

Plesati sa strancima: mladi pravni naučnici i njihova disciplinarna usmerenost

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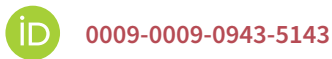
U vremenu kada se „odlazak u interdisciplinarnost” shvata kao jedan od profesionalnih ciljeva, odnosno koraka unapred, dolazi do toga da mladi pravni naučnici bivaju suočeni sa jednostavnim, ali frustrirajućim pitanjem: treba li da težimo tome da sačuvamo sopstveni spori i precizni ritam plesa ili pak da se prepustimo razigranijem ritmu drugih disciplina? Ovaj rad, mali kreativni eksperiment, određuje navedenu dilemu kao „ples sa strancima”. U tom smislu, na scenu stupaju sledeća dva aktera: pravni fantazam, neobično specifična mentalna maska koju nose pravnici, i duh interdisciplinarnosti, razdvojili protivnik koji prelazi granice. Praveći razliku između znanja prava i znanja o pravu, smatramo da oba treba da imaju svoje jasno određeno mesto – pod uslovom da ne postanu neraskidivo uvezani. Uigraju, možda isuvišerazigran, rad ne teži da potkopapravnu nauku niti da se potčini njenoj antagonističkoj predstavi, već samo da podstakne čitaoca da odabere sopstvenu koreografiju – pažljivo, svesno i, možda, sa malo stila.

Dancing With Strangers: Young Legal Scholars and Their Disciplinary Predicament

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In a time when “going interdisciplinary” is treated as the ultimate career move, young legal scholars possibly face a simple but frustrating question: ought we protect law’s own slow, precise dance, or throw ourselves into the funkier groove of other fields? This paper, a minor creative exercise, frames the dilemma as “dancing with strangers”. Two modest characters take the floor: the legal phantasm, the oddly specific mental mask lawyers share, and the spirit of interdisciplinarity, the curious, boundary-crossing antagonist. By differentiating between knowledge of law and knowledge about law, I go on to suggest that both have their place, provided their steps don’t get hopelessly entangled. Playful, perhaps too playful, the paper isn’t here to bury legal scholarship or to subdue to its antagonistic notion, but simply to nudge the reader into choosing their own footwork – carefully, consciously, and maybe with a little style.

1. INTRODUCTION

Contemporary legal scholarship¹ faces multiple challenges. As part of the fast-paced and shallow academic industry, the days of the good old less is more paradigm may be long gone. There are conferences to attend, articles to write, books to publish, LinkedIn posts to make. In English, that is, preferably. Sometimes, this never-ending circle of production can even seem as an arbitrary and sole end in itself, making the already perplexed and precarious existence of a young legal scholar only more dreadful. So, I believe such state of affairs calls for attention and adaptation. Young legal scholars should be made aware, from an early age, of the new academic market relations that govern their intellectual survival.

Further, as of recently, and perhaps hand in hand with the already described one, there might also be another tendency that the young legal scholar ought to consider. It concerns the fact that lawyer is not just a lawyer anymore and that legal scholar, similarly, needs to redefine her perspective. We don't just have the traditional scholastic categories to master anymore; rather, we now have companies to lead, faces to sell, and boundaries to overcome. Merging disciplines is now "in", as the old parochial fields of knowledge slowly fade away. Or such is my impression, at least. And so, Join the hype train or be left in shambles! has the paradigm of interdisciplinarity² asserted itself as the name of the game (*cf.* German Scientific Council, 2002).³ There comes the curious lawyer's conviction. She is all the more confused as to what her role is precisely in such a wicked world.

Now, this paper comes as a brief exploration into legal scholarship's place within the contemporary academic legal discourse. Its task is simple and twofold. First, it aims to broadly and briefly discuss the relation between various disciplines taking law, however defined, as their object of inquiry. Not to appear completely dire to myself, I will take here the not so brilliant metaphor of joining a not-so-familiar dancing session. The paper might then ask itself how open to committing to new partners will one be. This new dancefloor, it argues, might require of lawyers, legal scholars, and other agents attending the knowledge production event to learn to engage with what is new rather than avoid the not-so-familiar. Out of the comfort

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- 1 In this paper, I will generally refer to legal scholarship as a plethora of approaches in the field of law, without aiming at any specific type of legal inquiry.
 - 2 I am generally referring to the vast theoretical landscape that is interested in, and based on, the combination of modes of inquiry to gain insights other than legal. More than its precise quality, however, I am interested in how its "paradigmatic frame" challenges the scientific attitude of the modern scholar.
 - 3 The programmatic resolution of the German Scientific Council (2020) (accessible upon: <https://www.wissenschaftsrat.de/download/2020/8694-20.html>) is just one among many that advocate for an extensive interdisciplinary approach both in legal research and teaching.

zone, then. Inevitably, despite the comfort of the existing dance moves, new ones would have to be considered.

Second, the paper proposes a simple response to the confused scholar's dilemma. Let's assume that this young and ambitious individual now joins the session. She is excited, dressed up, you name it, and she finds herself a partner. While dancing, however, she might become quite fond of the new partner's elegance, or even of the fancy jumps and spins. Too fond, perhaps. The silly issue which emerges is that this might lead to an overwhelming reaction. The scholar might be led to forget her own initial moves, confused as to how to proceed. The paper briefly argues that this existential dilemma might be resolved by observing a modest principle, namely to keep things professional where necessary and leave the extravagance to the after hours.

And so, the paper will explore two theses. First, at the core of legal thinking, or dancing, lies a distinct cognitive enterprise that every lawyer should master. Through this process, the lawyer develops her knowledge of law. I will call this cognitive pattern the "phantasm of legal construction", or legal phantasm for short (Obreza 2024, 45–48). Beyond the core of legal construction, second, there lies a rich array of approaches available to both lawyers and other scholars in examining legal phenomena. These approaches generally produce knowledge *about* law, guided by what I will simply call the spirit of interdisciplinarity (cf. Balkin 1996, 955–960).

Fundamentally, the paper examines the nature of legal knowledge itself. Rather than attempting a comprehensive and rigorous approach, however, it wishes to establish one or two distinctions necessary for navigation in contemporary academia. In this sense, it is especially the young legal scholar which it takes as its "audience". So, while legal scholarship undergoes transformation, which I believe is taking place, this evolution need not, indeed, should not proceed without conscious reflection. "Legal scholarship is dead, long live legal scholarship."⁴

2. ESTABLISHING PROFESSIONAL BOUNDARIES

To explore the psychological features of a legal scholar, an elaboration of a *differentia specifica* is necessary (cf. Jovanović 2024, nr. 4–12). What exactly separates her from an ordinary civilian? Many things, probably. Or none at all, depending on one's stance. For me, however, it primarily has to do with how she thinks. It has to do with the fact that there are patterns of thought that the lawyer is bound to pick up while being intellectually, or "ideologically", disciplined (cf. Bourdieu 1986, 10–19). This is one of the virtues, but also an issue, that the paper will briefly address, claiming that it has to do with accepting the law's call to normativity. This is

4 To paraphrase the "The king is dead, long live the king" parlance.

what might make lawyers different, namely the artificial images they possess and the language games they play.

Indeed, lawyers seem to be able to provide answers to the deepest and the pettiest of questions of our social existence. But responding to the law's call can at the same time pose an issue. The "legal mind" or "legal way of thinking" (*cf.* Schauer 2009, 1–13), while practical and necessary, namely carries significant consequences both for its individual agent as for the social sphere itself, in which this agent participates (*cf.* Bourdieu 1986, 4–7). The phenomenon thus manages to create both a certain type of people and a certain type of discourse, both leading to the same outcome. This section will briefly explore this epistemic cramp. It will argue that lawyers, as crafts(wo)men, do indeed operate in a different, or distinct, manner, or at least they think they do, and that this is predominantly the result of one (silly) phenomenon. I will call it the phantasm of the legal construction.

2.1. The Epiphany of the Phantasmal

I believe there is something intangible about the lawyer's gradual acquisition of knowledge. And that there is something indiscernible about the whole process of becoming a lawyer, even. For, despite the myriad cases to analyse, rules to memorise, and textbook pages to study, despite of the almost incomprehensible amount of discrete legal material to delve into, there will always be, or so I have gathered, a certain tacit point of culmination (*cf.* Polanyi 1966, 5–13). And this tacit point outlines the whole before its parts.

What I mean by this is that sooner or later in a soon-to-be-lawyer's career, the creative induction will have taken place and a sufficient cognitive "order" will have been established. So, what lies between a lawyer's and a non-lawyer's conception of the world is not only a vast amount of information *per se*, or the confidence to proceed to endlessly argue, but most crucially a particular cognitive scheme. It is this scheme that allows her to process, store, and further develop the sometimes-unbearable amounts of information in an effective but also efficient way.

I will first term this scheme the "phantasm". Not to suggest that lawyers are fantastical beings, however, but to establish that legal categories are in themselves nonsensical. We do not see, hear, touch, feel, or taste the law. We can certainly notice how it might manifest itself, what legal institutions there lie, how a policeman's club might assert its legal power over us, and so forth. But in itself, it is not a phenomenon which we have direct access and control over. For we only try to curb it by thinking.

The phantasm thus refers to something transcendental, whose constituency is generally influenced by the given variables of time and space (Kant 1787, par. 3–4).

As these variables change, so does our phantasmal perception of anything lawful. However, and for the sake of simplicity, at its (contemporary) heart there might lie a phenomenon largely “universalizable”, that is a certain methodological core, or a particular cognitive attitude acquired for its intended purpose. So, I take that through learning patterns and practices that revolve around the activity we deem “legal” (Obreza 2024, 48–49), lawyers are trained to apply artificial categories to corresponding empirical events. Ultimately, the phantasm emerges, both as an individual and a collective phenomenon.

These legal categories, secondly, refer to what I will call the “legal construction”. By “construction”, first, I aim at a certain arrangement of knowledge, consisting of both a static and a dynamic component. The static one refers to a fixed and existing creation, equipped with fixed rules, principles, and other *legally* relevant criteria. Since they are static, all of them are already standing and in place, i.e. they can be legitimately and lawfully referred to, say before a judge. The dynamic component of the construction, on the other hand, refers to the act or process of creation itself (Kelsen [1960] 2020, 364–367). Since lawyers themselves creatively contribute to the existing legal systems, it is important to emphasise the sole epistemically bound potency of such doing (*cf.* Novak 2024, 39–41). This construction, then, has a twofold character. It is at the same time a building which lawyers imagine and their own constructive venture in questioning and refining it.

Moreover, the construction does not just stand as randomly accumulated knowledge, but it has “strictly” legal character. I take that it consists of “legal sentences”, i.e. normative units both past or future, which are to be organised as rules, principles, and other legally relevant criteria (*cf.* Kelsen [1960] 2020, 73–90). It follows that a sufficient, that is legally enforceable, organisation of these legal sentences can simply be called knowledge of law.

Together, the two elements form the “phantasm of legal construction”, or legal phantasm for short, which in this paper shall act as the main operational criterion for distinguishing a lawyer from a non-lawyer and a legal scholar from a non-legal scholar. Legal knowledge, then, is “best” acquired precisely upon the verification criterion of an established legal phantasm. And in what follows, I will very briefly consider three of its core manifestations. Legal language as the phantasm’s central operational unit, legal technique as the phantasm’s distinctive reasoning tool, and legal virtue as the phantasm’s identification mechanism.

2.2. Onto the Legal Language Games

Language is paramount to the very idea of law. At least in the traditional sense of “knowing” or arguing about law, I believe it is. To study law is to study a language. And to know law is to know a language. But not in an elitist kind of sense, to which

the purist might appeal. Rather, it is the epistemological sentiment which I am aiming at: if we are to play the “legal game”, we must have already acquired the grammar that underlies and holds together the superstructure that we refer to as “law”.⁵

It is probably not a complete contingency that the verbal “excellence” stereotypically counts as a feature of a “good” lawyer. Indeed, I believe there is high chance that such an individual, a well-trained jurist, is usually not only good at knowing what she says, but also exceptional at saying what she knows. And I don’t think you can have much of the former without a lot of the latter.

For this paper’s simplicity’s sake, anyway, let me conceive of language, this wonderfully peculiar human practice, as the essential medium of legal knowledge itself. It is a medium, or a “unit”, because it enables us to effectively compose and apply the cognitive pattern common to lawyers, i.e. the legal phantasm. Language thus makes it possible that the phantasm becomes explicit. And so that the judge, for example, can speak in the name of the law when declaring her decision (*cf.* Somek 2021, 63). However, language also construes the phantasm. There is no knowledge of a rule, even less so of the whole legal act, were it not for this thing called language. So, in this sense, it functions as a double agent, in favour of the thesis that in this very form law indeed stands as a unity of both *genetivus objectivus* and *subjectivus* (Somek 2018, 10).

But there is a slight twist. If I say, for example, that according to the Serbian criminal law it is forbidden to organise a protest in such and such place, what do “protest” and “such and such place” mean? Well, for one, I dare claim that it would be misleading to refer to the meaning of these objects as they appear in the general or common usage of the term. Their “legal” notion might overlap with the “common usage” one. And to an extent, they probably do. In that sense, the meaning of “protest” and “such and such place” might certainly be identifiable to an ordinary citizen. But the two notions might as well not overlap that much, or not at all (*cf.* Hart 1958, 607–616).

See, we all have an idea of what a “protest” and “such and such place” might be. Or at least we can all imagine what a certain Serbian prohibition *might* mean in that regard. But that is all nonsense until we have *made sure*. How? Precisely by accessing the specific epistemic domain which would allow for that, i.e. the “legal” or the normative one. So, before we find out about how Serbian laws usually define protests and whether there are differences between them, and then how judges navigate their semantics and inspectors and police(wo)men execute it, we better stay off the court.

By virtue of language, then, law manages to establish its own code of expressive conduct. And in this sense, it is not us, but it is essentially the law itself which states

5 It is not utterly incidental, for example, that Guastini (2014) decides to speak of *sintassi del diritto*.

what a “protest” really is (Somek 2021, par. 81). The multiplicity of such events, moreover, results in law establishing its own language games (*cf.* Wittgenstein 1953, 5–8; Esser 1972, 117–139). The substance of this “code” is modified (*cf.* Luhmann 1974, 49–52). It also varies from subject to subject and is usually only available through authorised access. As such, however, it is bound to the acquisition of the legal phantasm. By ways of language, law “makes up” a lot of things, rendering it possible that we deem it as “legal” in the first place. Ultimately, there emerges the epistemic segregation.

2.3. The In-between Moves

Besides the legal phantasm’s operational unit, there also lies, I believe, something I might call its operational reasoning tool, or “legal technique”. What I mean by this is that as one uses the “legal” language to participate in the “legal” discourse, she carries with that practice an identifiable set of reasoning patterns which help with the task (*cf.* Komel 2023, 175–186). This primarily concerns the so-called dynamic or creative element of the legal construction. Furthermore, these patterns manifest themselves in the more or less established and accepted manners of legal argumentation, which help us organise, interpret, and further develop legal knowledge.⁶

So, if legal language is the medium of legal communication, then I take this legal technique to be somewhat of a binding mechanism. In the legal studies curricula, this is usually referred to as “legal methodology” or “legal argumentation”.⁷ Now, of course, this is but a simplification. We, or I, first and foremost only pretend to be able to grasp these phenomena by suggesting intuitive concepts to describe them with. And then we try to make sense of the (odd, but also precious) indoctrination which we are exposed to as we enter the discourse. But still, I believe this simplification to be didactic enough.

It namely concerns nothing else but the muscle-cognitive memory of a legal mental action which the lawyer performs daily. It concerns the bare know-how of “doing law”, i.e. writing a subpoena, representing a client, deciding a case, and so forth. So, in this limited kind of sense, the psychological descriptivism can,⁸ I believe, hold some value in that it provides a brief self-reflection on our constructing of the very object lawyers deal with. For this reason, allow me three more theses on how this cognitive imagery might proceed to manifest itself.

6 A “prime” example of such a cannon can be found in what the German legal theory describes as *Methodenlehre*, i.e. a systematised methodological account of dealing with law.

7 In the context of the university curricula, both topics are usually explicitly addressed in the early semesters of the legal studies, particularly in subjects called “Introduction to Law”, “Introduction to Legal Methodology”, “Introduction to Jurisprudence”, and so forth.

8 I do not contend to psychological theories such as the one contested by Petrażycki in his *Law and Morality* (1955), however, which tend to approach law as purely psychological phenomenon.

First there is something one might call the “formula of identification”. Lawyers are taught to identify the applicable normative legal order. They simply have to know it when they see it. And they also have to know how to see it. This formula, then, or the plethora of cognitive manners it consists of, offers them the entry point to “legal” work.⁹

Then there might be the “interpretive formula”. Lawyers are taught that rules are to be interpreted and that, as interpretive concepts (*cf.* Dworkin 1986, 45–46), they can have more than one meaning. This lies at the heart of legal agency and of the commitment to a creative task. As an essential part of legal technique, furthermore, this task might even revolve around a particular interpretive cannon.¹⁰

Lastly, it is usually perceived that there is also the “application formula”. Here it is crucial that lawyers are taught how to “best” apply rules to decide or win cases. There is an infinite array of possibilities of how to conceptualise about this, of course, but the traditional discussion revolves around the so-called legal syllogism, i.e. a logical tool to confront the major premise, or a “rule”, with the minor premise, or “a real-life case” (Engisch 2010, 91, 108, 328). I take syllogism as theoretically extremely uninteresting and even more so logically flawed, but I can understand how its simplistic deductive framework can carry a reasonable practical weight. In the past few decades, there have been some attempts at reconciling it with the help of hermeneutic approaches to legal argumentation (*cf.* Engisch 2010, 115–130). However, as one can imagine, the intellectual magnitude of a narrow legal-theoretical venture explaining the complexity of one’s cognitive processes is a rather poor one.

2.4. On and Off the Dance Floor

Lawyers talk, listen, read, and write in their “own” way. At least they pretend to do so, which is already enough. They conduct this “way” through means of rather specific manners, be it logical or other. Legal work, furthermore, undoubtedly requires skills. Some of them are acquired through study, some through swimming among the pile of intern duties. Some are better at these skills, and some worse. Some lawyers are more creative than others, some are more persistent, some write better, and some are simply better friends. Having considered both the substantive and technical aspects of the lawyer’s creative function, however, the paper now claims that beyond this specific skillset there also exist certain “social parameters” which mould a successful legal mind (*cf.* Schauer 2009, 6–7).

9 For example, already from early on, the student is expected to know how to find, combine, and navigate through existing legal acts. And as an experienced lawyer, she will have only perfected this manoeuvre of recognition.

10 See note 6.

Namely, I believe that a “successful” legal indoctrination carries one additional and crucial element to the story. The cherry on the top refers to the fact that these skills include or presuppose a certain alignment to the value system that the lawyer operates within. Indeed, I believe legal work concerns a certain degree of internalisation enabling the fresh(wo)man to identify herself as part of the whole. This, last, piece of the scheme I am discussing is thus of a different character than the previous two. It is different in that it pervades each legal regime’s specific properties and refuses an explicit elaboration (*cf.* Polanyi 1966, 56–70). It is prescriptive in nature; and beyond legal language and legal technique it posits that an effective legal phantasm requires more than mere skill. It also requires a certain work ethic, based on which one accepts the legal game as a legitimate mode of human action (*cf.* Hart 2012, 89–91).¹¹

Now, as shallow as this might sound, I take that even an excellent knowledge of legal language and its logical peculiarities therefore cannot fully compensate for the tacit structure inherent in each of law’s “historical” manifestations. What this concerns is precisely the domain of the ineffable, the intangible. To be a successful at the legal game, it is probably best that the legal player (at least) appears congruent to the purpose of the social setting she moves within. And this, I believe, is not so much in a moral than in a simple “Just do your job!” kind of vain. So, to conclude with this section, then, I take that there indeed exists a set of professional boundaries which the *homo juridicus*¹² better aim to uphold.

3. ENGAGING ADVENTUROUSLY

That lawyers do think in a similar way is a convenient hypothesis to work with. Perhaps even the most plausible one for the God-fearing theorist. What the legal phantasm achieves, moreover, is an effective and efficient way of thinking in normative terms. Having acquired it, one can actively seek to participate in the legal matters. One can begin to “dance” on legal terms proper. Litigation, prosecution, court decisions, corporate restructuring, submission of articles, this and that, you name it. From then on, a belief in law is inevitable. The perspective is changed and being ordinary is no longer an option.

11 It is unavoidable to recall here what Hart calls the “internal point of view”, for example. I do not consider it much of a precise analytic tool, but it cannot be denied that it has sparked and continues to spark the discussion on both the epistemic preconditions of a legal inquiry as well as of the value enterprise it *might* refer to.

12 For a less naïve investigation on the type of individual who both deals with and is subjected to law than the one provided here, however, consider for example Supiot’s *Homo Juridicus: On the Anthropological Function of the Law*.

A devastating problem emerges, however. Unfortunately, common to the guild system is a certain “epistemic cramp”. Thinking like a lawyer obscures any perspective other than the one productive for a particularly legal matter (*cf.* Kelsen 1911, 4–10). The lawyer may indeed know all the moves to her own dance, but she will usually pay little attention to the other ones. In fact, she may not even be aware that there exist a funky bunch of other dances, equally interesting or equally elegant. So, say, for the sake of the story, she gets curious. Dressed up and all she joins the dancing session and begins to ask around. What kind of sorcery are all these other people practicing? This leads her to a delicate predicament. While on the intellectual dance floor, the lawyer may or may not dare to engage in a foreign exchange of dance moves. But should she?

3.1. A Careful Consideration

Now, lawyers who adopt intellectual dances other than their own are rare. Juggling several intellectual masks at once, even among academics, is a delicate and formidable trait. The “religious” nature of the discipline only makes it more difficult, probably. Which is not necessarily a bad thing. But even if that were to occur, namely if one would feel tempted to follow the non-traditional footsteps, the worried voices might be soon heard whispering. Yet again they might smirk at the fact that the “good old” constructions are being torn down. Sooner or later, anyway, the curious legal scholar might find herself in a major predicament. Through obstacles and objections, she would then have to make a choice. Allow me to navigate through this brief three-featured scenario.

3.2. Science, too, is a Part of the Political Arena

On a preliminary note, there is the ideological element to this question of dancing. Going beyond the normative discourse is not exactly what legal analysis is usually interested in. Usually, either one deals with law and law only, committing herself to “hard” science, or one is left to the “soft” approaches. Staying truthful to the pre-established intellectual lanes might indeed be seen as advantageous. Since lawyers don’t usually engage in a lot of creative experimentation, neglecting these mores might be seen as a cause of doom.

In this sense, the differences between legal disciplines, faculty departments, and personality types can furthermore create an additional amount of tension for a young legal scholar. For law, as a phenomenon, is not only extremely closely tied to the cruel reality of our social organisation, trying to influence it in one way or another. It is also necessarily politically charged, rendering disagreements on tentative topics an inevitable occurrence.

As a result of these and other disagreements, then, personal and disciplinary battles are fought, grudges are held, and students are left confused. And in our context, moreover, an important role is also played by the contemporary scientific research paradigm. When it comes to choosing this or that dance, namely, research funding is not ambivalent about the issue. It might even privilege being the daring darling dancing machine. So, when it comes to engaging with strangers, the tendency is very much in its favour. The academic market relations are indeed becoming increasingly poignant for disciplinary promiscuity, which is certainly interesting. And while this, of course, is not a bad thing, it might nevertheless be something that the young legal scholar might have to consider. *C'est comme ça*.¹³

3.3. Against Method

We humans perceive things differently. And we establish disciplines to commit to such perceiving. Different disciplines, however, operate with different cognitive apparatuses (cf. Massimi 2022, 3–20; cf. Žižek 2006, 22–23).¹⁴ The curious young scholar notices this, of course. To her it becomes rather second nature that when it comes to dealing with “law”, there seem to be varying approaches used and answers given to common issues at hand. The plurality of academics at the law faculty and their corresponding personalities already reflect this, for example. One legal problem is posed, and three legal solutions are provided. One legal concept is mentioned, four theoretical interpretations appear, and so forth. So, how does she cope with this? Because surely, this must be exhausting. Engaging in intellectual dances, namely, seems to come with several reservations, and her search for her own position is under an ever-persistent existential threat. Should she sympathise with all of them? I believe there is a methodological rethinking to be had.

3.3.1. *The Know-How*

First, at the heart of this issue lies the need for an epistemologically conscious inquiry (cf. Auer 2018, 40–55). With other words, it is not unimportant under what circumstances and for what reasons one produces knowledge. The classical liberal parole might argue that knowledge, considered a sole and sufficient end in itself, already serves the highest of purposes (Polanyi 1966, 66–69). This position I certainly consider as questionable and somewhat naïve. It deflects away from the

13 One might roughly translate this to “that is just the way it is”.

14 As Žižek notes, sourcing from the Kantian epistemology, the differentiated nature of our perceiving occurs to the phenomenon of “parallax”. Similar to how changing the parameters of the physical observation of an object renders the object itself appear differently, our cognitive apparatus too tends to calibrate its relative cognitive position.

contextual, be it political or broadly historical, framework present in each setting of inquiry. But for the time being, let it serve. Let us take, then, for simplicity's sake, that while contributing to a multifaceted understanding of legal phenomena, scholarly endeavour seeks to fulfil several of such "ends in themselves" (cf. Kant 1787, 378–385).¹⁵

The notion of the knowledge of law mentioned earlier is, it seems, one such end. Using legal language and legal technique, it operates on legal terms, it is aimed at a specific audience and used for a specific kind of purpose. Predominantly a practical one, that is. One can simply consider this purpose as raising the bar of the knowledge claim to that of becoming "legally enforceable". Additionally, it is also subject to differentiation down the tree of legal disciplines (Esser 1972, 125–130; Novak 2022, 284).¹⁶ Yet there quickly emerges a certain schism. It becomes apparent that such normative ends alone cannot suffice, for different question-asking triggers different answer-seeking. It becomes apparent, then, that it is the very choice of method that predetermines what each domain is bound to investigate (Auer 2024, 4–7; Auer 2018, 13–15, 42–43).¹⁷

3.3.2. A Foremost Spiritual Endeavour

The possibility of choosing the specific "ends" of each knowledge domain implies that the young legal scholar can choose her own epistemic perspective. This goes both for the normative enterprise as well as the non-normative enterprise which she might consider. For example, will she be pursuing to define legal implications of a newly adopted doctrine by the court? If so, she will be speaking of law, hence the legal phantasm applies. Will she instead want to expose the political bias behind a certain interpretive standard, say one concerning the bundle of property rights? Or consider the empirical analysis of how these property rights navigate the urban development? Or analyse the economic conditions under which a young person is to be entitled to them? See, in that case, the discourse would shift. And the lawyer herself, as apparent it is to be claiming this, would no longer be speaking in legal terms *stricto sensu*.¹⁸

15 Here, Kant speaks about the antinomic structure of human intellectual endeavour in general. I believe the arguments of his critical venture apply to the topic at hand, for what I am considering here is closer to an idealist framework of cognition than it is to the material one.

16 This very differentiation furthermore leads to different legal disciplines – say criminal, civil, or constitutional law – inhabiting varying frameworks, or "interpretive purposes". Novak, for example, proposes to grasp the idea under a concept he terms *interpretive pluralism*.

17 What Auer proposes is that if we take this thesis seriously, then we must accept for legal theory to shift its focus towards a multidisciplinary endeavour, precisely to overcome epistemic limitations.

18 "*Stricto sensu*" refers can be translated to "in the narrow sense". Its explaining might make the use of Latin proverbials itself rather obsolete, though.

Allow me to refer to the latter under the umbrella term “knowledge about law”. What it covers, in direct opposition to knowledge *of* law, are the intellectual attempts dealing with matters beyond the normative discourse (*cf.* Kelsen 1914, 840–844).¹⁹ Be it of philosophical, sociological, anthropological, or other non-legal nature, they transpose knowledge of law. Knowledge about law deals with the other side(s) of the legal game, namely the one(s) that the usual legal analysis can never really concern itself with (*cf.* Kelsen 1911, 25–30; Luhmann 2004, 76–140; Pitamic 1917, 345–347).²⁰ Crucially, this comes with several methodological implications. When speaking about law rather than of law, then, an issue will be approached by and seen from a different perspective than that of a traditional lawyer. A “new kind” of language would be used, and a distinct set of logical propositions would be pursued (*cf.* Bromme 2000, 118–119).

The question revolves around a common epistemological problem that legal scholars face in navigating creative research design, i.e. when implementing a partial or full merge of scholarly disciplines. Commonly, one refers to this as doing “interdisciplinary” research. But due to their religious inflexibility, or one might simply say due to their *déformation professionnelle*,²¹ lawyers struggle with it (*cf.* Thompson Klein 2000, 3–5).²²

There are many ways to approach this issue. One of them, for example, concerns an *ex-ante* proposal and reliance on typologies of such disciplinary confluence. It wagers precisely on that if we calibrate our thinking patterns beforehand, we can potentially make it easier to conduct a successful self-reflective exercise. I will simply call this the “taxonomy thesis”, one which was already fruitfully addressed in the works of van Klink and Taekema (2011), Siems (2009), or Boulanger (2019; 2020), to name but a few. Its premise is twofold. First, we ought to break away from the legal professions’ tight discursive network. And second, to make our life easier, we ought to do so by establishing formal prescriptions.

Further, I would suggest that this taxonomy thesis is primarily concerned with the “formal synthesis of knowledge”. Namely, what it amounts to is neither what one wants to achieve nor what one should aim to achieve, but rather how should one commit to the research question at hand. The taxonomy thesis attempts to formalise the inquiry itself, and it does so precisely by proposing methodological taxonomies. Therein, it wagers, the young legal scholar might see some hope. So, for example,

19 I consider Kelsen’s position a paradigmatic example of holding such attempts as utmost irrelevant.

20 This is what the logical consequence of “the shift” from a lawyers’ towards the non-lawyer’s perspective would amount to, at least.

21 One might translate “*déformation professionnelle*” to “professional deformation”.

22 A natural scientist, on the other hand, might work with exactly the opposite belief.

Mathias Siems' (2009, 8–12) distinction between “Advanced Research I and II” or Sanne Taekema and Bart van Klink's (2011, 12–13) “Integrated Type” could offer a constructive point of departure in that they both identify a precise question which their proposed interdisciplinary ventures could provide answers to (*cf.* Burazin & Relac 2022, 1359, 1391–1392).²³ The young legal scholar is hence immediately made aware that “Advanced Research I and II” implies doing some empirical research or that the “Integrated Type” considers the doctrinal study of law in a bigger picture, and so forth.

Yet knowledge about law as an enterprise is nevertheless a much wider phenomenon. Even the slightest hint of taxonomic schematism might stifle its very ambition, namely to break free from it in the first place. Thus, for the sake of the story, let us be even more speculative. If knowledge of law is thought to operate with the aid of a legal phantasm, i.e. a normative cognitive attitude towards legal knowledge, is there a similar pendant to be identified for knowledge about law as well? For some ludicrous reason, let's assume so. Let's assume that the venture of scholarly ambition is somehow reducible to intuitive conceptualization. And in simplifying terms of the occasion, let's call this one the “spirit of interdisciplinarity”. One of its labels might be that it is the creative venturer's goofy companion. Another one might be that it is precisely the devoted lawyer's arch enemy. I believe Jack Balkin (1996, 957) addressed the issue at hand brilliantly:

“[I]f disciplinarity is authoritarian, then perhaps interdisciplinarity is rebellious, even romantic. It is a form of intellectual martyrdom, a self-sacrifice against mindless authority; it offers a vision of independence of mind and spirit highly flattering to the average academic's self-conception. Interdisciplinary scholars are romantic rebels: they question authority by transgressing disciplinary boundaries. They are champions in the service of a greater truth that transcends scholastic categories.”

Following Balkin's observation, the spirit of interdisciplinarity is therefore but a special attitude to intellectual play. It is an untiring will to knowledge in a playground of ideas and a sequence of scientific manners aimed at a breakthrough. Or so one might think. Due to its playful nature, it can also only scarcely be captured, in opposition to the legal phantasm, that is. Furthermore, even the term “interdisciplinarity” is itself an intangible and continuous phenomenon. And it can mean multiple things (Siems 2009, 3). From a lawyer reading Franz Kafka, for example, to a physicist doing chemistry. And from creation of new fields of knowledge to the

23 Burazin and Relac's article can serve as an example here. Using Taekema and van Klink's taxonomy as an analytical scheme, the authors fruitfully explore the self-proclaimed interdisciplinarity of some of the Croatian study literature.

obliteration of existing ones (Siems 2009, 3–10). So, dear young legal scholar, which mental mask are you to wear, and which dance to perform?

3.4. Onto Analytical Domains ...

My daring conviction is that there might also be a third option to consider, however. Could the legal scholar not simply tacitly opt for both dance regimes, the traditional and the wicked one? Despite of the shallow nature of my analysis, namely, I deem the either/or scenario to always prove misleading. One should never neglect the vast room for creative adaptation, no matter the consideration in question. So, if epistemic perspectives can indeed be learned, and with the contemporary hyper-productivity paradigm only catalysing the need for flexibility, might this not be the strategy to aim for?

I suppose it could. In her choosing, however, the young scholar might want to remain cautious. Disciplinarians tend to not be fond of simultaneous flirting, or dancing, is what I have gathered. So, in her journey of intellectual martyrdom, should she opt for one, the legal scholar must proceed with caution. Among other things, this path includes navigating between what can and cannot be combined, or between what should and should not remain separated. In that sense, then, the scholar's predicament is most crucially also an analytical one.

3.4.1. ... *Beyond Divine Intervention*

In navigating the scenario, I wish to propose at least a semi-tangible example of how these sets of knowledge might operate. So, as the most “pristine” exercise of the legal-scientific inquiry, its “epitome”, as it is sometimes both cynically and uncynically framed, I might name the legal subdiscipline called legal dogmatics (*cf.* Stark 2020, 21; Dubber 2005, 1051–1052). What characterizes the latter is that it chooses as its very frame of epistemic playground the boundaries of positive law. It identifies, systematizes, and dissects them, legal norms and principles, that is, thus providing a “coherent” framework for their application (Peczenik 2000, 273–274). And in doing so, it functions by operationalising dogmas which it then constructs into larger theoretical bodies (*cf.* Jhering 1899, 245–260). We might regard these dogmas simply as accepted propositions about the nature of legal knowledge in specific contexts.

Further, these bodies of knowledge are then frequently, although not always and everywhere, regarded as sources of rational authority over judicial discourse (*cf.* Stark 2020, 121–126; Sander 1921, 130–150; Rottleuthner 1973, 15–30), whereas this “rational authority” involves both a theoretical and a practical dimension. With other words, scholars aim to collaborate with judges and other legal practitioners in constructing this type of “knowing law” (Potacs 1994, 209–211). So, the field oper-

ates as an argumentative avenue where competing interpretations clash and where one or only few of them must emerge coherent and victorious. What occurs is, or at least so it is presented to the young legal scholar, that the normative discourse is subjected to optimization.

Now, while one might, and one most certainly should, question whether these ideals are fully realised, I cannot commit to such task at the present moment. Instead, what I aim to only briefly touch upon is the very dogmatic version of legal knowledge. To illustrate, consider criminal law theory. When examining an alleged crime, what criteria determine guilt under the law? Across Western legal cultures, two primary models prevail. One, there is the common law *actus reus* – *mens rea* model.²⁴ Two, there is the German dogmatic four-step model (cf. Dubber & Hörnle 2014, 172–180, 188, 223). The latter warrants special attention for two key reasons.

First, it offers a complex scheme of dogma-bound legal criteria, representing a collective interpretive effort directed toward legal analysis proper (cf. Dubber 2005, 1050–1055). Only through careful consideration of each dogmatic element can the final judicial decision be “reasonably” reached. Second, the remarkably executed “will to systematise”²⁵ which the dogmatics resembles has earned it prestige among legal scholars worldwide, particularly among those already influenced by German legal thought. In this sense, it carries weight as theoretical enterprise which precisely champions, not questions the legal phantasm.

My intention here is most certainly not to advocate for any theoretical model. Law, being a cultural and social phenomenon, encompasses far more than pure analytical constructs. However, when considering our central theme, the young legal scholar’s intellectual dance with foreign disciplines, the dogmatic perspective interestingly enough offers valuable insights worth examining.

For one, I believe that what legal dogmatics presents us with is a uniquely structured approach to normative reasoning. As such, it concerns itself exclusively with knowledge of law. It operates within a self-confined yet precisely defined argumentative framework. And in a way, this might just suffice when offering the young scholar an intellectual path to consider. One, she might want to embrace the legal phantasm with its rigorous demands. Legal dogmatics captures precisely this narrow, though practical, approach to knowing law. Or two, she might want to pursue the more expansive path. Utilising the creative spirit, she might want to break beyond the confines of “traditional” thinking. At least that is how I propose to perceive it. Both approaches offer valid intellectual trajectories, yet their distinct

24 “*Actus reus*” refers to the act of the perpetrator, i.e. the guilty act, whereas the “*mens rea*” corresponds to his motivation while committing the act, i.e. the guilty mind.

25 Something Nietzsche wouldn’t be too fond of.

logical architectures vary. Indeed, they resist simultaneous pursuit. But since the scholar will remain flexible, why bother worrying?

3.4.2. *A Long Story Short*

For this reason, a certain measure to uphold is in order. Allow me to provide it in a fashion of a naïve thought experiment. To the young legal scholar, I believe, there is something that could be of help. A delineator of some sort. Let me call it the “justiciability thesis” and let it function as an avenue for choosing points of departure.

So, the justiciability thesis proposes an artificial setting to navigate between choices of inquiry. The first category comprises of propositions legally enforceable before a court. Operating within the legal phantasm, these propositions would be asserting knowledge of law. As such, they would be understood as a coherent organisation of legal sentences, both past or future, that constitute rules, principles, and other criteria for legal action. Legal dogmatics, as is now apparent, exemplifies a specialised case of this category. They are aimed to convince the judge.

Conversely, we find legally non-enforceable propositions. These stand apart from immediate legal practice, seeking instead to understand, explain, or problematise legal inquiry as a discursive field. They do not correspond to what the judge wants to hear. Instead, these propositions naturally align with the allure of the romantic spiritual endeavour. They explore law’s boundaries rather than operating within them, rendering themselves a rather poor “practical” enterprise.

So, this is all very brief and very simple. But what it might achieve, even if for a brief second or two, is that a conscious contemplation of one’s ambition is to be had. In an era where creativity flourishes and traditional disciplinary boundaries face questioning, or at least such is my perception, it is precisely the understanding of different epistemic positions that becomes crucial. While at the intellectual dancing event, who will the young scholar be ready and willing to face? The answer to the whole predicament, long story short, is that the sole act of choice matters more than its precise direction. One should dance, and one should do so on proper terms. But beware of the dancing steps.

4. CONCLUSION

In addressing the complex and precarious landscape of contemporary legal academia, this paper has ventured an experimental exploration of the young legal scholar’s predicament. At its heart lied the challenge of defining one’s intellectual path, that is the choice of which dance to perform on the academic stage. And as

I conclude with the exercise, the remaining strokes shall offer a final reflection on this, probably dubious, metaphorical journey.

Now, whether the experimental writing can offer some aesthetic appeal remains to be seen. I doubt so. But there is merit, I believe, in navigating strategies about the peculiar questions of our scholarly survival. In fact, there is a lot at stake for the young legal scholar. So, while I conclude, there remains hope that these sentences, originally intended for the student conference at the Faculty of Law at the University of Belgrade, can provide a spark or two. Whether a honest personal decision or a severe amount of cringe will be ignited, however, is now too late to redirect. Allow me three final considerations on the young scholar's pending decision about her dancing choreography.

4.1. The Phantasmagorical Situation

Let me begin by revisiting my central premise: lawyers share a distinctive cognitive framework. This framework emerges through rigorous training and manifests as a specialised pattern of legal thinking. At its core lies what has been termed the legal phantasm, that is a particular cognitive attitude essential for meaningful participation in normative legal discourse.

The legal phantasm serves a unique epistemological function. It enables practitioners and scholars to perceive and interpret the abstract dimensions of law within an epistemically neutral setting. Through this lens, lawyers construct and manipulate knowledge that exists beyond immediate sensory experience. They deal with knowledge that cannot be seen, heard, or touched, yet fundamentally shapes "law". This construction operates through specific legal language games, each governed by distinct operational codes that structure legal reasoning and discourse.

4.2. Limits of Cognition

There are several pitfalls to this, however. One of them is that the legal phantasm inevitably produces what I have called the epistemic cramp. It is a condition inherent to legal scholarship, where understanding of social phenomena becomes confined within discipline-authorised boundaries. This limitation, though it is grounded in legitimate mastery of normative knowledge, then goes on to create a particular professional deformation. Among other things, lawyers come to view themselves as indispensable architects of modern society. And as such, they find themselves in a cramped position, oftentimes unable to perceive beyond the epistemic orders wherein the legal world revolves.

Nonetheless, this cognitive constraint, while potentially limiting, remains essential. Without the legal phantasm, the legal analysis proper would fail. The critical

challenge, then, lies in determining how this necessary limitation might be complemented or transcended to achieve the promise of an interdisciplinary insight. While the taxonomy thesis outlined above offers some concrete approaches to this challenge, for example, it provides no complete solution. Young legal scholars, whom the future awaits, have a fundamental choice about their intellectual trajectory to make, not a preset “recipe” to follow.

Surely, one might argue, there must exist a more dynamic approach to legal matters. For this reason, the paper ventured a risky endeavour termed the spirit of interdisciplinarity a rebellious attitude aimed at dismantling parochial enterprises. With the curiosity and the creativity, however, there arrives a new set of obstacles. One might be led astray. Or too astray, perhaps. So, in the endgame, the justiciability thesis was proposed as a somewhat practical heuristic. When uncertain about your intellectual direction, imagine presenting your work before a judge. Would your conclusions hold legitimate weight in that forum? Would you want them to? In an era of an increasingly fractured academic discourse, this conscious methodological choice becomes ever so important, I believe.

4.3. Playful Experiments and Dancing Clowns

Anyway, the intellectual dance floor now invites the young legal scholar. Whether to join this dance, and how to do it, represents more than a mere career choice. It embodies a fundamental intellectual positioning. While the here proposed psychological reconstruction of legal thinking may seem unconventional, and the experimental style displayed may test traditional conventions, these very tensions might very well illuminate the paper’s central thesis. The old forms yield to new possibilities, I hope, yet the essential rigour must remain. If not for dancing clowns.

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