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ENSHRINING LEGAL COERCION AS A PREROGATIVE OF THE RULE OF LAW

Tănase Oleg

Topicality. *State, law, politics and morality were created within and for society. Human society determines the meanings and purposes of the other categories often generously but misleadingly called the common good or happiness. It is the point of departure and of return for all social, political and moral constructions. Whatever the reality may be closer or further from the idea as such, the concept of the rule of law is well outlined in the doctrine of the state everywhere. It is particularly noticeable in countries liberated from communist totalitarianism that the "rule of law" approach is a reaction against the dictatorial state, which has oppressed man, either through the abuse of illegality or through the enactment and enforcement of unjust laws. Even when we deal with the rule of law, aiming at practical, applicable purposes, we cannot proceed otherwise than starting from the clarification of the concept. And this all the more because, although it marks one of the spectacular transformations taking place in the countries of Central and Eastern Europe, so including in the Republic of Moldova, the concept of the rule of law risks, although it should not, to remain a simple obstruction, an unknown sea for most of the people in the mentioned countries.* ***The purpose of the article*** *is to study legal coercion as one of the traditional state management methods from the standpoint of the exclusive prerogative of the state to implement it.* ***Methodology***. *The research uses a natural-law approach and a number of methods aimed at a systematic and meaningful analysis of the problems of state coercion, the most important of which are generalization, dialectical, historical and integrative methods.* ***The results obtained***. *It is concluded that the legal coercion applied by the state must involve proportionate measures and sanctions, in such a way that, on the one hand, it creates the necessary inhibiting factors in the conscience of those who would try to break the law and, on the other hand, it strengthens the feeling of security in others, inspiring them with the conviction that the law, the state, protects them and that they should not resort to non-state, unofficial means in order to take the law into their own hands. It is absolutely essential that the application of coercion should not be used to infringe the rights and freedoms of individuals or to cause physical or mental suffering. We believe that only in such a situation will legal coercion contribute to the formation of the ethical attitude of citizens, increasing their psychological readiness to respect the law.*

Key words: *state, law, rule of law, legality, legal act, coercion, legal coercion, normativity.*

Тенасе Олег. Закріплення правового примусу як прерогативи правової держави

Актуальність. *Держава, право, політика й мораль були створені в суспільстві та для суспільства. Людське суспільство визначає значення та цілі інших категорій, які часто, проте оманливо називають загальним благом або щастям. Це точка відправлення й повернення для всіх соціальних, політичних і моральних конструкцій. Якою би ближчою чи дальшою не була реальність від ідеї як такої, концепція верховенства права добре окреслена в доктрині держави всюди. У країнах, що звільнилися від комуністичного тоталітаризму, особливо помітно, що підхід «верховенства права» є реакцією на диктаторську державу, яка пригнічувала людину шляхом або зловживання беззаконням, або ухвалення й застосування несправедливих законів. Навіть коли ми маємо справу з верховенством права, націленим на практичні, застосовні цілі, ми не можемо продовжувати інакше, ніж почати з уточнення концепції. І це тим більше, що, незважаючи на те, що це є однією з вражаючих трансформацій, які відбуваються у країнах Центральної та Східної Європи, зокрема Республіці Молдова, концепція верховенства права ризикує, хоча вона не повинна залишитися лише певною перешкодою для більшості людей у згаданих країнах.* ***Метою статті*** *є дослідження правового примусу як одного з традиційних державних методів управління з позиції виключної прерогативи держави на його здійснення.* ***Методологія***. *У дослідженні використано природно-правовий підхід та низку методів, спрямованих на системний і змістовний аналіз проблематики державного примусу, найважливішими серед яких є узагальнення, діалектичний, історичний та інтегративний методи.* ***Наукова новизна***. *Це одне з перших досліджень, присвячене питанню правового примусу в контексті використання його з боку держави з метою реалізації її владних повноважень у сучасних політи-*

ко-правових реаліях, зокрема з урахуванням досвіду державотворення в Республіці Молдова. ***Результати дослідження****. Зроблено висновок, що правовий примус, який застосовує держава, з одного боку, повинен передбачати пропорційні заходи та санкції таким чином, щоб створювати необхідні гальмівні чинники у свідомості тих, хто намагатиметься порушити закон; з іншого боку, він має посилювати відчуття безпеки в інших, вселяти їм переконання, що закон, держава захищає їх та що вони не повинні вдаватися до недержавних, неофіційних засобів, щоб узяти закон у свої руки. Украй важливо, щоб примус не використовувався для порушення прав і свобод особи або для заподіяння фізичних чи психічних страждань. Лише в такій ситуації правовий примус сприятиме формуванню етичного ставлення громадян, підвищенню їх психологічної готовності до правоповаги.*

Ключові слова: *держава, право, верховенство права, законність, закон, примус, правовий примус, нормативність.*

Introduction. Until now, the critical relationship between coercion and law has been somewhat ignored. The reason, according to some theorists, is that coercion generally seems to provide a superficial account of the nature of law. It is not enough to define law as simply the ability to enforce an edict. Classical models of jurisprudence, especially those defined by John Austin and Jeremy Bentham, have advanced this "crude", "uncouth" picture of law [2, p. 548].

For J. Austin and J. Bentham, laws are essentially orders whose fulfilment is ensured by the threat of force. This reductive picture ignores important, independent features such as the normative and authoritarian nature of how we perceive law. The picture combines a form of power with the richer social phenomenon that it represents [14, p. 42].

Moreover, some theorists argue that the focus on the constraining nature of law over-emphasizes its restrictive nature and obscures the constructive role that law plays in our lives [17].

Thus, modern theorists, led by H.L.A. Hart, deny the classical model of jurisprudence, arguing that coercion itself cannot distinguish law from the threat of force [12].

Most would regard the claim that law by its very nature is coercive as controversial. Closer philosophical inspection has led some to distinguish the concept of coercion from the concept of law in favour of a richer view of the latter. First, H.L.A. Hart and other modern theorists have noted that law is a normative system [12].

Law does not simply regard punishment as a tax to be paid; one cannot buy the right to murder in exchange for agreeing to spend 30 years in prison. By prohibiting murder, the law establishes that murder must not be committed. Violations of this rule, as H.L.A. Hart points out, are seen as grounds not only for punishment, but also for guilt, criticism and moral censure. Because the law is normative, legal norms are not reducible to amoral orders.

Secondly, the law is a system of rules that claims practical authority [18].

The state enacts rules that determine how we should act. This means that legal prohibitions cannot be equated with other reasons, such as self-interest or the simple desire to obey the law. The law does not accept or tolerate the kind of deliberation we are used to adopting in everyday life to justify some actions: "Well, on the one hand, it's illegal, but on the other…" Instead, law implicitly assumes that all the reasons have been considered and that an authoritative legal decision has been made. This position is called the "legal view" [18].

The position of law is a clear one: when the individual is told how he should (or should not) act, he has no alternatives other than those provided by law. Even when the law permits acts that are normally violations, the exceptions themselves are regulated by law. Moreover, the law has the capacity to enact authoritative grounds in an unlimited range of situations; that is, the law is "globally authorised".

These characteristics, normativity and authority, are absent from the classical model proposed by J. Austin and J. Bentham. However, in abandoning the classical model, legal philosophers too often treat coercion as peripheral to law.

Materials and methods. This study not only shows that coercion is important from the perspective of human nature but also argues strongly that coercive sanctions are a necessary and perhaps the most important feature for explaining legal norms. Even legal scholars who have apparently placed coercion within the concept of law have left it contingent. For example, H.L.A. Hart considers sanctions and coercion necessary as a safeguard against disobedience. The additional fact that H.L.A. Hart excludes closely related communal societies from this requirement seems to leave coercion out of conceptual necessity. The focus will be on the legal aspect of legal rules. The ability to use coercion in particular circumstances defines legal norms. The fact that coercion is necessary in human societies, being a pragmatic matter, does not give us sufficient clarity about its conceptual place. One may ask why some theorists find the argument that coercion is pragmatically necessary insufficient when the most

basic portrait of human beings includes within itself the need for coercion? Thus, apparently, there is no obvious reason why we should not be satisfied with the necessary connection between law and coercion in human society and thus forego further investigation. Does it not suffice to note that coercion is necessary in all nomologically possible scenarios?

However, the claim of the necessity of coercion lies at the very heart of the concept of law. Our concept of law would be incomplete, undefined and unclear without the awareness that coercion is at least part of it. Finally, defining coercion as a necessary feature of law reminds us of the power of law and its need for continuous justification. This paper deliberately avoids stating conditions that would morally justify the coerciveness of law in its entirety. Instead, it focuses on establishing and emphasizing the inherent coercive nature of law. Coercion, far from being an artifact of human frailty, is inseparable from our concept of law. As long as the law exists, its coerciveness places a moral burden on everyone. In contrast to the natural law approach used by the author in his research, the positivist conception of law has long encouraged citizens to consider it separately from morality, thereby subjecting law to critical moral judgment.

Results and discussion. Professor Gh. Costachi declares that: "In doctrine, practically unanimously, the idea is supported that the coercion applied by the State must be legitimate. It is important, however, that this depends, first of all, on the legitimacy of state power itself, by which is meant the recognition and confirmation of its legality. In general, the legitimacy of state power is expressed in terms of the correctness, legality and appropriateness of the power in relation to the expectations of individuals, social groups and society as a whole" [7, p. 7].

The simplest jurisprudential model exploring the relationship between coercion and law largely equates the two. This model, proposed by J. Austin and J. Bentham, attempted to distinguish law from other systems [2, p. 578]. J. Austin describes law as a group of imperatives or stable orders. Just because someone is liable to be punished for violating an order, he has a duty to obey that order. Consequently, the harsher the sanction, the greater the force of the duty. In this model, the notions of order, sanction and duty are inseparable. It is important to note that a sanction does not merely ensure the effectiveness of the order; rather, it is the sanction itself that imposes a duty: "The greater the possible evil and the greater the chance of causing it, the greater is the effectiveness of the order and the harder the force of the duty: or (substituting the exactly equivalent expressions), the greater the chance that the order will be obeyed and that the duty will not be violated" [2, p. 579].

J. Austin sees the law as little more than a set of stable orders backed by the threat of penalties. It follows from J. Austin's conceptualization that orders without sanctions attached cannot properly be called laws. J. Austin describes such orders as "imperfect laws" [2, p. 579].

Without the threat of sanctions, such dicta cannot properly be characterized as orders and cannot give rise to any duties or obligations. By defining laws as orders coupled with the threat of sanctions, J. Austin's model excludes other normative systems that are often combined with or compete for recognition as legal norms. Specifically, J. Austin distinguishes between customary laws and laws properly considered "lawful" [2, p. 579].

J. Austin acknowledges that violations of customary norms can lead to social sanctions, while at the same time asserting that these norms cannot be regarded as law insofar as the sanctions are not enforced by the state power. J. Austin notes that there are potential uses of the term "imperfect law" that equate perfect laws with non-lawful norms thus giving rise to non-lawful duties, whether religious or moral: the imperfect laws of which I now speak are imperfect laws in the sense of the Roman jurists: that is, laws that speak the wishes of political superiors, but which their authors did not provide with sanctions. Many of the writers on morality and the so-called law of nature have attached a different meaning to the term imperfect. Speaking of imperfect duties, they typically mean duties that are not lawful: duties imposed by God's commandments or duties imposed by positive morality in contradiction to duties imposed by positive law. An imperfect duty, in the sense of Roman jurists, is exactly equivalent to no duty.

At its origin, a custom is a rule of conduct which the governed observe spontaneously or not, in accordance with a law laid down by a political superior. The custom is transformed into positive law when it is adopted as such by the courts and when judicial decisions modelled on it are enforced by the state power. But before it is adopted by the courts and clothed with legal sanction, it is only a rule of positive morality: a rule generally observed by citizens or subjects; the only force it can be said to possess derives from the general disapproval which falls on those who break it.

Thus, while social sanctions may be powerful enough to ensure one's obedience and regulate a group's behaviour, they only accompany social norms similar to law. Adhering to this thesis, J. Bentham argues that a legal mandate cannot be conceived unless it binds its subjects coercively: "A law by which no one is compelled <…> contradiction in terms" [2, p. 580].

J. Austin does not distinguish between a legal sanction and a social sanction dependent on the severity of the legal sanction or the force and effect of the social sanction on the person. Rather, the distinction depends on the source of the sanction. Any sanction is applied to a person as a result of a violation of a social or customary norm; it does not result from the order of a political superior.

Specifically, J. Bentham notes that whether the burden a law imposes is onerous or gratuitous, it is still imposed coercively. According to J. Bentham, only insofar as the law is coercive can it affect the practical reasoning of citizens and thus produce a benefit; it is coercion that ultimately makes laws effective. But, like J. Austin, J. Bentham perceives the coerciveness of law as more than a contingent function necessary to guarantee the effectiveness of law. Rather, J. Bentham conceives in a deeper sense of the efficacy that coercion imposes – efficacy transforms an order into a law, which in turn imposes duties and confers legal rights. Thus, the compulsion that binds legal subjects is as critical to the construction of a legal mandate as the very purpose of lawmaking. Both are vitally necessary to the conceptualization of a legal norm.

Thus, the classical model, as constructed by J. Austin and J. Bentham, links coercion quite directly to legal norms. Legal norms are more or less orders backed by the threat of coercive force. It is easy to see why modern theorists reject the classical, reductive account of coercion in legal norms. The mere ability to coerce someone cannot adequately be described as law. (An older sibling, a bully on the playground, and an assailant in the alley may all be capable of compelling others to respect their will. They can also issue orders backed by attached sanctions. However, these cases cannot be attributed to law or right.)

The mere possibility of imposing actions by coercive pressure cannot constitute law. Coercion is merely a form of exercising power over someone. The classical model, devoid of other conditions, merely illustrates the exercise of social power over others, without properly describing it as law. Power, in this sense, is a broader concept than coercion [19].

Power is indeed a complex concept, and the law can exercise its power in many ways. Coercion is only one form of social power [14, p. 45].

Power can be exercised because of physical strength, wealth, social position or personal charisma [11].

Indeed, the law, contrary to the purely reductive image presented, often exercises its power by being normatively internalized by its subjects. There are at least three important ways in which brute power diverges from the kind of normative sanction that is the essence of law. First, having raw power over someone is not the same as having normative power over that person [20].

Second, power need not claim authority over its subject. The robber must not believe that he has a justified right to command his victim. He certainly does not believe that the individual he robs has a duty to listen to him.

Thirdly, coercion alone should not be part of a guiding or normative action and therefore should not be a sanction. Yes, brute power can be used as a sanction; the bully might beat you up because you didn't follow his order to hand over your daily lunch money. But, of course, the bully could also beat you up for no good reason. So the objection to the reductive picture of the relationship between coercion and law is true. The mere ability to compel others to act in a certain way may not be enough to make something law. This ability does not claim to establish systematic or stable rules, enforce these rules, or claim authority.

However, exposing the flaws of the classical model, legal theorists have often been inclined to believe that compulsion is only conditionally related to law – a human necessity that does not define its intrinsic nature. Although the views of J. Austin and J. Bentham need to be supplemented, it is a mistake to conceive of coercion as only contingently related to law. Rather, we must initially explore the missing features necessary to fully describe legal norms. Only after examining the other features of legal norms can we examine the role of coercion in fully describing legal norms. The classical model that J. Austin and J. Bentham outlined can be completed without losing sight of the characterization of coercion as intrinsic to law. To complete the classical model, it is essential to realize that law is a normative system and that it claims practical authority. Both of these aspects are themselves deep topics analyzed in detail by numerous works [13, p. 29].

Briefly discussing them may generate more questions than answers. However, even a cursory

approach is capable of highlighting the distinctions necessary to identify a viable concept of law and providing a platform from which to explore the unique role of coercion.

Law is clearly a normative system. Like all normative systems, it seeks to guide human activity by setting out how we "ought" to act. Obviously, not all laws are first-order norms.

Many laws, for example, set a deadline for paying income tax, change other legal rules, or create permissive rules by which someone can assume legal duties. But taken as a whole, law cannot be understood without recognising that it is a system of rules. When a law emerges, it pretends to guide human behavior [13, p. 29].

Sets out what we "should" do through a system or body of rules. This "ought" is meant to describe our course of action objectively, regardless of the subjective will of the sender, receiver or third party. There are moral, religious and personal norms. For example, in every family there is a set of rules that attempt to direct the behaviour of its members. Some norms may arise instantly. In other cases, a norm may emerge slowly, such as customs, or it may be a matter of philosophical or theological dispute, as in the case of moral and religious norms [13, p. 30].

H.L.A. Hart recognized the objective (normative) nature of "ought" in a legal system by distinguishing between "to be bound" and "to have an obligation". In H.L.A. Hart's terms, to be obliged means to be forced to do something. Having an obligation, however, exists regardless of whether the person escapes detection, is subject to sanctions, or feels or believes that they have an obligation. Arguing that one has an obligation based on a valid and valuable normative system is often important to correct one's lack of conviction or belief in one's duty.

The normative image of law helps us distinguish the role of norms from the mere presence of orders backed by force. As Hans Kelsen describes, a valid norm creates an objective "ought". The will of someone else, an armed man, for example, creates only a subjective "ought".

Ronald Dworkin describes this situation: "We make an important distinction between law and the general orders of a bandit. We believe that the structures of law – and its sanctions – are different in that they are binding in a way that the bandit's orders are not. J. Austin's theory does not frame such a distinction, because it defines an obligation as obedience to the threat of force, and thus bases the authority of law entirely on the sovereign's ability and willingness to punish those who do not obey. <…> But a rule differs from a order, namely in that it is normative, and sets a standard of behavior that impacts its subject above and beyond the threat it imposes. A rule can never be binding just because a person with physical power wants it to be so" [8].

Law, on the other hand, establishes rules that guide behavior. These norms exist independently of the accompanying threat of force. In this way, law, like all normative systems, establishes a "ought" that guides human behavior and criticizes noncompliance. These norms establish obligations and duties separately from force or fear of detection.

Law is not only normative, but is a particular type of normative system in that it claims authority. Law does not contain a system of normative rules with the caveat "Do what you want". What does it mean to define something as authority? One individual has authority over another when his dictates prevent the other from identifying other grounds for action. Or, as the old line goes, "Because I said so…". Thomas Hobbes addresses this type of authority in his discussion of orders. He defines an authoritative order as one where a man says: "Do this or don't do that, without waiting for any reason other than the will of the one who orders". Joseph Raz offers the most sophisticated elucidation of practical authority. According to this author, "a practical authority is one that can prevent or constrain consideration of other grounds for action" [8].

One can object to J. Raz's conception of authority for several reasons. How can law claim authority? How can a moral agent subordinate himself to someone else's authority? What is the function of the law's claim to authority? When is a claim to authority justified? Many fundamental legal documents in the world today – the United States Constitution for example – contain provisions that limit the scope of laws that can be enacted [5].

In firm ways, these documents give up their ability to claim authority on a range of issues, such as particular religious practices and First Amendment speech. Only a particular notion of law would exclude the totality of liberal Western legal systems. In this context of ideas, H.L.A. Hart notes that limiting the authority of law simply reflects the social practice of placing limits on the scope of grounds that the legal system can exclude. H. Kelsen complements H.L.A. Hart's view by noting that the law regulates its own creation. Thus, although its authority may be limited, these limits are created by the law itself [13, p. 37].

The difficulties of distinguishing law from other systems also imply that our previous examples are not based on linguistic intuition alone. This points to a built-in assertion of conceptual necessity; as long as we refer to the recognized and individualized concept of law, constraint is an inherent part of law, not merely necessary to ensure compliance.

The conception of compulsion as conceptually necessary in law is not merely a defining purpose. Our examples show that compulsion is one of the critical features for a normative system to claim legal status.

Recall two earlier points: first, even if society willingly submits to many normative systems that sometimes impose obligations greater than those imposed by law, only the system of coercively imposed duties constitutes a legal system.

Second, although people often follow the law for various reasons, the underlying constraint of the legal system independently precludes certain courses of action. Even when the law is never broken and a much richer system of rules (e. g. religious ones) is consistently followed, the minimum layer of coercively applicable rules is the only one characterised as law. J. Raz's position may raise some objections. The positivist model of law proposed by J. Raz considers that a norm can be qualified as a legal norm because it emanates from a certain social source [18, p. 43–44].

A norm is law if it is recognised by a social source determined by authoritative norms. Does this view modify the argument that law must be and is defined by its coerciveness? No, rather the source thesis simply pushes the question of the source of origin of coercion one step back. Let us imagine a society with three different leaders, each claiming to be the proper social source of law. Leader A leads a group of self-appointed individuals who occupy a large stone building from which he enacts what he claims to be legal law. Leader B leads a large group of individuals in a manner similar to a religious structure. Leader C is appointed on the basis of the ancient traditions of the society to interpret its customs. Notably, all three normative systems are identical and in full agreement [12, p. 86–88]. Now let us imagine a situation in which each of the normative systems mentioned takes a different position on an issue of social importance.

Leaders B and C appeal to the spiritual beliefs and traditions of the population to demand compliance with the proclaimed edicts. Leader A summons an armed battalion to enforce his orders. Notice that focusing on the appropriate social source leads to the same conclusion: the social source that can coercively enforce its dictates conceptually fits our notion of law.

J. Raz holds that the claim that coercion is unique to law is overstated [18, p. 149–150].

Other systems claim authority and use coercion to force members to abide by its rules (e. g., the Mafia).

Does the mafia or the group of robbers with their specific system of rules aspire to compete with the legal system? Let us remember the example of the robber who orders a person to hand over his wallet under threat of death. If such a group of people retreats into a desert, adopts its own rules and enforces them, does not the group of robbers create a new legal system? For example, upon arrival on American shores, settlers ignored the laws of the native tribes. The settlers promulgated their own authoritarian rules backed by their own military force. It seems inappropriate to characterize settlers as simply acting illegally on Native American land. It is clear that they constructed a competing legal system.

Recognizing that coercion is a conceptual feature of law gives us the resolution we need to individuate normative systems naturally described as law. The role of coercion in an authoritarian regulatory system illustrates the danger posed by mafia or robber gangs in a state when they aspire to be competing legal systems. This revelation naturally begs the question of how social norms that can be seen as authoritarian norms should be treated. Andrei Marmor observes that there are many social groups, with accompanying norms, to which we belong without clear consent or willing participation [15, p. 348].

There are even elaborate rules that determine the "correct" or "appropriate" style of dress for certain occasions and people who deviate from these are harshly criticized.

Doesn't the fact that a person finds exclusion from his or her religious or social group so psychologically terrifying that he or she feels compelled to abide by the rules of the group make those rules coercive (and coupled with normativity and authority, akin to law)? This is a difficult question. In this regard, I have already qualified as unsatisfactory J. Austin's claim that social sanctions cannot be considered law because they do not come from a political superior.

Unlike A. Marmor, however, the understanding that law is not only involuntary but also coercive reveals a distinction between powerful social norms and law. The tentative answer is found in the ideas

promoted by Aristotle on coercion and independent external motives [15, p. 348].

Let us recall Aristotle's view in determining what constitutes coercion [1]. Thus, the desire to be included in a social network is a desire that comes from within. In contrast, the coercive force that the law exerts is external and can be imposed on a person regardless of his or her attitude towards the law.

This approach can be considered far too simplistic. Perhaps constitutionally, humans are not exactly the kind of creatures capable of turning their backs on their social needs. It is difficult, if not impossible, to give up all socially important constraints; man, as a social being, cannot function effectively outside the ethos. Thus, the proposed model may lead us to believe that at some point, socially imposed constraint may be the law to some extent. If violation of an authoritarian norm on a desert island results in social exile (meaning in the given context certain death), the norm may constitute law, however it is described or named. Alternatively, this may indicate that the proposed model is incomplete; it has been argued that coercion, along with normativity and authority, is only necessary to delimit law. This example may indicate why these features are probably insufficient to describe law.

Grant Lamond's recent work on the role of coercion [14] in law resonates strongly with the picture of law we propose in this paper. G. Lamond notes that law is a system of rules. Moreover, he points out that law claims the authority to regulate a person's practical reasoning to the exclusion of other norms and does so across the full range of actions; that is, law is normative and authoritative across the board. Moreover, G. Lamond, in agreement with the present study, argues that the mere existence of sanctions does not make law coercive, and the conceptual role of coercion is not limited to the pragmatic question of its effectiveness.

However, G. Lamond denies that coercion is the fundamental constituent of law that individuates law from other global normative systems. Rather, he sees compulsion as determined by the law's status as a practical authority. Law claims the right to subdue a person's practical reasoning and change its normative position. Thus, in G. Lamond's view, the claim to authority is the justificatory link to the coercive force of law.

While G. Lamond believes it is possible to describe the law as coercive simply because it claims this right, in reality things are different. He argues that the law's coerciveness depends on whether the threat is real or not. G. Lamond ultimately concludes that the unique feature of the law is that it claims this authority on an indeterminate range of grounds, it is an overarching, authoritative and normative structure [14].

The justificatory rather than constitutive conception of law in G. Lamond's perspective results in a more attenuated role of constraint. For example, rejecting the idea that coercion is simply pragmatically necessary in law, G. Lamond suggests that law could authorize coercive enforcement by other social institutions. He points out that other social norms can attach sanctions to legal violations (shaming, ostracism, etc.) that independently reinforce legal norms. At the same time, G. Lamond argues that because the law could outsource its coercive enforcement to private groups or institutions, the law and its coercive enforcement are thus separable.

It is difficult to conceptualize G. Lamond's claim that the law could authorize other coercive measures, such as private violence, to enforce compliance with legal norms without internalizing this force. If the violation of a legal norm results in the permitted application of coercive force by the organized mob, this group would, in effect, become a police structure, bizarre and unreal as this may not seem.

Similarly, where the legal system authorises but does not require the use of coercive force to vindicate a legal right, the optional nature of that right does not erase the underlying compulsion. Overall, G. Lamond's thesis seems persuasive, except for his attempt to deny that the law is inherently coercive. The conclusion that coercion is tied to law merely because law uses its authority to justify coercion is insufficient. Not all global normative systems claim the right to forcibly impose their authoritarian demands. For example, many religious norms are considered valuable precisely because a person must willingly adopt a particular normative direction. The Catholic Church explicitly claims that its normative authority extends to certain portions of man's moral life, but leaves other realms of subjects' lives to be regulated by positive law [14].

However, religious zealots or cultural traditionalists argue that their normative systems are all-encompassing, authoritative, and fully justify violence or coercion to enforce their edicts. Ultimately, the authority of law is not just used to justify coercion. While other normative systems claim to be justified in their use of coercion, they simply do not or cannot effectively use coercion to enforce that authority. Thus, it is not the justificatory link,

but coercion itself that distinguishes law from other normative systems. At the same time, drawing on the above arguments, we conclude that compulsion is constitutive of law. The law may not be reducible to compulsion, but it is compulsion that transforms certain rules into legal rules.

We hope that in the above lines we have succeeded in sketching a simple but convincing picture of law as a fundamental element of the rule of law. The rule of law enacts rules. These norms claim to be authoritative; they present exclusionary grounds for action. Finally, law is intrinsically coercive. Without coercion, a normative system cannot be differentiated or understood.

This image of the rule of law has consequences for the reform of the current legal landscape. In particular, it excludes from the law those systems of rules that aspire to legal status but lack coercive enforceability. Much of the discussion in the paper is limited to theoretical meditations. On rare occasions, however, a legal problem illustrates the philosophical questions quite nicely and eloquently.

An example is the case of Western Sahara before the International Court of Justice [14, p. 25], the Court issued an advisory opinion on the precursor to the modern state of Algeria at the time of Spanish colonization. Thus, the Court ruled that organized tribes occupied the territory and had legal ties to the territory through various treaties. However, while Judge Dillard agrees that the fact of the presence of organized tribes is sufficient to establish that the territory was not terra nullius, it is nevertheless insufficient to determine whether the ties established by the tribes were legal ties. For this purpose it was necessary to identify the particular characteristics that make certain ties properly legal.

Thus, Judge Dillard noted that law must exercise a normative power over its subjects. Moreover, this normative power must, in some sense, be felt as authoritative or as a "deferential obligation". Thus, Judge Dillard consciously attempted to distinguish legal ties from those "based on religious, cultural, ethnic, linguistic or other factors". However, the analysis conducted by Judge Dillard is incomplete, as he overlooks the fact that legal rules must be enforceable, including coercively.

In our view this view presents only some of the challenges that repeatedly manifest themselves in the legal world. Some international laws cannot be regarded as truly legal. Many regimes of international law, to the extent that they lack enforceability, are difficult to distinguish from rules that might be proposed by a religious institution, a school or an interest group.

International law certainly qualifies as a legal regime to the extent that the enforceability of the international law regime is ensured through the enforcement apparatus of each Member State [11].

In conclusion, let us examine the results of our discussion and analysis efforts. After all, what is the basis for a theory of law that elevates compulsion to a conceptual necessity in law? The arguments presented above provide us with at least two valuable insights. The constitutive theory of law creates a narrow account of law that nevertheless insists on the presence of distinct features that allow a normative system to be considered law. Much of jurisprudence has been concerned over the last few generations with exploring the truth conditions of legal provisions. This debate has largely focused on the tension between the positivist model presented in this study and R. Dworkin's interpretivist model. Unquestionably, much ink has been spilled, and the hope of discovering new perspectives on the subject demonstrates boundless optimism.

However, defining compulsion as an essential feature of law offers a new insight into this long-standing debate. To appreciate why R. Dworkin's interpretivist model is so compelling, it is crucial to understand its difference from the positivist model and why understanding law as essentially coercive may reveal that R. Dworkin's model is wrong. R. Dworkin's conception of law is primarily an integrative model. Rather, in R. Dworkin's view, law is seen as a particular model of morality: legal morality [8].

However, moral rules are constantly subject to inspection and justification by the principles on which they are based. They must be examined in the context of their application in moral conflicts in order to arrive at a correct view of our moral duties. Likewise, legal norms gain their force from the norms embedded in legal values. Simply put, R. Dworkin argues that the truth of legal provisions – legal rights and obligations – are derived from a particular kind of political-moral reasoning [8].

The law, so understood, creates rights and obligations that exist by virtue of the background of the political rights and morality of each legal system. This background morality includes past legal decisions as well as other accompanying political values such as integrity, fairness, equality and freedom.

R. Dworkin concludes: "A principle is a principle of law if it appears in the soundest theory of law that

serves as justification for the explicit substantive and institutional rules of the jurisdiction in question" [8].

For R. Dworkin, this definition of law is critical. A provision is law if it is the best moral explanation of all legal rules, decisions and principles in a legal system. True provisions of law necessarily follow from and are derived from political moral rights.

At first glance, R. Dworkin's model seems irreconcilably distant from the positivist model. For R. Dworkin, the fact that legal principles are binding on judges is revealed by examining the role of judicial reasoning in the resolution of legal cases. The positivist principle holds that legal duties exist only by virtue of a recognised social practice – a rule of recognition – according to R. Dworkin. No judge imagines that where conventionally defined duties end, so does the law, leaving him or her free to "trot along" and make decisions according to his or her own reasoning. Rather, judges reason under principles of political morality in law to determine legally binding rights. Therefore, R. Dworkin believes, it is the principles of political morality that dominate the law [8].

However, most sophisticated positivist models do not deny that moral principles play a role in determining legal rights. For example, while J. Raz disputes that a legal rule can be valid according to its moral virtue as such, he recognizes that moral principles can be incorporated into a legal system by virtue of their social pedigree. If a legal rule incorporates a moral virtue such as "rightness" into the terms of a contract, validity relates to brute facts, not to whether the contract is a "moral fact" that is right, so long as it is so declared by the appropriate social sources [18, p. 325].

This formalist doctrine ignores the fact that, from any point of view, conflicting values and goals within the law cannot be resolved by legal rules alone. Law must supplement legal standards with other reasons. When this happens, judges are directed by law to engage in the best possible moral reasoning. This does not mean that these moral precepts are part of the law, because the law can compel judges to apply reasons that do not fall within the body of the law. It means that, in any positivist conception, applying legal rights brings the law into contact with morality.

Moreover, for J. Raz, the moral benefits of maintaining the law's authoritative capacity provide the justification for separating the courts' reasoning from direct moral reasoning.

While philosophical differences are sometimes important and often interesting, it is overwhelming to note how close these models become when they are put into practice [16].

R. Dworkin opposes the principles of positivism on the grounds that, without admitting that political moral principles are part of the law, plaintiffs' rights remain "outside the court" and must be based on the discretion of the judge.

While the positivist model proposed by J. Raz and others maintains some distance from R. Dworkin's model, it is a model that highlights the role of coercion and provides a more salient highlighting of the distinction in question. The recognition of compulsion as an inherent part of law reveals how accepting that legal principles are binding can give us more clarity on the model in question.

Certainly philosophical clarity is valuable in itself. Law is an important human institution, and we are therefore motivated to clarify its inherent characteristics appropriately and continuously. But a model of law that highlights the inherently coercive nature of gives us much more than philosophical clarity. Indeed, highlighting the coerciveness of law reminds us how important the problem of analytic jurisprudence of what constitutes law is. Coercion is a concept that engages our moral faculties in a variety of ways. Even for those who argue that law is or is not intrinsically coercive, one thing is clear: coercion requires a justification of the coercive act itself [14, p. 52].

Indeed, some regard justifying the coercive nature of law as the fundamental motivation of legal philosophy. Because coercion seeks to eliminate some part of a person's choices or freedoms, it often appears as a prima facie evil. Coercion limits autonomy, freedom of decision and action. Thus, coercion being inherent in law places the law under a unique moral burden – a burden of justification that is distinct from the burden of justification that falls on other normative systems.

Law must be justified in a way that other normative systems might not. Moreover, the fact that the law's constraint is involuntarily imposed on an entire community – whose members may have very different conceptions of fundamental legal principles limits the kind of justificatory grounds to which the law must conform.

Finally, the moral requirement to justify the coerciveness of law within the rule of law justifies the law itself – being related to nothing other than the need to justify a complete political theory. And while we cannot outline a viable justified political theory here, highlighting the coercivity of law allows us to know the limits that such a justification must

respect and the burden it must bear. If coercion is built into the very nature of law, then so too is the need for justification.

The coercive nature of law differs from other relationships that can bind or constrain one's actions – for example, personal and communal relationships – the law must be justified in unique ways. Understanding law as coercive may therefore show that these important restrictions on the grounds that justify legal force can be built into the very nature of law. It is not a trivial proposition to imagine that a legal system by its nature must conform to certain grounds in order to be justified. I. Kant and many others have noted that coercion can be used, indeed may be necessary – as an instrument of justice to secure the widest mutual liberty for all. By bringing coercion to the forefront of our concept of law, we actually recall the dangerous force of law. Law claims to be the supreme normative system in our practical reasoning. This claim must be vigilantly challenged and, in light of the law's compulsion, requires continual justification.

Professor V. Gutuleac states that coercion can be legal or illegal. The latter can degenerate into despotism of state organs, 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 characteristic of states with undemocratic political regimes [22, p. 4].

The author U. Chetruș reiterates that it is important to specify that the coercion regulated by contraventional, civil, criminal, etc. laws must not reflect the interest of a party, or become an instrument of the ruling party. It is known that laws adopted in parliament, in the absence of opposition, take on a political character of the party with a parliamentary majority [3, p. 47].

We consider that the legal regulation of coercion requires the utmost diligence even in democratic countries. Legal coercion is recognized to be the form and extent of which is strictly and concretely determined by legal norms and which is applied according to procedural norms in the form of concrete measures. It is important in this respect that the legality, soundness and fairness of legal coercion can be subject to review and can be challenged in court.

N.V. Makareiko holds that the degree of legality of coercion is determined by the extent to which it corresponds to the fundamental principles of the legal system; it is unique and general throughout the territory of the state; its content, limits and conditions of application are regulated by law; it acts through the mechanism of reciprocal rights and obligations of the subject applying the coercion and the subject who bears it; it has developed procedural forms. Closely related to the legal nature of coercion is the system of principles underlying it, which are considered to guarantee the application of fair and just coercion [24, p. 88].

Constraint is seen as a system of interdependent elements, the meeting of which is vital for its existence. The structure of constraint has been discussed by several scholars. For example, Ch.W. Morris [23] considers that the constituent elements of the structure of constraint are: the subject of constraint, the exercise of constraint as a state, the process of submission to the will of the constrained, the object of constraint.

In the view of the researcher T. Honoré [21], these elements form a narrower system than state coercion – this is the case of the legal relations of applying measures of coercion. In the structure of legal relations, such elements as the subject of coercion, the object of coercion and the process of its realization can be identified. In this respect, the author considers that the determination of the structure of coercion (of internal organization) is possible only if all the necessary and obligatory elements in its system are highlighted, without which state coercion cannot exist. Thus, in his view, coercion has the following structure: rules of law regulation, which set the legal obligations of the subjects of law; rules of law protection, which regulate the order of application of state coercion in order to ensure the execution of obligations; the legal fact – the factual basis of the application of coercion; the legal relationship of application (realization) of coercion; the result of the application of state coercion.

The author U. Chetruș argues that state coercion is a legal relationship with a protective character. It arises between the State and the individual when the latter commits an unlawful act, in other words, any violation of the legal norm can give rise to a relationship of coercion, which is established between the State and the author of such violation [3, p. 75].

In this regard, author D. Cornean [6, p. 7–8] notes that the force of the law materializes in social life by means of a legal relationship of constraint, understood as a plurality of rights and obligations, of substantive or procedural law, which arise as a result of the commission of an unlawful act (non-compliance with the model prefigured by the norm) and through which the application of legal sanctions is achieved.

In the view of researcher D.K. Simes [25], coercion implies a relationship in which the governing subject – the competent body for the protection of legal norms or the public official – applies the measures of coercion to the subject obliged to bear and execute those measures, i. e. the governed subject. The importance of researching state coercion as a legal relationship lies in the fact that it makes it possible to examine the grounds on which these legal relationships arise, i. e. the legal facts underlying them, which are particularly important for the legality of coercion.

Conclusions. In conclusion, we argue that the following grounds are necessary for the application of coercion:

– *the legal basis* presupposes the presence of legal norms that provide for the possibility of applying coercion to certain subjects in concrete cases;

– *the factual basis* presupposes the occurrence of the legal event provided for in the law – the event or act which generated the legal relationship;

– *the formal basis* implies the issuing by the state body of the act of application of the law ordering the application of the constraint to a specific subject. In other words, coercion as a physical action is applied by special state bodies on the basis of a court decision or administrative act. In the absence of such acts, coercion cannot be exercised. Regarding the subjects, the author Gh. Costachi reiterates that the legal relationship of coercion is a power relationship, bilateral, one of the parties being necessarily a state body, a representative of the state. The other party to the legal relationship can be any subject to whom the power of the state extends.

We conclude that the legal coercion applied by the state must involve proportionate measures and sanctions, in such a way that, on the one hand, it creates the necessary inhibiting factors in the conscience of those who would try to break the law and, on the other hand, it strengthens the feeling of security in others, inspiring them with the conviction that the law, the state, protects them and that they should not resort to non-state, unofficial means in order to take the law into their own hands. It is absolutely essential that the application of coercion should not be used to infringe the rights and freedoms of individuals or to cause physical or mental suffering. We believe that only in such a situation will legal coercion contribute to the formation of the ethical attitude of citizens, increasing their psychological readiness to respect the law.

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***Tănase Oleg*,**
International Free University of Moldova (Chisinau, Republic of Moldova)