REPORT FROM THE AUTUMN PH.D. WORKSHOP IN LEGAL THEORY[1]

Faculty of Law, Masaryk University Brno, 29th November 2024

On the 29th of November, the Faculty of Law of Masaryk University hosted a workshop for Ph.D. students of legal theory and legal philosophy. The event's main organizers were **Linda Tvrdíková**, an assistant professor at the Department of Legal Theory at the Masaryk Faculty of Law, and **Tomáš Koref**, a Ph.D. student at the Faculty of Law of Charles University and Goethe University in Frankfurt. The project was co-organized by the emerging Czech Young Legal Theorists (CYLT) organization.

The main purpose of the event was to provide a platform for early-stage researchers from various countries to present their ideas, receive critical feedback from international experts in their field and gain inspiration by engaging with fellow academics. The majority of participants were Ph.D. students presenting parts of their dissertation research.

The workshop commenced with a warm welcome from the organizers, followed by the opening remarks from the dean of the Faculty of Law of Masaryk University, **Martin Škop**.

The initial keynote presentation was given by **Michal Bobek**, a well-established academic and legal professional, whose speech struck a balance between humorous remarks and valuable suggestions on academic research and writing. He encouraged the participants to not be afraid of asking a very narrow question in their research, and to choose a niche topic that would be of interest to them as well as to a broader audience. He also gave suggestions on what to expect from a good supervisor and how to potentially compensate for a supervisor's lack of active participation, such as by actively engaging with other Ph.D. students and collecting feedback from them. He cautioned against relying too heavily on supervisors to provide ideas, advocating instead for intellectual independence, which will ensure that one is researching a topic that they care about.

The first student contribution was that of **Zsofia Folkova**, from Charles University, titled *Beyond dualisms: legal personhood and flat ontologies* in which she tackled the evolving concept of legal personhood, critiquing its traditional binary classification. Drawing on the philosophical framework of flat ontologies and new materialism, she is asking the question, whether we should expand legal personhood to also encompass non-human entities.

The discussant **Olga Rosenkranzová**, an academic from Palacký University Olomouc, praised the ambition of the research topic and its philosophical overlap. She then suggested the possibility of narrowing its scope by, for instance, focusing primarily on specific entities like animals or embryos, which could provide a clearer analytical framework. Another suggestion aimed at narrowing down the scope of the research came from M. Bobek who recommended asking the questions of *"what needs to be clarified regarding the research topic?"* and *"what is it about the topic, that is of interest to you?"*.

The second contribution came from **Michael Preisig**, a research associate from the University of Hamburg, with the title *The Kelsenian Conundrum: about the Logic of Law*. The main focus of his article was to disprove Hans Kelsen's claim made in the posthumous book *General Theory of Norms*, in which he claimed that *"normative syllogism"* cannot work as an analogy to *"theoretical syllogism"* and therefore logic cannot be applied to law. The article proposes an alternative interpretation of Kelsen's claim and argues that *"normative syllogism"* does not substantially differ from *"theoretical*

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syllogism". The article comes to the conclusion that the use of logic and logical consistency remain essential to law while still preserving Kelsen's theory of the *"autonomy of morality"*.

M. Bobek, serving as a discussant, highlighted the article's clarity and precision, describing it as highly persuasive. He noted that, possibly, an even more difficult question regarding this topic could be how Kelsen arrived at his problematic conclusion in the first place.

Tomáš Koref delivered the third presentation of the workshop, with the article's title being *Empirical Analysis of Legal Reasoning in Czechia: A Tale of Two Courts Revisited*. In his work he deals with the question of formalism of Central and Eastern European (CEE) courts in general as well as the two Czech Supreme Courts specifically. There exists the prevailing opinion, though not established by empirical evidence, that the Czech Supreme Court is excessively formalistic, while the Supreme Administrative Court is not. The article addresses the gap in empirical evidence, while also preparing valuable data for the creation of an AI model trained to analyze court reasoning. T. Koref concluded that the *"Tale of Two Courts"* is inaccurate, the Courts reason differently than described in the existing CEE literature on formalism and as a result the topic calls for a revision.

The discussant, **M. Bobek**, began by applauding the focus of the article on applied legal theory, as applied sciences in general often serve as catalysts for change in the real world. He then went on to provide constructive criticism, mainly regarding the methodology, stating that some of the aspects of formalism, as they were presented in the paper, seemed somewhat arbitrary and could benefit from further clarification.

After a lunch break, the second panel of presentations began with a contribution from **Weronika Dziegielewska**, a Ph.D. student from Adam Mickiewicz University, who presented the topic of *Arguing for Law's Normativity in a Third Way*. The presentation explored the concept of law's normativity – how legal norms guide behavior and provide reasons for action. Challenging conventional models of normative explanation, she introduced a "third scope" approach inspired by Robert Brandom's inferentialism. This framework emphasized normativity as a product of discursive practices, where reasons emerge through mutual recognition of commitments and entitlements within a community. By addressing critiques of traditional and constitutive models, the presentation offered a new insight into the topic of legal norms and reason-giving.

The discussant for W. Dziegielewska, **Preston Stovall**, currently an assistant professor in philosophy at the University of Hradec Králové, with a Ph.D. from the University of Pittsburgh, reflected on the interplay between individual reasoning and broader normative systems, offering several suggestions to enhance the paper's impact. Among these, he emphasized the value of frequently incorporating practical examples which could help communicate some of the more abstract concepts to a broader audience.

Another presentation was given by **George Dick**, a Ph.D. student at the University of Edinburgh, *Theorising About the Nature of Law: A Sketch of the Orthodox Approach*, in which he analyzed the shared methodological commitments of legal theorists, focusing on their search for law's necessary properties–features that define its essence and distinguish it as a unique category of normativity. G. Dick argued that most theorists employ a modal conception of essentialism, identifying universal properties that constitute law across all contexts. Despite this common ground, he highlighted that legal theorists are often vague or inconsistent about their methodologies, employing terms like "conceptual analysis" or "functional analysis" without clarity.

Discussant **Terezie Smejkalová,** an assistant professor at Masaryk University, complimented G. Dick's writing while noting that further critique would highly depend on the specific direction, he decides to take the paper. G. Dick answered, that based on what he has written, he might try to reject the essentialist approach altogether and look for a new methodology to define law. Other participants also contributed further insights: W. Dziegielewska questioned whether some theorists, despite explicitly denying that they view law as a distinct system, still argue in ways that reinforce

the notion of law as this distinct system. T. Koref then asked about the paper's methodology for identifying the methodologies.

The contribution from **Daniel Barták**, a Ph.D. student from Masaryk University, *Why Do We Accept Fictions?*, explored the reasons for accepting fictions and the implications of evaluating them using unified criteria. He defined three primary reasons for accepting fictions: unawareness of their fictitious nature, practical necessity, and individual motivation. He critiqued the use of prescriptive theories, such as utilitarianism, as tools for evaluating fictions, arguing that these theories themselves contain fictional elements and lead to circular reasoning where the evaluative tool becomes the "best fiction." He warned that adopting a unified evaluation criterion could stagnate the transformative potential of fictions, which serve as instruments of change. Instead, he advocated for maintaining the diversity of reasons for accepting fictions.

Marek Káčer, an associate professor from the University of Trnava, offered several great insights as a discussant. He emphasized the distinction between conceptual schemes and generalizations, which aim to describe reality, and fictions, which serve a different purpose. He advised D. Barták to clearly define the problem being addressed and articulate its significance, refine the definition of fictions, and overall make both the scope of the paper and the title more specific, allowing for a deeper exploration of the subject.

Kelly Amal Dhru, a Ph.D. candidate from the University of Hamburg, presented her research *Neurotechnology-mediated Actions and Legal Capacity* on the legal implications of neurotechnology-mediated actions. She explored the *"agency paradox"* where neurotechnologies enable actions for those lacking factual capacity, such as individuals with Locked-In Syndrome using Brain-Computer Interfaces (BCIs). Dhru examined whether these users could hold legal powers and capacity, challenging traditional views of autonomous agency. She proposed a two-layered conception of legal capacity: a primary non-rebuttable presumption based on moral considerations and a secondary context-specific defeasible presumption. This approach aims to balance the enabling potential of neurotechnologies with the inherent risks and uncertainties they pose.

Her discussant **Visa Anton Julius Kurki**, an associate professor at University of Helsinki, suggested that Kelly Amal Dhru should clarify why there are different components in her argument, potentially relating to action theory. He recommended drawing parallels between involuntary actions, such as tics, and unintentional neurotechnology-mediated actions to strengthen her analysis. Examples from action theory, such as intentionality (our goals or motivations for actions) and bodily movement (physical actions taken to achieve goals), could help illustrate these points.

Marlene Anzenberger, a Ph.D. student from the University of Graz, presented her work titled *Reshaping the Rules-and-Principles-Model Through the Lens of Customary International Law*. Her work reinterprets the two core elements of customary international law which are *usus longaevus* (long-standing practice) and *opinio juris* (sense of legal obligation) using Robert Alexy's theory of principles. Anzenberger adapts Alexy's distinction between "real ought" and "ideal ought" to the decentralized nature of customary law, emphasizing the nuanced "optimization" requirement and proposing its reinterpretation to include minimization. She suggests norms initially function as principles, later evolving into rules through specification. Her framework highlights the cooperative interplay of *usus longaevus* and *opinio juris*, challenging hierarchical models and redefining how norms are classified and understood within international law.

The discussant for Anzenberger's presentation was **Lukáš Hlouch**, an assistant professor at Masaryk University. He critiqued Alexy's model, agreeing with Anzenberger that the distinction between ideal and real ought is insufficient, especially without standardized norm formulations. He provided examples to show that normative standards can be both principles and rules, depending on context and application. L. Hlouch emphasized that the nature of a normative standard depends on its treatment by the legal community. Regarding the optimization requirement, he sug-

gested that principles should be seen as tools for optimization rather than objects of optimization. L. Hlouch recommended using more practical examples and highlighted the importance of considering national practice in applying customary rules. D. Barták then asked an interesting question about a potential difference between colliding and cooperating principles.

Finally, to conclude the event, **Václav Lipš** and **Marek Švajda,** both master students at Charles University, presented their research. Their work called *A delicate balance: How to solve conflicts of individualistic and communitarian dignity* focused on resolving conflicts between individualistic and communitarian dignity. They argued that human dignity, often seen as an absolute right, can be viewed through both individualistic and communitarian lenses. They critiqued the current approach to dignity conflicts, which assigns the same abstract weight to both aspects, and proposed a method to assign different weights based on context and justification.

Marlene Anzenberger, their discussant, raised several points challenging Lipš and Švajda's approach. She argued that the claim that individualistic and communitarian dignity carry different weights across jurisdictions lacks substantiation and requires evidence. Additionally, she observed that the cases presented involve other conflicting principles, such as human rights, which also warrant consideration. Finally, she questioned the source of dignity's abstract weight, asking if it stems from the rule of dignity. She suggested adding a chapter to define methods for determining dignity's abstract weight, which would enhance clarity and strengthen the rationale for assigning varying weights to dignity's aspects.

The Autumn Ph.D. Workshop in Legal Theory was a notable success, providing an invaluable platform for early-stage researchers to present their ideas, receive critical feedback, and engage with fellow academics. The diverse range of topics and the high quality of discussions underscored the depth and breadth of current research in legal theory and philosophy. The positive feedback from participants and the insightful contributions from discussants highlighted the importance of such events in fostering academic growth and collaboration.

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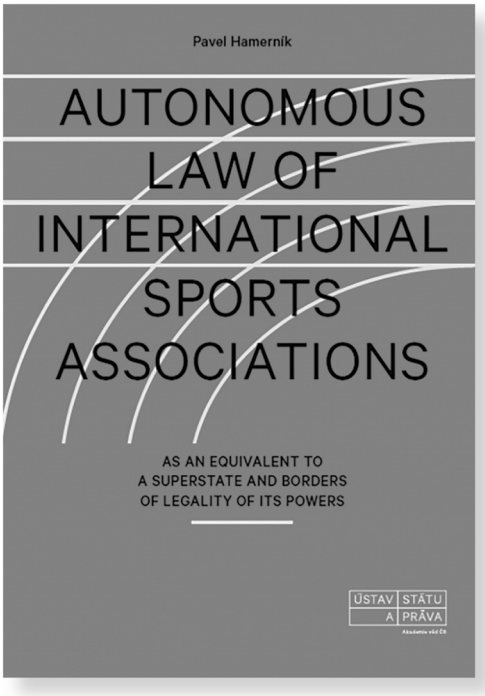
Autonomous Law of International Sports Associations as an Equivalent to a Superstate and Borders of Legality of its Powers

Pavel Hamerník

Institute of the State and Law
of the Czech Academy of Sciences
Prague, 2023, 181 p.

(also available for download on the website of the Institute)



This publication deals with the controversial mechanisms of international sports associations, how international sports associations can defend them in the light of applicable law and, on the contrary, where borders lie, where they must not enter at the expense of guaranteed freedoms of persons and other subjects in sport. It focuses on the issues of compulsory dispute resolution in sports arbitration, the issue of independence of the World Supreme Court of Sports, restrictions on transfers of players between clubs, modern slavery, law of subsidies, strict conditions of defense and the burden of proof in doping, further it presents also conflicts of interest of international sports associations in the licensing of competitions organized by third parties and punishment of athletes for participation in unauthorized competitions in case the license is not granted by international sports association. Finally, the book is also dedicated to the freedom of expression ofathletes and their suppression by sports associations.