

Methodology of (Continental European) Legal Science. Research Objectives, Questions, and Methods

Metodología de la ciencia jurídica (europeo-continental).
Objetivos de investigación, preguntas y métodos

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Abstract: The basic aim of the paper is to expound a more elaborate and rigorous methodological framework of legal science that is grounded in the insights of contemporary analytical legal theory. The paper focuses on five key objectives of legal scientific research: describing law, explaining law, evaluating law, recommending better law and better interpretation and application of law, and systematising law. It lays out these objectives and, for each objective, formulates possible research questions and hypotheses, and describes the appropriate methods for testing the hypotheses. The paper also shows that analytical legal theory, both as a conceptual laboratory and a meta-legal science, to a large extent amounts to the methodology of legal science.

Keywords: methodology, legal science, legal doctrine, analytical legal theory, research objectives, methods, research questions, research hypotheses.

Resumen: El objetivo fundamental del artículo es exponer un marco metodológico más elaborado y riguroso de la ciencia jurídica, basado en las aportaciones de la teoría analítica del derecho contemporánea. El artículo se centra en cinco objetivos clave de la investigación jurídico-científica: describir el derecho, explicar el derecho, evaluar el derecho, recomendar un mejor derecho y una mejor interpretación y aplicación del derecho, y sistematizar el derecho. Expone estos objetivos y, para cada uno de ellos formula posibles preguntas e hipótesis de investigación, y describe los métodos apropiados para contrastar las hipótesis. El artículo también muestra que la teoría analítica del derecho, como laboratorio conceptual y como meta-ciencia jurídica, constituye en gran medida la metodología de la ciencia jurídica.

Palabras clave: metodología, ciencia jurídica, doctrina jurídica, teoría analítica del derecho, objetivos de investigación, métodos, preguntas de investigación, hipótesis de investigación.

I. Introduction

Legal science, as any science, deals with “studying a certain aspect of the world that falls within its scope of interest” (Smokrović, 2017, p. 19). This aspect of the world is the content of the positive law regulation of human conduct. More precisely, legal science (primarily) deals with studying the legal qualifications or legal consequences determined by valid legal norms for classes of human conduct (or, more broadly, factual states of affairs) within a particular legal system (Núñez Vaquero, 2013, p. 59; Ratti, 2015, p. 153). Thus, the primary subject matter of legal science is the content of positive law.¹

However, the scientific nature of legal science with a thus determined subject matter, i.e., legal science in its core sense – legal doctrine or legal dogmatics – is frequently disputed.² The non-scientific outlook on legal science is fostered, among other things, by the absence of an explicit methodological framework for conducting legal scientific (doctrinal) research. For this reason, one increasingly comes across works striving to present a methodological framework of legal scientific research comparable to those of other sciences (see, e.g., Curry-Sumner et al., 2010; Klink & Taekema, 2011; Smits, 2012; Smits, 2017; van Dijk et al., 2023; Kestemont, 2018; Vols, 2021; Varuhas, 2023; Taekema & van der Burg, 2024). Nevertheless, none of the methodological frameworks expounded thus far seem sufficiently elaborate and rigorous, particularly with regard to the fundamental objectives of legal science, the formulation of research questions and hypotheses, and the methods of testing those hypotheses. This is because the said literature fails to consider the insights of contemporary (Continental European and Latin American) analytical legal theory which, by relying mostly on a logico-linguistic analysis of legal scientific discourse,³ contains, in fact, the most rigorous and clear exposition of all the essential elements of the methodological framework of legal science, including clearly and rigorously determined basic legal-scientific concepts. However, one disadvantage of the analytical legal theory is that it often falls short of explicitly presenting these elements as the very elements of the standard methodological framework of scientific research.

Consequently, the basic aim of the paper is to expound a more elaborate and rigorous methodological framework of legal science that is grounded in the insights of contemporary analytical legal theory. The paper will focus on five key objectives of legal scientific research: describing law, explaining law, evaluating law, recommending better law and better interpretation and application of law, and systematising law.⁴ Based on an analysis of contemporary analytical legal theory literature, the aforementioned

research objectives will be laid out and, for each objective, possible research questions and hypotheses will be stated, and the appropriate methods for testing the hypotheses described.

The secondary aim of the paper is to show that, given the method it uses (logico-linguistic analysis of legal scientific discourse), analytical legal theory to a large extent amounts, in fact, to the methodology of legal science. Legal theory is the methodology of legal science insofar as it builds the basic conceptual apparatus of legal science (legal theory as a conceptual laboratory) by constructing concepts suitable for a legal scientific description of law (such as the concepts of legal system, legal source, legal norm, legal principle, legal rule, normative hierarchy, legal validity, legal right, legal obligation, legal gap, antinomy), and insofar as it builds the theory of legal interpretation and reasoning (legal theory as a metalegal science) by constructing concepts suitable for a further and more in-depth analysis of legal scientific discourse (such as the concepts of cognitive, adjudicative and creative interpretation, interpretation *in abstracto* and *in concreto*, juristic construction, balancing, construction of unexpressed (implicit) norms, concretisation of principles).⁵

The paper will not consider some important legal-methodological questions, such as the methods of collecting research data,⁶ the method of conducting a systematic review of legal scientific (and other) literature,⁷ the theoretical and normative frameworks of legal scientific research,⁸ and the methods and functions of constructing legal dogmatic theses.⁹

In addition to the Introduction and Conclusion, the paper is divided into five sections, each of which relates to one of the analysed objectives of legal scientific research: describing law (section II), explaining law (section III), evaluating law (section IV), recommending better law and better interpretation and application of law (section V) and systematizing law (section VI). Each section first expounds on what the objective of legal scientific research in question consists of, then formulates corresponding research questions and hypotheses and, finally, states and briefly describes the methods suitable for testing the formulated hypotheses. For the purpose of analytical precision, the paper presents both research questions and hypotheses, although in the case of most legal scientific research, due to its frequently explorative and qualitative nature, it is fitting to put forward only research questions and omit hypotheses.

II. Describing law

The basic objective of legal science is to describe the existing legal regime of a class

of human conduct or, more broadly, a class of factual states of affairs, in a certain legal order. For example, to describe the legal regime of copyright protection, usucaption, civil liability, election of the Supreme Court president, position of the insolvency administrator, land consolidation, licence agreement, artificial intelligence, cybersecurity, employment status of civil servants in the Croatian legal order.

Describing law is the basic objective of legal science in the sense that it is the first step of any legal scientific research (Kestemont, 2018, p. 9). It can also be the sole objective of legal scientific research, but is often accompanied by additional research objectives, such as explaining, comparing, evaluating, recommending and systematising (doctrinally reconstructing) law (Kestemont, 2018, p. 9).

Describing law consists in determining a set of legal norms that regulate a certain class of factual states of affairs within a certain legal system. The content of these norms can be presented by setting forth the normative qualifications of the norm addressees' conduct or their subjective legal positions (legal rights).¹⁰ In the former case, descriptive legal scientific sentences will state that a certain norm deontically qualifies a certain conduct (e.g., payment of taxes, voting, compensation, association) as obligatory, prohibited, permitted or non-obligatory, and in the latter case, that a certain norm ascribes to a certain class of persons (e.g. taxpayer, citizen, employer, defendant) the subjective legal position of claim, duty, liberty, no-claim, power, liability, immunity or disability.¹¹

Describing law always includes the first level of systematisation of legal material given that a legal scientist describes law using certain conceptual categories and typologies. These can be conceptual categories and typologies used by the legislator in formulating a normative text, the legal scientist himself/herself for the purposes of his/her research (Kestemont, 2018, p. 20) or those developed by legal science to date (e.g., in the field of criminal law science: basic, qualified and privileged criminal offences, material and formal criminal offences, ongoing criminal offences and state-of-affairs criminal offences, criminal offences committed through acts and criminal offences committed through omissions, reasons for excluding unlawfulness and reasons for excluding culpability; in the field of civil law science: absolute and relative legal rights, transferable and non-transferable legal rights, principal and ancillary legal rights, movable and immovable property, consumable and non-consumable property, divisible and non-divisible property, unilateral and bilateral legal transactions, *inter vivos* and *causa mortis* legal transactions, legal transactions with consideration and legal transactions without consideration, formal and informal legal transactions, contractual

and extra-contractual liability).¹² Of course, the most basic conceptual apparatus used by the legal scientist for describing law is always the one built by (analytical) legal theory (e.g., the concepts of legal norm, legal principle, legal system, source of law, retroactivity of norms, legal validity).

It is possible to distinguish between at least three ways of describing law: 1) identifying the meaning-content of normative texts (sources of law), 2) identifying the prevailing doctrinal interpretations of normative texts (sources of law) and juristic constructions, and 3) identifying the norms actually applied by judges (and/or other law-applying organs) (Guastini, 2015, pp. 52-53; Guastini, 2014, pp. 425-429).¹³ The first two ways of describing law belong to the so-called normativist understanding of legal science (describing “law in books”), while the third one comes under the so-called realist understanding of legal science (describing “law in practice”) (Guastini, 2014, pp. 425-429).¹⁴

As will be shown in what follows, all three ways of describing law belong to the cognitivist discourse of legal science since legal science describes law by exploring certain facts, i.e., (legal) existence of norms (membership of norms in a certain legal order), and infers about them on the basis of other facts, e.g., that the competent norm-creating organ made a certain normative formulation (legal provision), that it was published in the official gazette, that the doctrine prevalently ascribes to it a certain meaning or that, in view of linguistic rules and generally accepted rules of interpretation, it can be ascribed certain meanings or that this normative formulation is prevalently interpreted and applied by judges in a certain way.¹⁵

A. Identifying the meaning-content of normative texts

When law is described by identifying the meaning-content of normative texts (sources of law), the following descriptive research questions (Q) and hypotheses (H) may be formulated in the research.

Q1: Which norms can be derived from provision P on the basis of shared linguistic rules, prevailing techniques of interpretation, doctrines, and previous judicial decisions in a legal community LC?

H1: On the basis of shared linguistic rules, prevailing techniques of interpretation, doctrines, and previous judicial decisions in a legal community LC, from provision P one can derive norms N1, N2 and N3.¹⁶

Q2: Which subclasses of factual states of affairs can be subsumed under class of

factual states of affairs F regulated by norm N on the basis of shared linguistic rules, prevailing techniques of interpretation, doctrines, and previous judicial decisions in a legal community LC?

H2: On the basis of shared linguistic rules, prevailing techniques of interpretation, doctrines, and previous judicial decisions in a legal community LC, under class of factual states of affairs F regulated by norm N one can subsume subclasses of factual states of affairs F1, F2... Fn.¹⁷

To test the above hypotheses one can use the method of cognitive interpretation of normative texts. This method consists of the following steps: 1) identification of relevant legal provisions (those that *prima facie* seem to relate to the normative problem that is the subject of the research), i.e., identifying relevant sources of law (Ratti, 2015, pp. 153-154; Alchourrón & Bulygin, 1971, p. 72), which includes: a) *prima facie* interpretation aimed at identifying which provisions are relevant (Ratti, 2015, pp. 153-154) and b) identification of the membership or applicability of the relevant legal provisions in a certain legal order (Ratti, 2015, pp. 154-155; Alchourrón & Bulygin, 1971, p. 72 ff; Núñez Vaquero, 2013, p. 62); 2) identification of linguistic rules, interpretive methods (techniques, directives) which lawyers regularly use in a relevant legal community (e.g., linguistic interpretation, teleological interpretation, historical interpretation, systemic interpretation), doctrines and previous judicial decisions; 3) possible precisifying reconstruction of identified interpretive methods; 4) application of each of these methods to the relevant legal provision, which requires identifying the set of interpretive resources (e.g., dictionary definitions, preparatory works, doctrinal theories on legal concepts and institutions, judicial opinions, legal principles, moral and political doctrines) linked to each of the methods; 5) finally, formulation of the cognitive interpretive sentence expressing the result of previous activities (Chiassoni, 2019, pp. 28-29).

According to Chiassoni (2019, p. 28), the above steps represent the so-called hermeneutical experiment: “On the basis of data gathered from legal experience, the experiment purports to investigate the hermeneutical capacity of an individual [legal] provision”.

Describing law by identifying the meaning-content of normative texts is suitable, e.g., for presenting the content of law arising from a new piece of legislation (for which there are no interpretations or insufficient interpretations and which has not yet been applied or has not been significantly applied in practice), for presenting the content of law in legal commentaries,¹⁸ for presenting the content of law when there are

doctrinal disputes as to the interpretation of a certain normative text and/or different interpretations of a certain normative text by law-applying organs.

B. Identifying the prevailing doctrinal interpretations of normative texts and juristic constructions

When law is described by identifying the prevailing doctrinal interpretations of normative texts (sources of law) and juristic constructions (i.e. formulation of unexpressed norms), the following descriptive research questions (Q) and hypotheses (H) may be formulated in the research.

Q3: Which norm did legal scientists S prevailingly derive from provision P by means of interpretation during time period T?

H3: During time period T, legal scientists S prevailingly derived norm N from provision P by means of interpretation.¹⁹

Q4: Which unexpressed norm did legal scientists S prevailingly construct for factual state of affairs F during time period T?

H4: During time period T, legal scientists S prevailingly constructed unexpressed norm N for factual state of affairs F.

Q5: Which subclasses of factual states of affairs did legal scientists S prevailingly subsume under class of factual state of affairs F regulated by norm N during time period T?

H5: During time period T, legal scientists S prevailingly subsumed subclasses of factual states of affairs F1, F2... Fn under class of factual state of affairs F regulated by norm N.

To test the said hypotheses, one can use the method of analysing linguistic usage in the interpretive and constructive practices of legal scientists and the method of generalization. First the scientist has to determine within a population or representative sample of legal scientific texts how in the relevant time period individual legal scientists adjudicatively interpreted in a legal scientific (doctrinal) text provision P (i.e., which meaning did each of them adjudicatively ascribe to provision P or which expressed norm did each of them adjudicatively derive from provision P),²⁰ which unexpressed norm did each of them construct for factual state of affairs F or which subclasses of factual states of affairs did each of them subsume under class of factual states of affairs F regulated by norm N and then, through generalization, infer what the prevailing

interpretation, construction, or generic subsumption is in a community of legal scientists during the relevant time period.²¹

Describing law by identifying the prevailing doctrinal interpretations of normative texts (sources of law) and juristic constructions is suitable, e.g., for presenting the content of law in legal textbooks, presenting the contents of laws being compared (when a foreign law in comparative law research is described most suitably by identifying the prevailing doctrinal interpretations of foreign normative texts and juristic constructions), for presenting the content of law which research aims to explain (legally or extralegally, e.g., from the economic, sociologic, historical, moral-political perspective) or (legally or extralegally) evaluate.

C. Identifying the norms actually applied by judges (and/or other law-applying organs)

When law is described by identifying the norms actually applied by judges (and/or other law-applying organs), the following descriptive research questions (Q) and hypotheses (H) may be formulated in the research.

Q6: Which norm did judges J in time period T actually apply in deciding on a class of factual states of affairs F?

H6: During time period T, judges J prevalingly decided on a class of factual states of affairs F on the basis of norm N.²²

Q7: Which subclasses of factual states of affairs did judges J in time period T actually subsume under class of factual states of affairs F regulated by an actually applied norm N?

H7: During time period T, judges J prevalingly subsumed under class of factual states of affairs F regulated by an actually applied norm N subclasses of factual states of affairs F1, F2... Fn.

To test the said hypotheses, one can use the method of argumentation analysis of judicial decisions (and other decisions of law-applying organs), the method of universalization, the method of abstraction and the method of generalization. In the case of identifying the norms actually applied by judges in deciding on a certain class of factual states of affairs, the researcher first has to determine, within the population or representative sample of decisions, which norm an individual judge (or another law-applying organ) applied in the relevant time period to a factual state of affairs belonging

to the relevant class of factual states of affairs. This is done by means of argumentation analysis of the motivations of judicial decisions, which isolates individual premises of judicial reasoning and identifies the content of the first normative premise of the so-called internal justification of a judicial decision,²³ namely, the norm expressly stated by the judge as the reason for his or her decision (*ratio decidendi*).²⁴ If the norm is not stated expressly, it can be identified through the method of universalization, which “consists in subsuming, by *conjecturing*, an individual decision under a general (or universal) norm that justifies it” (Guastini, 2011, p. 264).²⁵ After determining which norm each individual judge (or another law-applying organ) applied in the relevant time period to the factual state of affairs belonging to the relevant class of factual states of affairs, the researcher derives by means of generalization a conclusion as to which norm judges actually prevalently applied in deciding on a certain class of factual states of affairs in the relevant time period. In the case of identifying the generic subsumption, prevalently accepted in judicial practice, of certain subclasses of factual states of affairs under a class of factual states of affairs regulated by an actually applied norm, the researcher first has to determine, within the population or representative sample of decisions, which subclass of factual states of affairs an individual judge subsumed under a class of factual states of affairs regulated by an actually applied norm. Of course, in so doing, he or she will first have to determine, by means of abstraction, to which subclass of factual states of affairs each specific factual state of affairs belongs.²⁶ After determining which subclasses of factual states of affairs each individual judge (or another law-applying organ) subsumed in the relevant time period under the class of factual states of affairs regulated by an actually applied norm, the researcher derives by means of generalization a conclusion as to which subclasses of factual states of affairs judges prevalently subsumed in the time period in question under the class of factual state of affairs regulated by the actually applied norm.²⁷

Describing law by determining the norms actually applied is suitable, e.g., when one wants to determine the “law in action”, in particular, when research wants to show that there are differences between what is prescribed or norms that doctrine prevalently derives by means of interpretation from existing normative texts, on the one hand, and norms “in force”, namely, norms that judges actually apply in deciding concrete cases. This way of describing law is also suitable, for example, as a prequel to further empirical research into the social effects of applied norms, legal explanation of law, evaluation of the enforcement of an existing legal regime (as it follows from, e.g., the will of the legislator or prevailing doctrinal interpretations), evaluation of case law, and recommending better interpretations and applications of law (recommendations *de*

sententia ferenda). To a limited extent it can also be used to make predictions about future judicial decisions.²⁸

III. Explaining law

Another important objective of legal science is to legally explain law, i.e., inquire into why, from the *legal* standpoint, e.g., a particular general legal norm (formally) exists, i.e., why it belongs to a particular legal system, and not to some other; or is applicable, i.e., why law-applying organs can or should apply that and not some other norm; or exists as it is, i.e., why it has a particular, and not some other content (cf. Mackor, 2013, pp. 54-56). In contrast to an extralegal (e.g., sociological, politico-scientific, economic, historical, ethical) explanation, a legal explanation of law is an explanation of law on the basis and within the framework of law as a set of general and abstract legal norms.²⁹

The main focus of the legal explanation of law in legal scientific research is the explanation of the content of legal rules on the basis of legal principles regulating values, desirable states of affairs or legal-political objectives underlying the legal rules that realize or concretize these principles.³⁰ For instance, explaining the existence of the rule on the hearing of the child in the adoption procedure with the (family law) principle of the best interests of the child, explaining the existence of the rule on handling confidential information exchanged at the negotiation stage of the conclusion of a legal transaction with (obligations law) principle of good faith, explaining the existence of the rule on the acquisition of the right of ownership by usucaption with the (property law) principle of good faith, explaining the existence of the rule on appointment and dismissal of judges by organs mostly comprised of judges with the (constitutional law) principle of the independence of the judiciary, explaining the existence of the rule on the prohibition of unlawful evidence in criminal proceedings with the (criminal procedural law) principle of procedural fairness before the criminal court.

According to Atienza and Manero, legal

principles have that explanatory function in at least two senses. First of all, because they can synthesize great quantities of information: reference to a few principles enables us to understand how a legal institution works, within the legal order as a whole and with respect to the social system (...). But secondly (...), principles (...) enable us to understand the law (...) not just as simple sets of standards, but as ordered sets, that is, sets that somehow make sense. Hence, if we know the principles of an institution or of some legal system we can even, to some extent, predict the solutions given to certain legal problems by specific [legal] provisions (Atienza & Manero, 1998, p. 20).

In that sense, as Ratti (2015, p. 174) states, in legal scientific research legal principles

“are used to build a sort of explicative theory of existing legislative materials”.

When law is explained on the basis of legal principles, research can put forward the following explanatory research question (Q) and hypothesis (H).

Q8: Why does, in legal-axiological (substantive or material) terms, rule R or set of rules R1...Rn exist?

H8: In legal-axiological (substantive or material) terms, rule R or set of rules R1...Rn exists because it enables the realization of principle P.

To test the said hypothesis, one can use the methods of juristic construction of the justifying unexpressed principle and identification of the justifying expressed principle. Of course, the researcher first has to identify the rules he or she wants to explain in one of the following ways: a) through adjudicative interpretation of the relevant legal provisions, i.e., by choosing one of the possible meanings of each of the analysed provisions as the “most correct” meaning and by argumenting the chosen meanings; b) by identifying the prevailing doctrinal interpretation of the relevant legal provisions; or c) by identifying the rules actually applied by judges (and/or other law-applying organs). Then, in the case the researcher is seeking to discover an unexpressed principle (i.e., a principle not explicitly formulated by the law-creating organ) underlying the set of rules sought to be explained, he or she can use the method of conjecturing about the *ratione legis* or the method of universalization (generalization, abstraction). The method of conjecturing about *ratione legis* consists in deriving, i.e., constructing an (unexpressed) teleological principle (“End E ought to be achieved” or “Value V ought to be pursued”) “from one or more rules by conjecturing about *ratione*, the *raison d’être*, the purpose of the rules in question” (Guastini, 2011, p. 186).³¹ The method of universalization consists in inductively deriving the (unexpressed) principle (“all factual states of affairs that share the element A ought to have the same legal consequence”) from a set of rules whose antecedents regulate different complex factual states of affairs containing one shared simple factual state of affairs and whose consequents determine the same legal consequence (Guastini, 2011, p. 188).³² If, on the other hand, the researcher is seeking to discover an expressed principle (i.e., a principle explicitly formulated by the law-creating organ) underlying the set of rules sought to be explained, he or she needs to determine, by the method of conjecturing about the *ratione* of those rules or the method of universalization, the content of the justifying principle and then, by analysing normative texts, determine whether the principle in question exists as an expressed principle.

Although at first glance it might seem that legal explanation of law, just as description of law, belongs to the cognitive (descriptive) part of legal scientific research, it needs to be pointed out that both methods of “discovering” the principle underlying the rules sought to be explained (the method of conjecturing about *ratione* and the method of universalization) are for the most part discretionary procedures and that they depend on the interpreter’s value assessments (Guastini, 2004, pp. 209-210).

In any case, the objectives of legal scientific research discussed below (evaluation, recommendation, and systematization of the law) do not belong to the cognitive discourse, but rather to the prescriptive (normative) discourse of legal science.

IV. Evaluating law

As a rule, legal scientists do not confine themselves to merely describing law, but also engage in its legal evaluation, i.e., they inquire whether, from the *legal* standpoint, the standpoint of a particular *legal system* or *legal doctrine*, the law is “good”. In contrast to the extralegal (e.g., sociological, political scientific, economic, ethical) evaluation, which is based on extralegal (i.e., external) evaluation criteria (e.g., social efficacy, policies, economic efficiency, social welfare, moral principles, justice), legal evaluation of law is evaluation of law on the basis of legal, legal systemic or doctrinal (i.e., internal) evaluation criteria.³³

The most common legal evaluation criteria are consistency, completeness and axiological coherence of the legal regime,³⁴ correctness of interpretation of normative documents (sources of law) and legal subsumption of (sub)classes of factual states of affairs under the scope of legal norms, conformity of the legal regime with the prevailing doctrine (doctrinal systematization of the relevant field of law, doctrinal thesis or conceptual theory), conformity of national law with, e.g., international law, European law, the case law of the European Court of Human Rights and the Court of Justice of the EU, and conformity of a national legal regime on a given subject of regulation with the so-called best practices for legally regulating that subject (which, in turn, is determined through previous comparative law research).³⁵

Roughly speaking, the criterion of consistency of legal regulation requires the absence of antinomies (conflicts between norms), the criterion of completeness the absence of legal gaps (cases of certain classes of factual states of affairs being “unprovided for” by the law), and the criterion of axiological coherence the compatibility of norms with norms that are axiologically superior to them. The criterion of correctness of legal interpretation and subsumption requires respect for the rules of interpretation and

subsumption in the relevant legal community³⁶ and persuasive legal argumentation of interpretation and subsumption that is acceptable to the wider community of legal scientists. The criterion of conformity with doctrine, supranational law and the so-called best practices requires compatibility of the evaluated norms with the existing doctrinal systematization of the relevant legal regime (e.g., the Croatian legal regime of tort liability, employment status of civil servants, testate succession), the prevailing doctrinal thesis (on, e.g., legal effects of international treaties, role of the head of state in the system of parliamentary government, acquired rights, nullity of *ultra vires* acts)³⁷ or doctrinal conceptual theories (e.g., theories of ownership, legal transaction, succession, criminal offence, administrative contract), the relevant supranational legal regime or the so-called best practices.

When evaluating law, the researcher needs to explicitly state the evaluation criteria he or she plans to use, explain them and state the (positive and/or negative) indicators for meeting the criteria, explain why these particular indicators were chosen, what degree of presence of a given indicator demonstrates (non-)fulfilment of the corresponding criterion and what the importance of each criterion is in the event of a conflict between them.³⁸

Of course, evaluative legal scientific research may refer not only to the existing legal regime (as it arises from sources of law or case law), but also to a proposed (future) legal regime (e.g., a draft amendment to a law).

In evaluative legal scientific research, it is possible, for example, to formulate the following evaluative research questions (Q) and hypotheses (H).

Q9: Is the legal regime of a class of factual states of affairs F complete?

H9: The legal regime of a class of factual states of affairs F is (in)complete.

Q10: Is the legal regime of a class of factual states of affairs F consistent?

H10: The legal regime of a class of factual states of affairs F is (in)consistent.

Q11: Is the legal regime of a class of factual states of affairs F axiologically coherent?

H11: The legal regime of a class of factual states of affairs F is axiologically (in) coherent.

Q12: Is the prevailing (doctrinal or judicial) interpretation of legal provision P such that it expresses legal norm N, correct?

H12: The prevailing (doctrinal or judicial) interpretation of legal provision P such that it expresses legal norm N is (in)correct.

Q13: Is the prevailing (doctrinal or judicial) subsumption of a subclass of factual states of affairs F1 under the class of factual states of affairs F regulated by legal norm N, correct?

H13: The prevailing (doctrinal or judicial) subsumption of a subclass of factual states of affairs F1 under the class of factual states of affairs F regulated by legal norm N is (in)correct.

Q14: Is the legal regime of a class of factual states of affairs F in accordance with the existing prevailing doctrinal systematization of the relevant field of law DS, doctrinal thesis DT, conceptual theory CT, supranational legal regulation SLR, or the so-called best practices BP?

H14: The legal regime of a class of factual states of affairs F is (not) in accordance with the existing prevailing doctrinal systematization of the relevant field of law DS, doctrinal thesis DT, conceptual theory CT, supranational legal regulation SLR, or the so-called best practices BP.

To test hypothesis H9, methods of identifying legal gaps are used: for example, methods of identifying technical, normative and axiological gaps.³⁹ The method of identifying technical gaps consists in determining the absence of a norm that is a necessary condition for the legal efficacy of an existing norm (its ability to produce legal effects) or for its social efficacy (actual behaviour in accordance with that norm).⁴⁰ The method of identifying normative gaps consists in determining the absence of a norm that links a normative solution (legal consequence) to a class of factual states of affairs within the framework of a set of previously identified norms and the set of classes of factual states of affairs and the set of normative solutions identified on the basis of that set.⁴¹ The method of identifying axiological gaps consists, depending on the type of axiological gap, in a) identifying the existence of a norm which, according to the interpreter's value judgment, is unsatisfactory, and the absence of a norm which, based on the interpreter's subjective ethical-political (value) preferences, ought to exist; and b) identifying the absence of a norm which, according to the interpreter's value judgment, ought to regulate a factual state of affairs that is, in fact, not regulated.⁴²

To test hypothesis H10, methods of identifying antinomies are used: for example, methods of identifying antinomies *in abstracto* and *in concreto*, as well as total, total-partial and partial-partial antinomies.⁴³ The method of identifying antinomies

in abstracto consists in identifying classes of factual states of affairs, regulated by two norms, that conceptually (totally or partially) overlap and are associated with incompatible legal consequences (Guastini, 2011, p. 106). The method of identifying antinomies *in concreto* consists in determining whether a subclass of factual states of affairs is subsumable under two classes of conceptually independent factual states of affairs, for which incompatible legal consequences are determined by two legal norms (Guastini, 2011, p. 107).⁴⁴ The method of identifying total and partial antinomies consists in determining the degree of overlap between classes of factual states of affairs regulated by two norms that associate incompatible legal consequences with those classes (Guastini, 2011, pp. 108-109; Ross, 2019, pp. 149-150).

To test hypothesis H11, the method of analysing the conformity of a norm with a legal principle taken to provide an axiological basis to the set of norms to which the given norm belongs is used. This method is used to examine whether, and to what extent, the given norm is suitable for realizing the principle taken as the evaluation criterion.

In order to be able to proceed with evaluating law (as a set of general legal norms) in view of its completeness, consistency, and axiological coherence, it is first necessary to determine which norms exist within a particular area of legal regulation. This can be done in one of the above mentioned ways of describing law. If law is described by identifying the prevailing doctrinal interpretations or the norms actually applied, then determining the existence of antinomies, gaps and axiological incoherence in fact amounts to assessing the consistency, completeness and axiological coherence of law as understood by doctrine or law-applying organs. If law is described by identifying the possible meanings of relevant legal provisions, then identifying antinomies, gaps and axiological incoherence constitutes a (negative) evaluation of particular (possible) interpretations as those that lead to inconsistency, incompleteness, and axiological incoherence of the legal regime. Furthermore, legal scientists often evaluate law after they themselves, through adjudicative interpretation, ascribe meanings to relevant normative texts which they, in light of generally accepted rules of interpretation within the relevant legal community, deem correct. In this latter case, it is worth noting that legal scientists, through their interpretation, can avoid but also create antinomies, gaps, and axiological incoherence. Should they create them, they thereby lay the groundwork for recommendatory, legal policy action, i.e., issuing recommendations *de lege ferenda* or *de sententia ferenda*.⁴⁵

To test the hypotheses H12 and H13, the method of argumentation analysis is used.

The legal scientist presents legal arguments justifying a prevailing interpretation of a certain legal provision or the subsumption of a certain factual state of affairs under the scope of application of a norm, points out the weaknesses of those arguments, and offers additional arguments challenging the correctness of such an interpretation or subsumption.

To test hypothesis H14, it is first necessary to systematically present the relevant doctrinal systematization of the law, doctrinal thesis or conceptual theory, or describe a supranational legal regime or, using the comparative law method, determine the so-called best practices (namely, determine the relevant evaluation criteria), and then assess whether, and to what extent, the analysed legal regime meets those criteria.

V. Recommending better law and application of law

If evaluative legal research shows that the law does not meet certain criteria, legal scientists often proceed by inquiring into how the law could be improved, and formulate recommendations for its amendment or its better interpretation and application. Recommendations concerning amendments to the law are recommendations addressed to the legislator (recommendations *de lege ferenda*), while recommendations on how to better interpret and apply the law are recommendations directed at law-applying organs, most commonly judges (recommendations *de sententia ferenda*).⁴⁶

While for formulating recommendations *de sententia ferenda* and smaller-scale recommendations *de lege ferenda* it is generally sufficient to engage in purely legal scientific (doctrinal) research, larger-scale recommendations *de lege ferenda* (advocating wider reforms) will typically require, alongside legal scientific (doctrinal) research, research belonging to other, non-legal disciplines and being grounded in the results of analysis of an extralegal (e.g., economic, industrial, trade, social, health, educational) policy (Ross, 2019, pp. 412-415). Recommendations to judges mostly confine themselves to smaller adjustments to the existing system, i.e., those that do not necessarily require the engagement of the legislator and can therefore limit themselves just to, e.g., removing antinomies, filling gaps, and reinterpreting specific provisions in accordance with the relevant principles. However, in the case of recommendations *de lege ferenda*, while these can also include smaller-scale recommendations (e.g., recommending a different formulation or the repeal of an existing norm and the adoption of a new one) for which legal scientific (doctrinal) research is generally sufficient, they can encompass recommendations for larger legislative changes (e.g., recommending the adoption of a law that would regulate a specific subject for the first time, or comprehensive and

thorough amendments to an existing law) which, in addition to doctrinal reasons, must necessarily take into account the broader social effects of the proposed changes (including a convincing prediction that the changes will indeed achieve the expected outcomes), as well as the axiological aspect of the changes, i.e., whether the proposed changes will realize certain values.⁴⁷

Recommendation criteria, just like evaluation criteria, can be extralegal (i.e., external) and legal, legal systemic or doctrinal (i.e., internal) criteria. Legal scientific (doctrinal) recommendations are based on legal criteria, the same criteria on which legal evaluation of law is based: consistency, completeness, and axiological coherence of the legal regime, correctness of interpretation and legal subsumption (in view of the generally accepted rules of interpretation and subsumption in the relevant legal community and the persuasiveness of argumentation), conformity of the legal regime with the prevailing doctrine, and conformity of national law with supranational law or the so-called best practices.

In the case of recommendatory research, as well as in the case of evaluative research, the researcher needs to explicitly state the recommendation criteria he or she plans to use, explain them, justify why he or she chose those particular criteria, operationalize them (i.e., specify the indicators on the basis of which it is possible to assess whether, and to what extent, a particular recommendation could improve the existing law or its interpretation and application), weigh the criteria (i.e., assign them appropriate importance), and formulate recommendations.⁴⁸

In recommendatory legal scientific research, it is possible, for example, to pose the following recommendatory (design) research questions (Q) and hypotheses (H).

Q15a: How ought the judge to interpret legal provision P in order for the legal regime of the factual state of affairs F to be complete?

H15a: The judge ought to interpret provision P so that it expresses norm N1.

Q15b: Which norm ought the judge to create in order for the legal regime of the factual state of affairs F to be complete?

H15b: The judge ought to create norm N.

Q16a: How ought the judge to interpret legal provisions P1 and P2 in order for the legal regime of the factual state of affairs F to be consistent?

H16a: The judge ought to interpret provision P1 so that it expresses norm N1, and provision P2 so that it expresses norm N2.

Q16b: Which of the conflicting norms N1 and N2 ought the judge to eliminate from the legal regime of the factual state of affairs F in order for the legal regime of F to be consistent?

H16b: The judge ought to eliminate norm N1.

Q17: How ought the judge to interpret legal provision P in order for the legal regime of the factual state of affairs F to be axiologically coherent?

H17: The judge ought to interpret provision P so that it expresses norm N1.

Q18: How ought the judge to interpret an equivocal legal provision P so that it expresses the correct legal norm, a norm in conformity with the prevailing doctrine, supranational law, or the so-called best practices?

H18: The judge ought to interpret provision P so that it expresses norm N1.

Q19: Which subclasses of factual states of affairs, in view of the criterion of correctness of subsumption, ought the judge to subsume under the class of factual states of affairs F?

H19: The judge ought to subsume under norm N subclasses of factual states of affairs F1, F2, and F3.

Q20a: How ought the legislator to amend the formulation of existing norm N to more precisely reflect the meaning of the said norm that does not lead to incompleteness of the legal regime of the class of factual states of affairs F?

H20a: The legislator ought to amend the formulation of existing norm N so that it reads "...".

Q20b: Which norm ought the legislator to create in order for the legal regime of the class of factual states of affairs F to be complete?

H20b: The legislator ought to create the norm "If a, then b".

Q21a: How ought the legislator to amend the formulation of one of the two potentially conflicting existing norms N1 and N2 in order to more precisely reflect that meaning which is not incompatible with the meaning of the formulation of the other norm?

H21a: The legislator ought to amend the formulation of norm N1 so that it reads "...".

Q21b: Which of the conflicting norms N1 and N2 ought the legislator to repeal

in order for the legal regulation of the class of factual states of affairs F to be consistent?

H21b: The legislator ought to repeal norm N1.

Q22: How ought the legislator to amend the formulation of existing norm N to reflect that meaning which makes the legal regime of the class of factual states of affairs F axiologically coherent?

H22: The legislator ought to amend the formulation of norm N so that it reads “...”.

Q23: How ought the legislator to amend the formulation of existing norm N so that it expresses the correct legal norm, a norm in conformity with the prevailing doctrine, supranational law, or the so-called best practices?

H23: The legislator ought to amend the formulation of norm N so that it reads “...”.

Q24: How ought the legislator to amend the formulation of existing norm N to ensure that, in light of the criterion of correctness of subsumption, certain subclasses of factual states of affairs are (not) subsumed under the class of factual states of affairs F regulated by norm N?

H24: The legislator ought to amend the formulation of norm N so that it reads “...”.

To test hypotheses H15a, H16a, H17, H18 and H19, one can use the methods of (adjudicative) interpretation *in abstracto* and *in concreto* that avoid the creation of legal gaps and antinomies, ensure conformity with legal principles, the correctness of the norm (i.e., the meaning attributed to the legal provision) and subsumption, as well as compliance with the prevailing doctrine, supranational law, and the so-called best practices.

Specifically, in testing hypothesis H15a, the following methods can be used: a) the method of extensive interpretation, by which the so-called dubious or hard cases (falling within the “penumbra”) are included within the scope of application of a norm and b) the method of evolutionary interpretation, by which new cases that were not subsumable under the so-called original meaning of the relevant legal provision are included within the scope of application of a norm (see Guastini, 1998, pp. 263-264; Guastini, 2004, p. 237, for evolutionary interpretation; Guastini, 2011, pp. 277-278, for extensive interpretation).

In testing hypothesis H16a, the following methods can be used: a) the method of systemic interpretation (in the strict sense), by which antinomies within the same normative document are avoided, b) the method of conforming interpretation, by which antinomies between different, especially hierarchically ranked, normative texts are avoided, c) argumentation *a contrario* (in its interpretative version), which avoids extending the scope of application of one norm to a factual state of affairs that is not covered by the norm's literal meaning and is regulated in an incompatible way by another norm, and d) restrictive interpretation, which excludes, on the basis of the argument of dissociation, from the scope of application of one norm a factual state of affairs that is regulated in an incompatible way by another norm (Guastini, 2004, p. 248).

To test hypothesis H17, the method of conforming interpretation is used, on the basis of which the researcher, among a number of possible, plausible meanings of the relevant provision, selects the one that is axiologically most compatible with the legal principle considered to axiologically justify the norm expressed by that provision. Of course, the researcher first needs to determine, through cognitive interpretation, the possible meanings of the relevant provision and, through the analysis of case law or legal doctrine, the content of the relevant principle (more precisely, by analysing judicial or doctrinal interpretations of the provision expressing the principle in question or, if the principle is unexpressed, the legal constructions of the principle in question).

To test hypotheses H18 and H19, one can use the method of argumentation (justification) of doctrinal interpretative decisions⁴⁹ on the basis of rules of interpretation generally accepted in the relevant legal community and standards of the legal regime deriving from the prevailing doctrine, supranational law or the so-called best practices. In this case as well, the researcher first needs to determine the relevant rules of interpretation (through empirical analysis of actual interpretive practices), the prevailing doctrine (through analysis of doctrinal literature), supranational legal regulation (using one of the methods of describing law) and the so-called best practices (through comparative law research), or use the results of previously conducted research on the interpretive practices, doctrine, supranational law, and the so-called best practices.

To test hypothesis H15b, methods of legal construction are used, i.e., methods of creating unexpressed norms that fill previously identified (or created)⁵⁰ legal gaps. Unexpressed norms can be created (constructed) through derivation from expressed norms on the basis of non-deductive patterns of reasoning (e.g., arguments *a contrario*

and *a simili*), from a combination of expressed norms and dogmatic theses, or directly from dogmatic theses alone (Guastini, 2014, pp. 411-418; Guastini, 2011, pp. 155-161).⁵¹ Arguments frequently used in the Continental European tradition to justify unexpressed norms that fill legal gaps are the following: *a simili* (analogy), *a contrario* (in its constructive version), *a fortiori*, the counterfactual intention of the (historical or present) legislator, general legal principles, the nature of things, norms of some social or critical morality (Chiassoni & Huerta, 2024, p. 320; Guastini, 1998, pp. 266-269).⁵²

To test hypothesis H16b, one can use the methods of resolving antinomies, based on the following: a) the criterion of hierarchy (*lex superior*), according to which a higher norm invalidates a lower one (where, in cases where a statutory norm realizes one constitutional principle and at the same time interferes with another constitutional principle, it will first be necessary to apply the technique of balancing conflicting principles, i.e., of creating a flexible axiological hierarchy between conflicting principles), b) the criterion of chronology (*lex posterior*), according to which a later norm tacitly repeals an earlier one, c) the criterion of speciality (*lex specialis*), according to which a more specific norm limits the scope of a more general one, d) the criterion of competence, according to which a norm from a competent source of law invalidates a norm from a non-competent source of law, and e) the technique of balancing and, in the case of conflicts between the criteria for resolving antinomies, the methods for resolving these conflicts (see Guastini, 2011, pp. 113-126 and 206-209 and Bobbio, 1970, pp. 95-118).

When it comes to research hypotheses *de lege ferenda* (H20a – H24), the researcher in fact uses the same methods as those used for testing the corresponding research hypotheses *de sententia ferenda*, but on the basis of the results of using these methods formulates recommendations to the legislator to amend or repeal an existing formulation of a norm or to introduce a new norm into the system. Of course, if the researcher formulates recommendations in such a way that he or she also precisely formulates the content of the recommended legislative amendment, he or she will also need to use certain nomotechnical methods.⁵³

VI. Systematizing law

Systematization is often cited in legal theory and methodological literature as one of the most important objectives of legal scientific (doctrinal) research (Aarnio, 1987, pp. 61 and 136-157; Bulygin, 2015, pp. 220-221 and 223-227; Ratti, 2008; Ratti, 2015, p. 151; Núñez Vaquero, 2013, p. 63; Van Hoecke, 2013, p. 17; Smits, 2017, p.

210; Van Hoecke & Ost, 1998, p. 197; Taekema & van der Burg, 2024, p. 52). As has been shown, the first level of systematization is carried out already at the stage of describing law, i.e., describing law using certain conceptual categories and typologies, often those developed within specific branches of legal science. The second level of systematization takes place at the stage of recommendations *de sententia ferenda*, where the researcher recommends ways to prevent or fill gaps, prevent and resolve antinomies, and recommends interpretations of legal provisions in accordance with legal principles that provide an axiological basis for the norms expressed by those provisions. With such recommendations, the researcher seeks to correct certain aspects of the legal regime so that it meets the criteria of systematicity (consistency, completeness and axiological coherence) in cases where there is no dispute within the relevant legal community regarding the legal principle or principles on which the given legal regime is based.

In this section, I discuss the third level of systematization, which the researcher undertakes when, in light of a specific normative problem (a problem concerning the legal qualification of certain behaviour or the legal regulation of a social relationship), he or she wants to present a comprehensive doctrinal reconstruction of a broader set of norms whose axiomatic foundation (i.e., the legal principles that provide its axiological justification): a) is not yet doctrinally established, b) is not *prima facie* clear, c) is doctrinally controversial or d) there is doctrinal agreement about it, but the researcher considers it inadequate for correctly resolving a certain normative problem. Such a comprehensive doctrinal reconstruction is derived by presenting a particular legal regime systematically, as a consistent, complete and axiologically coherent set of norms, demonstrating that the given set of norms needs to be ordered (systematized) on the basis of a particular legal principle (or a set of interrelated legal principles) so as to appropriately resolve a certain normative problem.

A highly illustrative example of the systematization of law (from Italian doctrine) is the ordering of the legal regime of liability for business risk on the basis of the principle of strict liability for damage, so as to extend the right to compensation to those cases of no-fault damage where, were the legal regime systematized on the basis of the principle of fault liability, the injured party would not be entitled to claim compensation for the damage caused.⁵⁴

By systematizing the legal regime, the researcher contributes to the development of existing doctrinal theory (and in this sense, systematization means theory building) (Van Hoecke, 2013, p. 17)⁵⁵ of that field of law, primarily the legal regime of a legal institution or branch of law, and potentially influences legal practice (Smits, 2017,

p. 218). Specifically, comprehensive systematization of a particular legal regime contributes to: a) its better understanding, i.e., a better understanding of the existing sources of law that regulate a particular legal institution or branch of law, b) the systematic resolution or elimination of deficiencies in the existing legal regime, which are due either to the absence of previous doctrinal systematization or to deficiencies (incompleteness, inconsistency, axiological incoherence) arising from previous doctrinal systematizations, c) the setting of standards for evaluating future legislative amendments and the interpretative and constructive trends of law-applying organs, d) the setting of standards for recommending better law and better interpretation and application of law, e) facilitating interpretation and application of law, and f) creating a theoretical framework for future legal scientific research.

In systematizing legal scientific research, the following systematizing (design) research question (Q) and hypothesis (H) are posed.

Q25: According to which legal principle ought a particular legal regime LR to be ordered (systematized) in order to solve normative problem NP?

H25: The legal regime LR ought to be ordered (systematized) according to principle P.

To test hypothesis H25, a set of interpretative and constructive methods is used.⁵⁶ These are methods of ascribing to legal provisions the status of provisions that express principles and interpreting those provisions (i.e., determining the principles they express)⁵⁷ or constructing unexpressed principles (e.g., by the abovementioned methods of conjecturing about *ratione legis* and universalization), by which the “axiomatic basis” of a certain previously determined set of norms is determined,⁵⁸ and the method of creating axiological hierarchies (see Guastini, 2011, pp. 169-172), which includes balancing conflicting principles (if two or more competing principles are derived from a particular set of norms through construction), so as to proceed with the final ordering, on the basis of the thus established hierarchical relations, of the legal norms of the given set by applying the methods of: a) deductive derivation of the logical consequences of legal norms that make up the axiomatic basis of the system, b) adjudicative interpretation (including that which avoids antinomies and gaps, and conforming interpretation, which uses the level of agreement with the axiomatic basis of the relevant set of norms as the criterion of selection), c) concretization of principles, through which more precise unexpressed legal rules are derived from a principle as its “realizations” or “specifications”, serving to fill gaps, d) developing unexpressed norms to fill gaps, and e) resolving antinomies, i.e., excluding from the given set of norms

those that are incompatible with the axiomatic basis.

VII. Conclusion

The paper addressed the problem of the disputed scientific nature of legal science as science (primarily) dealing with the content of positive law, i.e., legal science in its core sense or legal doctrine. In particular, it addressed the absence of an explicit rigorous methodological framework for conducting legal scientific (doctrinal) research.

The paper combined the efforts to present a general methodological framework of legal scientific research already undertaken in legal-methodological literature with the insights of contemporary analytical legal theory and, hopefully, expounded a more elaborate and rigorous methodological framework of legal science. The paper focused on five key objectives of legal scientific research: describing law, explaining law, evaluating law, recommending better law and better interpretation and application of law, and systematising law. Based on an analysis of contemporary analytical legal theory literature, the aforementioned research objectives were laid out and, for each objective, possible research questions and hypotheses formulated, and the appropriate methods for testing them described.

The paper also showed that, given the method it uses (logico-linguistic analysis of legal scientific discourse), analytical legal theory largely amounts to the methodology of legal science. Legal theory is the methodology of legal science insofar as it builds the basic conceptual apparatus of legal science by constructing concepts suitable for a legal scientific description of law (such as the concepts of legal system, legal source, legal norm, legal principle, legal rule, normative hierarchy, legal validity, legal right, legal obligation, legal gap, antinomy), and insofar as it builds the theory of legal interpretation and reasoning by constructing concepts suitable for a further and more in-depth analysis of legal scientific discourse (such as the concepts of cognitive, adjudicative and creative interpretation, interpretation *in abstracto* and *in concreto*, juristic construction, balancing, construction of unexpressed (implicit) norms, concretisation of principles).

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Notes

- 1 Primary subject because in addition to existing law, i.e., law currently in force, legal scientists study the historical evolution and possible future development of law. Nevertheless, studying positive law remains the central focus of their interest (Ratti, 2015, p. 152). This is also confirmed by (qualitative) empirical research of how, for example, Croatian legal scientists understand the subject matter, objectives, and methods of legal science (Burazin & Relac, 2022, pp. 1357-1399).
- 2 On the problem of the scientific nature of legal science, see, e.g., Kirchmann (1848), Bobbio (2011), Comanducci (2014), Duarte (2024, pp. 468-474); Penner (2024, pp. 482-486), and Arienza, Ratti & Vega (2025).
- 3 But also more broadly, juristic and legislative discourse. See Guastini (2016, pp. 37-38).
- 4 Although the objective of comparing law is commonly considered an important part of legal scientific research, this paper will not address it. This is because (a) it seems that the literature thus far has already discussed the comparative law methodology in quite some detail and certain aspects of this methodology are already quite developed, (b) comparative law research is generally not entirely doctrinal (Taekema & van der Burg, 2024, p. 48) and (c) analytical legal theory has not made a significant contribution in this regard and the primary objective of this paper is to remedy deficiencies in the general methodological framework of legal science by drawing on insights of analytical legal theory. Nevertheless, since “the starting point of comparative research is usually the doctrinal reconstruction of the legal orders of the countries involved [in the research], and for this, doctrinal methods must be used” (Taekema & van der Burg, 2024, p. 49), the sections of the paper on the objectives of describing and systematizing law can also be read as an addendum to the literature on the methodology of comparative law research. On the methodology of comparative law research, see, e.g., Samuel (2014), Van Hoecke (2015), Kestemont (2018, pp. 12-14, 36-54) and Monateri (2021).
- 5 On analytical legal theory (philosophy) as a conceptual laboratory (or workshop) and metalegal science (or meta-jurisprudence), see Guastini (2016, pp. 37-47).
- 6 On the methods of collecting research data in legal scientific research, see Taekema & van der Burg (2024, pp. 62-68) and Snel (2014).
- 7 On the systematic literature review in legal scientific research, see Snel & de Moraes (2018).
- 8 On the theoretical and normative frameworks of legal scientific research, see Taekema & van der Burg (2024, pp. 79-92).
- 9 On dogmatic theses (or propositions), see Guastini (2004, pp. 15-17; 2006, pp. 213-215) and Alexy (2010, pp. 257-266). In fact, I address the issue to some extent since one type of dogmatic theses are unexpressed legal principles constructed by legal scientists, which I discuss in Sections III and VI, as they are relevant both for explaining and systematizing

law.

- 10 See Guastini (2014, p. 77): “Just as there are many ways of formulating a norm, there are many ways of presenting its content. For example, for a commanding norm one can indiscriminately say that it qualifies a certain conduct of a subject as obligatory or that it imposes on the said subject a duty”.
- 11 For an analysis of subjective legal positions (legal rights), see Hohfeld (2001).
- 12 On the importance of doctrinal conceptual apparatus for a systematic description of law, see Smits (2017, pp. 214-215).
- 13 In fact, Guastini defines the abovementioned second way of describing law more broadly, i.e., as identifying the prevailing doctrinal and *judicial* interpretations and juristic constructions. However, he himself acknowledges that there is no major difference between the thus defined “normativist” way of describing law and the “realist” way of describing law by identifying the norms actually applied by judges (Guastini, 2014, p. 429) and that it is “not certain” that propositions “normativistically” describing prevailing interpretations in doctrine and/or case law really differ from propositions describing norms actually applied by judges (Guastini, 2011, p. 221). To achieve a methodologically clearer differentiation between the two ways of describing law and due to the practical research need to separately identify law as it follows from doctrinal interpretations of sources of law and the practice of law-applying organs, I have limited the second, “normativist”, way of describing law to the identification of prevailing *doctrinal* interpretations and juristic constructions.
- 14 As the second realist way of describing law Guastini mentions describing case law, i.e., a set of judicial decisions. However, in some sense this does not amount to describing law as a set of norms since, by analysing judicial decisions, a legal scientist does not identify a *norm* that exists in a legal order LO, in the sense of a norm actually applied by judges, but instead identifies a *regularity* in the behaviour of judges, i.e., that in a certain period of time, in a certain percentage of cases, judges decided on a class of factual state of affairs F in manner A. Thus, a descriptive legal scientific sentence in such a realist approach to describing “law” claims that judges J in a legal order LO generally decide cases of type X in manner Y, and not that in a legal order LO there exists a norm N. Since this does not represent describing norms (identifying how something is legally regulated) as the basic subject matter of legal scientific research, this way of describing “law” will not be further considered in the paper.
- 15 One of the reviewers pointed to one of the most important issues within the epistemology of legal science, i.e., the possibility of normative knowledge. The reviewer raised the issue of whether the relevant facts described by the so-called normativist understanding of legal science are the same kind of facts described by the so-called realist understanding of legal science, and alluded to the distinction between ‘brute’ and ‘institutional’ facts as a potentially helpful way of accounting for the differences in the types of facts explored by these two approaches to legal scientific research. While this undoubtedly is an important issue, and I thank the reviewer for bringing it to the fore, I am afraid that

at least a separate section of the paper would be needed in order to provide a reasoned answer addressing different versions of the normativist and realist understandings of legal science (including the version of the realist understanding of legal science that I discuss in the preceding footnote).

- 16 Hypothesis H1 is “a (true or false) sentence (proposition) which describes (enumerates) different possible meanings of a normative text” (Guastini, 2011, p. 221). According to Guastini (2015, p. 52, n. 25.), descriptive cognitive interpretive sentences can be understood “either as predictions of future interpretive decisions of law-applying agencies; or as interpretive directives aiming at guiding such future decisions, namely, by circumscribing the range of admissible meanings of the text concerned”. Here, however, in the context of discussing the descriptive objective of legal science, I understand these sentences primarily as descriptive sentences and, subsequently, as potential predictive sentences. Understanding these sentences as interpretive directives would belong to the recommendatory objective of legal science. On the recommendatory objective of legal science, see *infra* section V.
- 17 This is the so-called generic subsumptive sentence, i.e., the result of so-called generic subsumption, which “determines the semantic relationship between two predicates (i.e., terms designating classes) and which “is an essential part of interpretation ‘in abstracto”” (Guastini, 2011, pp. 24-25).
- 18 A paradigmatic example of such a commentary is Kelsen’s commentary on the UN Charter. According to Kelsen (1950, p. XVI): “The task of a scientific commentary is first of all to find, by a critical analysis, the possible meanings of the legal norm undergoing interpretation; and, then, to show their consequences, leaving it to the competent legal authorities to choose from among the various possible interpretations the one which they, for political reasons, consider to be preferable, and which they alone are entitled to select. A scientific interpretation has to avoid giving countenance to the fiction that there is always but a single ‘correct’ interpretation of the norms to be applied to concrete cases”.
- 19 Hypothesis H3 is a (true or false) sentence (proposition) describing the adjudicative interpretation prevailingly accepted in legal science (doctrine) (the so-called current interpretation) of a normative text (cf. Guastini, 2011, p. 221).
- 20 One can distinguish between two types of adjudicative interpretation. Standard adjudicative interpretation consists in “choosing one of the meanings from among the meanings identified (or identifiable) by means of cognitive interpretation”, while creative adjudicative interpretation consists in “ascribing to a text a ‘new’ meaning not included in the frame of meanings identifiable by means of cognitive interpretation” (Guastini, 2014, pp. 379-380).
- 21 Of course, if there is not even a minimum consensus in the relevant legal scientific community in the above mentioned cases, the researcher can only report a lack of consensus or the existence of controversies.
- 22 See Guastini (2011, p. 221). According to Guastini (2015, p. 53), propositions on

“norms in force” can be understood “as propositions on contingent futures: predictions concerning the future application of the norms they refer to”.

- 23 On the so-called internal and external justifications of judicial decisions, see Guastini (2011, pp. 257-262) and Wróblewski (1971, pp. 409-419).
- 24 Cf. Guastini (2011, p. 264), for identifying *rationes decidendi* in precedents in *common law* legal orders.
- 25 It should be noted that this particular method does not belong to the purely descriptive part of the research, since it is highly creative and involves a great deal of discretion, and so different researchers can reach different conclusions from the same material. I thank the reviewer for pointing that out.
- 26 For instance, the researcher wants to determine which subclasses of factual states of affairs judges subsumed under the class of factual states of affairs “unlawfulness”. The researcher determines that in judgment J1 a judge subsumed under the class “unlawfulness” a concrete factual state of affairs of violating the Obligations Act, in judgment J2 a violation of the Road Traffic Safety Act etc., and then by abstracting infers that the subclass SC1 prevalingly subsumed by judges under the class “unlawfulness” is “violation of a statutory norm”. Furthermore, the researcher determines that in judgment J7 a judge subsumed under the class “unlawfulness” a concrete factual state of affairs of breaching an apartment lease agreement between Anna and Maya, in judgment J8 a breach of a real estate sales agreement between Marc and Peter etc., and then by abstracting infers that the subclass prevalingly subsumed by judges under the class “unlawfulness” is “breach of a contractual norm”. The example was derived from Baretić (2020, pp. 606-611).
- 27 Of course, if there is not even a minimum consensus among judges regarding either the interpretation of provision P or the subsumption of factual states of affairs under norm N, the researcher can only report about a lack of consensus or the existence of controversies.
- 28 On describing law on the basis of case law analysis and, it seems, limited predictive power of legal science, see Aarnio (1987, pp. 166-170) (on describing regularities in case law) and Aarnio (1987, pp. 170-174) (on describing actually applied norms).
- 29 It is therefore also called the so-called internal approach to explaining law. See Kestemont (2018, p. 59). According to Kestemont (2018, p. 59), the legal (or so-called internal) explanation of law may also consist in identifying the reasons and motives that led to the creation or alteration of a legal rule on the basis of exploring preparatory works, case law, legal doctrine and former legal regime. It seems, however, that all these cases concern an extralegal (sociological or historical) explanation of law. For instance, preparatory works, case law and legal doctrine can be sources on the basis of which conclusions can be drawn in socio-legal research about factors that led to the creation or alteration of a certain legal regime (e.g., the Government wanting to achieve a certain goal or the courts deciding in a way that was incompatible with what the legislator wanted to achieve or the legal doctrine’s criticism of the existing legal regime and its recommendations for improvements).

- 30 On legal principles as norms having a “fundamental” character, which provide an axiological (moral-political) justification (foundation) to other norms, see Guastini (2011, pp. 175-176).
- 31 For more on the method of conjecturing about the *ratione* of rules, see Guastini (2011, pp. 186-188).
- 32 For more on the method of universalization (generalization), see Guastini (2011, pp. 188-189). For the distinction between deductive and inductive generalization, see Ratti (2015, pp. 161-162) and Ratti (2008, pp. 327-333).
- 33 On the distinction between internal and external criteria for evaluating law, see Kestemont (2018, pp. 60-61).
- 34 On completeness, consistency, and axiological coherence as (desirable) properties of normative, and thus also legal systems, see Ratti & Rodríguez (2015, pp. 131-146). On these properties as (legal) criteria for evaluating law, see Taekema & van der Burg (2024, pp. 50, 135 and 141-142) and Kestemont (2018, pp. 60-61).
- 35 For the criteria actually used for evaluating law in, e.g., one Croatian family law textbook, see a (qualitative) empirical research Čušić (2024, pp. 162-193).
- 36 Rules of interpretation commonly include rules on interpretation that help avoid antinomies and gaps and ensure conformity of norms with norms axiologically superior to them. However, due to the fact that completeness, consistency, and coherence are also the criteria of rationality and (desirable) formal properties of every normative system, and thus also the legal one, and their prominence among the criteria for evaluating law, I treat them here as distinct evaluation criteria.
- 37 On doctrinal theses, see Guastini (2004, pp. 15-17; 2006, pp. 213-215) and Alexy (2010, pp. 257-266).
- 38 For more details on this, see Kestemont (2018, pp. 60-63) and Taekema & van der Burg (2024, pp. 143-148). On the structure of evaluative arguments, see Taekema & van der Burg (2024, pp. 148-151).
- 39 On these and other types of gaps and ways of identifying them, see Chiassoni (2007, pp. 169-236). On ways of identifying gaps, see also Ratti (2015, pp. 166-170).
- 40 On technical gaps, see Guastini (2011, p. 133-134) and Chiassoni & Huerta (2024, pp. 308-309).
- 41 For more details on the method of identifying normative gaps, see Alchourrón & Bulygin (1971, pp. 15-21) and Chiassoni & Huerta (2024, pp. 306-308).
- 42 On types of axiological gaps, see Guastini (2011, pp. 134-139). In the case of the first type of axiological gaps, legal scientists may assess the axiological adequacy of an existing norm, for example, with regard to the counterfactual legislative intent, the actual legislative intent, the assumedly “objective purpose” of the norm, fundamental constitutional principles, or the norms of a critical morality. See Chiassoni & Huerta (2024, pp. 309-

- 310) and Bulygin (2015, p. 230), who states that, when identifying axiological gaps, legal scientists seldom refer to the norms of critical morality, and more often “argue that the legislator did not foresee the case in question, for if he had foreseen it, he would have introduced a relevant distinction that would have led to another solution”.
- 43 On these and other types of antinomies and ways of identifying them, see Chiassoni (2007, pp. 251-281) and Guastini (1998, pp. 216-219). On ways of identifying antinomies, see also Ratti (2015, pp. 170-173) and Alchourrón & Bulygin (1971, pp. 15-21).
 - 44 An antinomy *in concreto* also exists when a concrete factual state of affairs can be subsumed under two conceptually independent classes of factual states of affairs. Such an antinomy is typically identified by judges in the course of applying the law. Legal scientists, on the other hand, generally deal with determining whether a certain subclass of factual states of affairs is subsumable under a particular class of factual states of affairs.
 - 45 For the relationship between antinomies and gaps, on the one hand, and interpretation, on the other, as well as for the doctrinal creation of antinomies and gaps (i.e., evaluation of law as inconsistent and incomplete) as a basis for legal scientists’ legal-political activities, see Guastini (2011, pp. 109-113 and 129-133). The recommendatory objective of legal science will be discussed in the following section.
 - 46 For the distinction between *de lege ferenda* and *de sententia ferenda* research as two approaches within the activity of legal policy, see Ross (2019, p. 416).
 - 47 Taekema & van der Burg (2024, pp. 50, 151 and 153-154).
 - 48 For more details on this, see Kestemont (2018, pp. 64-74). On the structure of recommendatory arguments, see Taekema & van der Burg (2024, pp. 152-154).
 - 49 On the method of justifying doctrinal interpretive decisions, see, e.g., Aarnio (1987, pp. 115-136 and 185) and Ratti (2008, pp. 269-317).
 - 50 The interpreter can create a legal gap, for example, by using the argument *a contrario* (in its interpretative version) and the argument of dissociation (see Guastini, 2004, pp. 235-236).
 - 51 On the different methods of constructing unexpressed norms, see also Ratti (2015, pp. 156-162).
 - 52 Specifically on the ways of filling one type of axiological gaps, see Guastini (2012, pp. 182-192). On ways of filling axiological gaps, see also Chiassoni & Huerta (2024, pp. 311-313).
 - 53 On nomotechnical methods, see, e.g., Vuković & Vuković (1997), Milotić & Peranić (2015) and Xanthaki (2014).
 - 54 Example taken from Ratti (2015, p. 175).
 - 55 Systematizations are “theories in legal dogmatics” in the sense of “partial articulation of

the legal dogmatical paradigm” (Aarnio, 1987, p. 141).

- 56 For an excellent systematic overview of the most important doctrinal operations, i.e., methods that legal scientists use in the process of systematizing law, see Ratti (2015).
- 57 For the methods of ascribing to provisions the status of provisions that express principles and interpreting those provisions, i.e., determining the principles expressed by them, see Guastini (2017, pp. 360-364).
- 58 For the method of determining the normative basis, see Ratti (2015, p. 155).

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