

/ARTICLES

Philosophy of Law

INTRODUCTORY WORD

Miodrag JOVANOVIĆ, PhD*

Bojan SPAIĆ, PhD**

THE MOST IMPORTANT PROBLEM OF CONTEMPORARY LEGAL PHILOSOPHY

We have recently come across a documented discussion, held at the Faculty of Law, University of Belgrade in April and May 1963 and subsequently published in Volume 11 of the *Annals of the Faculty of Law*.¹ It was dedicated to the concept of law and, although it was organized by professors from the Department of Theory, Sociology and Philosophy of Law, it brought together

* Full Professor, University of Belgrade Faculty of Law, Serbia, miodrag@ius.bg.ac.rs.

** Associate Professor, University of Belgrade Faculty of Law, Serbia, bojan.spaic@ius.bg.ac.rs.

¹ Diskusija – O pojmu prava (Discussion – On the concept of law), Vol. 11, No. 3–4, 445–529.

scholars from both the legal theory and non-theoretical fields of law. It is interesting to see from a distance of nearly half a century how lively and occasionally blistering these discussions were. As expected, they addressed both substantive and methodological issues. In fact, the debate regarding the defining features of the concept of law was largely methodologically inclined. In particular, the focus of criticism of several discussants was the approach of Kelsen's *Reine Rechtslehre*, which was labeled *normativism*, insofar as it claimed that jurisprudential inquiry, properly understood, is exhausted in the study of legal norms (rules). The leading legal philosophers of the time argued, instead, that legal methodology should be integralistic in nature, which, among other things, implied the study of law's function(s), its underlying social relations, as well as the behavior of norm-addressees. And although one may be inclined to think that those ideas mostly resonated with central ideas from Hart's then freshly-published *The Concept of Law*, this would be a wrong conclusion. Simply put, Yugoslav legal theory of that time was mainly oriented towards European continental tradition and largely unaffected by the dominant trends in Anglo-American jurisprudence.

In contrast, legal theorists of the present generation at the University of Belgrade, Faculty of Law have always been interested in establishing effective bridges between the two most important traditions in legal philosophizing. This Symposium is the outcome of one of the latest attempts of that sort – an online one-afternoon event on the purposefully broadly conceived topic “The most important problem of contemporary legal philosophy”, which was sponsored by the Serbian section of IVR (International Association for the Philosophy of Law and Social Philosophy) and held on 28 May 2021. The hiatus in meetings, conferences, seminars, symposiums, and lectures caused by the COVID-19 pandemic, motivated us to survey the state of the field on both sides of the Atlantic. The idea was to summon distinguished representatives of the present-day jurisprudence to share their thoughts on views, topics, approaches and insights that are or should be at the center of jurisprudential inquiries. We were fortunate enough that Brian Leiter, Frederick Schauer, Pierluigi Chiassoni, Tomasz Gizbert-Studnicki, and Torben Spaak gladly accepted the invitation to take part in the event. This was probably the most visited jurisprudential conference in 2021, with more than 150 participants from all over the world in remote attendance.

It transpired that some of the issues that are highlighted as the most important for the present-day legal philosophers are, in fact, perennial problems of jurisprudence, albeit discussed within novel heuristic and terminological frameworks. Hence, just as Yugoslav scholars in 1963 were concerned that the methodological obsession with normativism may impoverish our understanding of the legal phenomenon, so some of 2021

discussions warn about “pointless metaphysical inquiry” as a dangerous methodological stray, which has taken analytical jurisprudence away from Hart’s path (Leiter); while our predecessors debated about law’s ultimate role and purpose within the official Marxist doctrine of “withering away of the state and law”, contemporary legal philosophers tend to wonder whether law matters (Schauer), and in what sense, if any, can jurisprudence “contrast the morally disgusting state of the world” (Chiassoni); whereas legal philosophers in the socialist era were puzzled about the relationship between official, state created law and autonomous, spontaneously developed norms of “self-governing” (*samoupravnih*) bodies, nowadays scholars inquire as to the usefulness of the old paradigm of “legal pluralism” for assessing the new and complex reality of the global legal landscape; similarly, while Yugoslav legal philosophers were at pains to reconcile newly developed legal concepts, such as “social ownership”, with the traditional ones, the jurists of today face similar problems related to new manifestations of legal subjectivity, of the likes of autonomous machines, environmental legal persons and animals (Gizbert-Studnicki).

One topic conspicuously absent from the 1963 Belgrade discussion, which was addressed in the 2021 online meeting, is the nature of legal reasoning (Spaak). Lawyers from both practice and academia have unquestionably always been aware that theirs is to provide adequate reasons and arguments, but this feature of legal life has often not been sufficiently stressed in legal philosophy or in legal education.² Being primarily focused on the philosophical method of analysis, at times jurisprudential inquires resemble the scene from Rembrandt’s famous painting *The Anatomy Lesson of Dr. Nicolaes Tulp* (1632), which depicts knowledge about the human body being acquired by inspecting a corpse. The philosophical analysis of law is frequently practiced in a similar fashion, as if we are not dealing with a living and pulsating body.

The breadth of the discussed issues and topics, as well as the way they were addressed by the Symposium speakers, has aptly demonstrated that jurisprudence is, after all, well equipped to elucidate the most vital aspects of the complex social practice called *law*.³

² Since the current generation of legal theorists at the University of Belgrade Faculty of Law is of the opinion that Serbian legal education acutely suffers from this deficiency, a significant part of our educational efforts is directed towards overcoming it.

³ The order of the written contributions follows the order of the talks at the symposium.