A very preliminary version of:

Competition as a Cognitive Process and the Sources of the Law

Hayek, Leoni, di Robilant.

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March 2000

Thanks to Dr. Peter Boettke, Dr. Charles Rowley and Dr. Richard Wagner for very helpful comments. The remaining mistakes are only mine.

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Abstract

Like the economy, the law is a spontaneous order generated and evolving thanks to the cognitive process of competition.
Judge-made law is a decentralized and competitive source of law. Because it is open to the critical selection of competition, it allows the production of interesting information and its voluntarily acceptance.
Legislation is a centralized and monopolized source of law. Because it subtracts itself from the critical selection of competition, it is bounded to produce lower quality information and to be imposed on society by force.

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Introduction

Hayek, an economist, Leoni, a lawyer, and di Robilant a legal philosopher, have much more in common than a regular economist and a regular couple of law scholars usually have. Beside their multidimensional culture and preparation, their works build on each other and offer us a consistent and solid perspective of evolutionary orders. Hayek presented a theory of competition concerning the economic system. Leoni noticed the power and the generality of Hayek's argument and applied it to the legal system. And di Robilant went a step forward and applied the competitive model to all the systems that produce information. Hayek, by focusing in particular, but not only, on economic order, and Leoni and di Robilant, by focusing in particular, but not only, on legal order, illuminate some striking similarities between economics and the law.

This paper will present a theory which is not new. But, even if originated within the economic discipline, it developed and reached maturity in the legal philosophy field and, for whatever reason (language included), it does not seem to have made its way back into economics. But economists, since Adam Smith, should very well know that the gains from trade derive from specialization. And that, on the other hand, if there is specialization without trade, there is no gain. What would we do, indeed, with just a mountain of pins? And the same is true even as far as knowledge is concerned. I believe, therefore, that it is important that this interpretation of competition and the law comes back into economics.

The other reason why I believe this argument is important for economics is because the attention of the scholars who are interested in the relation between economics and the law is concentrated on the efficiency of the law (problem that will be approached below) and on the role of competition among different jurisdictions. But theories of competition among different jurisdictions take the existing law 'as given', as prices in a mainstream competitive models are taken 'as given'. Hayek noticed that the mainstream approach begged the most important question - 'where do the prices come from?' is indeed of fundamental importance to ask. In the same way, the current literature on competition and the law does not seriously address the question on where the law comes from, and how. But in the Hayek-Leoni-di Robilant argument this question is asked and answered. Their

theory is indeed an account of the role of competition at the production level of the law, at the level of the sources of the law.

The (Lack of) Interactions between Law and Economics

Before we look into the Hayekian view of competition, it is appropriate to give a brief context to the problem.

Descartes' new powerful rationalistic philosophy contributed to lay down the way to abandon the 'mysticism' of the past and answer the new and strong opportunities that Reason could offer to men. Rooted in a strengthening conception of the absolute power of Reason, the two disciplines here considered, economics and law, abandoned interactions with each other and with other social sciences, in order to form self-contained structures. It was easily forgotten, for example, that Adam Smith, considered the father of modern economics, was trained in law, and that *The Theory of Moral Sentiment* was the base not only for the *Lectures on Jurisprudence* but also for *The Wealth of Nation*.

Economics, from a moral science which studied a particular set of activities of men, became a science which studies a fictitious and monodimensional *homo economicus*. Law, from a moral science based on the concept of justice, became a logical science based exclusively on legality (a legal rule is such and it is just, not because of the sense of justice that it represents, but because the legal authority, based on its supreme power, has deliberated so). Unfortunately, this kind of analysis in isolation closes many fruitful doors, and in part it has been recognized.

Caveat: judge-made law vs. legislation rather than common law vs. civil law

Some political and legal literature, in particular of the 19th century, tends to emphasize the differences between the common law system, or Anglo-Saxon system, and the civil law system, or continental Europe system. But the differences between common law and civil law are, and have been, more nominal than real. The more appropriate distinction to

consider is the one between judge-made law and legislation. And , in terms of this paper, the relevant comparison will be the one between legislation and judge-made law. Indeed, rather than a geographical distinction, I prefer to use a categorical and temporal distinction. The temporal distinction that marks the passage from judge-made law to legislation can be traced back to the Enlightenment. By Enlightenment it is meant not a specific time in history, but a particular way of seeing history and the world, that caught on in slightly different periods in different regions between the 18th and the 20th century. In particular, the Enlightened thought had a temporal window of adjustment that saw the continent taking the first step, only later followed by the Isle. Since the passage from judge-made law to legislation happened later in the Anglo-Saxon world than on the continent, it has become common to identify common law with judge-made law. Attention is due, though, because when there is, commonly, an interchangeable use of common law and judge-made law, there should be an implicit reference to the traditional common law, not to the present-day modern common law. In the same way, when civil law is commonly used as if it were equivalent to legislation, there should be the implicit reference to the present-day modern civil law system, and not to the pre-Enlightenment civil law.

Before the Enlightenment, in fact, common law and civil law were very similar, and they both could be considered as judge-made law systems. And today common law countries are not radically different from civil law countries: indeed, what a common and a civil law system have in common far outweighs their differences. Today, they both can be categorized within legislation system. “The increasing significance of legislation in almost all the legal systems of the world is probably the most striking feature of our era, besides technological and scientific progress. While in the Anglo-Saxon countries common law and ordinary courts of judicature are constantly losing ground to statutory law and administrative authorities, in the Continental countries civil law is undergoing a parallel process of submersion as a result of the thousands of laws that fill the statute books each year. Only sixty years after the introduction of the German Civil Code and a little more than a century and a half after the introduction of the Code Napoleon the very idea that

the law might not be identical with legislation seems odd both to students of law and to laymen." [1]

Legislation

From the end of last century to the beginning of this century, under the influence of the rationalism of the Enlightenment, an increased need for organization and rational structure emerged among scientists. Categorization and typology were felt necessary not only for physical sciences but also for human sciences. Disregarding centuries of traditional education, each humanistic discipline became, or has attempted to become, not only specialized, but autharkical.

Rooted in this strengthening conception of the absolute power of Reason, the law abandoned interactions with other social sciences, in order to form a self-contained structure. The idea of interaction (now contamination) between the law and other humanistic areas was indeed accurately avoided because it could compromise the 'purity' of the discipline. Moreover, the legal science shifted away from an inductive discipline, and adopted a deductive and logical method. As mentioned, from a moral science based on the concept of justice, law became a logical science based exclusively on legality. A powerful example of this situation is the idea of *Grundnorm* (the supreme norm, not further derivable, and not further demonstrable), elaborated by Hans Kelsen in *The General Theory of Law and State*, which creates a 'pyramidal' legal system completely closed in itself, originating from and ultimately reducible to the *Grumdnorm* itself.

All these revolutionary ideas are embodied in the tradition of legal positivism. This innovative and 'scientific' approach to the law implied another radically different factor from the previous view of the law. Now the law cannot be discovered by the lawyer or by the judge, but it can only be created by the State, via its legislative body. Positive law means indeed that the law is *positum* (put down) by the appropriate legal institution, i.e. the State.

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[1] LEONI, Bruno, *Freedom and the Law*, Indianapolis, 1991, p. 6

The source of law is now legislation, monopolistically provisioned by the State.

Judge-Made Law

Judge-made law is that law that is based on *nomos*. *Nomos* means by convention, convention that developed slowly through time and through highlighting of deviant behaviors. No one made it, no one created it, no one explicitly developed it. It is, yes, man-made, but only because if there was no man there would be no *nomos*. In this, *nomos* is different from *physeis* (physical order) that would exist even without men. And in this sense, *nomos* is the result of 'human action but not of human design'.

Leoni explained this concept of law created by human action, but not by human design with the words of Cicero: "The reason why our [Roman] political system was superior to those of all other countries was this: the political system of other countries had been created by introducing laws and institutions according to the personal advice of particular individuals like Minos in Crete and Lycurgus in Sparta, while in Athens, where the political system had been changed several times, there were many such persons, like Theseus, Draco, Solon, Cleisthenes, and several other. … Our state, on the contrary, is not due to the personal creation of one man, but of very many; it has not been founded during the lifetime of any particular individual, but through a series of centuries and generations. For he said that there never was in the world a man so clever to foresee everything and that even if we could concentrate all brains into the head of one man, it would be impossible for him to provide for everything at one time without having the experience that comes from practice through a long period of history."[2]

This view has characterized centuries and centuries of law history. It means, in other words, that if law is made by somebody, than it cannot be superior to everybody. It explains why the law rules are 'discovered' by the judges, or by the lawyers, but are not 'Created' by them. It enhances the difference from the presumption of Creation of law (in the biblical sense, creation from nothing) of the legislation process. When Hayek

[2] CICERO, *De Republica*, ii. 1, 2. quoted in LEONI, Bruno, *Freedom and the Law*, op. cit., p. 88

recognized the that the word law is the same one designated to natural and legal laws, Leoni reminded us that, in the Roman tradition and basically until the 18th century, to tell a judge or a lawyer that he was creating new laws, would have been like telling a physical scientist that he could create new natural laws.

Hayek and Leoni reminded us that, in general, the lack of a specific maker implies the lack of a design, of a purpose, of a goal. Indeed, the market has no goal in itself. And in the same way, a genuine common law system has no goal in itself. They both are processes that facilitate the achievement of individuals' purposes. The adoption of a goal would put the common law on the same level as legislation. The goal transforms a *nomos* into a *taxis*. *Taxis* is, indeed, a human order, established by somebody, consciously, for a specific purpose. Like *nomos, taxis* is the result of human action, but sharply differently, it *is* the result of human intention or deliberation.

The traditional common law can be considered a form of judge-made law, because the law is 'made' not by a specific assembly, but through time, in the courtroom. It is not therefore possible to trace a specific 'maker' or a specific date of birth of the law. The traditional civil law worked in a striking similar way. Indeed, it falls in the same category of judge-made law, even if at times it is called lawyer-made law. The name lawyer-made law derives from the fact that the main difference from the common law was simply that the law originated from the bar rather than the bench. And the difference between the names 'civil' and 'common' is simply that the common law has a longer oral tradition, while the civil law has a longer written tradition. Indeed, the name 'civil law' comes from the use of the civil code, a written collection of the law. Civil law is recently considered a legal system in which legislation is the sole source of law, because the law collected in the codes can be made only by the appropriate assembly. Therefore legislation differs from judge-made law because, in the case of legislation, there is an identifiable 'maker' (the assembly) and a date of birth of the piece of legislation (the date in which the bill passes).

The role of coercion

Another way to describe the difference between judge-made law and legislation, and the similarity between traditional common and civil law, is the role of coercion.

It is possible to describe the traditional law as characterized by horizontal relationships, while in today's law a vertical system is superseding the horizontal. All kind of traditional judge-made laws, being of common or civil law, developed from the bottom, horizontally, and required the law to be commonly accepted. An hierarchical and monopolistic legal system that is imposed from the top, through some coercive authority, being a parliament/congress or a supreme court, falls into the vertical system. Therefore, today's common law countries, as well as civil law countries, can be included in this latter category.

The classical judge-made law systems were conceived, indeed, as genuine peaceful conflict resolution processes[3]. Coercion was absent both at the individual and at the aggregate level. At the individual level, the decision of the judge was not backed by the force of the state. It was left to the parties to accept it. The sovereign, the supreme authority, was the head of the military forces as well as the supreme judge, but, as Leoni noticed, he would never carry out his judicial functions with his emblems of power. At the aggregate level, coercion was absent for the very nature of the decision making process: "First, judges or lawyers or others in similar positions are to intervene only when they are asked to do so by the people concerned, and their decision is to be reached and become effective, at least in civil matters, only through a continuous collaboration of the parties themselves and within its limits. Second, the decision of judges is to be effective mainly in regard to the parties to the dispute, only occasionally in regard to third persons, and practically never in regard to people who have no connection with the parties concerned. Third, such decisions on the part of judges and lawyers are very rarely to be reached without reference to the decisions of other judges and lawyers in similar cases and are therefore to be in indirect collaboration with all other parties concerned, both past and present. All this means that the authors of these decisions have no real power over other

[3] Note, again, a strong similarity with the market process. Economic actors have conflicting interests on scarce resources. Trade is considered a pacific resolution of conflicts.

citizens beyond what those citizens themselves are prepared to give them by virtue of requesting a decision in a particular case."[4]

Two links

Now that we have seen the difference between judge-made law and legislation, let us see how economic analysis enters the analysis of the legal system.

It is possible to find two ways in which law and economics are related.

One is the mainstream view where common law, like the market, is seen as efficient. In the case of the market for goods, the mainstream focus is on the final products. In this competitive market for goods, with given prices, the cheapest good would capture the entire market, adjusting for transaction costs. And the market is efficient, since all the resources are allocated to who values them the most. In the same way, in the case of competition in the legal sphere, this view brings the focus on the competition between different jurisdictions, or in some cases on the possibility of choice of law. And as in the market of goods, in the market for laws, the jurisdiction, or the set of laws, that proves to have the 'cheapest' law will attract all the legal persons present in the market, adjusting for transaction costs.

The other way to look at the relationship between law and economics is via competition. Competition, as Hayek explained, can be seen as a cognitive process, and therefore focusing on the production process of the final good (or law). Leoni picked up this idea and developed a theory of competition within the cognitive system of the law. di Robilant, following the same path but walking a step forward, considered the role of competition within and among the different cognitive systems that man faces.

The former approach is a phagocytosis of one discipline in the other. The latter approach is an analysis that underlines the similarity of two different orders.

[4] LEONI, *Freedom and the Law*, op. cit., p 22

The Mainstream Link: Efficiency

The desire of rationalization and of scientificity introduced by the faith in Reason which originated during the Enlightenment led to abuses especially within the social sciences. Hayek has described this process as scientism. And, while civil code countries cracked under the 'logic and scientific' pressure adopting a legal positivism prospective, lately some law-and-economics movements have introduced into the common law the 'objective and scientific' criteria of efficiency. That is to say that, not only the recent trend of increasing intervention of legislation within common law systems is depriving them of their genuine characters of *nomos* from the 'outside', but the adoption of efficiency as a normative criteria is transforming common law into *taxis* from the 'inside'. Indeed today some of the scholars and judges interested in the relationship between economics and the law, do not limit themselves to *observe* the efficiency of the traditional system based on *stare decisis* (to abide by, or adhere to, decided cases). They actively promote and attempt to achieve efficiency through open modification of century-old rules, by adopting efficiency as a normative criteria, not just as a positive instrument of analysis.

With this purpose in the mind and in the actions of the judges, the so-called common law system increases the gap between itself and a genuine judge-made law system, and decreases its distance from legislation. Indeed, while traditional judge-made law corresponds to the procedural expectations in the society's relational life, legislation (originating from an assembly or from a judge) pursues political and economical enterprises that aim to a specific result. If 'public happiness' is the explicit or implicit goal of a legislation system, efficiency can be seen as the explicit or implicit goal of today's common law system. And by adopting the goal of efficiency, the common law has put up a cover for the adoption of the same 'public happiness' purpose characteristic of a legislation system. In other words, efficiency, in its 'objectivity', is still a purpose that judges think they should adopt and promote, as it is a purpose whatever other principle or particular interest the legislator adopts in his action. By creating new laws to modify the legal order according to a specific purpose, a judge becomes a legislator, and as a legislator, a judge will suffer from the *hubris* of reason and from constructivism. The adoption of a goal puts

the common law on the same level as legislation: the purpose transforms a *nomos* into a *taxis*.

If this is still puzzling, try to keep in mind the idea that the law can be seen in the same way as the market. The attempt to actively and consciously achieve efficiency in the law corresponds to the attempt to actively achieve efficiency in the market.

Law and market are processes that facilitate the achievement of individuals' purposes. A genuine common law system has no goal in itself. Indeed, as Hayek reminded us, the market has no goal in itself. The fact that market is efficient does not mean, indeed, that the market participants are acting consciously following the goal of rendering the market efficient. As it is known, economic actors act in their own self interest, according to their own individuals goals, and only as an unintended consequence the market turns out efficient. If we establish a central authority that has the job to achieve the same efficiency that millions of individuals bring out unintentionally, we are bound to fail. The calculation debate, and the failure of the Soviet Block teach. In the same way, if the law emerges from the spontaneous interactions of millions of individuals, and it is in this way efficient, the attempt to establish a central authority (being it an assembly or a supreme court) to promote efficiency in the legal system is bound to fail.

In the market, can competition be imposed? Can efficiency be imposed? The answer is the same for the same attempt of imposition in the law.

The Hayekian Link: Competition

Judge-made law can be considered efficient only if seen in the same way that markets are viewed as efficient, i.e. if it is seen as a procedure for making social decisions which are open to the multitude of interests and preferences. The act of choice rather than the things that are chosen is the basic principle. Indeed, the market is not efficient because every single outcome of a choice is the correct one - man are still imperfect and still make mistakes. The market is efficient because the process by which the outcomes are produced

is the one that allows efficiency. This process is the competitive process that, alone, allows the more complete use of all the relevant knowledge of society.

Hayek & Leoni

What Hayek explained implicitly, and Leoni explicitly, is that the ratio behind the calculation debate is a general principle, applicable not only to the economic order itself (which indeed is only a particular case), but to other spontaneous orders that are present in human associate life, like the legal order. And since the arguments that explain the role of competition in the economy and in the law are the same, I will present them simultaneously.

For Hayek and Leoni, the staring point of the analysis is to consider that knowledge is disperse in society among all the individuals. Each individual has a 'knowledge of time and place' that is contingent to his specific conditions and that is relevant for his decisions.

Planning is a determinant aspect of economic activity, as well as rules of behavior are to be present in associate living. The question is, therefore, not whether we should have planning, or laws, but who is to do the planning, or to make the law. Both planning and rules of behaviors can originate from a central authority or from the interaction of many individuals. When a central authority is in charge of planning the economy, we talk, indeed, of central planning. When a central authority is in charge of creating the law, we talk instead of legislation. In both cases, the central authority claims to itself a monopoly power respectively in the production of the economic order and in the production of the law.

On the other hand, competition means decentralized planning by many different individuals, as well as judge-made law implies the formation of the law through the interaction of many different individuals.

"Which of these systems is likely to be more efficient depends mainly on the question under which of them we can expect that fuller use will be made of the existing knowledge. And this, in turn, depends on whether we are more likely to succeed in putting at the disposal of a single central authority all the knowledge which ought to be used which is

initially dispersed among many different individuals, or in the conveying to the individuals such additional knowledge as they need in order to enable them to fit their plans in with those of others."[5]

And the interactions of all individuals creates and selects information and procedures in a way that a centralized decision maker would never be able to do, because it is impossible to concentrate all the information dispersed throughout society into a few minds. If this centralization of information is attempted, the result cannot be efficient because some, if not most, of the information has necessarily been lost.

The spontaneous mechanism through which this information is preserved and diffused is, for the economic system, the price mechanism. That is to say, prices can be seen as 'carriers' of all the relevant information. As a consequence, any attempt of a central authority to set the prices will lead to an inefficient result, because the prices are not in the condition to 'do their job' in the best way. Indeed, imposing a price is diffusing 'false' information. The cost of getting the 'correct' information increases, in case just few prices are distorted. In case most of the prices are distorted, the cost of getting the 'correct' information is prohibitive - prices become meaningless, and economic calculation impossible, rather than easier.

The law, in the same way, can be characterized not as a group of imperatives or value judgments, but as an informational system, in the sense that the information which is produced by it is information that points to the consequences, both theoretical and practical, that may happen if that information is not taken into account. But when the law is imposed arbitrarily, according to a specific view of the world, but disregarding the underlying reality, the law becomes meaningless. It hinders, rather than facilitates, social interactions. It increases uncertainty, and it will not be followed. Not by chance, the law has been traditionally compared to a dress: if it is too tight, it will break.

Like prices in the economic system, in the legal system the law can be formed by a central authority, monopolistically, or by the constant interaction of a multitude of

[5] HAYEK, Friederick A., "The use of Knowledge in Society" in *The American Economic Review,* Vol. 35, Sept. 1945, No. 4, 519-530, p. 521

individuals, in a competitive way. In the economic system, the monopolized determination of the economic order and/or the imposition of centrally determined prices leads inevitably to inefficiency because the central authority cannot have at his service all the information dispersed in society. In the same way, in the legal system, the monopolized determination of the legal order and of the rules of behavior cannot be efficient because the central authority (parliament or judge) does not have all the information required for such a task (to re-create order in society).

Moreover, what has been shown by the words of the calculation debate, and what actually the 'real socialism' countries showed by their collapse, is that an economic system without competitive prices cannot work. The best that it can be is a distributional system enforced by military force. And in the same fashion, a legal system with a monopolized source of the law can work only if enacted by force.

<u>di Robilant</u>

di Robilant took Hayek and Leoni seriously and saw that the cognitive process of competition is present in all human activities that involve creation, diffusion and selection of information. He put together the view that competition is the process that allows diffuse information to circulate, to evolve and to be available to individuals in order to facilitate their individual choices, and the old tradition of a complete view of the individual and of the context within which individuals interact. For di Robilant, the information present in reality is, indeed, multiform and dispersed among millions of individuals. It is expressed in many different forms and behaviors that are necessarily in competition with each other because they are simultaneously present in a complex society.

di Robilant saw that individuals face a plurality of information coming from different sources or systems. He recognized that there are five such informational systems: the science system, the technology system, the economy system, the law system, and the orientation (moral) system. These, and the information they carry, are necessarily in competition with each other because of their co-presence in the society. And it is this simultaneous presence of different cognitive products that allows competition, that makes

a critical exam possible (in the Popperian sense), that makes it more difficult to escape the testing by creating a closed system. Indeed, competition among informational systems is , by its critical confrontation, the process by which selection of knowledge and new knowledge is generated. That is to say, competition is the process by which knowledge evolves and generates orders in society. But this is possible only if there is more than one system of information present in the analysis. Therefore considering law and economics two isolated systems, independent from the informative context in which they act is recognized as a reductive and barren path of analysis.

di Robilant pointed out that competition plays a fundamental role for the economy system in relation to other informational systems since economic activities are done in a complex reality where the science and technology informational systems as well as the law and orientation systems are present. The knowledge coming from these other systems cannot be ignored by economic agents, even if it is considered and weighted by them in a different way. The science and technology systems provide economic actors with the information and the knowledge regarding the natural reality. They offer the tools and the information on the possibilities of and on the ways to modify nature, and how to use this information in the most useful manner. The law and orientation systems provide the information and the knowledge regarding other individuals in society. They offer the tools to understand the relationships among individuals, and the development and evolution of those relationships. As the economy and the other cognitive systems present in society, the informational system of the law produces a kind of information that supports individual choices and behaviors. And as the economy system, the law system cannot be considered in isolation from the other informational systems, as the legal rationalism and positivism doctrines attempted to do.

Legal rationalism, as we saw, by adopting a logical and strictly deductive approach, closed the law and the process of formation of the law on itself. Deriving legal principles only from and within the internal rational legal structure was an elimination of every contact with other sources of law and of information. Therefore, legal positivism, that derived from the rationalistic approach, implied the centralized and monopolistic provision of that deductive and closed legal system by the monopoly of the State. But as the economy system, the law system cannot be considered in isolation from the other

informational systems. The science and technology systems offer to the law system, as they offer to the economy system, the information on the natural and social reality. The economy system offers the information on the economic process. The orientation system offers, explicitly or only implicitly, ethic principles, or valuation criteria, without which the law system could not be conceived.

In this way we can see how, every time the legislative authority ignores the diffused information coming from the multitude of individuals of a society and from the other spontaneous informational systems, or attempts to reduce or eliminate the competition that produces it, by monopolizing the sources of law, usually under the pretense of a superior cognitive power, it undermines its own legitimacy, by producing low quality information, and by detaching itself from the real needs of society. Indeed, the cognitive power of a monopolistic actor, because of its formation process that does not allow the entrance of other competitors and that subtracts itself from the process of cognitive selection, can produce only information of inferior quality than the one produced by a competitive process. Therefore, the most deleterious consequence of the claim to reduce or to control competition is a reduction or a suppression of the selective cognitive process that leads to a decrease not only of knowledge itself, but also and especially of its *quality*.

The decrease of the quantity and of the quality of information deriving from the monopolization of its sources implies that, every time that one of the spontaneous sources of information is claimed not to be able to produce the "correct" information, force and coercion are required, be it in the economic or in the legal sphere, or in any other sphere. And when the State has not only monopoly on the law system (originating from either a legislative assembly or a judge with legislative power) but also monopoly on the legitimate use of force, the deleterious consequences of its low quality information are even stronger because of the active attempt to impose, by force, such information on the other systems.

Conclusion

We saw that the law can be formed in two general theoretical frameworks: it can emerge from society or it can be imposed by the State. Searching for the sources of the law

in society implies a competitive formation of the law. The law, being an information system, is exposed to the critical selection of a competitive process due to the presence of other information systems. On the other hand, the State's imposition of the law on society implies a monopolistic production of the law, by the State indeed. But as in every monopoly, the results of the State law may not be rose. Given the cognitive incapacity of human condition to have the power to control and foresee every situation and circumstance, projects of 'public happiness' are in their very nature unrealizable.

The state legal system cannot substitute the other informational systems present in society because it does not dispose, and it will never dispose, of the richness of information and of creativity present in the whole society, because it is not subject to the selective informational process generated by competition. An increasingly open and complex society inevitably faces a multiplicity of informational systems that limit the role of State law system, because the information that circulate in society is more articulated and it is in better condition to correspond to the need of society. The more complex society is, the less it is possible that a central power is a position to be able to produce interesting information because the disproportion between its limited cognitive power and the immense richness of information present in society increases as increases the damages created by the lack of competition with other informational systems.

That is to say: what is true for the production of goods is true for the production of the law. That is also true for the development of the legal discipline as well as for the development of economic science. Competition always leads to the formation of better quality information than a closed system.

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