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Regulatory consolidation of coercion as a prerogative of the rule of law: A literary review

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Abstract
The right to coercion and the possibility of its application is an integral attribute of the state, its bodies, i.e., it is possible to discuss the state's monopoly on coercion. Regardless of whether the requirements of legal norms are fulfilled voluntarily, coercion stays an integral part of their implementation. Legal coercion is inextricably linked to the rule of law and human rights. This connection is especially felt in the countries of Central and Eastern Europe, which have recently been freed from totalitarianism, the dictatorship of ideological norms, dominance, and the spread of coercion. The purpose of this study, the results of which are presented in this paper, is to reveal the essence of legal coercion at the theoretical level, analyse and generalize the scientific opinions of scientists who have already expressed themselves on this matter. The study uses a natural law approach and several methods aimed at a systematic and meaningful analysis of the problems of state coercion, the key of which are logical, dialectical, historical, and integrative methods. As a result of this study, it was established that the legal coercion applied by the state should make provision for proportional measures and sanctions in such a way as, on the one hand, to create the necessary inhibitory factors in the minds of those who try to break the law. On the other hand, it is coercion that should increase the sense of security in others, instilling in them the belief that the law, the state protects them and that there is no point in resorting to non-state, unofficial means to take the law into their own hands. The scientific significance of this study lies in the fact that it is one of the first studies covering the issue of legal coercion in the context of its use by the state to exercise its power in modern political and legal realities. In a practical sense, the results of this study may be important for improving legal regulation with an emphasis on coercion, specifically when adopting criminal law norms

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Introduction

The study of the problem of coercion at the philosophical and theoretical legal level is relevant today because with the growing number of regulations, it becomes necessary to differentiate them into those ensured by coercion, and those that focus on certain behaviour.

Scientists of young democracies do not pay enough attention to the problems of statutory regulation of coercion. Given that legal coercion is inextricably linked to the rule of law and human rights, this connection is especially felt in the countries of Central and Eastern Europe, specifically, in the Republic of Moldova, which have recently been freed from totalitarianism, the dictatorship of ideological norms, and which were characterized by the lack of protection of human rights and the absolute dominance and spread of coercion. Therefore, it is possible that studies of the rule of law and human rights are more relevant in these countries than in European countries of sustainable democracies in a theoretical and practical sense.

However, recently, some researchers, mainly Western European and American, have begun to pay more attention to the problems of statutory regulation of coercion, namely in the context of the rule of law. Among such studies, one should mention those covering the relationship between law and coercion (Miotto, 2021), the conceptualization of coercion as a necessary feature of the legal system (Woodbury-Smith, 2021), (Himma, 2020), the use of coercion in the context of the transnational rule of law (Rabanos, 2022). In addition, the conceptual basis for the analysis of the issues in the application of coercion in modern political and legal realities included the publications analysing the concept of coercion (Hart, Raz & Bulloch, 2012) and the tendencies of the law to become coercive (Galligan, 2006), the analysis of coercion in the interpretive concepts of the rule of law (Kyritsis, 2016). The selected studies also cover the doctrinal definition of the concept of coercion in the conditions of neoliberal society (Anderson, 2008), consider the role of coercion in international and national law (Raponi, 2016) and its application in the context of morality (Lyons, 2010), the role of coercion in legal norms (Ekow, 2008) and the question of the legal content and coordination of decentralized collective punishments (Gillian, Hadfield & Weingast, 2013).

But in general, questions concerning the relationship between coercion and law are still out of the proper attention of lawyers. The reason, according to some theorists, is that coercion tends to provide a superficial understanding of the nature of law. It is not enough to define law only as an opportunity to ensure the implementation of a regulation. Classical models of legal science, especially those proposed by J. Austin (2009) & J. Bentham (2000), developed this "rough", "clumsy" understanding of law.

According to Austin (2009) & Bentham (2000), laws are considered as regulatory requirements, the implementation of which is guaranteed by the threat of the use of force mechanisms. Such a simplified approach, according to G. Lamond (2000), does not consider the normative and authoritarian nature of how law is usually perceived. In reality, the form of power is combined with the social phenomenon that it represents.

Thus, the American researcher G. Oberdick (1976) claims that the fixation on the restraining nature of the law excessively emphasizes its restrictiveness and conceals the constructive role that the law plays in the life of society.

H. Hart *et al*. (2012) challenge the classical model of legal science, arguing that coercion itself cannot distinguish the law from the threat of force.

It appears that in the opinion of the general public, the claim that the law is inherently coercive is contradictory. Thus, legal philosophers mainly separate the concept of coercion from the concept of law through a more profound perception of the latter. For instance, H. Hart (1958) notes that law should be considered as a normative system.

The law does not just recognize punishment as a certain tax that must be paid because one cannot buy the right to murder in exchange for agreeing to spend several dozen years in prison. Upon prohibiting murder, the law stipulates that it must not be committed. H. Hart notes that violations of this rule are considered grounds not only for punishment, but also for a sense of criticism, guilt, and moral condemnation. Given that law is normative, legal norms should not be considered as an immoral order.

It can also be argued that law is a system of rules that has practical significance. In theory, the state should establish rules that determine how to act. This means that legal prohibitions cannot be identified, e.g., with a simple desire to obey the law or with one's own interests. The law does not make provision for reasoning such as mundane justifications for wrongdoings: "even though this is illegal, however..." Instead, the law clearly provides that all the circumstances were analysed, and an authoritative, legitimate decision was made. Such position is called the "legal position" (Raz, 1979).

The legal position is clear: when a person is told what they should or should not do, there are no alternatives besides those prescribed by law. Even when the law allows actions that are clearly violations, such situations are governed by law. Moreover, the law makes provision for the possibility to establish solid grounds in an unlimited range of situations, i.e., this refers to the global nature of law.

These characteristics, the authority and normativity of law, are absent in the classical model of law, which was considered by J. Austin (2009) & J. Bentham (2000). However, when abandoning the classical model, coercion is usually considered as a secondary factor in relation to law.

In connection with the above, it is possible to single out *the purpose of this study*, which lies in revealing the essence of legal coercion in the described sources, its influence on legal relations, the development of this concept in the context of further prospects for legal regulation of relations in society.

Coercion as an Inalienable Feature of Law

One can agree with Professor Gh. Costachi (2013), according to whom "... the doctrine almost unanimously supports the idea that the coercion used by the state should be legitimate. However, it is important that this depend, foremost, on the legitimacy of the state power itself, which means recognition and confirmation of its legality. In general, the legitimacy of state power is expressed in terms of the correctness, legality, and conformity of power in relation to the expectations of individuals, social groups, and society as a whole".

The simplest known legal model proposed by Austin and Bentham involves largely the identification of coercion and law. The model developed by these scientists attempted to distinguish law from other systems (Austin, 2009; Bentham, 2000). According to Austin, law can be seen as a group of stable orders or imperatives backed up by the threat of punishment. Since someone is punished for violating an order, they must obey that order. Thus, the stricter the sanction, the stronger the duty. In this model, the concepts of sanction, order, and duty are inseparable. Therewith, the sanction not only ensures the effectiveness of the order, but rather imposes a duty. That is, "the greater the possible evil and the greater the chance of causing it, the greater the effectiveness of the order should be and the heavier the force of duty, ... the more likely it is that the order will be executed, and the duty will not be violated" (Austin, 2009).

By defining laws as orders along with the threat of sanctions, Austin's model excludes other normative systems. Specifically, Austin distinguishes between customary laws and laws that are correctly considered "lawful". Violation of customary law can lead to social sanctions, but at the same time, these norms cannot be considered a law, since state authorities do not ensure sanctions. The scholar notes that the use of the term "imperfect law" equates perfect laws with unofficial norms, which leads to the emergence of unofficial duties – whether religious or moral: "Imperfect laws", Austin notes, "are imperfect laws in the understanding of Roman jurists: that is, laws that reflect the wishes of the political leadership without securing them with sanctions. Many researchers who have written about morality and the so-called law of nature have given the term "imperfect" a different meaning (Finnis, 2006). When it comes to imperfect duties, it usually refers to duties that are not related to a law: duties imposed by God's Commandments, or duties imposed by positive morality, rather than duties imposed by positive law. Imperfect duty, in the understanding of Roman jurists, is equivalent to a lack of duty" (Austin, 2009).

By its origin, a custom is a rule of conduct that is observed spontaneously or not observed pursuant to the law established by the political leadership. Custom becomes a positive law when it is adopted as such by a court, and court decisions made on its basis are executed by the state authorities. But before a decision is made by the courts and ensured by legal sanction, it will only be a rule of positive morality: a rule that is usually followed to ensure obedience and regulate the behaviour of a group, citizens. It can be argued that the only strength of such a decision comes from the general disapproval of those who violate it.

Thus, to ensure obedience and regulate the behaviour of a certain group of people, social sanctions may be strong enough, but they only accompany social norms similar to a law. Following this thesis, J. Tolkien Bentham (2000) argues that a legal mandate cannot be acceptable if it does not unite its subjects through coercion, i.e., a law that does not force anyone is controversial.

Austin does not distinguish between a social sanction and a legal sanction based on the strength and impact of a social sanction on a person or the severity of a legal sanction. The difference, rather, depends on the source of the sanction. Any sanction applied to an individual as a result of a violation of a customary or social norm is not the result of an order from a political leader (Austin, 2009).

Bentham (2000) emphasizes that regardless of whether the burden imposed by a law is cumbersome or not, it is still imposed coercively. The researcher states that only to the extent that the law is compulsory, it can influence the practical considerations of citizens and thus bring benefits. It is coercion that makes laws effective in the end. J. Bentham, like J. Austin (2009), perceives the compulsion of law not only as a conditional function necessary to guarantee the effectiveness of law. But Bentham (2000) understands the effectiveness that coercion imposes in a more profound sense: efficiency transforms an order into a law, which in turn imposes duties and grants lawful rights. In other words, coercion, which obliges subjects of law, is just as important for the formation of a legal mandate as the very purpose of law-making. Both are fundamentally necessary to conceptualize a legal norm.

Thus, the classical model of law developed by J. Austin (2009) & J. Bentham (2000), clearly connects legal norms with coercion. Legal norms are essentially orders backed by the threat of force. That is why modern legal scholars reject the classical simplified explanation of coercion in legal norms. In itself, the ability to force someone cannot constitute the law. Coercion can only be interpreted as a form of exercising power over someone. The classical model of law only demonstrates the exercise of social power over others, without describing it as a law. Power in this context is a broader concept than coercion (Russell, 2004).

Evidently, power is a complex concept, and the law can use its power in various ways. Accordingly, coercion is only a form of social power (Lamond, 2000). Power is exercised through social status, wealth, physical strength, or personal charisma (Friedman, 1973).

Admittedly, law, despite the presented purely reductive image, often exercises its power, being normatively assimilated by its subjects. There are at least three important differences between brute force and the regulatory sanction that constitutes the essence of law (Wolff, 1998):

1. Firstly, having strict power over someone is not the same as having normative power over that person.

2. Secondly, the government should not claim to command its subjects. A robber should not feel that they have a legal right to command their victim. They certainly do not believe that the person they are robbing is obliged to listen to them.

3. Thirdly, coercion itself should not be part of a guiding or regulatory action, and therefore should not be a sanction. Thus, brute force can be used as a sanction: a robber can beat someone for not following their order to give them money. Admittedly, a robber could have beaten someone up for no good reason. Thus, the objection against a reductive picture of the connection between coercion and law is correct. Simply being able to get others to act in a certain way may not be enough to make something lawful. This ability does not claim to establish stable or systematic rules, enforce those rules, or grant authority (Wolff, 2021).

However, when exposing the shortcomings of the classical model of law, researchers often tend to believe that coercion is only conditionally related to law – a human necessity that does not determine its internal nature. Although the opinions of J. Austin (2009) & J. Bentham (2000) require reinterpretation in the present context, it is a mistake to consider coercion only conditionally related to law. Rather, there is a need to first investigate the missing characteristics necessary to fully describe legal norms to determine the role of coercion in it. The classic model outlined by J. Austin (2009) & J. Bentham (2000) can be completed without losing sight of the characterization of coercion as an integral part of law. To complete the classical model, it is important to understand that law is a normative system and that it asserts practical authority. Both of these aspects are themselves broad topics that have been analysed in detail in numerous papers (Kelsen, 2000).

At first glance, the reasoning of J. Austin (2009) & J. Bentham (2000) may raise more questions than answers. However, even a superficial approach can highlight the differences needed to define a viable concept of law and provide a platform for exploring the unique role of coercion.

Law is obviously a normative system. Like all normative systems, it seeks to guide human activity by establishing how people "must" act. Evidently, not all laws are first-order norms. Many laws, for instance, set a deadline for paying income tax, change other legal rules, or create permissive rules under which someone can take on legal responsibilities. But in general, law cannot be understood without recognizing that it is a system of rules. When a law arises, it claims to govern human behaviour (Lamond, 2000)

It is usually established that people "must" act according to the system or set of rules. This "must" is intended to describe possible actions objectively, regardless of the individual's subjective will. There are religious, moral, and personal norms. For instance, each family has a set of rules used to control the behaviour of its members. Some norms may emerge instantly. In other cases, the norm may emerge slowly, specifically in relation to customs, or as a result of philosophical or theological disputes, as in the case of moral and religious norms (Hart, 1958).

Perhaps H. Hart (1958) recognized the objective (normative) nature of "must" in the legal system, distinguishing "being obliged" and "having obligations". From Hart's standpoint, being obligated means being forced to do something. Obligations, however, exist regardless of whether a person avoids exposure, is subject to sanctions, or feels or believes that they have obligations. Arguing that someone has an obligation based on a valid and valuable regulatory system is often important to correct a lack of conviction or belief in their duty.

The normative image of law helps distinguish the role of norms from the mere presence of orders supported by force. As H. Kelsen (2000) notes, the actual norm creates an objective "must". The will of another, armed individual, for instance, creates only a subjective "must".

R. Dworkin (2019) describes this situation as follows: "We make an important distinction between the law and the general orders of a bandit. We believe that the structures of the law – and its sanctions – differ in that they are binding, unlike the orders of a bandit. Austin's theory does not make provision for such a distinction, since it defines duty as submission to the threat of the use of force, and thus the authority of the law is entirely based on the sovereign's ability and desire to punish those who do not obey [...] but a rule differs from an order precisely in that it is normative and sets a standard of conduct that affects its subject beyond the threat it poses. A rule can never be binding just because a person with physical strength wants it."

The law, on the other hand, sets rules that govern behaviour. These norms exist regardless of the concomitant threat of use of force. Thus, the law, like all regulatory systems, establishes a "must" that guides human behaviour and criticizes non-compliance. These rules set obligations and duties apart from the force or fear of being exposed.

Law is not only normative, but also a special type of regulatory system since it claims to be authoritative. The law does not hold a system of normative rules with

the ability to do whatever one wants. There is no clear definition of power. One person has power over another when their instructions prevent the other from determining other grounds for action. T. Hobbes (2016) examines this type of power in his discussion of orders. It defines an authoritative order as such, when a person does or does not do something without regard to any reason other than the will of the one who orders. J. Raz offers his own original explanation of practical power. In the words of this philosopher, "practical authority is one that can prevent or restrict consideration of other grounds for action" (Dworkin, 2019).

Raz's concept of authority can be objected to for several reasons. It appears that the law cannot claim power. Furthermore, a moral figure cannot submit to someone's authority (Dworkin, 2019). Other questions also aris e regarding the law's claim to authority. Many of the foundational legal documents in the modern world – such as the United States Constitution[1] – contain provisions that limit the scope of laws that can be passed.

The private concept of law alone makes the entire set of liberal Western legal systems impossible. In this context of ideas, Hart notes that limiting the authority of the law simply reflects the social practice of limiting the scope of grounds that the legal system can exclude. H. Kelsen (2000) complements the opinion of Hart (1958), noting that the law regulates one's own creation. Thus, while its powers may be limited, these restrictions are created by the law itself.

The difficulty of distinguishing law from other systems also means that it is not just a matter of linguistic intuition. This indicates a built-in claim about the conceptual necessity of coercion. Considering the recognized and individual concept of the law, restrictions form an integral part of the law, not just a necessity for enforcement.

The concept of coercion as conceptually necessary in law is not just a defining purpose. These examples show that the obligatoriness of coercion is one of the critical features of the regulatory system to claim legal status. Therewith, one can distinguish two points of view on this issue. Firstly, even if society voluntarily obeys many regulatory systems, which sometimes impose duties greater than those imposed by law, only a system of compulsory duties constitutes a legal system (Woodbury-Smith, 2021; Galligan, 2006).

Secondly, while people often respect the law for assorted reasons, the principal limitation of the legal system itself hinders certain areas of action. Even when the law is never violated and a much richer system of rules (such as religious ones) is constantly observed, the minimum level of enforceable rules is the only one that is characterized as law. The position of J. Raz (1979) may cause some objections within the analysis of his positivist model of law, according to which a norm can be qualified as legal because it originates from a certain social source.

A norm is a law if it is recognized as a social source defined by authoritative norms. This opinion does not change the argument that the law must be and is determined by its coercive force. Rather, the thesis about such a source simply pushes the question of the source of coercion a step back. Imagine a society with three different leaders, each claiming to be the true social source of law. Leader A leads a group of self-styled individuals occupying a large stone building, from which he enacts what he claims is legal law. Leader B manages a large group of people in a way similar to a religious structure. Leader C is appointed based on the ancient traditions of society to interpret its customs. Notably, all three normative systems are identical and fully consistent (Hart, 1958). And now imagine a situation when each of the specified normative systems takes a different stance on a socially prominent issue.

Leaders B and C appeal to the spiritual beliefs and traditions of the population, demanding compliance with the proclaimed decrees. Leader A summons an armed battalion to carry out his orders. Note that focusing on the relevant social source leads to the same conclusion: a social source that can coerce its dictates is conceptually consistent with a stable notion of law.

J. Raz (1979) believes that the claim that coercion is unique to law is exaggerated. This is partly true because some systems claim power and use coercion to force members to comply with its rules (e.g., the mafia). The mafia (criminal structures), with its own specific system of rules, seeks to compete with the legal system. If such a group of people retreat into the desert, adopt their own rules and ensure their implementation, one can probably contemplate creating a new legal system. For instance, upon arriving at the shores of America, the settlers ignored the laws of the local tribes. The settlers proclaimed their authoritarian rules, supported by their own military power. Perhaps it is inappropriate to characterize settlers as people who are simply operating illegally on Native American land. It can be stated that they have built a competing legal system.

Recognizing that coercion is a conceptual feature of law provides the necessary solution for individualizing the normative systems naturally described as law. The role of coercion in an authoritarian regulatory system illustrates the danger posed by criminal structures within the state when they seek to be competing legal systems. This discovery accordingly raises the question of how social norms that are considered authoritarian norms should be treated. A. Marmor (2014) notes that there are many social groups with accompanying norms to which a person belongs without explicit consent or voluntary participation.

There are even "complex rules" that define the "appropriate" or "correct" style of clothing for certain occasions, and people who deviate from them are harshly

[1]Constituția SUA, No. 1. (2021, May). Retrieved from https://constitutii.files.wordpress.com/2013/02/constitutia-s-u-a.pdf.

criticized. The fact that a person finds exclusion from their religious or social group so psychologically terrifying that they feel compelled to follow the group's rules does not make those rules coercive (and coupled with law-like normativity and authority). This is a complex issue where it is difficult to agree, specifically with Austin, that social sanctions cannot be considered the law because they do not come from political leadership (Marmor, 2014; Austin, 2009).

However, in contrast to A. Marmor (2014), understanding that law is not only forced, but also coercive, reveals the difference between law and strong social norms. The previous answer is contained in the ideas put forward by Aristotle regarding coercion and independent external motives. Recall Aristotle's view on the definition of coercion. Thus, the desire to be included in a social network is a desire that comes from within. In contrast, the coercive force exerted by the law is external and can be imposed on a person regardless of their attitude towards the law (Aristotle, 2011).

This approach can be considered too simplistic. Perhaps, constitutionally, people are not exactly beings who can turn their back on their social needs. It is difficult, if not impossible, to give up all socially important restrictions; a person, as a social being, cannot function effectively outside of the ethos. Thus, the proposed model may lead to the belief that at some point a socially imposed restriction will become, to some extent, a law. If a violation of an authoritarian norm on a desert island leads to social exile (which means certain death in this context), the norm can constitute the law, no matter how it is described or named. Furthermore, it may mean that the proposed model is incomplete because it was argued that coercion, along with normativity and authority, is necessary only to distinguish between law. This example may indicate why these features are probably not sufficient to describe the law (Marmor, 2014; Miotto, 2021).

The study of G. Lamond (2000) on the role of coercion in law correlates with the picture of law, which is considered in this paper. Lamond notes that law is a system of rules. Moreover, the scientist claims that the law claims the power to regulate a person's practical reasoning except for other norms and does so in the full range of actions, i.e., the law is normative and authoritative in everything. Furthermore, Lamond argues that the mere existence of sanctions does not make the law enforceable, and the conceptual role of coercion is not limited to the pragmatic question of its effectiveness.

However, G. Lamond (2000) denies that coercion is a fundamental component of law that separates law from other global normative systems. Instead, he sees coercion as defined by the status of the law as a practical authority. The law secures the right to subordinate a person's practical considerations and change their normative position. Thus, according to G. Lamond, the claim to authority is a justifying reference to the coercive force of the law. Although Lamond believes that the law can be described as compulsory simply because it requires this right, the reality is otherwise. He argues that the coercive force of the law depends on whether the threat is real or not. In the end, Lamond concludes that the unique feature of the law is that it declares this power on an indefinite range of grounds, it is an authoritative, comprehensive, and normative structure.

The justifying, rather than constitutive, concept of law from G. Lamond's standpoint (2000) leads to a more relaxed role of restriction. For instance, Lamond suggests that the law may authorize coercion by other social institutions, rejecting the idea that coercion is simply pragmatically necessary in the law. He points out that other social norms may impose sanctions on legal violations (ostracism, shame, etc.) that independently reinforce legal norms.

It is difficult to agree with Lamond's (2000) claim that the law can allow other coercive measures, such as private violence, to enforce legal norms without internalizing this force. If a violation of a legal norm leads to the permitted use of force by an organized crowd, this group will essentially turn into a police structure, no matter how unrealistic or strange it may appear. Similarly, if the legal system allows but does not require the use of coercive force to protect a lawful right, the optional nature of that right does not negate the principal coercion. In general, G. Lamond's thesis seems convincing, except for his attempt to deny that the law is inherently coercive. The conclusion that coercion is related to the law simply because the law uses its authority to justify coercion is insufficient. Not all global legal systems claim the right to forcibly impose their authoritarian demands. For instance, many religious norms are considered valuable precisely because a person should be willing to adopt a certain normative direction. The Catholic Church explicitly states that its normative power extends to certain parts of a person's moral life but leaves other areas of subjects' lives regulated by positive law (Lamond, 2000).

However, cultural traditionalists or religious fanatics claim that their normative systems are authoritative, comprehensive, and fully justify violence or coercion to enforce their decrees. Ultimately, the authority of the law is used not only to justify coercion. While other normative systems argue that the use of coercion is justified, they simply do not use or cannot effectively use coercion to enforce that power. Therefore, it is not the justifying link, but the coercion itself, that distinguishes law from other normative systems. At the same time, based on these arguments, it can be argued that coercion is constitutive for law. Law cannot be reduced to coercion, but it is coercion that turns certain rules into legal norms (Lyons, 2010).

It appears that legal reality can be considered as a fundamental element of the rule of law. The rule of law state sets the rules. These norms claim to be authoritative, and they represent exceptional grounds for action.

Finally, the right is internally enforced. Without coercion, the normative system cannot be differentiated or understood.

This image of the rule of law has implications for the reform of the current legal system. Specifically, it excludes from the law those norms that claim legal status, but do not have enforcement. It should be emphasized that a considerable part of the discussions on this topic is limited to theoretical reflections. However, in rare cases, a legal problem illustrates philosophical questions quite well.

An example is the case of Western Sahara in the International Court of Justice (Lyons, 2010), the Court issued an advisory opinion on the predecessor of the modern state of Algeria during the Spanish colonization. The court ruled that organized tribes occupied the territory and had legal ties with it through various treaties. And while Judge Dillard in that case agreed that the presence of organized tribes was sufficient to establish that the territory was not *terra nullius*, it was still insufficient to determine whether the ties established by the tribes were legal. For this, it was necessary to identify particular features that make certain connections legitimate.

Thus, Judge Dillard noted that law should exercise normative power over its subjects. Moreover, this normative power must, in some sense, be perceived as authoritative or as a "respectable duty". Thus, Judge Dillard deliberately tried to distinguish legal links from links based on ethnic, linguistic, religious, cultural, or other factors. However, Judge Dillard's analysis was incomplete because it ignored the fact that laws must be enforced, including coercively.

There is no doubt that this view represents only some of the issues that have repeatedly arisen in the legal world. Many international law regimes, to the extent that they cannot be implemented, are difficult to distinguish from rules that may be proposed by a religious institution, school, or interested group. International law, admittedly, qualifies as a legal regime to the extent that the possibility of implementing the regime of international law is ensured through the enforcement mechanism of each member state (Friedman, 1973).

The question arises, what is ultimately the basis for a theory of law, provided that it elevates coercion to a conceptual necessity in law? The above arguments allow providing at least two answers. The constitutive theory of law creates a narrow conception of law, which nevertheless insists on the presence of distinctive features that allow a normative system to be considered law. Over the past few generations, most lawyers have been concerned about investigating the conditions for the truth of legal provisions. This discussion mainly focused on the contradiction between the aforementioned positivist model and Dworkin's interpretive model (2019).

However, the definition of coercion as an essential feature of law offers a new perspective on this long-standing debate. To understand why R. Dworkin's interpretive model (2019) is so compelling, it is important to understand its difference from the positivist model and why understanding law as coercive can essentially show that R. Dworkin's model is erroneous. Dworkin's concept of law is primarily an integrative model. Rather, according to R. Dworkin, law is considered as a special model of morality: legal morality.

The Concept of Coercion in the Context of the Positivist Approachw

Notably, moral rules are constantly subject to verification and justification by the principles on which they are based. They should be considered in the context of their application in moral conflicts to come to a correct vision of our moral responsibilities. Similarly, legal norms come into force through the norms embedded in legal values. In this regard, R. Dworkin (2019) argues that the truth of legal provisions – legal rights and obligations – is derived from a certain type of political and moral reasoning.

Law in this sense creates rights and obligations that exist based on the political rights and morals of each legal system. This basic morality includes past court decisions, as well as other related political values such as honesty, justice, equality, and freedom. R. Dworkin (2019) concludes: "A principle is a principle of law if it appears in the most well-founded theory of law, which serves as a justification for the explicit material and institutional norms of a given jurisdiction." For R. Dworkin (2000), this definition of law is critical. A provision is a law if it is the best moral explanation for all legal norms, decisions, and principles in the legal system. True norms of law necessarily follow from moral political rights and originate from them.

At first glance, the model of R. Dworkin (2000) appears irreconcilably far from positivist. For R. Dworkin (2000), the fact that legal principles are mandatory for judges is shown in the study of the role of judicial argumentation in resolving court cases. The positivist principle states, according to Dworkin (2000), that legal duties exist only by virtue of recognized social practice – the rule of recognition. No judge can imagine that where generally accepted duties end, the law also ends, leaving the individual the "wiggle room" and make decisions according to their personal reasoning. Instead, judges reason based on the principles of political morality in the law to determine legally binding rights. Therefore, according to Dworkin (2000), law is dominated by the principles of political morality.

However, most complex positivist models do not deny that moral principles play a role in determining legal rights. For instance, J. Raz (1979) acknowledges that moral principles can be incorporated into the legal system by virtue of their social origin, although it denies that a legal norm can be valid according to its moral virtue as such. If a legal rule includes a moral virtue such as "correctness" in the terms and conditions of a contract,

then validity concerns the raw facts, not whether the contract is a "moral fact" that is correct as long as relevant social sources declare it.

This formalistic doctrine ignores the fact that, from any perspective, conflicting values and goals within the law cannot be resolved by legal norms alone. The law should supplement the legal norms with other grounds. When this happens, judges are ordered by the law to take part in the best moral reasoning. This does not mean that these moral principles are part of the law, as the law may force judges to apply reasons that are not covered by the law. This means that, in any positivist conception, the application of legal rights brings law into contact with morality. Furthermore, for J. Raz (1979), the moral benefits of preserving the authoritative power of the law are a justification for separating the reasoning of the courts from direct moral reasoning. Although philosophical differences are sometimes important and often interesting, it is necessary to emphasize how close these models become when applied in practice (Moore, 2007).

R. Dworkin opposes the principles of positivism because, without recognizing political moral principles as part of the law, the rights of plaintiffs stay "outside the court" and must be based on the discretion of the judge (Dworkin, 2019). While the positivist model proposed by J. Raz *et al*. maintains some distance from R. Dworkin's model, it is a model that emphasizes the role of coercion and provides a more prominent illumination of the relevant difference (Raz, 1979). Recognizing coercion as an integral part of law shows how recognizing that legal principles are binding can provide a greater insight into the model in question.

Evidently, philosophical meaningfulness is valuable in itself. Law is an important social institution, and therefore there is an urgent need to clarify its specific characteristics constantly and appropriately. But the model of law, which assumes its coercive nature, provides much more than philosophical meaning. After all, the emphasis on the coercive force of the law focuses attention on the problem of analytical legal science regarding what is law. Coercion can be defined as a concept that involves engaging a person's moral abilities in various ways. Even if it is assumed that the right is or is not internally coercive, there is no doubt that coercion requires justification of the coercive act itself (Lamond, 2000).

Justification of the coercive nature of law is now considered the fundamental motivation of the philosophy of law. Since the purpose of coercion is a certain limitation of a person's choice or freedom of action, it often, at first glance, looks like evil. Thus, coercion, as an inalienable property of law, imposes on the law the corresponding moral burden of justification, which differs from the burden of justification that falls on other normative systems.

The law must be justified in a way that other normative systems cannot be justified. Restrictions imposed by law are imposed on all members of society, who may have different ideas about the fundamental legal principles. Finally, the moral requirement to justify the coercive nature of law within the rule of law justifies the law itself, which is associated with the need to justify a complete political theory. That is, when coercion is embedded in the very nature of law, so is the need for justification.

The coercive nature of law differs from other relationships that can bind or constrain human action – e.g., personal and social relationships – law must be uniquely justified. Therefore, the understanding of law as coercive shows that these important restrictions on grounds that justify legal force can be embedded in the very nature of law. This is not a trivial suggestion to imagine that a legal system by its very nature must meet certain grounds to be justified. Coercion may be used, may even be necessary, as an instrument of justice to secure the widest mutual liberty for all. By bringing coercion to the forefront of the modern concept of law, researchers are factually emphasizing the dangerous power of law. In practice, law claims to be the highest normative system in society. This requirement must be thoroughly investigated and given the binding nature of the law, requires constant justification.

Professor V. Gutsulyak (2008) argues that coercion can be legal and illegal. The latter can develop into despotism of state bodies, which puts the individual in an unprotected state. Such coercion is largely based on such negative phenomena as abuse of power, incompetence of the state apparatus, corruption, etc. Such coercion is particularly inherent in states with undemocratic political regimes.

According to U. Chetrus (2007), it is important to note that coercion, which is regulated by convention, civil, criminal, etc., should not reflect the interests of the party or become an instrument of the ruling party. It is known that the laws adopted in the parliament in the absence of opposition acquire the political nature of the party with the parliamentary majority.

It is considered that the legal regulation of coercion requires maximum thoroughness, even in democratic countries. Legal coercion is a form and measure that is strictly and specifically defined by legal norms and that is applied according to procedural norms in the form of particular measures. In this respect, it is important that the lawfulness, reasonableness, and fairness of legal coercion can be tested and challenged in court.

American researcher R. Hughes (2013) believes that the degree of legality of coercion is determined by the degree of its compliance with the fundamental principles of the legal system; it is single and common throughout the entire territory of the state; its content, limits, and conditions of application are regulated by the law; acts through the mechanism of mutual rights and obligations of the entity that applies coercion and the entity that bears it; it has developed procedural forms. The legal nature of coercion is closely linked to the

system of principles underlying it, which are considered a guarantee of the application of fair and just coercion.

Restriction is considered as a system of interdependent elements, the meeting of which is vital for its existence. Several scientists have discussed the structure of the restriction. For instance, W. Morris (2012) believes that the constituent elements of the structure of restriction are the subject of restriction, the implementation of restriction as a state, the process of subordination to the will of the restricted, the object of restriction.

According to the researcher T. Honoré (1990), these elements form a narrower system than state coercion – this concerns the legal relations of applying coercive measures. In the structure of legal relations, such elements as the subject of coercion, the object of coercion, and the process of its implementation can be distinguished. In this regard, the author believes that the definition of the structure of coercion (internal organization) is possible only if all the necessary and mandatory elements are highlighted in its system, without which state coercion cannot exist. Thus, according to the researcher, coercion has the following structure: norms of legal regulation that establish the legal obligations of subjects of law; norms of law protection that govern the procedure for applying state coercion to ensure the performance of obligations; legal fact – the real basis for the use of coercion; legal relations of the application (implementation) of coercion; the result of the use of state coercion.

U. Chetrus (2007) argues that state coercion is a legal relationship of a protective nature. It arises between the state and an individual when the latter commits an illegal act, in other words, any violation of a legal norm can give rise to a coercive relationship that is established between the state and the author of such a violation.

In this regard, D. Cornean (1999) notes that the force of law is materialized in public life through compulsory legal relations, which are understood as a set of rights and obligations of substantive or procedural law that arise as a result of committing an illegal act (non-compliance with the model prescribed by the norm) and through which the application of legal sanctions is achieved. According to researcher D.K. Simes (1980-1981), coercion involves a relationship where the managing entity – the competent authority for the protection of legal norms or a public official – applies coercive measures to the entity obliged to carry out and implement these measures, i.e., a managed entity. The importance of investigating state coercion as a legal relationship lies in the fact that it allows studying the grounds for the emergence of these legal relations, i.e., the legal facts underlying them are especially important for the legality of coercion. Summarizing the above, it should be emphasized that the legal coercion applied by the state should make provision for proportional measures and sanctions in such a way as, on the one hand, to create the necessary inhibitory factors in the minds of those who try to break the law. On the other hand, it is coercion that should increase the sense of security in others, instilling in them the belief that the law, the state protects them, and that they should not resort to non-state, unofficial means to take the law into their own hands. It is essential that coercion be not used to violate the rights and freedoms of an individual or to cause physical or mental suffering. Only in such a situation will legal coercion contribute to the development of an ethical attitude of citizens, increase their psychological readiness for legal respect.

Conclusions

It can be argued that as a result of this study, the set purpose was fulfilled: the content of the problems of legal coercion described in the literature was covered, the possibilities of its influence on those legal relations that are established in society were revealed, and certain prospects for the further doctrinal development of this concept were highlighted.

Therefore, the following grounds are necessary for the use of coercion:

– the legal basis makes provision for the existence of legal norms that prescribe the possibility of applying coercion to certain subjects in particular cases;

– the factual basis makes provision for the occurrence of a legal event prescribed by the law – an event or action that gave rise to legal relations.

– the formal basis is the issuance by a state body of an act on the application of the law, which makes provision for the application of a restriction to a particular subject. In other words, coercion as a physical action is applied by special state bodies based on a court decision or an administrative act. In the absence of such actions, coercion cannot be applied.

Thus, coercive legal relations are power relations, bilateral, one of the parties of which is necessarily a state body, a representative of the state. The other party of the legal relations can be any subject to which the power of the state extends. In summary, the legal coercion used by the state should make provision for proportionate measures and sanctions in such a way as to create the necessary inhibitory factors in the minds of those who attempt to break the law. It also reinforces others' sense of security by convincing them that the state and the law protect them and that they should not resort to unofficial, non-state means to take the law into their own hands.

Legal coercion must be limited to norms and principles, the Universal Declaration of Human Rights, the European Convention on the Protection of Human Rights and Fundamental Freedoms, their Protocols, and other international regulations.

It is crucial that coercion be not used to violate the rights and freedoms of citizens or to cause physical or mental suffering. The authors of this study believe that only in such a situation will legal coercion contribute to the development of a proper legal culture of citizens, increase their legal awareness in modern conditions of social transformation.

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Нормативне закріплення примусу як прерогатива верховенства права: літературний огляд

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Анотація
Право на примус і можливість його застосування є невід'ємним атрибутом держави, її органів, що підтверджує монополію держави на примус. Незалежно від того, чи приписи правових норм виконано добровільно, примусовість залишається невід'ємною ознакою їх реалізації. Правовий примус нерозривно пов'язаний з верховенством права та правами людини. Особливо цей зв'язок відчувається в країнах Центральної та Східної Європи, які порівняно недавно звільнилися від тоталітаризму, диктатури ідеологічних норм, домінування та розповсюдження примусу. Метою дослідження, результати якого наведено в цій статті, є розкриття на теоретичному рівні суті правового примусу, аналіз та узагальнення наукових позицій учених, які вже висловлювалися з цього приводу. У дослідженні використано природно-правовий підхід і низку методів, спрямованих на системний і змістовий аналіз проблематики державного примусу, найважливішими серед яких є логічний, діалектичний, історичний та інтегративний методи. У результаті дослідження встановлено, що правовий примус, який застосовує держава, повинен передбачати пропорційні заходи та санкції таким чином, щоб, з одного боку, створювати необхідні гальмівні чинники у свідомості тих, хто намагатиметься порушити закон, з іншого – саме примус повинен посилювати відчуття безпеки в інших, вселяючи переконання, що держава захищає їх, і що немає сенсу вдаватися до недержавних, неофіційних засобів, намагаючись маніпулювати положеннями закону. Наукова значущість дослідження полягає в тому, що це одне з перших досліджень, присвячених питанню правового примусу в контексті використання його з боку держави з метою реалізації її владних повноважень у сучасних політико-правових реаліях. У практичному значенні результати проведеного дослідження можуть мати значення для вдосконалення правового регулювання з акцентом на примус, зокрема в разі прийняття норм кримінального права

Ключові слова:
держава; правовладдя; закон; нормативність; моральність; юснатуралізм; стримування силою