in the philosophy of science. The escape route from this fundamental undecidable of jurisprudence is sought at the intersection of the two strategies, where the necessity of the theory of anthropogenesis as an inherent part of jurisprudence becomes evident. This escape route also necessitates the outer disciplinary and inner theoretical openness of the academic discipline of the philosophy of law.*

Keywords: *philosophy of law, philosophy of science, jurisprudence, epistemology, empiricism, logocentrism, anthropocentrism.*

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Introduction

The development of jurisprudence (as, generally, philosophy of law) is such a complex and multi-linear process that it allows for flexibility in the selection of criteria in any systemic approach. On the other hand, any attempt to systematically articulate this development once and again reveals the complexity and multi-linearity of this process. This is caused at least in part by the fact that jurisprudence, like all domains of philosophy, is always a part of a wider sphere of philosophy in general. Philosophy, as an academic discipline, despite its fragmentation in sub-disciplines, schools, domains, so-called turns or otherwise, is always condemned to overall reciprocity, and no philosopher would stop considering some issue that really engages him only because he reached the limits of one or another philosophical sub-discipline.

In line with this condition of jurisprudence, in this paper the criteria for a systematic approach to the development of this sub-discipline of philosophy are essentially taken from a sphere that is outside of its proper domain. This other sphere is the sphere of the philosophy of science or, in other words, modern epistemology. Accordingly, the aim of this research is to inquire into analogies, reciprocities and influences between the two domains of philosophy as well as to analyze the development of jurisprudence through the prism of approaches and criteria that come from modern epistemology.

The first part of the paper is devoted to the influences and reciprocities between the philosophical domains, giving no priority to one over the others. In the second and third parts of the article more attention is given to the legal side of the discipline, rather than to the scientific. The second part of the article presents an analysis of the development of jurisprudence, its apparently divergent schools and approaches with the aim of extracting the ideological elements that point to dialectics, fluctuation or at least dualism analogous to that found in modern epistemology (i.e. between inductivism and deductivism). For this purpose, from many contemporary books on the general jurisprudence, *Lloyd's Introduction to Jurisprudence*¹ was chosen as a basic source for the analysis. The third part of the article focuses on the prospects of the further development of jurisprudence in light of the insights and conclusions of the second part.

1. Jurisprudence as a Science of Law: Philosophical and Historical Preconditions

The understanding of jurisprudence as a science of law was the characteristic condition of the 19th and the first half of the 20th century and is still at least partially present nowadays; this understanding is inextricably related to the positivism in law. In this part

1 Lloyd, D.; Freeman, M. *Lloyd's Introduction to Jurisprudence*. 6th edition. London: Sweet & Maxwell Ltd., 1994.

we will investigate both how arrival at this condition of jurisprudence was influenced by philosophy, in particular, the philosophy of science, and how the development of jurisprudence to the point of this condition is reflected in the development of the philosophy of science (or modern epistemology).

The dawn of modern science, symbolized by Isaac Newton looking at the falling apple, initiated the fundamental turn in epistemology. Knowledge, which must now be understood and even centred on the object of epistemology became scientific knowledge or, more specifically, the method of science. What had to be conceived was the process of cognition in science. Therefore, the dawn of science marks also the dawn of the philosophy of science or, in other words, modern epistemology – general conceptions of science (essentially having in mind the natural sciences). Because of the overwhelming prestige of science,² these conceptions became a follow-up model for general conceptions of law, which experienced a development from the philosophy of law to the science of law, otherwise named jurisprudence or the theory of law. The latter development is the transformation in the general conceptions of law from the very well known conception of *jusnaturalism* to *juspositivism*,³ very much analogous to the transformation in the general conceptions of science from empiricism/inductivism to logocentrism/deductivism, to the extent that clear parallelism and even reciprocity of the developments of the philosophies of science and law could be discerned.

Why is the general conception of science (i.e. the philosophy of science or modern epistemology) analogous to the general conception of law? To clearly conceive this we have to move down from the meta-level, which in this case is the level of the aforementioned general conceptions, to the level of the direct analogy of science and law.⁴ This analogy is most accurately expressed by the parallelism between scientific and humanitarian laws, which itself shows that the word *law* (as one of laws) belongs to both domains – that of science, and that of law.⁵ To think generally of law is in some respect akin to the general thinking of science. In both cases we could ask the same questions – how do we find law (as one of laws)? How do we create it, or, maybe, “who” dictates it for us? Where does it come from? What are the origins, sources or foundations of law? Of course, we know the differences between scientific and humanitarian laws very well,⁶ their object of being imposed or valid, is different – in one case it is nature, in the other the human or social behavior. Nevertheless, this difference of laws has not always existed – prior to modernity (with the exception of some aspects related to Ancient Greece)

2 Lloyd, D.; Freeman, M., p. 6.

3 The word *jusnaturalism* is taken from the well-known article by Jacques Derrida *Force of Law* (Jacques Derrida, J. Force of Law: Mystic Foundation of Authority. *Cardozo Law Review*. 1990, 11: 983–984); the formation of the word *juspositivism* is based on the parallelism of form.

4 This is related to the fact that there are two levels of influence of the prestige of natural sciences on law: (1) the influence of modern epistemology to the science of law or of what claims to be that kind of science; (2) the direct influence of science to law, when legal laws are attempted to conceive (or even to make function) as scientific laws. This second level of influence is not intended to be in the focus of the analysis in this paper.

5 Fletcher, G. P. *Basic Concepts of Legal Thought*. New York, Oxford: Oxford University Press, 1996, p. 28-32; Hayek, F. A. von. *Teisė, įstatymų leidyba ir laisvė*. I t. [Law, legislation and liberty. I volume]. Vilnius: Eugrimas, 1998, p. 114.

6 Fletcher, G. P., p. 28-32.

human beings made essentially no distinction between scientific/natural and humanitarian laws; or, in other words, factual and normative rules.⁷ There was no science and there was only one conception about foundations of laws (any laws), i.e. natural law, which, as observed by some authors, treated all laws as more akin to humanitarian laws (not scientific laws), because the whole environment was socialized.⁸ Today we have inherited (and probably forgotten) this, as some might say, odd conception of natural law, the ideology, which most coherently (what concerns the object of the validity of its laws) would be explainable in the context of natural science. All laws of natural sciences are natural to the extent that they apply to nature. Therefore, natural law should be also the direct ancestor of natural sciences, not only of the modern conceptions of law.⁹

To return to the peculiar character of the concept of natural law – nowadays this concept is considered by some philosophers to be fundamentally contradictory, as it draws together two essentially incompatible constituents – *nature* and *law* – to the extent that the state of nature together with natural law is not a real historical epoch.¹⁰ The peculiarity of these two constituents being drawn together is equally valid for law and science. David Hume here is usually “blamed” for his insight that the empirical world or nature does not, as a matter of logic, provide us with any laws (and, therefore, Hume’s insight poses a problem to both science and law, perhaps especially to the latter).¹¹ However, the same conclusion may be logically drawn from Thomas Hobbes’s conception of the state of nature, which is described as a lawless¹² state. Therefore, in either post-Hobbesian or post-Humean ideologies law becomes a human product — a product of human nature, human social activity or human reason. We could draw the conclusion that modernity marks a fundamental transformation and division of natural law, being about laws *of* nature and *about/for* nature, to scientific law and humanitarian law, both of them being about laws *of* a human, although *about/for* different objects of application or validity (one about nature, another for humanity).

Nevertheless, the development of those divided in this process remains reciprocal, probably because of this common ancestry. Arguably the remaining strong influence of natural law at the initial stages of the aforementioned transformation paves the way for the spread of empiricism and inductivism (naïve and similarly simple in its inductive scheme) in both domains of the general conceptualizations of science and law – forming modern epistemology and modern conception of law (jurisprudence), which only starts to take contours of positivism. Classical English positivism is still very empirical in its understanding of the foundations of law.¹³ Although one crucial difference can already be discerned: because of the prestige of science, this new empiricism (or, we even may

7 Hayek, F. A. von., p. 121-127.

8 Kelsen, H. *Grynoji teisės teorija*. Vilnius: ALK, Eugrimas, 2002, p. 99–100.

9 This ancestry, which should cover the influence of law to science, is also (together with the influence of science to law) not intended to be in the focus of the analysis in this paper.

10 Agamben, G. *Homo Sacer: Sovereign Power and Bare Life*. Stanford: Stanford University Press, 1998, p. 35-36.

11 Hume, D. *Žmogaus proto tyrinėjimas*. Vilnius: Pradai, 1995, p. 65–69.

12 Hobbes, T. *Leviatanas*. Vilnius: Pradai, 1999, p. 140.

13 Especially it is valid to the ideology of John Austin and his followers (Lloyd, D.; Freeman, M., p. 213–214).

say, *new* natural law, even though classical positivists explicitly rejected natural law) is essentially scientific. It is empiricism/inductivism conceived firstly as a method of science. The same method is sought in conceiving the law, thus paving the way for the formation of the science of law.

But then Hume opens the well known gap between *is* and *ought*, and therefore condemns empiricism in both domains, the general conceptualization of science and that of law. After that, Hume's insight "opens the eyes" of Immanuel Kant, who formulates his logocentric *Critique of Pure Reason*, and, from his side, influences Hans Kelsen, who formulates his *Pure Theory of Law* in a Neo-Kantian logocentric spirit. The development of modern jurisprudence from classical English Positivism (the starting point could even be moved back to the Social Contract Theories) to the Kelsen's normativism represents its transformation as a conception of law from the empiricist to the logocentric one. The place of the foundations of law eventually moves from the empirical/natural world to the domain of reason, and Kelsen's normativism could be considered a symbolic high point of modern jurisprudence as a science of law, jurisprudence with pretenses to present the doctrinal conception (i.e. theory) of law.

2. Fluctuation Between Logocentrism and Empiricism in the Jurisprudence of the 20th Century

The development of modern jurisprudence in the anthropocentric and logo-centric direction, starting from the social contract theories, via the classical English positivism up to the Kelsen's normativism, is a rather stable and coherent development, and the 19th century is considered by some theorists to be the age of the virtual non-existence of other general doctrine of law apart from positivism.¹⁴ However, by the very beginning of the 20th century we witness the start of the fluctuation between logo-centrism and empiricism in jurisprudence, the process, which was the characteristic trait of jurisprudence throughout almost the entire 20th century.

Initially we should note the criteria for the identification of empiricism or logocentrism in the conception of law. We consider the conception of law as essentially empiricist (it could be also called a naturalistic or realistic position) not only if it explicitly expresses the fundamental (originary) dependence of law on the empirical world, but also the dependence of law on the contingency of some factual environment or dependence of law on unpredictable, fundamentally irrational human behavior¹⁵. We consider

14 Lloyd, D.; Freeman, M., p. 113.

15 A note on the relation of empiricist position to behaviorism should be made here. Behaviorism is the general conception of psychology, but the word *behaviorism* is sometimes used by legal scientists or lawyers to more elegantly articulate the opposition, which is very analogous to the discussed herein, i.e. between logo-centric and empiricist positions; for example, behaviorism could be opposed to normativism, which is also the other name of Kelsen's ideology (e.g. see Kūris, E. Konstitucinis teismas ir įstatymų leidyba: žvilgsnis iš vidaus (Petro Ragauskos straipsnio recenzija). [The Constitutional Court and legislation: a closer look. (Review of Petras Ragauskas' article)] *Teisės problemos*. 2004 1(43), p. 116, 118). And the sympathy to the behaviorist side of the opposition (for example, the author alleges that at the level of behaviorism law is much more complex than at the level of normativism, and that this complexity must be taken into account in any serious

the conception of law as essentially logocentric (it could also be named as rationalistic position) if it expresses the fundamental (originary) dependence of law on reason, human rationality, human or any forms of consciousness, human rational behavior.

2.1. Kelsen v. Schmitt

Kelsen's and Carl Schmitt's conceptions of law stand in radical opposition – opposition which has its history of direct academic confrontation, even involving its applicability to the famous process in the Constitutional Court of Germany on the *Coup d'Etat* of the year 1932, and, therefore, reciprocity in historical reality.¹⁶ It is sad that Kelsen is usually considered a stand-alone author by legal academia, because Kelsen's ideas, especially the radically rationalistic content, acquire much more sense and meaning if analyzed together with the ideas of Schmitt.

Kelsen's conception of law is based on radical separation between two worlds – that of facts (or the outside world) and that of norms (or the inside world).¹⁷ We could say that the world of facts is, in other words, empirical world, and, notably, is also the place of politics and ethics. The world of norms is also the world of reason or consciousness. It also has its originary structure, which is usually metaphorized by the idea of a pyramid. Climbing from the less foundational/originary level to the most foundational/originary level, i.e. at the peak of the pyramid, we find *Grundnorm*, which is the foundation of all other norms, the source or their validity. Despite all the vagueness¹⁸ and possible *political*¹⁹ consequences of this concept (*Grundnorm*), what is important to us is that it finds its place only and purely in consciousness, reason, making the Kelsenian originary structure of law purely logo-centric. The grand or primary originary place for law is the place of reason, consciousness – that is where law emanates, originates, finds its ultimate foundation²⁰. Schmitt would not agree with this conception of law.

general conceptualization of law) indicates the authors' position, which is very akin to that of the legal realists.

- 16 On the relevant biographical details and relations of both authors, the historical context and the mentioned court process, see Dyzenhaus, D. *Legality and Legitimacy: Carl Schmitt, Hans Kelsen and Hermann Heller in Weimar*. Oxford: Oxford University Press, 2003, p. 1-37. On the reaction of one author to the other authors' ideas see, for example, Schmitt, C. *Political Theology: Four Chapters on the Concept of Sovereignty*, p. 7, 14, 18, etc.
- 17 The very start of the *Pure Theory of Law* heavily employs spatial metaphorical *inside/outside* (for example, the first word of the section *Norm is outside [fact]*; Kelsen, H., p. 45), which would definitely regale grammatologist Jacques Derrida.
- 18 *Grundnorm* is typically considered to be the Constitution, although it is not in every case.
- 19 It could be alleged that *Grundnorm*, as directly related to the power of authority, „opens the gateway“ for the politics to enter the world of law, and the politics-law separation thesis is shattered (Kelsen, H., p. 174). On the other hand, exactly because of the certain characteristics of *Grundnorm*, politics are at least in some sense unrestricted by law – those, who have the authority, given by *Grundnorm*, may create any law, as law may also have any contents (see *ibid*). That is why positivist position could be considered as a nihilist one as well, because a positivist should agree, that “the law is merely the product of communities powerful enough to have their preferred meaning imposed as the law” (Dyzenhaus, D., p. 8.)
- 20 Kelsen, H., p. 48–49.

Today Schmitt's ideas are experiencing a renaissance and by some thinkers, such as Jacob Taubes, Schmitt is considered "the greatest state law theorist of our time"²¹; great as he is, still his ideas are almost *terra incognita* in Lithuania, especially with regard to legal theory. One of the causes of this rather very large *lacuna* in legal theory within Lithuania is the Soviet heritage: Schmitt was in one or another form and because of one or another reason affiliated with the Nazis, and therefore his ideas were complete taboo during the Soviet era.

Schmitt essentially draws us backwards to the reconsideration of Thomas Hobbes's conception of the separation of the state of nature (or natural state) and social state (or legal state). Is it possible to articulate this separation to the extent that the state of nature loses any relation to the world of law, i.e. that it is radically separated from the world of law leaving no relation, *especially that of the originary character*, between two worlds or states? Schmitt's answer is negative – the relation between two worlds/states is still intact. The place of the origin of law is still in the state of nature, in which the sovereign, who decides on the state of exception (and the *first* law), resides²². This place is also the place of politics, which means that the thesis of the separation of the world of law and politics is denied (making the doctrine of politics also the doctrine of law). In fact, this is the case to the extent that Schmitt declares the primacy of politics over law. Schmitt's conception of politics and law is also called decisionism, which asserts the fundamental/originary dependence of law on the decision of the one in power (i.e. sovereign):

"Schmitt asserts that all legal orders are based on a decision which is an irreducible and animating political basis of such orders. The decision is basic in the sense that it is not a mere judicial decision by a parliamentary majority to enact a statute, but a decision about the nature of a legal order"²³.

But this fundamental dependence of law on decision constitutes also dependence, in Kelsen's terms, on the contingent world of facts. The sovereign is a particular/concrete person deciding in a concrete situation and in a concrete factual (or empirical) environment, and, in some sense, for Schmitt exactly this unique factual environment dictates law; this environment (which is also the state of nature and the state of exception at once) is the place from which law originates, which must go first, before law as norm in Kelsen's terms could appear:

"The norm requires a homogeneous medium. This effective normal situation is not a mere 'superficial presupposition' that a jurist can ignore; that situation belongs precisely to its immanent validity. There exists no norm that is applicable to chaos. For a legal order to make sense, a normal situation must exist, and he is sovereign who definitely decides whether this normal situation actually exists. All law is 'situation law'".²⁴

21 Taubes, J. *The Political Theology of Paul*. Stanford: Stanford University Press, 2004, p. 2.

22 On the proximity and, at the same time, complex relation between *law, state of nature and state of exception* see Agamben, G. *Homo Sacer: Sovereign Power and Bare Life*, p. 36–38.

23 Dyzenhaus, D., p. 39.

24 Schmitt, C. *Political Theology: Four Chapters on the Concept of Sovereignty*, p. 13. Also see *ibid.*, p. 14-15,

From this extract we see that a normal situation must exist even before the sovereign decides on its existence. Normality in a concrete situation (or in empirical world) is what has originary/fundamental primacy. Therefore, whatever the name of his conception (decisionism, existentialism²⁵, or we may call it even situationism²⁶), structurally it is in the position analogous or even equal to that of empiricism or naturalism as general conception of law – what comes first in the originary structure of law is empirical, natural, or, in other words, the real, concrete world.

To summarize, the opposition between the ideas of Kelsen and Schmitt represents the clearest opposition between radical, fundamental logocentrism (such as that of Kelsen) and fundamental empiricism (such as that of Schmitt) as the theory/conception of law. The former conception represents law as autonomous subject, separate from such spheres as ethics or politics, this feature being clearly positivistic. The latter conception represents law as absorbed into the field/sphere of politics (Schmitt is sometimes considered to be a holist of politics)²⁷; that is, law as politics. It is alleged that what connects Schmitt and Kelsen is that they both considered the spheres of ethics and politics to be fundamentally *irrational*²⁸. This only reaffirms the thesis that Schmitt's conception of law should be considered as diametrically opposite to that of Kelsen's in their articulations of law and rationality: Kelsen's conception of law is logocentric, Schmitt's is fundamentally a-logocentric. To reiterate, for Schmitt, law is founded in the sphere that is outside²⁹ *logos* – law comes out of the state of nature, it is dictated by nature, by the empirical world. For Kelsen, law is founded in the sphere of *logos* – law originates from reason, consciousness.

2.2. Empiricist Doctrines With Logocentric Features

It is said that the ages of the domination of positivism in law did not bring an end to the doctrine of natural law, which saw a revival in the second half of the 20th century. This revival was noticeably influenced by the necessity to deal at the ideological level with the crimes of Nazism. The most noticeable attempt of this revival is by John

where Schmitt contemplates on the relation of the concept of exception with the doctrine of natural law and the philosophy of concrete/real life.

25 *Existentialism* is the title of Schmitt's ideology as that of the foundations of politics; Dyzenhaus in this respect speaks of the so-called *communitarian existentialism*, Schmitt himself speaks of the *existential sense* as applied to the foundations of politics in a more radical way, i.e. as an existential/warlike sense of friend and enemy groupings (Schmitt, C. *The Concept of the Political*, 27, 33; Dyzenhaus, D., p. 5, 41).

26 Relation of Schmitt's conception of law to the general postmodern conception of situationism, especially as applied to law, is not covered in this article.

27 Generally see Schmitt, C. *The Concept of the Political*, p. 29-32, 78-79.

28 Dyzenhaus, D., p. 105.

29 Although it should be noted that in Agambenian interpretation of Schmitt, the articulation of this *outside*, even as explicitly based on Schmitt's ideology, is far from being clear and unambiguous; thus, it is also possible to state, that the „state of exception is ... a complex topological figure in which not only the exception and the rule but also the state of nature and law, outside and inside, pass through one another“ (Agamben, G. *Homo Sacer: Sovereign Power and Bare Life*, p. 37). This ambiguity and paradoxicality (although not deeper inquired in this paper) itself could be discerned as a *cause* of the fluctuation between the two strategies of the articulation of the foundation of law, discussed further in this paper.

Finnis. However, his attempt is called a proposition of “natural law without nature”, and is a rejection of much in the natural law tradition³⁰. Finnis explicitly denies the possibility of the inference of law from facts,³¹ and finds the origins of law in practical reason, which orders the lives of human beings as they strive for seven self-evident basic goods/objective values³². Therefore, the revival of the doctrine of natural law in the 20th century should not be considered a noticeable revival of the empiricist strategies in legal philosophy.

Alternatively, the noticeable return to the ideological strategy, which is analogous to empiricism in the philosophy of science/modern epistemology, is legal realism. First of all, there is a group of conceptions/schools, which are, generally, realistic to the extent that they more or less have traits of clear empiricism in their general approaches to law and are unified by general anti-positivistic approach. The most obvious examples are the schools of American and Scandinavian realism, but these are not only schools. It is also the schools of sociological and historical jurisprudence (however, maintaining relative autonomy to the general trend of realism in law). Nevertheless, although unified by the return in one or another form to the general conceptualization of law which founds its basis in that outside world to Kelsenian inside world of law, as it appears, neither of these schools could escape the allure of the inside.

Sociological jurisprudence puts an emphasis on so-called political arithmetic, which should form the basis for the creation of law, done either by politicians or by judges (which alone is in contradiction to the positivistic thesis of the separation of powers). Political arithmetic (or, as generally called, *calculation*) is the collection of data about the real world or, in other words, collection/accumulation of factual information about property, land, people, their statuses, ages, employments, their needs, etc.³³ This collection of factual information is what must be done at first for the legal system to start forming, and that exactly corresponds to the empiricist/inductive strategy in modern epistemology – the scientist first collects factual information. On the basis of this collected data, law is created with the aim to reconcile conflicting interests, which become evident on the basis of this data. Nevertheless, this aim or what is achieved (as some rational outcome of rational procedure of the reconciliation of conflicting interests of society) may become *fundamentally* prior in the ideological scheme, especially by the presupposition of the existence of such thing as the consciousness of the whole society, some “brooding omni-presence in the sky” (as alleged by Roscoe Pound), in which the law finds its fundamental basis (in other words, only because this consciousness or, generally, rationality exists, the law also exists);³⁴ all that constitutes logocentric incoherence to the generally empiricist ideological strategy of this school.

30 Lloyd, D.; Freeman, M., p. 122.

31 Finnis, J. *Natural Law and Natural Rights*. New York: Oxford University Press, 1992, p. 33-36.

32 Lloyd, D.; Freeman, M., p. 122-123.

33 Emphasis on political arithmetic is especially clear in the ideologies of Max Weber and Roscoe Pound (see Lloyd, D.; Freeman, M., p. 516, 525).

34 Emphasis on political arithmetic is especially clear in the ideologies of Max Weber and Roscoe Pound (see

American realism was no less coherent, with the probable exception of its instances of naïve and rather radical empiricism usually associated with Justice Oliver Wendell Holmes, who was charged with the introduction of empirical social scientific research into laws and legal institutions and the proposition of the so-called prediction theory of law, when the prediction is based on the empirical observation of real/actual judicial behavior.³⁵ American realists are usually divided into two groups – rule skeptics and fact skeptics, the former group more attributable to the start, the latter to the end of the development of the school.³⁶ Rule skeptics concentrated on the observation of actual judicial behavior as the basis for the general conceptualization of law, and Holmes’s approach is exactly an instance of this kind of skepticism. Fact skepticism is a rather incoherent group in the context of American realism, because it is essentially the skepticism in empiricist/naturalistic strategy itself; however, this kind of skepticism should be the outcome of the coherent application of an empiricist strategy in the articulation of the foundations of law, as then the impotence of this strategy in this matter should become evident (therefore, exactly in this respect American realism is akin to the Scandinavian realism). In fact, this fact skepticism, as a part of American realism, marks the turning point in the 20th century’s jurisprudence in the USA in two possible further ways: either the return to the doctrine, which inevitably has traits of logo-centrism (for example, the return to deduction as a proper scientific method, which should be also a proper method of law)³⁷, or the turn to the radically critical and rather nihilistic skepticism in jurisprudence, as happened with critical legal studies.

In the context of the analysis of American realism, it is important to linger briefly on the ideas of Karl Llewellyn, especially on his idea of the so-called Grand Style as the main “locomotive” and, accordingly, the originary foundation of the precedent based Common Law tradition. The Grand Style is characterized by a resort to “situation sense”.³⁸ We have already encountered the concept *situation* in Schmitt’s conception, and could ask: what is the difference between Llewellyn’s and Schmitt’s *situation*? And then, what is the difference between (1) the great judge of the common law tradition, adjudicating in Grand Style and, in fact, creating law/precedent, basing this creation on his sense of the situation, on the uniqueness of every concrete case, and (2) the sovereign, who creates law in the state of exception, being also the unique situation. Is this judge not a Schmittian sovereign? And does such a conception not return us to the fundamentally empiricist strategy in legal philosophy? This aside, it should be so. But Llewellyn also alleges that “the Grand Style is based essentially on an appeal to reason”, some common reasonableness of community, and that “seem a very far cry from the

Lloyd, D.; Freeman, M., p. 529).

35 *Ibid.*, p. 659.

36 *Ibid.*, p. 659–660.

37 For example, as done by Morris Cohen, who worked in the field of the philosophy of science on the “hypothetico-deductive method”, but also applied his insights to the social and legal sphere in the direction of “the rehabilitation of rules and principles of legal reasoning” (Yablon C. M. Law and Metaphysics. *Yale Law Review*. 1987, 96: 620). This mode of the development of ideology is akin to that of Karl Raimund Popper.

38 Lloyd, D.; Freeman, M., p. 663.

scientific realism which has so long been regarded as one of the animating influences of the realist movement. It savours, indeed, far more of Savigny than of social science.”³⁹

Historical jurisprudence, with F. K. von Savigny at the fore, is probably the most controversial⁴⁰ school of legal philosophy of our time; however, we could also trace clear features of both strategies therein. At first sight, it seems that this school holds firmly to the empiricist/naturalistic strategy of the articulation of the foundations of law. The emphasis on *Juristenrecht*, as law formed and founded through the historical development and investigation of concrete court cases, and the *Volkgeist*, which has its foundation in the biological – apparently empirical – heritage of the nation, should point exactly to this strategy.⁴¹ But in a strict philosophical sense, history is what is not empirical or real; it is what is already in the past (“being” *in history* is “being” *in the past*), what already no longer exists and what has to be *rationaly* reconstructed or even originally constructed, and never investigated as a fact. On the other hand, speaking of the connotations of *Volkgeist* alongside the *biological* heritage of the nation, we could ask, is it empirical or, in fact, logical heritage — heritage which is firstly discovered in nature or in (or by) reason/scientifically? In other words, which comes first: (1) reason, ideas about heritage, or (2) nature, facts of heritage in the Popperian sense of the logic of the discovery of law? Savigny did not answer this question, but that does not harm the evidence of the incoherence in his strategy of the articulation of the foundations of law.

Finally, Scandinavian realism could be regarded as a school with a radical empiricist strategy. This school asserts that law has to have an empirical basis, law has to be shown as some really existing object/fact that anybody could point their finger to.⁴² But this strategy is used by Scandinavian realists to show that there is no law to point to in this way, i.e. there is no law in the empirical world at all, and to show this in a very critical way, by finding that what is really pointed at by allegedly pointing at law is, for example, an act of power. This makes this school of law akin to the critical legal studies. In fact, for Scandinavian realists the consequences of this impossibility to find law in the empirical world are twofold – either then, essentially as in Axel Hägerström’s ideology, law loses its autonomy and becomes one of the elements of the political power/force based landscape, which is in consonance with the conception of Schmitt;⁴³ or, essentially as in Olivecrona’s so-called psychological realism, a return, to the logocentric strategy of the articulation of the foundations of law is attempted, having considerable traits of the psychologization of the foundational elements of law,⁴⁴ which, only in this aspect, makes this strategy akin to that of H. L. A. Hart.

39 Lloyd, D.; Freeman, M., p. 665.

40 Savigny, as Llewellyn, rejected natural law (*ibid.*, p. 785), although did not succeed in evasion of clear elements of apparently empiricist/naturalist strategy of the articulation of the foundations of law. This itself reaffirms that explicit rejection of natural law not always means the absence of empiricist/naturalistic strategy in one of another conception of law.

41 *Ibid.*, p. 785–788.

42 *Ibid.*, p. 733–736.

43 *Ibid.*, p. 732–734.

44 Savigny, as Llewellyn, rejected natural law (*ibid.*, p. 785), although did not succeed in evasion of clear elements of apparently empiricist/naturalist strategy of the articulation of the foundations of law. This itself reaffirms

To summarize, the empiricist/naturalistic strategy in the articulation of the foundations of law is either incoherent, or, the more it is coherent, the more it leads to either radical skepticism in jurisprudence (especially thesis that “all law is politics”)⁴⁵ or a return in one way or another to the other strategy of the articulation of the foundations of law. Nevertheless, the logocentric strategy, if *explicitly* attempted in the jurisprudence of the 20th century, is also characteristic of analogous incoherence or, at any rate, it cannot withstand the century’s overwhelming critique of logocentrism and all that is associated with the Enlightenment.

2.3. Logocentric Doctrines With Empiricist Features

We can agree that logo-centrism in jurisprudence (and also essentially all of positivism when uncritical to its being logo-centric) achieved its peak together with Kelsen’s normativism. Afterwards the path of positivism appears to be going downwards, especially in the Anglo-Saxon tradition and especially after World War II, the causes of which were sought more in the positivistic ideologies than in, for example, Schmitt’s decisionism.⁴⁶ Much of the empiricism/naturalism/realism in law was based on the critique of positivism and inherent logocentrism, and the other strategy for the articulation of the foundations of law was chosen *because* the logocentric strategy discredited itself, but not because the empiricist strategy was known or accepted as suitable for the task; therefore the skeptical approach is an integral part of legal realism. Then, as was shown, the empiricist strategy also appeared to be problematical, leaving room for positivism even after World War II. Generally it is agreed that empiricist strategy failed to be the one which once and for all could take (or, speaking with historical precision, re-take) the place of the dominant or even doctrinal pattern of the articulation of the foundations of law⁴⁷. From the attempts to articulate the foundations of law using logo-centric strategy in the second half of the 20th century, we will focus only on the ideologies of H. L. A. Hart and Karl R. Popper; the ideologies of, for example, John Rawls⁴⁸ or Joseph Raz will be left aside.

The similarity between Kelsen’s and Hart’s articulation of the origins of law can be discerned at the most fundamental level. We can assert that there is a basic structural

firmly that explicit rejection of natural law not always means the absence of empiricist/naturalistic strategy in one of another conception of law, p. 738, 744–745.

45 *Ibid.*, p. 668.

46 The ideas of Nazism are as compatible with the Schmitt’s decisionism as with Kelsen’s normativism. To conceive this, we should discern, that the real difference in the articulation of the foundations of law between Schmitt and Kelsen is that the latter in this articulation stops at the frontier of the inside world of law, and this frontier is exactly *Grundnorm*, which is the rule of sovereign, the rule, enabling sovereign and by that making sovereign; Schmitt would say that Kelsen just negates the problem of sovereignty in this way. Conceiving this, not only radical empiricist position, as of Schmitt or Hägerström, alleges the inseparability of law and politics/sphere of power/force, but also “the positivist conception says that legal order is just the legal instrument of the powerful”, what equals to nihilist thesis (see note 19; Kelsen, H., p. 174; Dyzenhaus, D., p. 8; Schmitt, C. *Political Theology: Four Chapter on the Concept of Sovereignty*, p. 21).

47 Lloyd, D.; Freeman, M., p. 667–668.

48 We could only note, that the critique of the Rawls’ian conception of abstract universal self in the direction of the foundation of the similarities of this conception with theories/mythologies of the social contract, could lead to the conclusions that what is alleged in relationship to Hobbes in this paper, could be also applied to Rawls.

analogy of the differentiations of inside (or what is inside) and outside (and what is outside) in the ideologies of both authors. Right at the very beginning of Kelsen's *Pure Theory of Law* we are confronted with the exploitation of the differentiation *inside/outside*: fact is presented as being *outside*.⁴⁹ Kelsen's outside world also includes nature, politics, morality; the inside world contains law, norms, and reason. In Hart's ideology we have the *internal* aspect of law, which has its *externality* (being also the externality of law).⁵⁰ Internal aspect points inside the human being and, essentially, to reason. Externality is the place/world of facts as externally observable facts, specifically, as human habitual behavior. Law could be found only in this internality, and externality provides us no law whatsoever. It appears that the scheme is basically the same, except that reason in Hart's ideology is a little more natural/empirical than in that of Kelsen's. Hart explains/describes reason in more psychologized terms, as a matter of feelings and emotions (although, it should be noted that Hart distanced himself from this interpretation of his approach), which means that reason or its phenomena can also be observed as an object/fact of psychological research.⁵¹ This alone constitutes incoherence in Hart's articulation of the foundations of law.

But this incoherence in Hart's ideology is not the only instance. He also gave us the idea/conception of the minimum content of natural law in the internality of law, which is regarded as a concession by Hart to the post-war critique of positivism. Leaving aside Hart's known anxiety about the possible incoherence of this idea in relationship to the rest of his conception and all the critique of this idea by other scholars, here we will linger only on the very starting/basic presumptions of this whole conception. The minimum content of natural law, as universally recognized principles of human conduct, is founded on the necessity of the human beings, firstly, to live, then to prolong their existence, and for these reasons to live in a social arrangement (i.e. live together), rather than in a suicide club. All this is a part of a description of human nature.⁵² This conception is akin to Hobbes's conception of social contract and two states "separated" by this mythical event; it shows that through this idea of minimum content of natural law, Hart, although in a back-door way, admitted the necessity of the inclusion of the articulation of anthropogenesis in the coherent conception of law, especially if it attempts to be positivistic. In other words, any coherent positivistic approach should start from a consideration of how it is possible to depart from the natural position, to move "the place" of the origins of law from the nature/empirical world to the human world, human nature or reason. For this reason this "new place" then has to be satisfactory articulated.⁵³ This articulation is attempted by Hart through the description of some specific and undisputable *facts* of human nature, facts which should depict the human at the most fundamental level (i.e. say

49 Kelsen, H., p. 45.

50 On the concept of the internal aspect of law as opposed to externality, and externality-based legal ideology (i.e. legal realism) especially see Hart, H. L. A. *The Concept of Law*. New York: Oxford University Press, 1997, p. 51-66.

51 Lloyd, D.; Freeman, M., p. 348-350.

52 Hart, H. L. A., p. 192–193.

53 On the importance of this thesis also see Part 3 of this article.

what human is), and this attempt cannot stand criticism.⁵⁴ Therefore, the conception of the minimum content of natural law only reaffirms the incoherence of Hart's logocentric strategy of the articulation of law, since the other (naturalist/empiricist) strategy is, while not ignored, it is not sceptically rejected, but Hart's attempt to integrate this strategy in his ideology and, together, "to humanize" it, probably, failed.

Finally, turning our view to Popper, we can make a coherent sequence of logocentric ideologies, if the primary concern of all of their authors would have been the foundations of law: that of Hume, Kant, Kelsen, and Popper. Nevertheless, only Kelsen was primarily and unambiguously a philosopher of law. The others in the sequence more or less substantially influenced the philosophy of law. Popper was primarily a philosopher of science, and the fact that he did not avoid applying his insights to the articulation of the foundations of law once again show the reciprocal interrelation between both philosophical domains.

Popper's primary concern in his philosophy of science is the process of the formulation of scientific law. Popper's thesis is that this process is essentially deductive, not inductive. Therefore all laws are falsifiable hypotheses. In other words, all laws are predictions of one or another factual result, but, as a matter of logic, positive result (verification) would never suffice to negate the possibility of the negative result (i.e. falsification) in the future.⁵⁵ On the other hand, how law is formulated, i.e. how the idea of one or another law comes to the mind of a human being, is a question that is explicitly suspended.⁵⁶

If all this were applied to humanitarian laws,⁵⁷ this would lead to the thesis that the formulation of genuinely *innovative, new* general laws – for example, in parliament as a statute or in court as a precedent – should, as a matter of logic, lack inductive dependence on facts, as these laws have to be new in relationship to existing facts. Only after their formulation would these new laws be, in a deductive manner, applied to social environment to test their efficiency – a process which is akin to the process of verification in the natural sciences. Nevertheless, exactly the example of the formulation of law in the court (i.e. precedent) suggests that there is something wrong with this lack of dependence of the formulation of law on factual environment. The court formulates law confronted with concrete factual situation, and, speaking generally, the common law tradition offers some vision of inductivity of law – its continuous dependence on factual environment, its formulation while always adapting it to changing factual environment, while exactly this environment and its change is what goes first, what is primary in the logical scheme⁵⁸.

54 *Ibid.*, p. 193-200; Lloyd, D.; Freeman, M., p. 120-121.

55 Popper, K. R. *The Logic of Scientific Discovery*. New York, 1965, p. 29-30, 40-41.

56 *Ibid.*, p. 31-32.

57 Concerning the application of Popper's ideas to social sciences, for example, see Poperis, K. R. *Istoricismo skurdas*. [Poverty of historicism]. Vilnius: Mintis, 1992, p. 151.

58 That should also be the reason, why common law, as a tradition, presents an environment, which is not suitable for positivistic/logo-centric doctrines to develop or flourish; this is the environment of exactly empiricist/naturalistic strategies, and probably that is why such phenomenon as realism in law (after positivism)

Popper also alleged that there is some backwards inductive direction at the general scale of the development of science (so-called “path of science”), and at the macro-level science leaves dependant on facts and their contingency⁵⁹. This happens because the fact that apparently falsifies the old theory usually not only falsifies it (or at least does not falsify it in its entirety) but is the cause of the formulation of a new theory about some newly appeared factual environment. The common-law tradition (which, probably not incidentally, was born and grown in the natural law environment) develops exactly in this way – when court needs to formulate a new precedent, it is usually also confronted with some new fact, in relationship to which the old law and old precedents do not work, and exactly this fact is the cause of the new law. We could say that as there is such “path of science”, there is also analogous “path of law/right”. Of course, looking at the very micro-level, we should also note that the formulation of a new law itself in that situation is still deductive (speaking more metaphorically, new facts are at the discretion of judges rationality). The analysis above only shows that at the macro-level the dependence of law on factual environment is evident, and Popper probably would not negate that. This leads to the conclusion that if Popper’s conception of science would be applied by analogy in its entirety to the articulation of the foundations of law it would lack logocentric coherence⁶⁰.

3. The Agenda for the 21st Century – Towards Integrative Jurisprudence⁶¹

The analysis above has shown that jurisprudence contains the undecidable⁶² in Derridian sense: the oscillation between two main patterns or strategies in the articulation of the foundations/origins of law, found also in the philosophy of science – empiricist/naturalistic/inductive and logocentric/rationalistic/deductive. These strategies are both fundamentally contradictory not only to the extent that they are radically opposite, but also to the extent that they are both the basis for the presentation of holistic ideologies about the world of law. Any attempt to reconcile them, to make them into one binding

should have happened therein. Different environment is presented in Continent with its tradition of codification and systemic/abstract approaches to law.

59 Popper, K. R., p. 276-278.

60 In order to strengthen the notion of theoretical incoherence and fluctuation between the two strategies of the articulation of the foundations of law, we could also confront Popper’s conception with Mr. Justice Holmes’s prediction theory of law. In both cases we could talk about predictions/hypotheses as a basic matter of law, predictions, which should be falsifiable in their nature and, which, it appears, in both cases leave essentially dependant on empirical world. Nevertheless, both authors traditionally are considered to represent opposite strategies of the articulation of the foundations of law in their ideologies – logo-centric/deductive (Popper) and empiricist/inductive (Holmes).

61 The phrase *integrative jurisprudence* is taken from Harold J. Berman’s introduction to his work “Law and Revolution”; the context from which it is taken essentially supports the core ideological structure of this paper, especially if logo-centrism could be replaced by Hegel’ian idealism, and empiricism – by Marx’ian materialism (Berman, H. J. *Teisė ir revoliucija*. [Law and revolution]. Vilnius: Pradai, 1999, p. 69-70). Dyzenhaus’s approach to his research proves that this phrase names the model, which is followed (Dyzenhaus, D., p. xi).

62 Derrida, J., p. 963–967.

ideology leads to contradictions and incoherencies. Both strategies, especially until 20th century, also constituted aspirations of philosophy of law to become the science of law. In this way the hope was to change the status of jurisprudence from that of philosophy to that of theory.

It should also be noted that attempts to depart from the positivistic approach and return to the naturalistic approach have their individuality. Long ages of the domination of positivism in law made the old doctrine of natural law literally impossible to reconstruct to the extent that we just see no other way to have *satisfactory* articulation of the foundations of law, apart from a positivistic one. And if it fails, especially in the context of the widespread critique of Enlightenment, this leads either to incoherent doctrines, as with most of realism and contemporary natural law, or the spread of rather radical scepticism in jurisprudence. In fact, an attempt to return to the naturalistic strategy, eventually leading to the finding of the impossibility of this attempt, is the main cause of the proliferation of sceptical doctrines – critical legal studies, postmodernism, ideas of the holism of politics, ideas of the inseparability of the constituent and constituted powers. The concurrent consequence of the contemporary (i.e. post-logo-centric) naturalistic strategy in the articulation of the foundations of law is losing both: the scientific status or at least prestige of this articulation on the one hand, and, on the other, the autonomy of law.

Despite this entire situation, we could also allege that the duality between the two main or fundamental strategies and conceptions of law, which are built on them – *just-naturalism* and *juspositivism* – still persists (at least partly and at least in some regions). They are both still equally unchallenged to the extent that we should once and for all reject one of them, especially at the level of legal philosophy, and, with a high probability, it will not be done at this level. It appears, that the articulation of the foundations of law at the level of legal philosophy (especially which chases for the prestige of science and presentation of one and only theory of law) is condemned to oscillation between *jusnaturalist* and *juspositivist* patterns or is at a deadlock.

For today, we can only suggest that an escape route from this condemnation can be sought *at the intersection* of the two strategies discussed here, and this route is also the route *out* of the autonomous (or more precisely, being made autonomous) domain of legal philosophy, especially legal philosophy as legal theory. This leads back to Hobbes, who could be considered the founding father of modern jurisprudence; jurisprudence that departs from old-good natural law to the anthropocentric and, afterwards, logocentric “highs”. This anthropocentric direction presupposes that any coherent modern jurisprudence should also necessarily give an answer to the problem of humanity or, at least, people in general. Hobbes’ conception of the state of nature presupposes that therein we have neither people nor even can discern a clear distinction between human and animal, at least to the extent that there perhaps is no “human” at all, i.e. that humans are not different from animals. Therefore, Hobbes’s theory of law, the first explicitly modern theory of law, is also, and *at first*, a theory of anthropogenesis, *which in itself enables (or should enable)* the possibility of proceeding from the empiricist-naturalistic strategy to the anthropocentric and, afterwards, logocentric strategy in the articulation of

the foundations of law. Speaking in a literary manner, that “the human should be born” or explicated prior to logo-centrism, which is founded on an anthropocentric strategy in the articulation of the foundations of law, should be possible. On the other hand, the human should not be taken as some starting and unquestionable *axiom* of the conception of law, in all possible wordings, as *human being, person, citizen*, because this is simply unsatisfactory in the contemporary critical academic environment and only leads to the formulation of doctrinal anthropocentrism.

Today we have the well-known thesis by Michel Foucault: “man is dead”. Nevertheless, we could offer to correct this statement by a less radical and, probably, more truthful one by Giorgio Agamben: “we do not have, in fact, the slightest idea of what either a people or a language is”⁶³. That we still have no ultimately satisfactory idea about what a people, language and even a man is, that animal becoming man (and, probably, people at once) and role of language in this becoming is still an open question⁶⁴ – that does not mean the death of man. We still live in an age of the conflict of hypotheses about all these occurrences of our world, having no satisfactory one, and academicians are still working on these issues in other domains of philosophy: the philosophy of sociology, anthropology, epistemology, ontology, philosophy of language, political philosophy, etc.

What are the outcomes of this entire situation for jurisprudence? First of all, as was said, the basis for the satisfactory articulation of the foundations of law should not be laid in the level of legal philosophy/jurisprudence, but, speaking precisely, only if it wants to remain closed/autonomous doctrine. *Jurisprudence needs outer disciplinary openness*. Jurisprudence should become much more open to other domains of philosophy and also more integrated with them, if it strives for the coherent, in-depth articulation of the foundations of law. And it should do so; otherwise it would lead to its indefensible silence⁶⁵. It appears that jurisprudence in the United States was already very significantly opened to this kind of inter-disciplinarity already in the first half of the 20th century⁶⁶. In Europe this still is done mainly, so to speak, “from the other side”; i.e. by the philosophers, who work primarily in other areas of philosophy and try to “knock on the doors of the kitchen” of the so-called legal theorists and say “hey, look, this also really concerns your area of professional inquiry”; it appears there is still no considerable reaction “from inside the kitchen”.

Secondly, and this concerns especially the situation in Europe, the allure of the positivistic self-evidence of what constitutes reason (consciousness) or the human (person) should be abandoned once and for all, because not only it discredited itself in the first half of the 20th century,⁶⁷ but it exactly serves for the disciplinary closure/autonomy of

63 Agamben, G. *Means without End: Notes on Politics*. Minneapolis, London: University of Minnesota Press, 2000, p. 65.

64 Generally see Agamben, G. *The Open: Man and Animal*. Stanford: Stanford University Press, 2004.

65 See epigraph to Agamben’s book “State of Exception” (Agamben, G. *State of Exception*. Chicago, London: The University of Chicago Press, 2005).

66 Yablon, C. M., p. 618.

67 As Dyzenhaus, while substantially resting his thoughts on Antonio Gramsci, would allege: although “it is not that one can ascribe the Nazi seizure of power to legal positivism ... however ... theory and practice

the subject of jurisprudence, especially having in mind the situation in academic institutions and its form of pedagogy⁶⁸. However, *jurisprudence also needs inner theoretical openness*, at least a post-Popperian approach to the concept of *theory*. It is a rather strange situation that when we cross the Atlantic Ocean we find radically different situations/environments in the domain of jurisprudence as legal philosophy: on the one side there is the discussion whether legal philosophy should be taught at law schools at all and if taught, then only for the students of the last courses of postgraduate studies; on the other side legal philosophy is usually considered legal theory or the science of law, and this subject is usually taught as some strict doctrine for beginning graduate students. It appears that legal philosophy (alleged science of law) becomes fundamentally different when crossing the ocean; for the philosopher or, we may say with some reservations, the scientist of law the environments are very different on the different sides of the ocean. Alternatively, for example, for a scientist of nature (physician, chemist or else) this difference does not happen. In physics, chemistry, their problems and the environment of their articulation are the same in France, Lithuania, the USA, Australia, etc. It appears that, not inquiring much into the influence of general legal tradition, jurisprudence in the United States was critical enough not to stagnate and evolve, through the critique of any newly appearing conception, while in Europe legal academia still lingers on the preservation of the demarcated domain of so-called doctrinal legal theory, when this demarcation wall is “build of the bricks” of more (Kelsenian) or less (Hartian) uncritical logocentrism or its modified form of anthropocentrism.

Conclusions

1. The transformation in the general conceptions of law from the conception of *jusnaturalism* to *juspositivism* is parallel and, in some instances, reciprocal to the transformation in the general conceptions of science from empiricism/inductivism to logocentrism/deductivism.
2. Through the development of modern jurisprudence in the anthropocentric and logocentric direction, at the conceptual level “the place” of the foundations of law eventually moves from the empirical world to the domain of reason.
3. The opposition between the ideas of Kelsen and Schmitt represent a clear opposition between radical logocentrism (such as that of Kelsen) and radical empiricism (as that of Schmitt) as the conception of law.
4. The fluctuation between logocentrism and empiricism in jurisprudence is the characteristic trait of the jurisprudence of the 20th century, and explicitly or apparently

are linked ... because success at the theoretical level, while in no way sufficient condition for influencing or sustaining the practice, is necessary condition. Inadequate reflection will eventually issue in inadequate practice.” (Dyzenhaus, D., p. 5.)

68 On the contemporary limits of professionalism, questioning of the notions of intellectual and scientific autonomy and dominating forms of pedagogy especially see Weber, S. *Institution and Interpretation*. Stanford: Stanford University Press, 2001, p. x, 18-32.

logocentric or empiricist conceptions lack ideological coherence what concerns the strategy of the articulation of the foundations of law.

5. The escape route from the condemnation of legal philosophy to the fluctuation between empiricist and logocentric strategies could be sought at their intersection, and this route is also the route out of the autonomous domain of legal philosophy.

6. Any coherent modern jurisprudence should necessarily give answer to the problem of human, making the conception of anthropogenesis its integral part.

7. Jurisprudence, as legal philosophy, should be opened to the other domains of philosophy and to the critique of the domination of logocentrism or anthropocentrism therein (if that still happens), as this is the only way to advance the discipline to the levels of the in-depth inter-disciplinary research. I.e. jurisprudence needs outer disciplinary and inner theoretical openness.

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MOKSLO IR TEISĖS FILOSOFIJŲ PLĖTRA: PARALELIZMAI, ABIPUSIŠKUMAI IR PERSPEKTYVOS

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Santrauka. Straipsnyje pateikiama analogijų, sąveikų ir įtakų tarp dviejų filosofijos sričių – mokslo filosofijos (moderniosios epistemologijos) ir teisės filosofijos (jurisprudencijos) – analizė, taip pat pristatomas jurisprudencijos raidos ir šiuolaikinės būklės bei perspektyvų tyrimas panaudojant kriterijus, kurie gali būti kildinami iš moderniosios epistemologijos ideologinio lauko.

Analizė pradedama bendruoju epistemologijos ir jurisprudencijos santykio įvertinimu, istorinių ir loginių dviejų filosofijos sričių koreliacijų nustatymu. Loginėje plotmėje ši koreliacija tampa akivaizdi dėl refleksijos objekto analogijos, kurią gerai reprezentuoja išraiškos tapatybė: anglų kalba žodis „law“ reiškia tiek mokslinį dėsni (mokslinę taisyklę), tiek teisinį įstatymą (teisinę taisyklę). Istorinėje plotmėje dviejų filosofijos sričių vystymosi panašumas ir netgi sąveika yra akivaizdi pradedant nuo ikimodernistinės natūralistinės teisės koncepcijos laikų. To išraiška yra abiejų filosofijos sričių fundamentalių nuostatų – 1) empiricizmo, natūralizmo, induktyvizmo ir 2) logocentrizmo, racionalizmo, deduktyvizmo – analogiška kaita (apimant ir antropocentrizmą kaip tarpinę poziciją tarp empiricizmo bei logocentrizmo) ir išliekantis dualumas.

Antroje straipsnio dalyje susitelkiama ties įvairių XX amžiaus jurisprudencijos mokyklų ir sampratų analize išryškinant jų nenuoseklumus pasirenkant vieną ir kitą minėtų (t. y. empiricistinę arba logocentrinę) fundamentalią nuostatą svarstant teisės ištakas, arba kitaip, pagrindus. Analizuojamos tokios teisės filosofijos mokyklos ir sampratos kaip H. Kelseno normatyvizmas ir C. Schmitto decizionizmas, šiuolaikinė prigimtinė teisė, amerikietiškas ir skandinaviškas realizmas, sociologinė ir istorinė jurisprudencija, H. L. A. Harto pozityvistinė ir K. Popperio mokslinė teisės sampratos. Tyrimas parodo, kad nepaisant šių sampratų ir mokyklų stereotipinės asociacijos su viena ar kita minėta fundamentalia nuostata, visoms joms (išskyrus H. Kelseno ir C. Schmitto iš esmės nuoseklias ideologijas) trūksta nuoseklumo laikantis šios nuostatos, o tai rodo, jog jurisprudencijai, kaip visuminei disciplinai, būdingas svyravimas, neapsisprendimas (J. Derrida nuomonė).

Straipsnyje teigiama, kad išeities iš tokios jurisprudencijos būklės turi būti ieškoma dviejų minėtų fundamentalių nuostatų sankirtoje, akivaizdžiam tampant antropogenezės teorijos kaip sudėtinės jurisprudencijos dalies poreikiui. Tokios išeities galimybė taip pat išryškina jurisprudencijos, kaip teisės filosofijos, išorinio disciplininio ir vidinio teorinio atvirumo reikalingumą.

Reikšminiai žodžiai: *teisės filosofija, mokslo filosofija, jurisprudencija, epistemologija, empiricizmas, logocentrizmas, antropocentrizmas.*

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