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*Published in:*  
Law and Critique

*DOI:*  
[10.1007/s10978-018-9220-4](https://doi.org/10.1007/s10978-018-9220-4)

*Publication date:*  
2018

*Document Version*  
Peer reviewed version

[Link to publication in Discovery Research Portal](#)

*Citation for published version (APA):*  
Siliquini-Cinelli, L. (2018). Vilhelm Lundstedt's 'Legal Machinery' and the Demise of Juristic Practice. *Law and Critique*, 29(2), 241-264. <https://doi.org/10.1007/s10978-018-9220-4>

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## *Law and Critique*, 2018 – Forthcoming

# Vilhelm Lundstedt's 'Legal Machinery' and the Demise of Juristic Practice

Luca Siliquini-Cinelli

**Abstract** This article aims to contribute to the academic debate on the general crisis faced by law schools and the legal professions by discussing why juristic practice is a matter of experience rather than knowledge. Through a critical contextualisation of Vilhelm Lundstedt's thought under processes of globalisation and transnationalism, it is argued that the demise of the jurist's function is related to law's scientification as brought about by the metaphysical construction of reality. The suggested roadmap will in turn reveal that the current voiding of juristic practice and its teaching is part of the crisis regarding what makes us human.

**Keywords** Vilhelm Lundstedt • *Scientia Juris* • Juristic Practice • Legal Education

In the objective content of science [the] individual features are forgotten and effaced, for one of the principal aims of scientific thought is the elimination of all personal and anthropomorphic elements

Cassirer (1944, p. 228)

[In the Western legal tradition] [t]he law contains within itself a legal science, a meta-law, by which it can be both analyzed and evaluated

Berman (1983, p. 8)

## Introduction

Terence C. Halliday and Gregory Shaffer have recently noted that '[s]ocial orders increasingly are legalized transnationally' (2015, p. 3). This can be hardly disputed: our existence is in fact highly legalised, and law is being pervasively practised (Hadfield 2016, p. 59). The proliferation of transnational judicial networks and forms of cooperation, as well as the emergence of multiple methods of legalisation on the post-national scale and evolving interest in (transnational) comparative legal analysis, are just some of the many examples one might give in this regard (Michaels 2016; Lupu and Scaffardi 2014; Mak 2013; Cohen 2012; Kennedy 2008).

Yet over the past decade, a great deal of scholarship has claimed that law schools and the legal professions are witnessing an existential crisis for a variety of reasons—including the inability of teachers to efficiently educate their students for the highly-contested market environments, the increasing difficulty for graduates to enter the professional world, the incapacity of contemporary legal infrastructures to cope with the pace of innovation, and the growing reliance on technological means to perform legal tasks<sup>1</sup> (Hadfield 2016, pp. 3, 59,

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Acknowledgment. This article was written in April 2017 during a visiting fellowship at the Uppsala Forum on Democracy, Peace & Justice at the Faculty of Law, Uppsala University. I am indebted to the Uppsala Forum for funding my stay and research. An earlier version of the article was presented as the Uppsala Forum Guest Lecture, entitled 'Juristic Practice as an Act of Experience' and given at the Faculty of Law, Uppsala University

79, 81; Stratas 2016; Barton 2015; Dewan 2015; Banakar and Traves 2013; Tamanaha 2012; Westerman 2011; Susskind 2013; 2010; Scott 2005).<sup>2</sup>

While the solution to this paradoxical trend is yet to be found, it has become increasingly clear that its essence and extent force us to interrogate anew the role of the jurist within current processes of legalisation around the global and on a transnational scale. In this sense, some commentators might object that jurists have been confined to a secondary role in the past as well, such as when (with the exception of Germany, until 1871) the modern *raison d'état* largely rendered legal academics spectators of the law's authoritarian administration. If anything, this indicates that the trajectory of our reflections on the past and present status of the legal enterprise in its various official branches (teaching, practising, adjudicating, legislating, etc.) is ultimately determined by whether we think of law as a science that transcends the intermediation of man, or as a matter of practice (either moral or political) and experience that cannot do without it (Berman 1983, p. 39; Coyle and Pavlakos 2005; Van Hoecke 2011).

While scholars are still divided on this definitional point, they tend to agree that the current crisis of legal education and practice can only be overcome through a neorealist and contextual commitment to the rediscovery of law's regulative purposes and how to teach it. This intellectual roadmap is centred around the belief that the difficulties encountered by the jurist under processes of globalisation and transnationalism may only be overcome through a reconsideration of the axiomatic findings and statements that characterise our understanding of legal academics' role within the social and legal dimensions, as well as of the perspectives from and methodologies through which we have come to form our insights into it (Hadfield 2016, pp. 5–9, pp. 199–277; Rhode 2015; Zumbansen 2015a; Arjona, Anderson, Meier, and Sierra, 2015; Susskind 2013, 2010; Twining 2009, 2013; von Bogdandy 2009, 2013; Gordley 2008).

Recently I showed that the activity of *jus dicere*, or rule-telling through juristic practice, will gradually become superfluous in the form of society that is currently emerging at the global and transnational level (Siliquini-Cinelli 2016a, 2016b). This is due to the fact that law's juridical component is increasingly incapable of embracing the reality of contemporary forms of regulation. Simply put, the reason for this is to be found in the global and transnational diffusion of the 'action to rational behaviour' and 'experience to knowledge' shifts. The substitution of action and experience with rational behaviour and knowledge lies at the core of the Western metaphysical tradition. The implications of the post-national expression of this phenomenon ought not to be underestimated. It is indeed becoming increasingly difficult to comprehend that in terms of *juris genesis*, to perform its regulative instances law needs humans to inter-act freely and define themselves as persons in Arendtian terms through an act of experience. This self-defining form of interaction has then to be

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on Tuesday 4 April 2017. Among the many friends and colleagues to whom I am indebted, for many and different reasons, I particularly wish to thank Joel Samuelsson, Martin Kraigh, and Stella Marceta for inviting me to Uppsala. I am also grateful to Torben Spaak, Markku Helin, Brian Z. Tamanaha, James Gordley, Roger Cotterrell and two anonymous reviewers for constructive comments on earlier drafts, as well as all to those who provided me with valuable suggestions. Errors are mine only.

<sup>1</sup> It should be noted, however, that other professions are also losing their hold owing to technology (Croft 2017; Crain Miller 2016; Staglianó 2016; Susskind and Susskind 2015).

<sup>2</sup> See also the 2016 Consultation Paper – Ministry of Justice and Her Majesty's Courts and Tribunal Service Proposal on the Provision of Court and Tribunal Estate in England and Wales, available at [https://consult.justice.gov.uk/digital-communications/proposal-on-the-provision-of-court-and-tribunal-es/user\\_uploads/reform-estates-national-consultation\\_official-sensitive\\_final.pdf](https://consult.justice.gov.uk/digital-communications/proposal-on-the-provision-of-court-and-tribunal-es/user_uploads/reform-estates-national-consultation_official-sensitive_final.pdf) (last accessed: April, 17, 2017).

normativistically interpreted by a figure, the jurist, among whom stands the judge,<sup>3</sup> through the formulation of (and answer to) a *quaestio juris*. The substitution of action with reason-oriented behaviour and experience with knowledge has voided this task of its anthropological and sociopolitical significance.

In the same context, I suggested that the negative trend that affects the teaching, learning and practice of law will persist as long as we do not internalise that (1) these activities are dependent upon the anthropological and sociopolitical function of the jurist; and that (2) the activity of *jus dicere* itself is a matter of self-defining and imperfect experience rather than self-dissolving and scientific knowledge. By this I do not mean that knowledge (and thus, also knowledge of the law) is not achievable, per se (Pavlakos 2007, p. 1; Somek 2017, pp. 1, 84). Rather, what I intended to show is that it is experience, not knowledge, that defines the apprehension and exercise of juristic practice. This experiential nature, I further maintained, cannot be rediscovered until we recognise that, in the West, the substitution of experience with knowledge has occurred along that of action with rational behaviour.

In my earlier work I substantiated these claims through a two-step analysis: firstly, I delved into the role that the categorisation of law as *scientia juris* and *tékhnē* has played in the development of the Western legal tradition, from Irnerius to current post-national theorists; secondly, I contextualised the function that the metaphysical and ontological metamorphosis from *jus* to *lex*<sup>4</sup> has had in the scientific conceptualisation of law. In doing so, I also showed that the spark of this process ought to be found in what Stoicism brought to Rome, mainly through Panaetius and Polybius: the structuring of thinking and language.

In this article, I would like to elaborate further on the crisis of juristic practice and its apprehension<sup>5</sup> by taking a lateral step and addressing its non-metaphysical, experiential nature through the lens of Vilhelm Lundstedt's legal realism. More particularly, my aim is to ascertain whether Lundstedt's thought, which is tied very closely to the social welfare understanding(s) of a shared community (Cotterrell 2016), may offer new insights into how to untangle jurist practice's loss of social relevance in a global and transnational age, such as ours, characterised by the behaviouralisation and standardisation of human existence and relations, as well as by diffusionist processes of diversification or fragmentation—that is, by the pluralisation of regulative sources and norm-setting bodies at the macro, meso, and micro levels, as well as by 'regime-shifting' mechanisms (Raunig 2013; Agamben 2012; Friedman 2007; Adorno and Horkheimer 2002; Adorno 2001; Zumbansen 2013; Zürn and Faude 2013; Teubner 2013, 2012, 2004, 1997; Teubner and Korth 2012; Handl, Zekoll, and Zumbansen 2012; Head, Krisch 2010;).

As is well known, Aristotle believed that only scientific knowledge is capable of being passed on to others, whereas what is apprehended through experience cannot.<sup>6</sup> This constructivist approach to teaching and learning has profoundly shaped the development of

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<sup>3</sup> Cf. Cotterrell on this point (2013, p. 511).

<sup>4</sup> As noted by Donlan, this distinction 'is almost foreign to Anglophone lawyers' (2013, p. 291). This explains why, in the words of Cotterrell, '[m]any Anglophone practising lawyers would not call themselves jurists and might even be embarrassed or puzzled by the title' (2013, p. 510). Further, this is also the reason why American legal theorists have not discussed the 'law as science' view since the nineteenth century, when it was generally rejected (van Gestel, Hans-W. Micklitz, Rubin 2017, pp. 4–7). It is therefore expected that the English-speaking reader might find the following reflections unconvincing. Hence the author would be satisfied enough if the present article is seen as an attempt to initiate a communal effort from which academic debate on the subject may ultimately benefit.

<sup>5</sup> A note of caution. Some commentators might object that the crisis of legal education and that of juristic practice are not one and the same thing (I want to thank Brian Tamanaha for stressing this point). It is, however, the author's opinion that they meet in a zone of indistinction, which the article aims to explore. The building of ROSS on the Watson cognitive computing platform—which Richard and Daniel Susskind define as a 'landmark development in artificial intelligence' (2015, p. 164)—is a good example of this interaction.

<sup>6</sup> *Metaphysics*, Alpha 981<sup>a</sup> 30 – 981<sup>b</sup> 9.

the Western tradition, including that of its jurisprudential branch (Stein 1980, pp. 33–36; Berman 1983, pp. 120–64; Padoa Schioppa 2007). Hence it comes as no surprise that the above-mentioned interrogative as to whether law is a science or a matter of (either moral or political) practice and experience has been discussed at length. An important figure in this debate, Lundstedt opted for a hybrid categorisation and contended that the conceptualisation of ‘law’ as a system of rights and obligations ought to be abandoned. Rather, scholars should speak of ‘legal machinery’, to be understood as a system of behavioural regularities that can be known scientifically. This is because rights and duties are not immanent entities, and as such cannot be the objects of scientific scrutiny as is commonly thought. To argue that law and legal thinking ought to be based on value judgements would lead us to believe that they can be either true or false, even though nothing can be used to assess them scientifically. Hence, to Lundstedt, law is better understood as a ‘legal machinery’ of stable connections and causations whose dynamism is determined by the (inverted) ‘effect-cause’ relationship. This empiricism led Lundstedt to reject traditional (i.e., ideological) legal science in favour of a newly scientific jurisprudence that is still based on experience—that is, on the practical observation and analysis of social facts.

Unsurprisingly, Lundstedt’s reflections on law and legal thinking have attracted a considerable degree of interest, particularly in relation to the development of Scandinavian legal realism and the so-called ‘Uppsala School’ (Cotterrell 2016; Bindreiter 2016; Spaak 2014; Petrusson and Glavå 2012; Sundell 2010; Zamboni 2006, 2002; Helin 1988, pp. 431–47; Lagerqvist Almé 1986; Sundberg 1986; Campbell 1958). Of particular relevance for the purposes of this inquiry is a compelling essay written by Bjarup in which the reader is presented with a critique of the role Scandinavian legal realists assign to behavioural regularities. Bjarup concluded that article by outlining the perils of such a naturalist approach for legal education (2005, p. 15). The project that I propose here is to push this critical analysis one step farther and reflect on both the values and weaknesses of Lundstedt’s reasoning from the perspective of the difficulties that affect legal practice and its teaching and learning in our age.

More specifically, in the following pages I shall argue that while Lundstedt’s critique of a metaphysical approach to law and legal thinking is worthwhile, his notion of law reproduces the same metaphysical fallacy he aims to overcome. This is due to the fact that Lundstedt focuses his efforts on the *essence* of metaphysic as the realm of the ideal and suprasensory, without paying enough attention to its *function*, that is, to the reason why metaphysics transcends factual beings and phenomena and our experience of them. Unfortunately, this means that Lundstedt fails to grasp that metaphysics’ ultimate aim is to structure human existence and relations through logic’s ground-giving properties. Put bluntly, this also means that Lundstedt ignores, or appears to ignore, that *every* science, even the jurisprudential one whose formation he advocates, is by definition a metaphysical construct that nullifies the self-defining properties of its objects.

Once this critical aspect is added to the reading of Lundstedt’s legal realism, it becomes manifest that both his understanding of law as a machinery governed by the ‘effect-cause’ relationship as well as his use of logic to support his arguments lead us back to the purview of metaphysics. As will be seen, this explains why Lundstedt’s natural-scientific world view blurs the distinction between experience or practice and knowledge, as well as the structural relationship between knowledge and scientific (and thus, metaphysical and logical) inquiry. Importantly, this also serves to clarify why, as recently noted by Spaak (2014, pp. 270–1), Lundstedt has nothing to say on law-making and law-applying procedures: once the legal dimension is understood as a machine automatically governed by some kind of logic (in Lundstedt’s case, that of behavioural regularities), the need for coordinating human

interaction and making sense of it normativistically through juristic practice becomes irrelevant.

Consequently, Lundstedt's reflections cannot help us internalise either what constitutes law's juridical component, or the reasons for its demise. Rather, I conclude that the challenge of comprehending what the activity of *jus dicere* is about as well as why it is increasingly becoming superfluous in our global and transnational age will not be met as long as the distinction between knowledge and experience is not rediscovered within legal discourse, and the latter preferred over the former. As such, my argument ultimately aims to show the paradox that underpins cognitivist legal theories, all of which 'agree on the central role of *practice for legal knowledge*' (Pavlakos 2007, p. 3; emphases added).

This paper is structured as follows. Section II outlines those contentions put forward by Lundstedt that are of particular significance for the purposes of our inquiry. Section III offers a critique of Lundstedt's views by elaborating on the relevance of the 'action-behaviour' and 'experience-knowledge' dichotomies to the law's coordinating purposes and the apprehension of juristic practice. Concluding remarks follow.

### **Lundstedt's 'Legal Machinery'**

Lundstedt clarifies from the very beginning of his *Legal Thinking Revised* that from the time of his encounter with Axel Hägerström, he aimed at 'mak[ing] of jurisprudence a science' (1956, p. 5). This roadmap was pursued by rejecting legal ideology and replacing it with the so-called 'social welfare' paradigm (pp. 6, 9, 21, 124–5). According to Lundstedt's view, there is indeed no such thing as an 'objective' or 'material' law composed of 'rules, maxims, principles, norms, precepts, prescriptions, commands, etc.' (p. 23; see also pp. 31, 17, 165). Scholars should therefore abandon these ideological 'fancies' (pp. 123) and opt for an 'empirically based [method of] investigation' (*ibid.*) that might render jurisprudence truly scientific (1932, p. 327).

To substantiate his claim, Lundstedt argues that traditional jurisprudence is unscientific because its concepts (i.e., 'rules of law', 'wrongfulness', 'objective legal duties', 'objective guilt', 'legal rights', 'natural justice', and, more importantly, 'legal norms'; 1956, pp. 42, 43, 77) are produced by 'value judgements', that is, by judgements that ideologically depend on 'feelings', and thus differ from proper (i.e., scientific) judgements (p. 45; see also 1932, p. 328). Lundstedt concedes that feelings have a fundamental impact on the 'common sense of justice' (1956, pp. 137, 165), and that that sense is structurally related to the functioning of the aforementioned 'legal machinery'.<sup>7</sup> However, Lundstedt also stresses several times that this way of reasoning is wholly illogical and has determined the 'fanciful construction' of an 'absurd method of justice' whose consequences are simply 'unacceptable' because they are not 'in accordance with real life' determinations (pp. 47, 48, 50, 54, 60, 63, 124, 129, 160). A similar argument is put forward in *Superstition or Rationality in Action for Peace?*, which was published in 1925. It is important to note that Lundstedt follows logic when he asks jurists not to be concerned with the metaphysical world of ideas and objective values: as he himself writes, '[i]f one assumes at all a world beyond the connection in time and space, the consequence must of necessity be that the physical world, existing in time and space, must disappear' (1932, p. 328; see also p. 329). Regrettably, however, scholars have never been capable of freeing themselves from the shackles of metaphysical thought. As a result, the whole of European jurisprudence is affected by this illusory concept of natural, ideological justice (1956, pp. 285–300, 1932, p. 326).

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<sup>7</sup> Discussed below.

This is where the ‘effect-cause’ reversal appears in Lundstedt’s reflections. While Western jurisprudence, under the influence of the metaphysical tradition, has always thought of rights as an a priori source of legal rules, to Lundstedt these are to be understood as arising out of the legal machinery’s operativity (1956, pp. 93–100). As reality ‘has [been] turned . . . completely upside down’ (p. 100), a naturalistic turn must therefore occur: from understanding rights as the *cause* of ‘legal coercive reactions’ to conceiving of them as the *effect* (p. 98). This methodological shift, which Lundstedt outlines by describing the illogic that underlies conventional (i.e., ideological) approaches to transfer of property and hire (pp. 93–100, 110, 114, and 115–18 respectively), will ultimately serve to displace the ‘false idea of legal rights’ that has underpinned the development of legal thinking to date. This indicates that, as Olivercrona correctly noted, Lundstedt is of the opinion that ‘the judge cannot ascertain the existence of a right as a prerequisite for the infliction of a sanction’ (p. 137).

With these words, Lundstedt paves the way for his notion of legal science as that branch of rational, logical inquiry that abandons the unreal concept of ‘law’ and opts instead for that of ‘legal machinery’, whose functioning is dynamically governed by the inverted ‘effect-cause’ relationship.<sup>8</sup> More precisely, as Bindreiter has set out, the legal machinery is to Lundstedt a ‘regular enforcement of coercive acts, following upon certain modes of behaviour’ (2016, p. 382). This machinery therefore should not be seen as a metaphysical system of rights and duties, but as a terrain of causal connections that ought to be placed at the centre of the legal theorist’s considerations and lawmaker’s norm-production initiatives. As will be seen below, however, the law-making process exerts a counter-influence on the formation of social interests and expectations.

And indeed, Lundstedt stresses that for jurisprudence to become a science, scholars must do two things: first, they must reject all the “‘starting points”, “facts” and “connections” which are not given in time and space’ (1956, p. 122; see also p. 286); and second, they must opt for a naturalistic (p. 129) approach to legal inquiry based on experience (pp. 126, 128), which Lundstedt depicts as the vehicle for the formation of a ‘constructive jurisprudence’ that ‘imparts knowledge about actual facts and (causal) connections as well as reasons from epistemological points of departure’ (p.131). In other words, experience is, or ought to become, the source of knowledge (see also Bindreiter 2016, p. 380).<sup>9</sup> However, Lundstedt further notes, jurisprudence can never become a fully-fledged science in the strict sense of the term: given that at times lawyers cannot avoid dealing with ‘more or less strong hypotheses instead of facts’ (1956, p. 126), there will always be a certain degree of uncertainty when it comes to understanding, and moulding, the law’s operativity. The unavoidability of evaluations, then, renders jurisprudence only a partly scientific endeavour.<sup>10</sup>

From this follows the need to conceive of legal science as a ‘constructive *juridik*’. With this term Lundstedt refers to a segment of scientific analysis that focuses on the link between law and the preservation of society (p. 132). More particularly, constructive *juridik* must do the following: (1) ascertain whether the maintenance of a given law serves ‘to ensure the greatest benefit to society, or . . . a social function’ (p. 134); (2) ‘regarding the *interpretation* of so-called valid law . . . expound [it] . . . so that its consistent application . . . can be anticipated to benefit society as much as possible’ (ibid.; emphasis in original); and (3) ‘in its systematization of laws . . . consider the historical as well as the actual significance of legal ideology’, but only as a way to overcome its metaphysical essence (ibid.).

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<sup>8</sup> See also Castignone (1986, p. 270).

<sup>9</sup> For a detailed analysis of the evolution of the term ‘constructive’ in German and Scandinavian jurisprudence since its mid-nineteenth century inception, see Bindreiter (2011).

<sup>10</sup> This is an argument that ought to be evaluated within what Lundstedt argues in another work of his, written in German and entitled *The Non-Scientific Character of Legal Science*.

Hence, according to Lundstedt's constructive legal science, it is for the jurist to evaluate the functioning of the legal machinery. If properly understood, then, jurisprudence might help construct a model of society that is in line with the legislator's view on what social welfare is. Lundstedt's theory of legal thinking assumes in this sense a truly *political* essence: as Zamboni has noted, one might think that Lundstedt was 'trying to give birth to a scientific approach to the politics of law' (2002, p. 35). Needless to say, for this to be done, the jurist must first and foremost understand *why* the law's function is to preserve society.

Here is where Lundstedt discusses his empirically-led conceptualisation of social welfare (*samhällsnyttan*) as both the *telos* of law and practical guide for jurisprudential evaluations (p. 137). Simply put, this notion comprises all those aspirations 'which *people in general strive to attain*' (p. 140; emphasis in original) and that the development of the legal machinery requires one to take into pivotal consideration. Among these aspirations stands 'a general sense of security as concerns enterprising activities as well as other modes of action not harmful from a social point of view' (pp. 137–8). Lundstedt himself writes that 'neither the law-maker nor the constructive legal scientist would find any guidance for [his or her] activity but [in] the objects which the citizens in common actually strive to realize' (p. 146). It is important to note that, as people's aspirations and needs lead to social evaluations of their communal life, the jurist must also base his or her reflections upon their empirically verifiable content (p. 148).

This view of the jurist's social responsibility is combined with that of humankind's social instinct, which Lundstedt describes as a psychological disposition 'to build up society and to maintain it in order to live there' (p. 161). As it emerges during Lundstedt's discussion of Criminal law's social function (pp. 50, 229), this communitarian attitude plays a fundamental role in the framing of his legal machinery paradigm as well. The reason for this is that it leads to a double-featured phenomenon: on the one hand, humankind's sociability informs the drafting and enforcement of what is commonly known as legal rules; on the other, given that human beings' existence and relations are always influenced by their sociological nature, 'legal rules' turn out to influence behaviour and expectations (Zamboni 2002, p. 44).

Lundstedt's framing of the inverted 'effect-cause' relationship is based upon analytical elaboration of the working logic of this phenomenon (1956, pp. 166–7). Before addressing it, however, it should be noted that dismissal of the 'common sense of justice' ought to be evaluated in this realist light, as it simply does not reflect 'what is useful to mankind' (p. 161; see also pp. 162–4). Lundstedt, however, promptly clarifies that this approach to the legal enterprise does not make him a utilitarian, as his concern is not with individual aspirations, but with those of the larger society (p. 141). This organicist view is put forward by addressing Alf Ross's critical comments on Lundstedt's thought as well as in comparing the workings of society with those of a company (pp. 172–80).<sup>11</sup>

Crucially, Lundstedt also notes that either the legislator may base his or her evaluations upon 'false conceptions' regarding the people's aspirations, or the laws enacted may not reflect them sufficiently (1956, p. 144). Hence, a discussion follows on how the lawmaker, who is a 'servant' of society, should be influenced by the heterogeneity of social valuations so that the law may efficiently benefit its members (pp. 149–56, 173–8). This eventually causes Lundstedt to return to what he had anticipated a few pages earlier regarding law's regulative function being 'necessary for the maintenance of the social economy' (p. 156).

Building upon this contention, Lundstedt provides a more detailed account of how 'certain social welfare interests leave their mark on [the] legal machinery which in . . . in turn guides and maintains the common sense of justice' (p. 161). He confirms this a little later, only to

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<sup>11</sup> Criticism has been raised against this approach for resembling totalitarian sentiments (Campbell 1958, p. 568).



stress that, despite such influence, ‘basing law on the common sense of justice is the same as putting the cart before the horse’ (p. 169). Yet it would be an unforgivable mistake not to admit that ‘there is a kind of interaction’ between the two (ibid.). The point, however, is that it is the legal machinery that informs ‘feelings of justice’, not vice versa (p. 170). And indeed, the logic that informs the above-described ‘effect-cause’ reversal proves to be fundamental in this respect as well: As Lundstedt himself writes, ‘without the rules of law . . . the common sense of justice would lose precisely the points of support which are absolutely necessary for the indispensable role which it plays in the social organization, in the legal machinery’ (ibid.). Conversely, ‘if the legal machinery stopped functioning[,] the feelings of justice would lose all bearing and control’ (ibid.).

Having thus argued, Lundstedt then returns to what he had anticipated previously and insists that the task of jurisprudence as legal science is to use experience to gain ‘knowledge about reality’ (p. 196;<sup>12</sup> see also pp. 201, 206). The method of social welfare is in this sense to be developed ‘axiomatically’ and based on ‘direct conceptions of reality’: only through the observation and epistemological understanding of social expectations (pp. 197–8, 206–7) and behavioural regularities (which at times Lundstedt also refers to as ‘causal connections’; p. 215)<sup>13</sup> can legal activities achieve their aim of preserving public utility and dispelling the ‘chimera’ of legal ideology’s belief in ‘justice belonging to a metaphysical world’ (p. 196; see also p. 215). This can be further shown, Lundstedt maintains, by contextualising the social welfare paradigm within the working logic of Civil and Criminal law—an analysis that duly follows (pp. 217–69).

Finally, before concluding the second part of his manuscript by outlining why and how the common method of justice has contaminated European jurisprudence (pp. 285–300), Lundstedt discusses why his constructive *juridik* is logically incompatible with it (pp. 269–85). Of particular significance is the critique of Philip Heck’s jurisprudence of interests (*Interessenjurisprudenz*), which Lundstedt relates to the ‘free judge movement’ and dismisses for being ‘untenable from a scientific point of view’ (p. 274). The reason for this, we are told, is because its foundations are those of ‘the law of nature [and] natural justice’ (p. 275). Lundstedt’s analysis is, in this context, indubitably consistent with the organicist view he had expounded on earlier; while Heck’s school of thought set itself apart from the meta-juridical premises of the so-called jurisprudence of concepts (*Begriffsjurisprudenz*), it must be rejected for its merging of private and public interests.

## **Law’s Existence and the Nature of Juristic Practice**

Few would doubt that Lundstedt’s arguments share an affinity for those sociological accounts that criticise legal theory and jurisprudence for being too conservative and analytic (Cotterrell 2002). And indeed, Lundstedt’s reflections on law being a matter of social interaction and development rather than abstract and ideological reasoning<sup>14</sup> easily overlap with what, a few years after the publication of *Legal Thinking Revised*, Selznick would argue regarding the absurdity of denying ‘the general interdependence of law and society’ (1959, p. 115). In this respect, Lundstedt could be easily grouped with those legal philosophers and sociologists who have argued that the renovation of legal education depends on the movement from the abstractness of the doctrinal concepts of the ‘law in books’ to the empirically verifiable approach of the ‘law in context’ or ‘law in action’ (among others, see Twining 2009, pp. 38–

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<sup>12</sup> Emphasis in original.

<sup>13</sup> I share Spaak’s reading of Lundstedt’s legal philosophy as substantially positivistic in this respect (2014, p. 271). See also Leiter (2001).

<sup>14</sup> See in particular Lundstedt’s claim that ‘[l]egal science is the science of the conditions and forms of . . . social individuals, and of the life of societies’ (1932, p. 331).

41, 117, and 225–65). Similarly, Lundstedt’s theoretical reversal, according to which it is the law that influences human action and expectations rather than the opposite, appears to be in line with Luhmann’s well-known argument that ‘[a]ll collective human life is directly or indirectly shaped by law’ (1985, p. 1; see also pp. 77–8, 82).

While this context-oriented approach to law’s nature and functioning is welcome, it is my opinion that Lundstedt’s legal realism cannot be of assistance in overcoming the demise of either law’s juridical component or the teaching thereof. This is because while Lundstedt correctly rejects a metaphysical approach to law and legal thinking, he turns out to be a metaphysical theorist. To prove this, one could note the similarity between Lundstedt’s constructivist approach to experience and opinion that truth and untruth are ideal categories and Aristotle’s arguments in *Metaphysics*.<sup>15</sup> Alternatively, one could point to the Thomist essence of Lundstedt’s claim that law serves only public utility (Sariola 1986<sup>16</sup>).

However, here I would like to draw the reader’s attention to another factor, namely, Lundstedt’s understanding of law as a ‘machinery’ governed by the ‘effect-cause’ relationship. Above all, it is the objectification of reality underpinning this image that leads us back to the purview of metaphysics. A similar claim was made by Bjarup in the aforementioned article, in which he compellingly set out the perils of a naturalistic view of legal education. What sets my reflections apart from those of Bjarup, however, is that Bjarup does not engage with the importance of the anthropological, philosophical and sociopolitical distinction between action and behaviour and experience and knowledge in juristic practice and its teaching. My aim in the following pages is therefore to show that while Lundstedt’s commitment is to placing the sociological character of ‘action’ at the centre of his scientific jurisprudence, the trajectory of his thought deprives it of its spontaneity and unpredictability, and thus of its humanising essence in Arendtian terms. This is done, I argue, by inscribing action within a structured system of mechanic determinations.

The starting point for our reflections should be that if action is deprived of what renders it truly active—that is, its spontaneity and unpredictability—it inevitably follows that there is no need to create social order by normativistically evaluating and coordinating human relations. While Lundstedt seems to agree with this view (1956, pp. 48–9), his argument is ultimately at odds with it. To understand this fully, attention should be paid to the fact that Lundstedt speaks of the ‘action of people’ (p. 136) and yet argues that law is a universe of behavioural regularities rather than of rights and duties. It comes therefore as no surprise that, as noted by Spaak and mentioned earlier, Lundstedt has nothing to say on law-making and law-applying procedures: the sociopolitical function of the jurist becomes superfluous simply because the political-ontological problem of how law moves from the ideal to the factual and becomes *the* law, i.e., the combination between norm and decision (Kahn 2012), cannot be solved by his legal theory. From this it follows that Lundstedt’s account is wholly in line with the metaphysical structuring of human existence that underpins our global, transnational age and voids law’s regulative scope. A brief contextualisation of the ‘action-behaviour’ and ‘experience-knowledge’ dichotomies will show this.

### ***Action-Behaviour***

Phenomenologically, I have been claiming, law’s existence depends on the activity of *jus dicere*, or rule-telling through juristic practice. The anthropological and sociopolitical function of the jurist, among whom stands the judge, is indeed that of ‘*norm-alising*’ our actions in thus creating, protecting and promoting social order. This is how, through the

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<sup>15</sup> Alpha, 981<sup>a</sup> 6-8, 981<sup>a</sup> 13-18, 980<sup>b</sup> 26-28, and Epsilon, 4.1207<sup>b</sup> respectively.

<sup>16</sup> See also Heidegger (1977, p. 64), in which the ‘earthly happiness of the greatest number’ is described as a metaphysical construct.

jurist's existentialist function, law performs its essential regulative instances and becomes *the* law..

From this it follows that to absolve its coordinating purposes, (the) law needs humans to be free to act and define who they are as persons in Arendtian terms. This is where, I believe, the distinction between action and behaviour becomes all the more essential to understanding the crisis in legal education and practice. Needless to say, this dichotomy has been long studied, particularly by philosophers and political thinkers. To discuss it in all its aspects would require a more extensive treatment than can be provided here. Hence I would like to limit myself to Heidegger's and Agamben's conviction that action is a form of experience that arises out of nothingness. The self-defining properties of action depend indeed on its supra-logical negativity, or, as we may say, on its being phenomenologically spontaneous, free, non-positated, and thus groundless.

Conversely, any form of conduct that is captivated is behavioural. Thus Heidegger, notwithstanding his fight against subjectivism, distinguished between human comportment as 'acting and doing' and animal behaviour as 'being driven forward' by stimuli that captivate and nullify the subject's existence (1995, pp. 232, 240; see also Agamben 2004). In other words, action does not need a reason, or a *causa instrumentalis* (Agamben 2016, p. 70). This explains why Arendt contended that what distinguishes action from behaviour is that the former is its own end.<sup>17</sup> To speak of 'rational action', as many legal theorists do, is therefore an oxymoron that reproduces the fallacy of metaphysical thought: action is never as rational, nor predictable, as behaviour is.

Conversely, reason stands among the many stimuli that guide behaviour. And indeed, 'reason is not self-defining' (Kahn 2010, p. 175) simply because it is common to us all. As such, reason is a metaphysical construct that does not let us authoritatively and sovereignly experience what makes us human, and thus who we are as persons. The fact that rational behaviour may lead to different, individualistic outcomes should not lead us to claim otherwise, as it is reason itself that determines those outcomes, not us. This cannot be understood if we do not first comprehend that while man is the animal who reasons and speaks, this merely defines human *qua* human; it does not define me, nor the reader of these words, nor anybody else. It only defines humankind as a species, thus helping the interpreter to differentiate it from its animal and vegetable counterparts. When we pursue our own interests, that is, when we let our attitude be determined by the outcome of a rational calculation,<sup>18</sup> we do not actively decide who we are as persons but merely dwell in what we should perhaps define as a procedural—as opposed to absolute—truth.

### ***Experience-Knowledge***

As discussed, Lundstedt's constructivism has a precise scope: that of founding a jurisprudential form of scientific knowledge based on an experiential method of inquiry that understands human relations as mechanical regularities. Above all, it is the scientific preoccupation of comprehending the world as a totality along with the assumption that observation may lead to empirical knowledge that make Lundstedt a metaphysical thinker.

Indeed, in expounding these views, Lundstedt turns out to be a Humanist. In particular, his notion of legal thinking and analysis shares the Renaissance belief that scientific investigation is about the methodological discovery and reconstruction of the world—which, in Lundstedt's case, is reduced to a series of behavioural regularities that can be deciphered with absolute certainty. Lundstedt, then, acts as a new Quintus Mucius Scaevola who subscribes to

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<sup>17</sup> Cf. Agamben (2017, pp. 107–9).

<sup>18</sup> Heidegger, who believed it was inappropriate to combine action with convenience, would call it the 'calculating self-adjustment of *ratio*' (2008, p. 217, 1998, p. 50).

Aristotle's constructivist approach to experience.<sup>19</sup> Or we may say, he acts as a Leonardo or even, as a young Descartes or Pascal,<sup>20</sup> who transposes within the legal dimension the same paradoxical and transcendental faith in experience's capacity to instruct science that informs Humanist thinking and blurs the distinction between practice and knowledge.<sup>21</sup> And if we agree with Heidegger that humanism is metaphysics' modern declension, it emerges that Lundstedt's scientific estimation of the world recovers and remoulds within legal discourse the very essence of the same metaphysical tradition he aims to overcome.

In order to grasp the metaphysical substratum of Lundstedt's epistemological method and structuring of reality, we are, however, required to comprehend the dehumanising properties of behaviour and knowledge and how they operate. A good start would be to internalise the fact that what socioeconomic regulative processes of behaviouralisation—of which the desire for knowledge, standardisation, and reach is a crucial component (Rauning 2013; Agamben 2012; Friedman 2007; Willke 2007; Adorno and Horkheimer 2002; Keohane and Nye Jr, 2000, p. 24; Adorno 2001)—threaten is our capacity to experience what defines us as persons in Arendtian terms. This is why the substitution of (self-defining) action with (self-dissolving) behaviour has occurred alongside that of (self-defining) experience with (self-dissolving) knowledge. This is because while experience is unique and imperfect, knowledge looks for certainty and truth through a logic that prompts objectification, and thus, nullification (Heidegger 2016, pp. 7–9, 55–6, 63, 65, 101–2, 2008a, p. 118, 1982, pp. 200–2; Descartes 1986, p. 318; Hegel 1974; Cassirer 1957, p. 5, 1944, p. 57). Hence, even though it has been argued that knowledge 'assumes that things are the way they are irrespective of our ability to grasp them' (Pavlakos 2007, p. 15), the opposite is the case: knowledge functionally objectifies reality as behaviour functionally commodifies human existence and relations. To put it differently, both knowledge and behaviour phenomenologically *equalise* the targets of their reach for regulative and structuralising purposes, thus emptying their constituting properties as well as the unpredictability of their inter-*action*.

This may sound strange or even inappropriate, considering how deeply the inconsistencies or sheer metaphysical speculations (Arendt 1978, p. 157) of German idealism's systematisation of reality, as well as the 'technologisation' of the spirit described by Heidegger (2014, pp. 209–10), have influenced Western development over the last two centuries. It could therefore be asked, with good reason, whether global and transnational legal theorists have in fact even noticed the substitution of experience with knowledge (Ladour 2011; Quack 2016). And indeed, one may question whether knowledge and experience can be analytically differentiated in the first place, and thus whether separating them will help us comprehend what law and juristic practice are about and currently undergoing.

To address these issues, I submit, we need to delve into the role that knowledge plays in scientific inquiry, which in turn serves to explain its metaphysical and logical essence. In addition to such Humanists as Zabarella, according to whom knowing is an impersonal function, one may reference Heidegger, Agamben, and Cassirer in this respect as well. Heidegger famously contended that, through science,<sup>22</sup> '[t]he real becomes secured in its objectness' (2013a, p. 168; see also 2013b). This is because science's purpose is to 'se[t]

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<sup>19</sup> *Metaphysics*, Alpha, 980<sup>b</sup>–981<sup>b</sup>; Stein (1990, pp. 36–7).

<sup>20</sup> On Descartes's humanistic thought, see Negri (2007, pp. 24–102). On Leonardo and Pascal, see Wootton (2016, pp. 53, 297, 417).

<sup>21</sup> I refer to the Aristotelian naturalism of Pietro Pompanazzi and Giacomo Zabarella. For an introduction, see Randall (1956, pp. 257–79).

<sup>22</sup> It should be noted that Heidegger distinguished between 'ancient' science, which he considered favourably, and its 'modern' counterpart, which he vehemently condemned. The quoted remarks refer to the latter notion. See also Heidegger (2013c, p. 79, 2012, 2008b).

upon the real [by] order[ing] it into place to the end that at any given time the real will exhibit itself as an interacting network, i.e., in surveyable series of related causes' (2013a, pp. 167–8; see also 1982, pp. 320–4). Agamben drew on this tradition of thought in a short but valuable essay on the humanising character of experience which embraces Walter Benjamin's belief that modern society is devoid of it. In particular, Agamben showed that while science is aimed at achieving verifiable knowledge, experience 'is incompatible with certainty [because] once an experience has become measurable and certain, it immediately loses its authority' (2007, p. 20). Combining these accounts with that of Cassirer on the lack of 'personal and anthropomorphic elements' in scientific enquiry, quoted at the beginning of this article, reveals that, along with action, the self-defining, finite, and relative character of experience is what constitutes human uniqueness.

What matters for our purposes here is that (scientific) knowledge is a metaphysical construct that achieves its equalising and objectifying aims by using the ground-giving properties of logic to connect a 'cause' to an 'effect' dialectically. My use of the term 'metaphysics' here is Heideggerian, as by it I refer to the science that looks at beings and phenomena comprehensively (i.e., as a whole) with the aim of systematising them according to a *common* feature that they all share.<sup>23</sup> Metaphysics, then, transcends the factual *singularity* of beings and phenomena, including human beings and relations, as a way to structure (and, thus, equalise and objectify) them in a given order of reference that may be cognitively accessed through judgment.<sup>24</sup>

It would be impossible to describe in a few words how logic's rationality has neutralised the finitude and immanent actuality of experience in favour of transcendental knowledge (Heidegger 2014, pp. 198–9, 2008b, pp. 304–5). This would require an engagement with ancient, medieval, and modern metaphysical thinkers, such as Cicero, Thomas Aquinas, Descartes, Hobbes, Leibniz, Kant, and Hegel, according to whom truth—that is, reality as *certitudo*—resides in the word (Cassirer 2010, 1955, p. 129, 2009; Heidegger 2008b, 2008a, 1998, 1984, 1982; Stein 1966, p. 42).<sup>25</sup>

In this sense, to prove that logic's dialectical nature serves metaphysics' cognitive and structuring purposes, one might also note that both find their seed in Platonic and Aristotelian philosophy.<sup>26</sup> Since Plato's *Sophist* and what Aristotle called *Organon*, logic has indeed been the metaphysical science that looks for coherence between statement and meaning by deactivating the principle of non-contradiction with the aim of construing a systematic unity in which subject and predicate coincide. Hence Derrida's condemnation of metaphysics for 'keep[ing] the outside out [through] the inaugural gesture of "logic"' (1981, p. 128). In other words, logic dialectically connects elements of reality by transcending their spatiality and temporality and including them in an all-encompassing totality through judgement so that they can be known (Cassirer 2009, p. 253). This is how experience is nullified, knowledge produced and reality explained by scientific means: by metaphysically deactivating the factuality and ambiguity of beings and phenomena through a dialectical process that

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<sup>23</sup> See also Cassirer (1955, pp. 76–7).

<sup>24</sup> Hence Heidegger writes that, in Kant, 'cognitive truth' is the 'truth of judgment [which] becomes the standard for the object or, more precisely, for objectivity' (1982, p. 201).

<sup>25</sup> I want to thank James Gordley for the constructive feedback on this point. While Gordley concedes that rationalism is dehumanising, he disagrees with me regarding early and modern metaphysics being two manifestations of the same phenomenon.

<sup>26</sup> As Cassirer showed, according to Plato's 'cognitive value of language . . . the reality of things can be apprehended only in the truth of concepts'. Hence, in Platonic idealism, 'the "things" of common experience . . . become "images," whose truth content lies not in what they immediately are but in what they mediately express' (1955, pp. 124–5).

replicates them within a given framework of intelligibility.<sup>27</sup> Thus Heidegger aptly speaks of the ‘metaphysical foundations of logic’ (1984, 2002, p. 4).<sup>28</sup>

### ***Law’s Existence and the Apprehension of Juristic Practice***

Given the foregoing discussion on knowledge’s objectifying properties, it should come as no surprise that Heidegger refused to speak of ‘cognition’ and opted instead for a definition of knowing based on experiential terms such as ‘apprehending’ and ‘understanding’ (1982, pp. 275–330, 1998, pp. 11–2; 2014, p. 215). Indeed, according to Heidegger—who, as stressed by Arendt and Glenn Gray, was above all a teacher—the movement from the conceptualisation of teaching and learning as experiential apprehending and understanding to scientific knowing has to be inscribed within the origination of metaphysical and logical thinking ‘in the ambit of the administration of the Platonic-Aristotelian schools’ (2014, p. 153). Yet the role that Stoicism, in its promotion of the metaphysical structuring of thinking and language, has played in this process cannot be ignored (Long 2001, pp. 85–106; Heidegger 1984, p. 4). It was only through the Stoics’ preaching, indeed, that the ‘truth’ of the predicate started to be evaluated by making it coincide with the subject’s assertion. In this way, *logos* was instrumentally transformed into logic so that thinking could become a way of positing and structuring—and thus, transcending—reality by metaphysical means.

In terms of the legal dimension, the spark of this constructivist process has to be found in the influence of such Stoics as Mucius and Servius on Roman juristic practice: with them, the experiential essence of legal reasoning and the apprehension of its practice were reduced to a transcendental, logical, and cognitivist endeavour. As Schiavone has shown, this shift occurred alongside ‘the metamorphosis of law from an *act of will* into an *act of knowledge*’ (2012, p. 245; see also Stein 1980, pp. 6–47; critically, see Tuori 2004). After the Glossators’ scientific didactics, based on Aristotle’s *Logic*, established itself throughout Italy and Europe (Berman 1983, pp. 132–51; Padoa Schioppa 2007, pp. 87–98, 149), legal theory was easily able to develop along this metaphysical path to become wholly rational, logical, and constructivist in modern times ).<sup>29</sup>

The profound impact that Stoic structuralism, reason-oriented universalism, and mathematics have had on modern political and legal thinking ought to be appreciated from this perspective (Cassirer 1946, pp. 163–75).<sup>30</sup> Amongst the innumerable examples one might give in this respect, it will suffice to point to Grotius’s, Hobbes’s, Pufendorf’s, Wolff’s, Montesquieu’s, and Voltaire’s mathematical treatment of politics and law. Alternatively, one might point to Lord Kames’ belief that law is a rational science; to Leibniz’s famous contention that jurisprudence is not based on experience because law and justice depend on logical analysis like arithmetic; to Savigny’s collaboration with Wilhelm von Humboldt to create a model of higher education environment entirely based on scientific research; or

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<sup>27</sup> Critical lawyers have not failed to notice this. See Douzinas and Gearey (2005, pp. 43–5).

<sup>28</sup> Cassirer too describes metaphysic as based on a ‘logical process’ that hooks the ‘concept of the thing and the concept of causality’ so that ‘what cannot be converted into such a relation . . . remains ultimately intelligible’ (1957, p. 94). Cassirer returned to this point in writings later in his life, when describing why the knowledge pursued by the philosophy of the Enlightenment brought to completion a reason-oriented approach to reality that for the sake of objectifying it as a whole ‘dissolves . . . everything merely factual, all simple data of experience . . . tradition and authority’ using logic as its medium (2009, pp. 13, 244–74).

<sup>29</sup> See Heidegger (2013c, p. 34): ‘[i]n the modern age . . . we [have come to] know rigorous thinking only as *conceptual* representation’ (emphasis in original). More broadly, see Habermas’ description of modernity as a dimension in which cognitive procedures and normative expectations fully met and inform each other (1997).

<sup>30</sup> Hence Giacomo Marramao places measurement, conventionalism, and rationalism at the centre of modern secularisation and its voiding of experience (2005).

finally, to Puchta's scientific positivism<sup>31</sup> (Cassirer 2009, pp. 234–74; Padoa Schioppa 2007, pp. 504–8; Stein 1980, p. 25).

In our 'flat' world, where the reason-oriented behaviouralisation and standardisation of human existence and relations have been diffused globally through the spread of the 'civilised economy' and 'good economic governance' paradigms,<sup>32</sup> this trend has reached its apex and drained the relationship between juristic practice and the human condition of its significance. Needless to say, the inclusion of social science knowledge in the legal domain has profoundly influenced this process—as is made evident by the spread of artificial intelligence discourse in the development of legal practices and of computational models of legal knowledge, reasoning, and decision-making. Hence, twenty years after having warned against law's 'epistemic trap' and advocated a pure form of legal epistemology based on a constructivist conceptualisation of reality (1989, pp. 730, 732), Teubner suggested that jurisprudence should stop adopting the 'empirical results or theoretical insights from the other social sciences' (2009, p. 4, 1989).<sup>33</sup> Not coincidentally, this view is diametrically opposed to that of those contemporary Scandinavian legal realists who endorse Lundstedt's constructivist approach to the legal enterprise and argue for a sociological theory of law centred around the dynamics that inform the knowledge-oriented economy of our time (Petrusson and Glavå 2012). This approach, however, fails to realise that the existential crisis faced by law schools and the legal professions is structurally related to the transformation of normative thinking into a system of knowledge—which leads to the completion of the methodological relativisation<sup>34</sup> of reality and rationalisation of human existence that inform the Western metaphysical tradition.

What emerges from the foregoing analysis is, then, that the mechanical rationalisation of human conduct renders the regulatory function of the activity of *jus dicere*, as well as its apprehension, superfluous. The reason for this should be obvious: If humans no longer unpredictably *inter-act*, thus defining who they are as persons, but merely behave according to reason-oriented schemes of social interaction that may be mechanically planned and/or decoded, there is no need for the coordinating function of juristic practice. Or, we may say, there is no need for the jurist to create social order by '*norm-alising*' the instability and spontaneity of our actions. That is why, according to Sacco, for something like law to exist, the subject has to decide how to act. From this it follows that law is, and can only be, an anthropological tool which animals do not need: as their conduct is guided by behavioural stimuli, all they need is rules. Hence there is neither room for law nor the jurist in the animal world (2007, p. 19).<sup>35</sup>

The emergence of hybrid functional equivalents to law, among which stand networks and similar regulatory structures at the macro, meso, and micro levels is testament to the crisis of law's juridical component (Zumbansen 2015b, p. 102; Dietz 2014; Teubner 2012, 2011, 2009). The same may be said in regard to what global and transnational legal scholars commonly describe as the transformations of public law and its accountability schemes, or to the fact that state functions are increasingly delegated to the private sector and spread among multiple orderings of society without legitimate authorisation and efficient supervision.

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<sup>31</sup> Not coincidentally, Puchta is the first commentator to explicitly describe Quintus Mucius Scaevola as the jurist who introduced the scientific approach to law.

<sup>32</sup> Both terms relate to the belief that governments should educate consumers, as well as build or reform institutions and regulate economic activities, according to rational global standards determined by outsiders (Friedman 2007, pp. 51–9 and 201–39).

<sup>33</sup> Cf. Vick (2004); Schrama (2011).

<sup>34</sup> Or 'approximation', which is the term that Heidegger uses in the first volume of his *Nietzsche* when describing what characterises the Platonic conception of knowledge.

<sup>35</sup> Cf. Agamben (2017).

If this is correct, or at least plausible, the nihilism that currently affects juristic practice can only be defeated through an anthropological and sociopolitical turn: from the ‘(non-)human’ who behaves rationally according to scientific schemes of social interactions, to the human who acts spontaneously and whose decisions must be normativistically interpreted. Only through the individual’s reappropriation of his or her ability to act, and thus experience him- or herself in his or her uniqueness in Arendtian terms, will the activity of *jus dicere* be again a median between society’s need for order and coordination, and law’s performative instances.

## Conclusion

According to Richard and Daniel Susskind, in a few decades we will be living in the ‘post-professional society’—that is to say, in a form of society ‘[...] in which today’s professions will play a much less prominent role’ (2015, pp. 301, 271). Juristic practice is, of course, no exception. As discussed, scholars tend to identify the reasons for this fast-evolving development in the processes of digitalization and automation that shape our global and transnational age. The argument pursued by this article is that the seed of this phenomenon ought to be found in law’s scientification as brought about by the metaphysical construction of reality. The reason-oriented behaviouralisation and standardisation of human existence and relations pursued by metaphysics’ constructivism and the demise of the jurist’s anthropological and sociopolitical function meet in a zone of interaction.

Over the past years, a great many compelling arguments have been put forward in the wake of contextualising the impact that knowledge’s objectifying properties has on law’s existence and performativity (Riles 2008; Ladeur 2011). The question that is yet to be answered is, however, how can the suffering of juristic practice be cured? For my own part, I believe that the successful training of young lawyers for the highly contested, liquid environment of our time depends not only on which kind of materials we will bring into the field, nor will it be determined solely by the methodologies through which we will widen the interdisciplinary spectrum of legal education and pedagogy.<sup>36</sup> First and foremost, the healthy development of a newly contextualised discipline of law and justice will rest on whether we are able to internalise that law is not a science. Rather, it is an *ars*<sup>37</sup> that falls outside the purview of knowledge, and as such can only be apprehended through an act of experience.

This requires us, as teachers, to comprehend that the suffering of law’s juridical component is part of the crisis regarding what makes us human. The reason for this, as discussed, is that processes of behaviouralisation render the anthropological and sociopolitical function of the jurist superfluous. If humans stop acting because their conduct can be mechanically planned and/or decoded by a system of rational and causal behavioural connections, there is no need for a legal expert to evaluate their inter-*action* in light of law’s coordinative instances. In short, this means that there is no need for ‘(non-)humans’ to depend on the jurist’s anthropological and sociopolitical function of *jus dicere*.

Hence, rather than merely forming future global and transnational law professionals for the post-professional society, we should first aim to train *humans*<sup>38</sup> experienced in law and global and transnational issues who are capable of working efficiently—and thus, making sense of themselves as *persons*—in a diffusionist regulatory landscape as teachers, solicitors/barristers, judges, or legislators. If we opt for this approach, then a counter-

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<sup>36</sup> A recent example is the Solicitors Qualifying Examinations for England and Wales, which will come into operation in September 2020.

<sup>37</sup> Needless to say, this term is not used here in a Ciceronian fashion.

<sup>38</sup> See Domingo (2001, p. 121), in which the task of forming a global law as a ‘Law of Humanity’ is left to the jurists.



movement from self-dissolving knowledge and rational behaviour to self-affirming experience and action will be required. Lundstedt's scientific jurisprudence cannot be of assistance in this enterprise.

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