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A Natural History of Law

Law is a new phenomenon. In terms of the evolutionary timescale, it emerged relatively recently and is an outcome of cultural rather than biological evolution. However, the form and the content of the law is a product of the human mind, which has been shaped by long evolutionary processes. Our minds have great capabilities – ultimately, we have been able to create science, art, technology, and large societies – but they also have limitations. They both – the abilities and the limitations – played an important role in the creation and development of the law.

The goal of the project is to investigate what are the basic abilities and inclinations of the human mind which made the emergence and the historical development of the law possible. It is assumed that the shape of the contemporary legal systems has been influenced by five key inventions – or ‘turning points’ – which made the law what it is: institutionalization (creation of institutions equipped with the ability to interpret, apply and enforce the law), textualization (the development of written law), abstraction (creation of general and abstract legal rules), universalization (development of laws which are valid for everyone) and normativization (recognition of law as the ultimate source of its binding force). It is crucially important to understand how those inventions came to be and how they contributed to the historical development of the law.

By analyzing the mental mechanisms which gave rise to the flourishing of legal systems – but also by recognizing the limitations the structure of the human mind imposes on the possible developments of those systems – one can gain interesting insights into the nature of law. It may be speculated that the resulting picture will be of the law which has no ‘fixed nature’, but which is better characterized as a force-field: it is an outcome of dynamic processes, which involve cultural innovations on the one hand, and the cognitive and motivational limitations – deeply rooted in our evolutionary past – on the other.

The reconstruction of the natural history of law also enables a glimpse into the future. By understanding the limitations inherent in the mechanisms responsible for the emergence of law, one can ask what are the possible (or very likely) and impossible (or highly unlikely) future trajectories of law. This is particularly important in the context of quick technological progress, when lawyers are forced to consider such questions as whether a unified global law is possible or whether intelligent machines should (and could) ever be recognized as fully autonomous legal agents.