

This project objective is to determine the role which intuitive and rational reasoning plays in law. Recently, reflection on the law and the manner of its interpretation and application have been – especially on the European continent – dominated by a willingness to make the law “rational”, in the sense of being simple, understandable for everyone, possible to be easily foreseen, and after having been proclaimed by the parliament, strictly binding for a judge or an official. The vision of the law perceived as something mystical and esoteric has been pushed to the background. The same applies to the perception of the representatives of the legal profession as so-called guardians of the mystery. The latest studies and experiments on the ways in which a man really reasons seem to contradict this trend. That is, they indicate that it will be never possible to subordinate the law to the regime of rational thinking. Both its essence as well as the environment in which it functions, including a close connection with “life” and the physical world, results in law being condemned by definition to the domain of intuitive thinking (termed, not without reason, “experiential”). Moreover, the pursuit of making law “rational”, being virtually non-viable, appears to do serious harm to the law itself, and as a corollary, to law addressees who expect legal regulations to be effective, just and reasonable.

In consequence, one seems to have to agree with those few philosophers of law who saw in intuition (hunch) and experience a decisive factor in judicial decision-making or reaching that which really counts in law. These are particularly the American Law Realists, notably Oliver Wendell Holmes, Jerome Frank, Karl Nickerson Llewellyn and, above all, Joseph C. Hutcheson. Their opinions and theses, inter alia, will be also verified within this project and if they prove to be incomplete and fragmentary, they shall be developed in order to reveal the real nature of the law and the method(s) of its application.

The research results are expected to determine which attitudes, expectations and conceptions of the law are scientifically warranted. At the same time, the thesis, which is especially common amongst Anglo-Saxon lawyers, that lawyers make use of a method that is unique for their profession, being a source of their pride and distinguishing them from other society members, can be evaluated. The same applies to O.W. Holmes’ suggestion that by dealing with the general problems of law, we explore something that belongs to the Universe. This suggestion is in a way justified in the context of experiments on making use – within intuitive reasoning – of the so-called non-local information, i.e. information received by the mind, or other parts of a human body, especially a heart, without any mediation of the traditional senses from other people, things, or a-few-second future.

Having completed the project, we will not only find out whether the above suggestion or confession of J.C. Hutcheson that he settled court cases through hunches, recommending the same to other judges, is correct, but we shall also obtain a whole set of opinions about the law which, taken together, should constitute a new philosophy of law with a scientific footing. Such a philosophy will enable us to look at the law and the way of its interpretation, application and making as well as at the unification of law within the framework of the European Union from a totally different perspective. This philosophy will also be a more scientifically justified than Legal Positivism, in which the main emphasis is placed on the linguistic analysis of legal texts and perceiving the law in the categories of an order coming from the law-maker. As a result, one can imagine that the law will regain here its beauty and power, along with an ability to execute “self-improvement” and make a contribution to the social, economic and political development of modern societies – which, in turn, should bring forth an end to scepticism of Postmodernism in Law in the advent of a new ground-breaking post-postmodernistic era in legal science!