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On Methodological Unity and Diversity of Legal Sciences: A Contribution to Basic Methodological Research

1. Introduction

The subject of this paper is the methodological unity and diversity of legal sciences. The primary motive that prompted the authors to take up the issue referred to in the title of this article was the positive attempts to define the methodological nature of legal sciences and a proposal for the integration model[3] and similar recent attempts to create an integral methodology on the basis of the philosophy of science.[4] The main research goal of the study is constructivist, not critical. This does not mean that the authors disregard the existing critical literature (*via negativa*) that denies the unity of legal sciences in the context of transformations in contemporary research methodology.[5] Instead, the authors argue in favour of the integrative model (unity in multiplicity). In view of the foregoing, the novelty of this study is based on the extension of argumentation. The methodological issues of legal sciences cannot be limited to methods only, but should

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[4] P. Kawalec, *Metodologia integralna* [Eng. *Integral Methodology*], Lublin 2018. See also: J. Woleński, *O wewnętrznej i zewnętrznej integracji nauk* [Eng. *On the Internal and External Integration of Sciences*], "Zagadnienia Naukoznawstwa" 2016/1, pp. 5–14.
[5] J.M. Smits, *The Mind and Method of the Legal Academic*, Cheltenham 2012; J. Dickens, *Methodology in Jurisprudence. A Critical Survey*, in: M. Giudice, W. Waluchow, M. Del Mar (eds.), *The Methodology of Legal Theory*, Vol. 1, London 2010, pp. 361–402. See also: extensively on this topics: M. Del Mar, M. Giudice (eds.), *Legal Theory and the Social Sciences*, Vol. 2, London 2010.

be subject to consideration on at least three levels: 1) the subject matter; 2) method and 3) objectives (purposes) of legal sciences, which define the methodological position (status) of each discipline of knowledge. In the last section, the authors highlight the pluralism of research objectives, which has been a less present issue in the literature as compared to the extensive discussion on methods. Consideration of the three abovementioned determinants of the methodological status of each of the sciences creates opportunities for a more complete insight into the analysed problem. We treat the present study as an introduction to a broader research on the methodological characteristics of contemporary legal sciences.

2. A few remarks on the starting point

First of all, as the starting point, attention should be paid to the need for a more precise methodological characterization of legal sciences and recommendation of some form of systematic methodology programme in legal science. A clear attempt at this type of programme and research can be found in the three volumes of *The Methodology of Legal Theory* (2016), which assembles the findings of many scattered studies on methodological debates and controversies in the theory and philosophy of law in the 20th century.[6] In Poland, the integration model of legal sciences mentioned in the introduction to this article deserves interest. Andrzej Bator clearly emphasizes that this type of analysis has been replaced or absorbed by the contemporary philosophy of law, which took the place of the methodology of legal sciences.[7]

Currently, the problem of unity of scientific cognition and the multiplicity of sciences also occurs in the general methodology of sciences. There are various dynamic relations between sciences, hence a need arises to determine the nature, position and distinctiveness of a given science in relation to other sciences. In addition, there is the need to analyse the language of science and to organize the wealth of the forms of reasoning. Finally, from the historical point of view, there is the need to describe certain patterns in the understanding and practicing of science. It is commonly believed that a breakthrough in the traditional understanding of the methodology of sciences was achieved thanks to Thomas Kuhn's publication *The Structure of Scientific Revolutions*.[8] The starting point of a new, integral approach in the practice of science can now be Timothy Williamson's theory of knowledge, where he surrenders what is internal and external to knowledge.[9]

Likewise, in legal sciences nowadays, their internal and external differentiation and integration are emphasized. At the same time, the competition between legal sciences and other social sciences, e.g. to obtain research funding, the way of understanding academic education, or the accuracy of research, should also be emphasized.

Secondly, as the starting point of the deliberations, it should be emphasized that the methodology of sciences (general or specific) is the so-called complex meta-science, and that it combines various components. Most generally it is assumed that this kind of methodology comprises: 1) semiotics (a general theory considering language as a tool of scientific cognition and communication); 2) theories of argumentation and justification;

[6] M. Giudice, W. Waluchow, M. Del Mar (eds.), *The Methodology*…, Vol. 1; M. Del Mar, M. Giudice (eds.), *Legal Theory*…, Vol. 2; M. Del Mar, W. Twinig, M. Giudice (eds.), *Legal Theory and the Legal Academy*, Vol. 3, London 2010.

[7] A. Bator, *Polityczne interpretacje analitycznej teorii prawa* [Eng. *Political Interpretations of Analytical Legal Theory*], in: T. Bekrycht, B. Wojciechowski, M. Zirk-Sadowski (eds.), *Integracja*…, s. 14.

[8] T. Kuhn, *The Structure of Scientific Revolutions*, Chicago 1962.

[9] T. Williamson, *Knowledge and its limits*, Oxford 2002; P. Kawalec, *Metodologia*…, p. 17.

3) methodology *sensu stricto* (i.e., the theory of scientific methods, describing and valuing methods of different types of sciences); 4) theory of science practiced historically or systematically.[10] In the first case, we mean the historical analysis of different paradigms of science. In the second case, it will be the analysis of the concept of science, the issue of the subject, and the purpose (tasks) and methods of science, the system of sciences, and the functioning of science in society and culture.

Thirdly, by addressing the issue of unity and diversity of legal sciences in this study, we adopt the principle, most frequently used in the literature on the subject, of distinguishing a given field of knowledge or discipline by defining: the area of research (subject) and the tasks and research methods. In other words, we assume that three determinants of science can be pinpointed. These are: 1) the object; 2) purpose; and 3) method. All these three determinants remain in certain correlative relations with one another. The question of method is fundamental, as it is the condition of a scientific character of legal sciences. On the other hand, if we want to determine the nature (identity and unity) of the scientific discipline, it is necessary to consider its subject area of research and the purpose of research.

Fourth, by asking the question about the methodological nature of legal science, three approaches are most often indicated: 1) autonomy; 2) heteronomy; and 3) methodological anarchy.[11] In this paper, we do not assume that the issue of method is fundamental in establishing the identity of legal science. The issue of method is regarded as a condition of scientific viability, yet the methodological nature of scientific disciplines, including legal science, is not reduced to the method alone. If we want to establish the nature of a scientific discipline, it is necessary to consider its specific area and the purpose of research as well. Thus, we accept methodological pluralism in terms of the object, method and purpose of research. In other words, *via positiva* we acknowledge multidimensionality and multi-paradigmatic character of legal sciences, whereas *via negativa* we advocate that there is no sufficient rationale for methodological anarchism and draw attention to the lack of methodological identity of legal sciences. Taking this viewpoint, there are no clear criteria for separating science from non-scientific cognition (Paul Feyerabend: *Anything goes!*).[12]

3. The distinctiveness of the subject matter of research in legal sciences

In the theory and philosophy of law there are no uniform opinions as to the subject matter of legal science. In the 20th century, the discussion around the understanding of law was dominated by the criticism of legal positivism and the emergence of new paradigms of reflection on law.[13] Our goal, however, is not an ontological analysis of law, but a review of the basic methodological theses. The first of these theses is the answer to the question pertaining to the subject of the study. The peculiarity of the research subject of legal sciences

[10] Z. Hajduk, *Ogólna metodologia nauk* [Eng. *General Methodology of Sciences*], Lublin 2005, p. 11.

[11] J. Stelmach, B. Brożek, *Metody Prawnicze* [Eng. *Legal Methods*], Kraków 2006, pp. 11–35.

[12] P. Feyerabend, *Against Method*, London 1978.

[13] More broadly on this topic: D. Patterson, *A Companion to Philosophy of Law and Legal Theory*, Oxford 2005, pp. 223–396. See also on this topic: A. Grabowski, *W stronę postpozytywizmu prawniczego. Szkic z metodologii prawoznawstwa* [Eng. *An Outline of the Methodology of Legal Studies*], "Acta Universitatis Vratislaviensis" 2011/3337, pp. 147–161; A. Bator, *Post-Analitical Theory and Philosophy of Law. New Problems, New Research Perspectives?*, in: A. Bator, Z. Pulka (eds.), *Pos-Analitical Approach to Philosophy and Theory of Law*, Berlin 2019, pp. 11–38; M. Zirk-Sadowski, *Postmodernistyczna jurysprudencja?* [Eng. *Postmodernism Jurisprudence?*], in: M. Błachut (ed.), *Z zagadnień teorii i filozofii prawa. Ponowoczesność* [Eng. *From Issues in the Theory and Philosophy of Law. Postmodernity*], Wrocław 2007, pp. 11–24.

can be understood in a broad or narrow sense. In the first case (*sensu largo*), the peculiarity of legal sciences should be associated with the distinctiveness of the subject matter of humanities in relation to natural sciences, and then also with the internal specialization and differentiation of humanities. This is an essential premise for the methodological status of legal science.[14] On the other hand, legal sciences *sensu stricto* are dogmatic-legal sciences, objectively concentrated on determining the content of the law in force. Nevertheless, following the position of methodological pluralism adopted by us, dogmatic-legal sciences in the process of legal interpretation may go beyond linguistic analysis and may, for example, use the achievements of hermeneutics, or argumentation theory.

In the case of humanities, what distinguishes the subject of research of legal sciences is the law understood as "a product and a factor of culture" (Andrzej Korybski, Bartosz Wojciechowski).[15] In addition, we also adopt an assumption in the light of which, based on the subject of research, the broader humanities are differentiated into three main fields. These are:

1) sciences about man and society (e.g. psychology, ethnology, cultural anthropology);
2) sciences of human cultural products (e.g. arts sciences, moral sciences, legal sciences);
3) sciences about the history of human beings living in a society. The different sciences are not separated from each other in a strong way.[16]

It may be concluded from the foregoing that legal sciences hold a certain position within broader humanities, due to the study of law as a certain cultural product. However, whether the object of research understood in this way, i.e., law as a product of culture, will be narrowed down only to the state law, or will be complemented and extended by other dimensions, e.g. relations between law and morality, norms and socially important values, methodological proposals may be different in this respect.[17]

In line with the findings accepted above, social sciences can be accommodated within the broader humanities. Law is a product of a social man, it appears when common ways of behaving are determined within a certain social group ("we should" as opposed to "I should") and it is connected with "social intentionality" (John R. Searle).[18] Law

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[14] M. Smolak, *Naturalizm metodologiczny w naukach prawnych. Uwagi na marginesie książki Wojciecha Patryasa. Próba wyjaśnienia domniemań prawnych* [Eng. *Methodological Naturalism in Legal Sciences. Notes to the Book by Wojciech Patryas. An Attempt to Explain Legal Presumptions*], "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2012/4, p. 266; F. Guala, *Philosophy of the Social Sciences: Naturalism and Anti-Naturalism in the Philosophy of the Social Sciences*, in: P. Humphreys (ed.), *The Oxford Handbook of Philosophy of Science*, New York 2016, pp. 43–64.

[15] A. Korybski, *Prawo – język – kultura* [Eng. *Law – Language – Culture*], in: A. Korybski, L. Leszczyński (eds.), *Wstęp do prawoznawstwa* [Eng. *Introduction to Jurisprudence*], Lublin 2021, pp. 53–54; B. Wojciechowski, *Rola antropologii prawniczej w badaniach prawnoporównawczych* [Eng. *The Role of Legal Anthropology in Comparative Legal Research*], in: Z. Tobor, I. Bogucka, *Prawoznawstwo a praktyka stosowania prawa* [Eng. *Jurisprudence and the Practice of Law*], Katowice 2002, pp. 66–75; E.J. Lampe, *Rechtsantropologie. Entwicklung und Probleme* [Eng. *Legal Anthropology: Development and Problems*], "Archiv für Rechts- und Sozialphilosophie" 1999/85, pp. 1–12; E.-J. Lampe, *Grenzen des Rechtspositivismus. Eine rechtsanthropologische Untersuchung* [Eng. *Limits of Legal Positivism: A Legal Anthropological Study*], Berlin 1988; T. Frankl, T. Braun, *Law and Culture*, "Boston University Law Review" 2021/101, pp. 157–176.

[16] S. Kamiński, *Nauka i metoda. Pojęcie nauki i klasyfikacja nauk* [Eng. *Science and Method. The Concept of Science and the Classification of Sciences*], Lublin 1992, p. 294.

[17] Z. Hajduk, *Ogólna metodologia…*, pp. 11, 184–185; cf. more broadly: A. Bator, *Wspólnota kulturowa jako element integracji prawa* [Eng. *Cultural Community as an Element of Legal Integration*], in: A. Sulikowski (ed.), *Z zagadnień teorii i filozofii prawa. W poszukiwaniu podstaw prawa* [Eng. *Issues in the Theory and Philosophy of Law. In Search of the Foundations of Law*], Wrocław 2006, pp. 11–30.

[18] J.R. Searle, *The Construction of Social Reality*, New York 1995, pp. 23–26.

does not define the relation of man to himself, but it always expresses certain references to the community. Determining the peculiarity of the subject matter of legal sciences, law should be placed in the cultural dimension (Latin *colere* – to nurture, cultivate, shape, care). Furthermore, creations such as music, literature, theatre, painting, culture also shape certain ideas, systems of values, patterns of behaviour (including legal norms), which are articulated and defended by society. What is more, not only can the system of law be understood as a product and factor of culture, but according to some (Piotr Sztompka, Anthony Giddens) the whole culture can be understood as an axio-normative system.[19]

It should be clearly emphasized, however, that the division due to a different object of research presented dichotomously as nature *versus* culture is a certain simplification. Being a certain product of human actions, culture is not the opposite of nature, but it is its development and improvement. Moreover, taking into account various conceptions of the humanities, the dividing line does not always have to be so clear, as can be seen quite clearly in some recent reconciliation of the positions of naturalism and anti-naturalism. The dichotomy of naturalism and anti-naturalism does not have to be as strong as sometimes assumed. Rather, it is now emphasized that the naturalistic pattern of research on the ground of legal science enriches the knowledge of law as a complex socio-cultural phenomenon.

The next two aspects of socio-cultural objects that are important to us are values and the moment of individuality of such objects of study. Considered important, valuable and desirable for both individuals and the society, specific value systems are the fundamental components of any human culture. Law, as a product and factor of culture, is always a carrier of certain socially important values. Thus, law can be studied and evaluated from the point of view of protection and realization of a certain system of values. The way of existence of objects, peculiar for humanities, connected with the abovementioned, is also their individuality, i.e., a certain individual and concrete character, uniqueness and temporality. Against this basic background, there is a clear separateness of humanities and at the same time this basic methodological peculiarity of legal sciences in the dimension that determines the object of this study.

To summarise the analysis of the unity and diversity of legal sciences, in view of the subject matter of research, it should be clearly emphasized that although the *generaliter* of the peculiarities of legal sciences is determined by: 1) the socio-cultural character of the fact of the existence of law; 2) the axiological factor and 3) individuality, the applicable legal norms will remain the central object of consideration for the legal sciences. Therefore, on the grounds of various legal sciences, a special position and role should always be assigned to the dogmatic-legal approach. This does not mean, however, and should be strongly emphasized as well, that the study of legal norms can be explained exhaustively by establishing a set of valid norms only. It is only the assertions of norms that give any legal science the form of scientific knowledge. Therefore, rooting the dogmatic-legal sciences in the humanistic model of science makes it possible, without limiting empirical research, to meet the condition of an adequate and exhaustive study of law. In other words, this is the research which we can call "total evidence".[20]

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[19] P. Sztompka, *Socjologia. Wykłady o społeczeństwie* [Eng. *Sociology. Lectures on Society*], Kraków 2021, pp. 499–514; A. Giddens, *Socjologia* [Eng. *Sociology*], Warszawa 2008, pp. 45–48.

[20] P. Kawalec, *Epistemiczne podstawy badań mieszanych* [Eng. *Epistemic Foundations of Mixed Research*], "Zagadnienia Naukoznawstwa" 2019/2, p. 36.

4. On the distinctiveness of the research methods in the legal sciences

In the 20th and 21st centuries, the problem of a single, separate legal method and the multiplicity of methods was presented in the theory and philosophy of law in various ways. As we know, in the 20th century, the dispute over the method was mainly focused on the criticism of legal positivism (John Austin, Hans Kelsen, Herbert L.A. Hart)[21] and search for new ways of reflection on law. Let us recall that Kelsen named his concept *Reine Rechtslehre* to emphasize the autonomy (specificity) of the legal method. According to Hart, legal positivism should be treated in the fundamental sense as a methodological position. Namely, it is assumed that only the positive law is the subject of research and I treat the subject of research understood in this way as distinct from morality; and the purpose of the study is descriptive.[22] After successive waves of criticism of legal positivism and methodological monism, mainly under the influence of Gustav Radbruch, Lon L. Fuller and Ronald Dworkin, the position of methodological pluralism has gradually emerged.[23]

At times, the question of the distinctiveness of method has been posed in a different way, i.e., whether there is an autonomy of methods that would indicate the independence of legal sciences in relation to other disciplines, or whether a heteronomy of methods should be assumed.[24] Then again, in the basic methodological issues of legal science, the opposition of analytical and empirical approaches is every now and then emphasized.[25] It is sometimes stressed that the debate around method concerns the question whether there is any scientific method at all in legal science, or whether methods are applied randomly and all possible positions cited above should be rejected, assuming methodological anarchism (Fayerabend) and the emergence of new paradigms in research thinking (Kuhn).[26]

When considering the problem of method in legal sciences, it is worth remembering about the ambiguity of the use of the following terms in literature on the subject: "method", "scientific method", "research method", "method of legal science", or "paradigmatic method". Let's establish then, with an aim to systematise the accepted meanings, that first of all, in the most general sense, the term "method" (Greek *metha hodos* – the way of proceeding) defines the way (course) of action, i.e., a certain conscious, systematically applied and guided by the rules, arrangement of activities, which allows achieving the set aim more effectively and efficiently.[27]

Adopting the above-mentioned general understanding of the method, we can say, in turn, that the "scientific method" in a certain way embraces the entirety of research activities (a specific course, arrangement) from setting the research problem, through the search for a solution, to providing reasons for the results, after the activities of

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[21] B.H. Bix, *Legal positivism*, in: M.P. Golding, W.A. Edmundson (eds.), *Philosophy of Law and Legal Theory*, Oxford 2008, pp. 29–49.

[22] H.L.A. Hart, *Legal Positivism*, in: P. Edwords (ed.), *The Encyclopedia of Philosophy*, New York 1967, pp. 418–420.

[23] Dworkin rejects the possibility of descriptive jurisprudence. According to Dworkin jurisprudence is normative, not descriptive, J.L. Coleman, *Methodology*, in: J.L. Coleman, S. Shapiro, K.E. Himma (eds.), *The Oxford Handbook of Jurisprudence and Philosophy of Law*, Oxford 2004, pp. 311–352.

[24] J. Stelmach, B. Brożek, *Metody*…, pp. 32–35.

[25] T. Gizbert-Studnicki, A. Dyrda, A. Grabowski, *Metodologiczne dychotomie. Krytyka pozytywistycznych teorii prawa* [Eng. *Methodological Dichotomies. A Critique of Positivist Theories of Law*], Warszawa 2016, p. 9.

[26] T. Kuhn, *The structure...*

[27] T. Kotarbiński, *Dzieła wszystkie. Elementy teorii poznania, logiki, formalnej i metodologii nauk* [Eng. *Complete Works. Elements of the Theory of Cognition, Logic, Formal and Methodological Sciences*], Wrocław 1990, pp. 267.

organizing the obtained knowledge are completed.[28] Moreover, if we add sets of assumptions on the broader conception of practicing a given science (e.g. legal science) to this general understanding of method, then we can talk about scientific method in the paradigmatic sense (such as the following approaches: hermeneutic, axiological, argumentative, communicative in legal science).

On the other hand, speaking about the research method, as opposed to the scientific method, we mean a specific (elementary) method of research, such as the formal-dogmatic method, the legal-comparative method, or general methods of thinking and systematizing knowledge. However, it should not be overlooked that the set of research methods also includes other elementary procedures used at different stages of scientific investigation. In this sense, the research method does not concern only, for example, the linguistic-logical analysis of the legal text, aiming to determine the content of the legal norm, but because of the individual stages (phases) of practicing science. Furthermore, the research method will also be the manner of formulating scientific problems (question, thesis, research hypothesis), and then searching for solutions, embarking on a critical analysis with the use of the principle of *principium rationis sufitientis*, and systematization of results with potential general conclusions being drawn, i.e., giving a scientific theory.[29]

After the preliminary determination of the scope of the problem and conceptual arrangements, let us proceed to the determination of the peculiarities of the method in legal science. First of all, currently the research method in legal sciences is neither uniform nor simple in its selection and arrangement. Having in mind the elementary research methods, we can say that the position of methodological pluralism prevails. Inasmuch as it poses a research problem, one should be aware that there is no single "predetermined" scheme of cognitive operations, leading to the solution (the answer). The scope of the undertaken issues in the scientific study and the choice of the system of research methods will depend on a variety of factors: 1) the areas of law (*obiectum materiale*); 2) the selected aspect of the study (*obiectum formale*); 3) the research problem (*obiectum formale subquod*) – research hypothesis; 4) the connection of law research with other disciplines of knowledge (law and morality, law and sociology, law and philosophy, law and anthropology, law and economy, law and literature; and 5) the connection of a scientific method with a specific school, trend or research paradigm.[30]

We propose the following outlook on the distinctiveness of legal science in terms of the method. The peculiarity of the method of legal science can be viewed from at least two dimensions: 1) paradigmatic; 2) elementary. The paradigm of the scientific method in legal sciences is formed, first of all, by the connection of the assumptions on the choice of the object of research, the goal (tasks) of research, the choice of adequate method (methods) of research in relation to the object and the goal and the assumptions on the understanding of the nature of the object of research (ontology of law) and the nature of cognitive processes.[31] Due to the limited scope of this paper, we will only

[28] S. Kamiński, *Nauka*…, pp. 202–203.

[29] T. Bekrycht, M. Korycka-Zirk, K. Dobrzeniecki, *Logiczne zagadnienia prawoznawstwa* [Eng. *Logical Aspects of Jurisprudence*], Toruń 2014, pp. 173–179.

[30] D. Patterson (ed.), *A Companion to Philosophy*…, p. V–VIII.

[31] T. Kuhn, *The Structure of Scientific Revolutions*, in: O. Neurath, R. Carnap, Ch. Moriss (eds.), *International Encyclopedia of Science*, Chicago 1970, pp. 43–51; M. Król, A. Bartczak, M. Zalewska, *Integracja zewnętrzna i wewnętrzna*…, p. 7.

briefly point to the hermeneutical paradigm of studying law, which is closely related to the way the world is understood in humanities. The argumentative paradigm, the phenomenological paradigm, or the communicative paradigm of law can be analysed more extensively, however, it goes beyond the scope of this paper.

The hermeneutic method is connected with logical and linguistic analysis of legal science (i.e., understanding law as a set of signs). However, as a paradigm of scientific method in legal sciences, it is connected to a broader context of theoretical assumptions. Hermeneutics (gr. *hermeneutike techne*, that is the art of understanding) is, most generally, the ability to understand the products of human culture, including linguistic statements. The hermeneutic approach is not satisfied with the literal ("shallow") sense of the text; instead, it strives to reach understanding by delving into deeper layers of meaning (such as historical, social, political, cultural conditions). By way of example, in many cultures, an offer water or food held in the left hand is not a psycho-physical behaviour (that is serving guests), but it is in fact a sign that the person is not welcome and will not be invited in the future. However, deciphering this behaviour as carrying a certain message is connected with an innate socio-cultural (hermeneutic) interpretation. Hermeneutics thus implies a deeper understanding of the products of human culture. It is also important for law being not only a certain social phenomenon, but also a cultural product. Legal hermeneutics can be approached in two ways. First, it can be regarded an interpretative practice of a legal text and, secondly, it can represent a specific concept in legal theory and philosophy.[32]

The legal text in the hermeneutical view is not only a normative act in the formal sense (normative utterance), which can be fully understood by applying the formal-dogmatic method. In the 20th century, legal hermeneutics developed in several directions. According to Emilio Betti, the interpretation of a legal text is based solely on the humanistic category of understanding. The law is a product that should be interpreted taking into account the "deeper" layer, which accords a full understanding of the law-maker's statement.[33] Arthur Kaufmann claims that learning the law is not a process of extracting some ready-made meaning. From the point of view of the hermeneutical epistemology of law, we assume that the cognition of the object of study is not in the same form, but in a multi-act form. Cognition has the form of the so-called "hermeneutic circle", in which, while determining the meaning of a particular symbol (cultural product), we move sequentially, always with the aid of several cognitive acts, from the learned element to the whole of which it is a part, and from the whole to the learned element.[34] In the case of a legal text, this assumption may be applied in the case of systematic interpretation. However, looking for deeper meaning we will reach for an intentional interpretation or the like. Aulis Aarnio, on the other hand, linked his research with the trend of analytical philosophy and, following Ludwig Wittgenstein, maintains that legal interpretation is a kind of "language game". It is a linguistic game within both the law itself as well as the interpretative community.[35]

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[32] T. Chauvin, T. Stawecki, P. Winczorek, *Wstęp do prawoznawstwa* [Eng. *Introduction to Legal Science*], Warszawa 2021, pp. 13–14; cf. more broadly: P. Jabłoński, *Na czym polega poznawanie prawa. O konsekwencjach myśli gadamerowskiej w edukacji prawniczej* [Eng. *What Knowing the Law is All About. On the Implications of Gadamerian Thought in Legal Education*], "Krytyka Prawa" 2016/3, pp. 43–49.

[33] E. Betti, *Die Hermeneutik als allgemeine Methodik der Geistewissenschaften* [Eng. *Hermeneutics as a General Methodology of the Humanities*], Tübingen 1967, pp. 20–41.

[34] A. Kaufmann, *Analogie und 'Natur der Sache', zugleich ein Beitrag zur Lehre vom Typus* [Eng. *Analogy and 'Nature of the Thing', at the Same Time a Contribution to the Doctrine of the Type*], in: A. Kaufmann, *Rechtsphilosophie im Wandel* [Eng. *Changing Philosophy of Law*], Berlin 1984, p. 282, quoted behind: J. Stelmach, B. Brożek, *Metody*…, pp. 253–254.

[35] A. Aarnio, *On Legal Reasoning*, Turun Ylipisto 1977, pp. 163–168 and 282–322.

In the second dimension, i.e., the set of specific research methods applied in the successive phases of the study of law, the specificity of legal sciences is expressed in the application of the formal-dogmatic method. Dogmatics of law, due to its subject matter, specific problems and goals, dominates amongst branches of law and, in this dimension of elementary research methods, asserts their distinctiveness.[36] However, assuming a certain connection with a broader (multifaceted) understanding of the object of study, an exhaustive understanding of law on the grounds of a certain dogmatics of law must assume the possibility of using many other methods of study as well. We will examine the matter in a greater detail later, arguing for an integrative model of the methodology of legal sciences.

The formal-dogmatic method is based on the linguistic analysis of the legal text. However, if we take into account all the achievements of the contemporary theory and philosophy of law, as pointed out by Maciej Zieliński, the three general concepts (paradigms) of linguistic analysis of a legal text should be indicated: 1) the first will be embedded in the achievements of analytical philosophy; 2) the second is a hermeneutical analysis and 3) the third is derived from argumentative concepts.[37] The formal-dogmatic method can be based on one of the abovementioned types of analysis. What connects the used methods is understanding the object of study as a system of signs and rules of their use. The peculiarity of this kind of elementary methods lies in the fact that analysis is the basic tool of the study of law, and the language of legal texts is the object of this analysis; nevertheless the interpretation of a legal text and determination of the content of a legal norm assume, as it is currently underlined, other dimensions and elements: e.g. systematic, logical, hermeneutic, axiological or teleological.[38]

The axiological method of law analysis (another one in the proposed catalogue), is a consequence of understanding law as a socio-cultural phenomenon and defining culture as an axio-normative system (Sztompka, Giddens, Parsons).[39] In this case we assume that legal norms expressed in legal text are carriers of certain social values.[40] Let us just retell that in the philosophy of law, a strong interest in the systems of values and building the axiology of law emerged after the Second World War, when the problem of (dis)obedience to the openly unjust laws appeared. Nowadays, axiological analysis is one of the basic tools for studying and thinking about law. However, in practicing the theory of law, one often confuses the understanding of the legal norm with the concept of value. The experience of "we should" is one thing, while the experience of "this is important to us" is yet another. The experience of value does not imply the experience of duty. A value or a system of values in this sense is connected with a legal norm, as it constitutes its rationale (reason). Therefore, in this study we have assumed that the law, as a product of culture, is an axio-normative system.

Empirical methods include sociological, psychological and economic methods of law analysis. All of the abovementioned methods assume that law as a socio-cultural phenomenon manifests itself through certain empirical facts (i.e., behaviour and mental

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[36] R. Tokarczyk, *Filozofia prawa* [Eng. *Legal Philosophy*], Lublin 2002, p. 53.

[37] Cf. M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki* [Eng. *Interpreting the Law. Principles, Rules, Guidelines*], Warszawa 2002, p. 65.

[38] See more about it, e.g., T.M.J. Möllers, *Juristische Methodenlehre* [Eng. *Legal Methodology*], München 2021.

[39] P. Sztompka, *Socjologia*..., pp. 425–431 and 485–497; A. Giddens, *Sociology*, Cambridge 2006, pp. 163–165; T. Parsons, *The Social System*, London 2005, pp. 1–14.

[40] K. Pałecki, *Redukcja aksjologiczna jako sposób objaśniania porządku społecznego* [Eng. *Axiological Reduction as a Method of Explaining the Social Order*], in: M. Dudek, M. Stępień (eds.), *Aksjologiczny wymiar prawa* [Eng. *Axiological Dimension of Law*], Kraków 2015, pp. 19 and 21–24.

experiences of individuals and social groups in the form of certain attitudes towards the law or even more broadly, social changes). In the case of economic analysis of law, on the other hand, it is a question of examining the effectiveness of law, both the devised and the applicable law.[41]

In turn, the comparative and historical method treats law as inherently dynamic in time and space. While speaking about law we often treat this kind of phenomenon as something homogenous, posing a question about its essence and universality at the same time. Meanwhile, as we can see, law treated as a cultural product undergoes various changes. Therefore, we can talk about its typicality, not uniformity. Comparative studies, in their diachronic and synchronic approach, reveal at the same time the richness of legal systems and legal cultures, thus significantly enriching our thinking and understanding of law.[42]

As already mentioned in the second part of our deliberations, given the complex and dynamic subject of research, the study of law should be based on the combination of many elementary methods. In each of the distinguishable legal sciences, general and specific, the choice of methods, means and techniques of the research process will be different. Even if we assume that the leading method in legal sciences is the formal-dogmatic method, the law as a complex phenomenon requires applying various kinds of methods to show legal regulations in the right context (historical, social, economic, axiological, etc.). Moreover, we would like to emphasize that only such a form of research meets the condition of exhausting the object of study, i.e., obtaining a fuller explanation of the research problem.

Let us add at the end, in order to make our position clearer, that the lack of a specific *a priori* research scheme does not constitute an argument either for adopting the position of methodological anarchism or for the thesis raised by some (e.g. Jan M. Smits) about the identity crisis of legal sciences. Many sciences use combinations of elementary methods, the selection and arrangement of which is modified depending on the type of knowledge, choice of formal object and research problem.[43]

5. Pluralism of research objectives in the legal sciences

Before we proceed with further comments, in this part of the study we would like to note that authors also maintain the position of pluralism in determining the purpose of legal sciences, which, in view of the dominance of the dispute over the method, has not been strongly emphasized in the literature on the subject so far. In this respect, it even seems that the commonly used term "methodological pluralism" has been understood too narrowly, i.e., referred only to the issues of research methods involved. The reason for our position of pluralism of goals are the methodological categories of "understanding" and "valuing" occurring in humanities, goals which are not realized by natural sciences. Understanding,

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[41] On the analytical and empirical relationship in the practice of legal science see more: T. Gizbert-Studnicki, A. Dyrda, A. Grabowski, *Metodologiczne dychotomie*…, pp. 21–106; M.P. Baumgartner, *The Sociology of Law*, in: D. Patterson (ed.), *A Companion to Philosophy*…, pp. 406–420; A. Giddens, *Sociology*…, pp. 72–96.

[42] E.J. Eberle, *The Methodology of Comparative Law*, "Robert Williams University Law Review" 2011/16, pp. 50–72; R. Hyland, *Comparative Law*, in: D. Patterson (ed.), *A Companion to Philosophy*…, pp. 184–199; R. Tokarczyk, *Komparatystyka prawnicza* [Eng. *Legal Comparatistics*], Kraków 2000; L. Leszczyński, *Komparatystyka a teoria prawa – powiązania metodologiczne i pole współdziałania* [Eng. *Comparatistics and Legal Theory: Methodological Connections and the Field of Interaction*], in: Z. Tobor, I. Bogucka, *Prawoznawstwo*…, s. 35–48.

[43] P. Kawalec, *Epistemiczne podstawy badań metodami mieszanymi* [Eng. *Epistemic Foundations of Mixed Methods of Research*], "Zagadnienia Naukoznawstwa" 2019/2, p. 33–37.

as opposed to explaining something by pointing to its cause, assumes grasping the sense of the whole, intuitively comprehended entire structure as a certain logical unit, as well as its genesis and function.[44] In the study of law in the humanities, understanding and valuing involves the integration of law into a broader cultural context. Thus, legal sciences assume, on the one hand, a multiplicity of methods and, on the other hand, a multiplicity of research objectives and, ultimately, an attempt to synthesize the research results as an understanding of a certain meaningful whole or an evaluation of law, which always functions in a certain social group, as its product and a factor of socio-cultural changes.[45]

The question of the research objectives in legal science, their multiplicity and unity, can be considered on two levels: general and specific. On the first plane, it will be focused on emphasizing the distinctiveness of the goal in the humanities themselves, as well as in practical sciences and an indication of the unity of legal sciences. Then again, on the second plane it will be focused on defining the most frequently undertaken, detailed goals (tasks) of the legal sciences themselves.[46] In our consideration, we will not further characterize the disputes that have existed between the various goals of the legal sciences, such as descriptivism *versus* expansionism. Instead, we will assume that the various cognitive tasks listed below, both general and specific, are currently applied as specific goals that lead to a comprehensive cognition of law, to an understanding or valuation of law, which we place in a broader socio-cultural context.

Speaking of the unity of legal science, due to the nature of humanistic cognition, the following general research objectives in legal science will come into play: 1) descriptive research; 2) explanatory research (more precisely, in the humanities it involves understanding); 3) evaluation research in practical sciences (evaluations, standards, norms), which in the case of legal sciences accords them a special methodological status. Moreover, it is often emphasized that the order of realization of the above-mentioned cognitive research objectives is not arbitrary and that these objectives are interdependent. One does not reach the third goal (valuing) in a scientific study without obtaining the corresponding results of the second and first goals.

Scientific description (Latin *descriptio*) is a certain set of cognitive activities or their result. Underlying this kind of descriptive approach and purpose is the intention of an accurate, objective report of what is directly given. Description as a category of cognition of the world and the aim of research is connected with reporting or referring to something, therefore, it is often contrasted with explaining and valuing. However, this kind of opposition is not an alternative. Instead, description should be regarded in science as a certain preliminary stage of cognition, consisting in providing information, as accurately and comprehensively as possible, about a certain area of reality.[47] The description somehow organizing (systematizing) the structure of the examined object is a certain view of the whole and constitutes a degree of understanding of something, which will be further subjected to explanation and evaluation (assessment).

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[44] Z. Hajduk, *Ogólna metodologia*…, p. 185.

[45] On the matter of category of "understanding" cf. B. Brożek, M. Heller, J. Stelmach, *Spór o rozumienie* [Eng. *Dispute Over Understanding*], Kraków 2019.

[46] Ch. Soren, *Legal Research methodology: An Overview*, "Journal of Emerging Technologies and Innovative Research" 2021/8, pp. 445–448.

[47] A. Motycka, *O osobliwości opisu w nauce* [Eng. *On the Singularity of Description in Science*], in: M. Hempoliński (ed.), *Transcendencja i ideał poznawczy* [Eng. *Transcendence and the Cognitive Ideal*], Wrocław 1990, pp. 227–247; Z. Pulka, *Prawoznawstwo. Opis czy optymalizacja prawa* [Eng. *Legal Studies. Description or Optimisation of Law*], "Przegląd Prawa i Administracji" 2000/43, pp. 79–96.

In the case of the formal-dogmatic approach, when the object of study is a legal text, the analytical description is of particular importance, i.e., the use of logico-linguistic analysis both as a set of interpretative activities (interpretation) of the law and the expected result of these activities, i.e., the determination of the content of the law in force. The concept of analysis as a decomposition of something complex into simple elements can be found in Descartes and the authors of the *Port Royal Logic* influenced by him, Antoine Arnold and Pierre Nicole. Whereas in the 20th century an important stage of a new look at the method of analysis, i.e., linguistic analysis treated as translation within the same language in order to clarify meanings, is the development of British analytical philosophy (George E. Moore, Bertrand Russell, Ludwig Wittgenstein, Rudolf Carnap, Gilbert Ryle, John L. Austin, Herbert L.A. Hart). The primary goal of descriptive analysis is to clarify concepts (conceptual analysis).[48] At the same time one should not forget about the achievements of the Lviv-Warsaw school in this field.[49]

In order for scientific knowledge to fully mature as a position, concept, or theory, it is necessary to go beyond the descriptive purpose and move toward the explanation of the law. Generally, in scientific cognition, explanation (Latin *explanatio*) consists in providing an answer to the question of why certain and not other facts have occurred. By explaining a certain event, one indicates that it is the result of certain regularities, which at the same time leads us to understanding. However, in the humanities the explanation has a more complex form than giving one simple cause and effect. Law is a socio-cultural fact, a complex object, hence it is studied with mixed methods. Moreover, socio-cultural facts are characterized by typicality and not by something that indicates their homogeneity, as in natural sciences.[50]

In view of the above, it is only at the level of goal-understanding of legal norms that we will be able to talk about practicing legal science in the full sense of the word. The system of norms, rules and values itself is not eligible to be called science. Admittedly, the systematizing description already entails a certain knowledge about the system of norms, but this kind of study does not yet exhaust what we can refer to as science characterised by the understanding of the studied object. Therefore, it is not enough to put norms into a certain system within the framework of a certain legal dogmatics. Science in the full sense of the word will be only such cognitive results by means of which we can make: 1) statements about this system of norms; or 2) normative statements (theses) of this science. However, in order to obtain such results, it is necessary to proceed to the explanation of the norms of the system of law as the object of assertions.

In legal science, the explanation of established legal norms can take many forms of particular purposes:

1) justification by giving reasons for the norms in various forms: axiological, sociological, economic, historical;
2) clarification by creating specific orderings (qualification, classification, typology, partition);
3) legal-comparative characterization;

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[48] S. Perry, H. Hart, *Methodological Positivism*, in: J. Coleman (ed.), *Hart's Postscript. Esseys on the Postscript to the Concept of Law*, Oxford 2001, pp. 311–313 and 319–325.

[49] J. Stelmach, B. Brożek, *Metody*…, pp. 97–103; J. Woleński, *Filozoficzna Szkoła Lwowsko-Warszawska* [Eng. *Lviv-Warsaw Philosophical School*], Warszawa 1985, pp. 9–34 and 232–253.

[50] A. Grobler, *Metodologia nauk* [Eng. *Methodology of Science*], Kraków 2006, pp. 103–120.

4) explanations of a genetic, structural, functional and purposive nature; and
5) philosophical explanation on the nature of law, rationale and purpose of law. In legal science, the explanatory purpose will be achieved in different ways, depending on the research problem posed.[51]

To conclude the analysis of the unity and diversity of legal sciences, it is also necessary to indicate the scientific purpose which has the nature of valuation (evaluation of the law and formulation of norms). In view of its purpose, legal science can be practiced in 1) a theoretical and 2) practical way, i.e., to serve the functioning of the law, both in the dimension of lawmaking, application and compliance. In the theory of science there have been different general attitudes on the theoretical and practical goal of research. Sometimes the theoretical aim has been strongly emphasized (*scire propter scire*), at other times the practical dimension was being highlighted (*scire propter uti*). This kind of juxtaposition shows at the same time that the practical sciences constitute a distinct group with a particular peculiarity amongst the sciences. It also reveals the distinctiveness of higher education as a preparation for practicing specific professions. It is no different in legal sciences, where both theoretical and practical approaches exist. Nevertheless, it should be emphasized that nowadays the recognition of the pluralism of research methods and objectives in legal sciences blurs the sharp distinction between the theoretical and practical objectives of research.[52]

Practical research goals in the legal sciences may involve, first of all, of the evaluation of law based on external criteria such as evaluation of the effectiveness and efficiency of the law in different social areas of functioning; diagnosis of selected areas requiring improvement and enhancement of the public authority's activity, improvement of organizational forms of the state. However, important practical objectives in the legal sciences are the conclusions to the future legislation (*de lege ferenda*) and future court decisions (*de sententia ferenda*). Generally speaking, different practical purposes of the study of law are related to the actual external purposes and functions of law.

6. Final reflections

The purpose of the study was an attempt to characterize the methodological unity and diversity with a proposal to build the foundations of the integral methodology model of legal sciences. The authors assumed that a task of this kind is possible by analysing the three determinants of any discipline of knowledge: 1) the object; 2) methods; and 3) purpose of legal research. As a final reflection, we once again highlight that in legal sciences there is currently neither a single paradigm of their practice, nor a single method and aim of research or a uniform scheme of combining elementary methods (in a narrow sense). This does not mean, however, that we cannot speak of a methodological integrity in legal sciences. The authors propose to go beyond the dispute over the method and assume that the methodological status of each science determines not only the method but, above all, the object and purpose of the research. It seems that so far this dimension has been poorly emphasized in deliberations over the autonomy of legal sciences. However, if we take into account the assumptions of Hart's

[51] S. Perry, H. Hart, *Methodological Positivism*…, pp. 348–352; Ch. Soren, *Legal Research methodology*…, p. 446.
[52] A. Korybski, L. Leszczyński (eds.), *Wstęp*…, p. 35.

methodological positivism, it is clear that Hart was aware of the subject, method and purpose of his research. Supporting different approaches to non-positivist concepts does not have to mean giving up the distinguished character of legal sciences, i.e., their unity in multiplicity (methodological integrity). The project of methodological integrity of legal sciences is therefore possible.

On Methodological Unity and Diversity of Legal Sciences: A Contribution to Basic Methodological Research

Abstract: The paper is an attempt to argue for the methodological distinctiveness of legal sciences. The methodological distinctiveness (specificity) of legal sciences has been presented in three dimensions: 1) the subject; 2) methods; and 3) purpose of scientific research. The analysis can be used both for the argument against the lack of a methodological identity of the legal sciences and positively for the comprehensive research and the integrative model of the legal sciences. In view of the complexity of the subject and the aims of legal science should be used various research methods should be uses. In further research, it would be advisable to establish their possible systems in a specific research problem.

Keywords: methodology of legal sciences, subject matter of legal sciences, methods of legal sciences, research objectives in legal sciences

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