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INTELLECTUAL HISTORY OF A TEXTBOOK: RADOMIR LUKIĆ'S *INTRODUCTION TO LAW* BETWEEN MARX AND KELSEN

Radomir Lukić's Introduction to Law *was a model textbook in Communist Yugoslavia for nearly fifty years. Still in use as a learning source in present-day Serbia, it combines Marxist theory of law with Kelsen's normativism in order to explain the legal rule as a social fact without denying its normative dimension. In order to discern the reasons for and patterns of this synthesis, the paper compares the first five consecutive editions of Lukić's textbook, as milestones of the author's intellectual evolution. The initial hypothesis is that Lukić's teaching was no more than a reinterpretation of his Parisian doctoral thesis from the late 1930s. Inspired by French theory of social law and despite being Marxist, his teaching was not of Marxist origin. As such, it facilitates understanding of the Communist theory of law, especially Marxist perception and reception of Kelsenian normativism.*

Key words: *Marxism. – Normativism. – Introduction to law. – Radomir Lukić. – Communist theory of law.*

1. INTRODUCTION

What may be the purpose of intellectual history of a particular textbook? In the case of Radomir Lukić's *Introduction to Law*, the scientific inquisitiveness derives from academic praxis. Not only have more than 50 generations of Serbian jurists gained their first insights into law from this book, but it has served as a model for nearly every other

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introduction-type textbook in the former Yugoslavia. Moreover, most of the contemporary Serbian authors are still using it, making Lukić's *Introduction to Law* more of a living legacy than a silent monument.[1]

Aware of it, Stevan Lilić offered a critical review of Lukić's' "class concept of the state as the organization having the monopoly of physical force, and of law as the will of the ruling class" resulting directly in the interpreting of administrative action as "exercise of state power" (Lilić 2006, 63).[2] According to Lilić, this anachronistic, yet still influential Marxist definition, explains the Serbian resistance to accept the modern concept of state administration as a public service. Although limited to the field of administrative law, this critical review obviously implies a boarder conclusion: as anachronistic, Lukić's perspective still generates harmful consequences.

The initial idea of this paper was to relativize Lilić's conclusion, not only because a definition need not necessarily be faulty due to its Marxist foundation, but precisely because Lukić's definitions were not exclusively of Marxist origin. It is a commonly known fact that his *Introduction to Law* was a syncretic work that combined Marxist theory of law with Kelsenian normativism. The fact that there is no analytical research dealing with the reasons for and patterns of this synthesis offers an excellent impetus for this study. Its initial hypothesis is that Lukić's *Introduction to Law*, as well as his theory in general, combined a sociological approach with normativism in order to explain the legal rule as a social fact without denying its normative dimension. Lukić's so-called objective law theory, formulated under the influence of pre-war French theory of social law, was adaptable enough to the terms of new, post-war ideology of the communist Yugoslavia. The history of his *Introduction to Law* is thus the history of this adaptation.[3]

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[1] Lukić's *Introduction to Law* is a true watershed that divides pre-1941 and post-1945 production of textbooks in this field. By its structure, definitions, choice of topics and the method of their presentation, this book has set the standards that are still generally accepted and observed. The only one (or two) recent exception(s) to this rule was to some extent Kosta Čavoški's *Introduction to Law*, used optionally from 1994 to 2011 at the Belgrade University Faculty of Law (or Ricardo Guastini's *Syntax of Law*, translated into Croatian by Luka Burazin, and from 2016 on in use as a textbook in University of Zagreb Faculty of Law).

[2] The fact that Stevan Lilić has already discussed Lukić's theory of state allows us to focus this study on his theory of law.

[3] In his endeavor to create a systemic Marxist-based theory of law, Lukić had no real competitor in the former Yugoslavia. But on some Marxist legal philosophy points and especially on Kelsen's pure theory of law, in 1963 Lukić clashed with Ljubomir Tadić (then University of Sarajevo Faculty of Law), who – unlike Lukić – was at the time very close to Lukács' interpretation of Marx and in many more ways critical of Kelsen, and afterwards a prominent member of *Praxis* philosophy school. Tadić's PhD thesis on Kelsen (in 1962) became an issue of a vigorous debate with Lukić in 1963 (Lukić, 1963a,

In order to illustrate the latter claim, this paper will compare the first five consecutive editions of Lukić's textbook perceived as milestones of his intellectual evolution which was, *grosso modo,* completed by the early 1960s: *Encyclopedia of Law* of 1946 (hereinafter *Encyclopedia*), *Theory of State and Law Learning Material* of 1952 (hereinafter *Material*), *Theory of State and Law II*, editions of 1954 and 1957 (hereinafter *Theory, ed. '54* or *ed. '57*) and the second edition of his *Introduction to Law* of 1961 (hereinafter *Introduction*, *ed. '61*). The focus will be on the way Lukić progressively modeled his fundamental legal categories apparatus, i.e. the notions of the legal norm, legal act and legal relation, as well as his theory of interpretation. To describe avenues of this twofold influence, the following Lukić's preferred sources will be given priority: Soviet textbooks that he was obliged to use during the late 1940s[4], and Kelsen's *General Theory of Law and State* that he himself translated in the early 1950s.[5] With regard to Lukić's intellectual background, the paper will

Lukić 1963b, Tadić 1963a, Tadić, 1963b). For more on this polemic, see Grebo 1979 and Basta 2019.

[4] These textbooks were written by authors from the so-called second generation of Soviet legal theoreticians. The first post-revolutionary generation of Soviet theoreticians, led by Stuchka and Pachoukanis, professed the "withering away of the state and law" and defined law as a system of social relations rather that a system of norms. After 1931, such an approach would have been ideologically eliminated and progressively replaced by another theory in line with the political needs and actions of Stalin's socialist state. This new Soviet socialist theory of state and law, incarnated in Andrey Vyshinsky and the second generation of Soviet theoreticians such as Golounsky, Strogovitch and Denisov, became less suspicious towards normativism and ready to adapt it to Marxist premises. Despite of the fact that Yugoslav theory of law came along with this teaching and was ready to accuse the first generation of Soviet authors as "vulgare economists of Trotskyist-Buharin attitude" (Lukić 1948, 615–619; translation by author), Yugoslav theoreticians were mostly interested in the early post-revolutionary period of sociological orientation (Tadić 1957; Džinić 1963; Anzulović 1967; Gams 1967). On the other hand, reviews and critical analyses of this mature Soviet theory of law remained extremely rare (Lukić 1948; 1957b; Popović 1980), notwithstanding Radomir Lukić and some other prominent Yugoslav authors, such as Jovan Đorđević in Belgrade or Ivo Krbek in Zagreb, who had adopted the same approach. This is most likely due to the rising detachment from the USSR after the Tito-Stalin split in 1948. A brief, but harsh ideological critical review of Denisov's textbook in 1950 confirms this turning point in Yugoslav legal science (Unknown Author /probably Radomir Lukić/ 1950, 165–166). Naturally, it does not mean that Lukić lost contact with and interests in the Soviet legal thought and its further evolution. On the contrary, a lion's share of his personal library at the time (until the 1960s) had been composed of Soviet and, generally, Marxist legal literature.

[5] Hans Kelsen's *General Theory of Law and State* was translated by Radomir Lukić and Milorad Simić and published as an edition of Belgrade-based legal review *Arhiv za pravne i društvene nauke* in 1951 under the title *Opšta teorija prava i države* (Kelzen 1951). All references to Kelsen's classical work in this text are taken from this Serbian edition that was apparently the main source of Lukić's normativism. Lukić's reading of Kelsen was mostly focused on his early writings, especially *Hauptprobleme der Staatsrechtslehre* and his Berkeley textbook of 1945 (Lukić 1950; 1951; 1955a; 1955b; 1983), and much less on his *Pure Theory of Law,* which Lukić considered a writing of

also point to the pre-war Serbian and French teaching books,[6] which have been mostly relied on – let's call it – classical theory of law that for the purposes of this paper designates dominant European pre-Kelsenian theories of law.[7] However, this paper does not take into consideration other post-war textbooks from the period of socialist Yugoslavia since they were all quite similar and came after Lukić's classical volume, so they may only indicate the importance of Lukić's influence and, consequently, corroborate the practical importance of this research.[8]

2. MARXIST-KELSENIAN SYNTHESIS

According to *The Great Soviet Encyclopedia*, "normativism as a whole is directed against the Marxist interpretation of law" since it holds that legal science must "disregard the social factors" and "that law must be studied in 'pure form' as a special normative sphere independent of social life and economic and political conditions." If this is the case, it is so because "normativism is based on the neo-Kantian idea that the 'ought' and the 'is' are inseparable from one another and that the former cannot be derived from the latter..."[9] Unburdened by this neo-Kantian dichotomy, Marxist theoreticians felt free to explain the legal rule as a normative phenomenon determined by its social background. After 1945 Lukić also followed such an approach,[10] but he left the door open

secondary importance that "added nothing really new to the author's general ideas" (Lukić 1950, 333).

[6] Especially the titles that had been pointed out by Lukić himself as literature and sources relevant to his work (Lévy-Ullmann 1917; May 1932; Du Pasquier 1937; Juliot de la Morandière *et al*. 1951) and listed under each chapter (Lukić 1957a) or after Introductory remarks (Lukić 1961a).

[7] For a detailed historical survey of the discipline in the civil law world (including 20th century Europe) before and after Kelsen, see Pattaro, Roversi 2016.

[8] Author of this article expresses his gratitude to the Judge Renata Pavešković, Head of the Velika Plana Court District, who kindly made it possible to consult the personal library of Professor Radomir D. Lukić that was bequeathed to this Court after 1999.

[9] *The Great Soviet Encyclopedia*, 3rd ed. (1969–1978, 1981), vol. 18, 1974, 382–383; cited according to Hasanbegović 2015, 69–70, n. 1. It seems that Jasminka Hasanbegović was the first one (at *loc. cit.*) who noticed a grave misprint in that Encyclopedia's wording: "If this is the case, it is so because 'normativism is based on the neo-Kantian idea that the 'ought' and the 'is' are inseparable from one another and that the former cannot be derived from the latter," instead of saying: "If this is the case, it is so because "normativism" is based on the neo-Kantian idea that the 'ought' and the 'is' are so separate from one another and that the former cannot be derived from the latter" (Hasanbegović 2015, 70).

[10] Lukić also claimed that Kelsen's starting point must surely be wrong since he denied that "normativity is a part of reality" (Lukić 1950, 334).

to normativism by recalling that its founding father Hans Kelsen had never really dismissed the Marxist class concept of law as wrong, but only as irrelevant for understanding the way normative side of law really functions (Lukić, 1955a, 234).

2.1. Legal Norm

The fourfold structure of the legal norm is probably the best-known feature of Lukić's *Introduction to Law*. Indeed, a brief survey of older and alternative Yugoslav legal literature of the time is illustrative enough: the pre-war Belgrade legal teachings never explained the legal norm in this way,[11] and the post-war Zagreb and Ljubljana legal teachings have been in this respect under Lukić's influence.[12]

The new understanding of sanction lies at the core of his doctrine. According to the oldest legal literature that Lukić refers to, the legal rule is a hypothetical statement compounded of only two elements (i.e. the disposition or legal rule *stricto sensu*, and its hypothesis as a qualifier describing, i.e. determining a fact or facts needed for the implementation of that rule). The sanction itself was only a mere guarantee of due observation of the legal rule as such (provided by another legal rule).[13] Kelsenian and Soviet legal theory, on the contrary, recognized the sanction as an integral element of the legal norm. However, the role of sanction remained disputable. Kelsen perceived the sanction as the normative element of primary importance since only the fact that sanction existed for certain behavior implies the norm imposing the opposite. Contrary to Kelsenian theory, Soviet theory remained closer to understanding of

[11] While Feodor Taranovski's *Encyclopedia of Law* (Taranovski 1923, 132–134) followed the classical legal theory and its twofold and hypothetical structure of the norm, Stojković's *Introduction to Law* of 1940, as well as Tasić's *Introduction to Legal Sciences* of 1941, did not discuss this issue at all. In postwar Serbian legal theory, the classical teaching of the norm was still argued by Toma Živanović in *System of Synthetical Philosophy of Law* (Živanović 1997, 65–67).

[12] Berislav Perić's *Structure of Law* and Oleg Mandić's *State and Law II* at the Faculty of Law in Zagreb and Gorazd Kušej's *Introduction to Legal Science* at the University of Ljubljana broke away from the classical teaching of their predecessors (Lanović 1942, 63–70) and adopted the Soviet threefold model of the legal norm (Mandić 1958, 21–24; Perić 1964, 15–16; Kušej 1966, 99–101). The fact that the first editions of all these Yugoslav textbooks appeared after 1957, and that they often explicitly referred to Lukić's writings, makes Lukić's influence on these authors more than probable. This influence is far more evident at universities in southern and eastern parts of former Yugoslavia, which did not have a long tradition in legal education.

[13] In other words, a sanction was understood as a certain legal rule that ensures implementation of another legal rule. "La sanction est la conséquence attachée par le droit à la violation d'une règle juridique; [...] C'est une règle de droit qui la determine" (Du Pasquier 1937, 107). Similar to this, Nikolai Korkunov (Korkunov 1922, 187) and Feodor Taranovski (Taranovski 1923, 282).

sanction as a necessary, yet secondary normative rule that only ensures the implementation of the primary one. This difference in reasoning is actually epistemological: from a Kelsenian strictly analytical perspective, the sanction (and the legal norm itself) makes sense only if its due implementation is guaranteed by another, superior sanction. Consequently, a legal order is considered a hierarchically organized series of sanctions that linearly enforce one another, ending with a logically needed but only hypothetical *Grundnorm*. For Soviet theory, with its allegedly scientific approach, the foundation of the sanction is empirical. Thus, Kelsen's logical and hypothetical *Grundnorm* has been replaced by a (categorical!?!) fact: the State. Consequently, the rule is made legal not by just any sanction, but only by the *state-provided* sanction.

Obviously, Lukić's fourfold formula was not created *ex nihilo*. Innovative, yet not original, it was more an important part of the Soviet legacy than his genuine doctrine. Namely, in his first post-war textbook of 1946, Lukić still argues in favor of the Soviet three-part formula: the legal norm consists of a hypothesis, a disposition and a sanction (Lukić 1946, 25–28).[14] He may have easily adopted this teaching from Soviet textbooks that had already been in use at the Belgrade University during the late forties. Moreover, the Golounsky-Strogovitch textbook was a unique officially approved teaching material at the time, so Lukić's *Encyclopedia of Law* was only complementary learning material, which was expected to remain coherent with the Soviet theoretical standpoints. The way Lukić understood sanction as a secondary disposition, and especially its grounding ultimately in the State, placed him clearly on the Marxist line of 20th century legal thought. After all, Lukić's fourfold structure of the norm was no more than the further crystallization of the Soviet formula achieved through a gradual emancipation of *delict* as the fourth, free-standing and "logically necessary" element of the norm.[15]

Yet, it would be wrong to think that this early Soviet influence on Lukić resulted from his political opportunism.

Incorporation of delict into the logical structure of the norm, actually, may also indicate Kelsen's influence on Lukić's writings. Namely, it followed his reading of Kelsen's *General Theory of Law*

[14] Cf. Soviet textbooks of Golounsky-Strogovitch (Golunski, Strogovič 1946, 217–219) or Denisov (Denisov 1949, 358). There is an evident influence of Feodor Taranovski's textbook, especially regarding the typology of norms (Taranovski 1923, 134–138).

[15] The emancipation of *delict* was rapid, but gradual. Lukić's 1946 *Encyclopedia of Law* mentioned it briefly (Lukić 1946, 53). The 1952 *Materials* elaborated sanction as the third element compounded of two elements: the secondary hypothesis (delict) and the sanction *stricto sensu* (Lukić 1952, 52–53). Lukić's 1957 *Theory of Law* had already recognized determination, i.e. description of a delict as an equally important element of the complete (or perfect, i.e. compound) legal norm (Lukić 1957a, 82–83).

and State, which emphasized the sanction as a primary disposition, and consequently the delict as hypothesis for the sanction. The fact that Lukić, unlike other Yugoslav theoreticians of his generation, especially those from Ljubljana and Zagreb who kept the Soviet threefold formula, recognized the description, i.e. determination of the delict as so-called secondary hypothesis of the so-called perfect legal norm, which includes ultimately the State sanction, supports the assumption of a simultaneous and combined Soviet and Kelsen influence on his work.

Another important part of Kelsen's teaching that slowly but surely snuck into Lukić's *Introduction to Law*, eventually becoming a common place in his understanding of the norm structure: abandoning both the classical and the Soviet concept of the norm as, *per definitionem*, a hypothetical statement. This resulted from Kelsenian elimination of the classical distinction between legal rule and its effective implementation through the court rulings or administrative legal acts. Since decisions contained in these two kinds of concrete legal acts are not hypothetical, but categorical stances, classical legal theory treated them as concepts differing from norms (Du Pasquier 1937, 81–90). It was Kelsen who shifted this perspective. Since a court or administrative decision derives from a statute or other decisions containing (or able of creating) general legal rules, likewise statutory or similar general legal rules themselves stem from constitutional ones, so there is no real difference in their *nature*, but only in the *degree* of their extent, accuracy and concreteness. They are all norms: the first ones are concrete, and the second type belongs to abstract (or general) ones. According to Kelsen, the hypothesis of a general legal rule is perhaps a regular, but irrelevant element of the norm structure and dynamics.

It seems that Lukić was strongly affected by the idea of abandoning the hypothetical character of legal norm as its structural necessity.[16] Not only did Lukić adopt Kelsen's position on this matter early on,[17] but he

[16] Lukić's enthusiasm for this idea was genuine. The Soviet theory of the time did not explicitly recognize the distinction between the general and concrete (or singular) norm. In Denisov's textbook, "a norm is a rule of, more or less, general character" (Denisov 1949, 355; translation by author). Golounsky and Strogovitch differentiated between the abstract and concrete rule, but only as two different types of the general rules or proscriptions created by the state (Golounsky, Strogovitch 1946, 215–216). The French textbooks from the late 1940s that Lukić consulted discuss this aspect of Kelsen's normativism only as an interesting, but not recognized doctrine (Du Pasquier 1937, 93–94).

[17] If Lukić's 1946 *Encyclopedia* was strongly influenced by classical pre-war theory, and implicitly adhered to the idea of the norm as a hypothetical stance, his 1952 *Material* had already spoken of general and concrete norms, and undoubtedly mentioned that "[...] certain theoreticians do not consider individual [i.e. concrete] norms as norms, but as an implementation of a general norm on a specific situation, which means that only general norms are – norms." (translation by author) In other words, his classical standpoint of 1946 had become thoroughly relativized in 1952.

pointed it out in a way that it became a starting point for his norm theory.[18] Since there are concrete (or individual) norms containing a hypothesis, and general norms deprived of it, Lukić implicitly reached the conclusion that the hypothetical form could not be *differentia specifica* of a legal norm.[19] Kelsen claimed pretty much the same, but he was less radical. Unlike Lukić, who in a way recognized absolute legal norms,[20] which some authors usually associate to legal principles, Kelsen considered general legal norm typically – i.e. by its nature – hypothetical (Kelsen 1949, 91). Additionally, if Kelsen spoke of the concrete (or individual) norm that contained a hypothesis, it was only of a secondary hypothesis, namely, of a delict, or disrespect of rule that implies the sanction, and never of a hypothesis of disposition (Kelsen 1949, 38).

2.2. Legal Act

It appears that, unlike his teaching of the norm structure, Lukić's definition of the legal act as an "act of will that creates a legal norm" (Lukić 1952, 65; translation by author),[21] was closer to normativism than to the Marxist theory of law.[22] He could not have found this definition in Soviet textbooks from the late 1940s nor in classical theory of law.[23] One

[18] His 1954 *Theory of State and Law* had started the exposition of his norm theory in the chapter titled "Hypothetical and Non-hypothetical Norms", giving the definition of norm and some introductory remarks (Lukić 1954, 70–71).

[19] Lukić says: "Obviously, it is possible to imagine a legal order deprived of hypothetical norms, since they are not indispensable. On the contrary, a legal order without non-hypothetical norms is inconceivable, since they are indispensable" (Lukić 1974, 202; translation by author).

[20] Though Lukić did not use the term "absolute norm", he certainly had in mind one of two possible types of general legal norms: the unconditioned (i.e. absolute) general legal rules, i.e. the general legal norms the implementation of which is not conditioned by the occurrence of any specific and qualified facts (Lukić 1974, 202). In this, Lukić clearly deviated from classical legal theory, which strongly denied the existence of absolute norms (Korkunov 1922, 176).

[21] This definition of the legal act, however, was completed by its additional specification in 1957. Namely, according to Lukić's *Theory*, a legal act could, indeed, be an act of will that creates a legal norm, but also an act of will that claims the existence of a condition for applying such a norm, i.e. a legal act could also claim the existence a qualified fact stipulated by the hypothesis of a certain legal norm (Lukić 1957a, 104). This twofold definition became a common feature of the later editions of Lukić's *Introduction* (1961a, 200; 1963a, 192; and 1974, 220).

[22] More specifically, closer to Adolf Merkl than Kelsen, since Lukić reffered to two Merkl's (Merkl 1923; Merkl 1967) and none Kelsen's work (Lukić 1957a, 103).

[23] Just like the classical theory of law, the Soviet authors were not familiar with this concept. Instead, they acknowledged legal sources as a form or manner of expressing legal norms (Denisov 1949, 393; Golunsky, Strogovič 1946, 149). On the other hand, both traditions, the Soviet and the classical one, discussed the notion of the legal act, but only as a legal fact that establishes, modifies or abolishes legal relations. For the oldest Serbian

might think that Lukić adopted Kelsen's definition of the legal act as a way to overcome *Hume's law* and find the philosopher's stone of legal theory: transcending the gap between fact and norm (i.e. make an *ought to be*, logically, if not empirically, interconnected with the social reality). According to Kelsen, the legal meaning of a certain fact originates from a norm that attributes certain juridical consequences to it. The norm itself, however, is no more than the legal meaning of another fact, qualified as normative by another legal norm, which is simply the legal meaning of another, superior fact, qualified as such by a superior norm, etc. The first traces of this specific act and norm dynamics had already been noted in Lukić's *Encyclopedia*. In his 1946 textbook, Lukić made the distinction between a judicial or administrative act and a statute since only the latter "contains those norms that legal acts are **based on** (since we have defined the legal act as a declaration of will **based** on a legal norm)" (Lukić 1946, 34; translation by author; emphasis in original). In other words, a legal act (a judgment or a contract), which is based on a legal norm, needs another act (a statute) to establish that norm. However, it would be wrong to believe that Lukić's adoption of normativism at this point was linear. In his 1952 *Materials*, Lukić does not pronounce on this, while in his 1957 *Theory* he claims that "creation of a legal act is regulated by another, superior legal act" (Lukić 1957a, 109; translation by author). Kelsen's formula is found only five years later, in the 1961 edition of his *Introduction to Law*: "One of the characteristics of the legal order is that it regulates its creation on its own [...] It means that, practically, legal norms are created by legal acts, and creation of a legal act itself is regulated by another, preceding legal norm contained in another, preceding legal act" (Lukić 1961a, 203; 1963a, 194; translation by author). Ten years later, in the 1974 edition of *Introduction to Law*, Lukić retained the same position: "It means that, practically, legal norms are created by legal acts, and that the creation of a legal act itself is regulated by another, preceding legal act" (Lukić 1974, 224; translation by author).

It should be noted, however, that in Lukić's view these processes of interchaining of norms with acts in a legal order always finish with "another, preceding act", not with "another, preceding norm." This means that the chain is closed by a (f)act, i.e. the Constitution as an expression of the supreme political will, and not by a constitutional, or any other *Grundnorm*. This indicates that Lukić had perhaps adopted a Kelsenian analytical perspective of the self-regulated legal order, but he did not

authors that followed the classical theory cf. Feodor Taranovski (Taranovski 1923, 159–160) or Toma Živanović (Živanović 1997, 280–286). For mainstream Soviet authors that have been translated into Serbian, cf. Golunsky and Strogovitch (Golunski, Strogovič 1946, 241–242) or Denisov (Denisov 1949, 424). Lukić did the same in his *Encyclopedia* (Lukić 1946, 33).

perceive it the same way. Unlike Kelsen, who used it in order to make an *ought to* logically connect, yet remain autonomous from the social reality, Lukić had never tried to emancipate the former from the latter, but intended to integrate them. Therefore, in his interpretation, a legal norm is also the content of a legal act, and, as such, a part of reality.

Defining the legal norm as the content of any legal act, it seems that in the beginning Lukić had not clearly differentiated between these two concepts. The confusion concerning legal norm and legal act was most obvious in his 1946 *Encyclopedia*. He claims there that "every legal norm consists of two elements: its form that determines its legal force and its content" (Lukić 1946, 38; translation by author), but he does not relate the form of the norm to its original legal source, as Soviet authors have done. On the contrary, he holds that it "is prescribed by another legal norm" (Lukić 1946, 38; translation by author). That is how he came to the hierarchy of norms as ordered by their legal force, yet, curiously enough, illustrated as a hierarchy of acts that starts with the Constitution and ends with statutes and regulations (Lukić 1946, 39). Six years later, in *Material*, Lukić would claim that it is the act, and not the norm, that has both the form and the content (Lukić 1952, 65–66), but a hundred-and-thirty pages later he insists that the legal force of a norm depends of its own form (Lukić 1952, 191).[24] This inconsistence was eliminated in his 1957 *Theory*, in which he claims the legal force of a norm is deduced from the form of the legal act that creates the norm (Lukić 1957a, 286). In this way Lukić's position has been clarified gradually: from 1946 all of Lukić's textbooks associated legal force both with the legal norm and the legal act, but from 1957 on it is clear that the legal force of the legal norm (and of the legal act, respectively) depends solely on the (elements of) form of the legal act that contains the given norm (Lukić, 1952, 71–72 and 191; 1957a, 103, 150–151 and 286; 1961a, 198–199, 278–279 and 276–277; 1963a, 190–191, 254–255 and 251–252; 1974, 219–220, 293–294 and 297).

Lukić's way of thinking about the relation between the norm and the act may come across as an oversight or a misunderstanding. Upon careful analysis, it is clear that it reflects his position that this relation is not based purely on the legal interchaining of legal norms with legal acts, as Kelsen thought, but on their common interaction with the third and crucial element of Marxist legal theory: the concept of legal relation.

2.3. Legal Relation

The Soviet definition of legal relation, which became Lukić's definition too, was not actually of Soviet origin. Its core is based on

[24] Similarly, form is a property of both the act and the norm (Lukić 1952, 96–97).

classical theory, which perceives law as a twofold phenomenon. According to Korkunov, who followed the older German legal doctrine, legal relation is but the *verso* of legal rule (i.e. a set of rights and obligations that the rule is to provide to legal subjects). Therefore, "[...] legal relations are also social relations, but governed by a legal rule [...]" (Korkunov 1922, 193). The concept of legal relation was well-known in this interpretation[25] and useful to Soviet legal theoreticians. It helped them overcome a gap between norm and reality through the dialectic understanding of history as a permanent and creative interaction between a social base and the legal superstructure.[26] According to some Soviet authors, like Piontkovsky and Ketchekyan, a norm is not an extra-empirical entity, but a social fact that comes into being through its practical implementation, transforming a social into a legal relation (Varga 1967, 192). Nevertheless, it seems that this overly realistic teaching has remained a minority standpoint of the Soviet legal theory which, for the most part considered legal relation only as a way of implementation of a norm, not as a way of its existence *per se* (Golunski, Strogovič 1946, 233; Denisov 1949, 411). Generally speaking, Marxist theory of law continued to rely on legal relation as a specific counterweight to norm, thus exceeding normativism.

Radomir Lukić's *Introduction to Law* tried to adapt this Soviet understanding of legal relation to Kelsenian normativism, which had never really considered this concept in any greater detail. In his attempt to explain the twofold nature of law as empirical *and* normative,[27] Lukić referred to Kelsen's notion of legal order as a concept unfamiliar to the Soviet authors of the late 1940s. Yet, even if he had really relied on Kelsen in defining the legal order, he did not perceive it as a purely normative phenomenon. Along with its normative side, considered a system of norms aimed at regulating the life of a society, every legal order in Lukić's opinion includes real social interactions as its empirical or factual side. There are still more differences as pertaining to Kelsen. As mentioned above, Lukić brought the legal norm and legal act in conjunction and inclined to keep them together, as two related elements on the normative side of the legal order.[28] He did not do the same concerning legal relation.

[25] As it was to pre-war Yugoslav theory of law, inspired by Korkunov or other theoreticians who broadly discussed this topic in their papers (Taranovski 1923, 138–147; Tasić 1941, 118–122; Živanović 1997, 275–280).

[26] There was, however, a broad discussion whether legal relation was part of the superstructure or was closer to the basis, or even if it united them in and by itself. For more details see Popović (Popović 1980, 47–48).

[27] Such influence of the classical tradition speaks in favor of the fact that Lukić defined a legal act both from its objective side (i.e. as an act creating a norm) and the subjective one (i.e. as an act of will that establishes, modifies or abolishes legal relation).

[28] This was not so from the very beginning; in *Encyclopedia* Lukić defined legal order as a system of norms without reference to any empirical or factual part of it (Lukić

Truth be told, in his 1952 *Material*, legal relation was the third element of the normative side of a legal order, along with the norm and the act (Lukić 1952, 51). Starting from 1957, legal relation in his teaching did not belong to either side. Just like in Piontkovsky's and Ketchekyan's papers, it was perceived as a link that kept the normative and the factual sides of legal order intertwined.[29] It practically meant that Lukić too was ready to recognize an order as *legal* only if it was *factual*. On the other hand, unlike Piontkovsky and Ketchekyan, who conditioned the validity of every single legal norm by its efficiency, Lukić preferred Kelsen's positions. In other words, he conditioned validity of a legal order by its overall efficiency, that of the system as a whole, and had never claimed that the validity of every single norm depended on its efficient implementation. On the contrary, the validity of a norm, i.e. its compliance with a superior norm in all (material or content-wise, and formal) aspects of its creation, remains its crucial qualifying feature as a legal and legitimate part of the legal order.

Although this chapter of the *Introduction to Law* may seem like Lukić's linear and consistent reception of Kelsenian ideas, this is not the case. In fact, his notion of the validity of norm was quite far from the Kelsenian one. His whole life, Lukić struggled with the definition of this concept, torn between a formal, strictly analytical concept of validity of norm, approaching Kelsenian normativism, and another, sociological understanding of validity as a social or even a psychological fact – a binding (individual or collective) consciousness that requires the respect of the norm – which he developed in his doctoral thesis in 1939. This point in Lukić's reasoning has already been the subject of analysis (Dajović 1995; Bozic 2020, 198–204) and will not be discussed here again because of its irrelevance for the topic of this paper. *Introduction to Law* had neither developed this topic more particularly, nor eliminated Lukić's dilemmas. Although personally deeply intrigued by the problem, Lukić was careful enough not to burden his students with it. Nevertheless, there are at least two less evident traces in his textbook that are indicative of his doubts. The first one is of lexical nature and refers to the declining use of the term *validity*, which from 1946 on has been gradually pushed into the background giving way to the alternative expression *positive law*.[30] The second clue is even more compelling. Up to 1957 Lukić had explicitly and unequivocally explained the validity of a norm as a feature dependent on its compliance with another, superior norm (Lukić 1946,

1946, 37).

[29] Expressed also in *Introduction* of 1961 and its subsequent editions – only in a different way.

[30] In 1946 *Encyclopedia*, 1952 *Material* and 1957 *Theory* Lukić used both terms equally. In all editions of his *Introduction*, starting from the second one of 1961, the use of validity was so reduced that it is nearly non-existent.

43; 1952, 189–190; 1957a, 285). After 1961, he made no additional effort to explain this concept.[31] In general, the subsequent evolution of Lukić's teaching, which, after the publishing of his monograph on *Interpretation of Law* in 1961, had been focused primarily on legal philosophy and not on general legal theory, tended towards a gradual return to his early ideas and the discreet renewal of his pre-war theory of objective law. Thoroughly inspired by the French theory of social law, such tendencies became evident in Lukić's later distinction between the formal and real validity and even more so in his interpretation of law.

2.4. Interpretation of Law

Of all the topics from Lukić's *Introduction to Law* discussed in this paper so far, his interpretative theory was the least syncretic combination of Kelsenian normativism and Marxist theory of law. There are, however, some hints indicating that Lukić's original theory of interpretation was not a free-standing part of his legal reasoning. It is *the* piece of the puzzle connecting the whole, also revealing most obviously its basically Marxist alignment. Regardless of its rapid emancipation of Soviet doctrinal teaching and progressive incorporation of an important Kelsenian element, the evolution of this interpretative theory unfolded along Lukić's mainstream thinking, heading towards the inception of the Marxist theory of natural law.[32]

For better understanding, it may prove useful to emphasize Lukić's detachment from the Soviet theory of interpretation, which he acquired early on. Inasmuch as he embraced Kelsenian understanding of the norm, Lukić's textbook, from its early editions, speaks not only of interpretation of the general norm, as discussed by Soviet authors, but also of the concrete (or individual) one (Lukić 1946, 59). This starting distinction is more significant than it may seem at first. Namely, according to 1940s Soviet textbooks, not only could a general norm be the exclusive subject of interpretation, but the *stricto sensu* interpretation was only the one undertaken *in abstracto* by the supreme state authorities. In other words, this meant that all those *in concreto* interpretations undertaken by legal practitioners were not *interpretations* at all, but rather simple *explanations*.[33] This distinction between the interpretation and explanation of a norm was based on Stalin's Constitution. According to the USSR

[31] A specific book chapter on the validity of the norm can be found in Lukić 1952, 191–192; 1957a, 285–287; the explanation of the meaning and nature of a positive (or a valid) norm in Lukić 1961a, 272 and 274; 1974, 309–316.

[32] Especially in his later years (Lukić 1979; Lukić 1980; Lukić 1986).

[33] The title of this chapter in the Golounsky-Strogovitch textbook is eloquent enough: *Explanation and interpretation of legal norm* (Golunski, Strogovič 1946, 221–232; translation by author). On the other hand, Denisov's textbook from the late 1940s abandoned this approach. According to Denisov's classification, there is an

supreme legal act from 1936, only the findings of the interpretation *stricto sensu* were compulsory for all judicial and administrative authorities with a law implementation mandate. The effects of the so-called *explanation* were limited strictly to a particular case covered by a judicial ruling or an administrative act. In other words, from the Soviet perspective, interpretation of the law was clearly separated from its immediate implementation. Notwithstanding that the first Yugoslav constitution (1946) was modeled after the Soviet one, and providing the highest state authority – Presidium of the National Assembly – with interpretative competencies of compulsory effect, Lukić did not embrace this Soviet theory of interpretation. His 1946 *Encyclopedia* had already relativized the Soviet distinction between interpretation and explanation, clearly stressing the highest importance of *in concreto* interpretations relative to the norm's direct implementation (Lukić 1946, 59). Several years later in his *Material* he modified the Soviet model even further by dividing all interpretations into those related to implementation and those that are not.[34] The Tito-Stalin split in the late 1940s and the resulting constitutional changes prompted further emancipation: the 1953 Yugoslav constitutional law removed these special interpretative capacities of the supreme state authority from the national legal system and introduced the classical concept of the legislator's authentic interpretation of law instead.[35]

Lukić seems to have paid much more attention to the theory of interpretation than the Soviet authors of the time did. Actually, the volume of his textbook chapter dedicated to this topic never stopped growing. While the Soviet authors were satisfied with some seven– or eight-pages explanations, Lukić used 24 pages in 1946, nearly 30 in 1952, over 40 in 1957, and around 70 in the 1974 edition of *Introduction to Law* for this purpose. It is without a doubt that no other part of his *Introduction to Law* gained in significance so rapidly and extensively, changing its form quite notably along the way.

authentic interpretation given by the lawmaker, as well as a casuistic interpretation of the administrative and judicial authorities applying the norm (Denisov 1949, 430).

[34] However, this emancipation from Soviet influence was not as radical as it might have seemed. Before the first edition of his 1963 *Introduction* 1, Lukić had kept the chapter on interpretation away from the chapter reserved to implementation of law. From then on, implementation and interpretation became two subchapters within a single chapter, entitled "Implementation of Law". Furthermore, although he had been continuously pointing out the relevance of interpretation by courts and administrative authorities, he denied its compulsory character the same way that the Soviet authors did (i.e. by emphasizing its limited effect restricted to a particular case, Lukić 1952, 137–140).

[35] It is noteworthy that Lukić had never accepted the authentic interpretation of law through an interpretative act, as the interpretation *stricto sensu*, but as the creation of a new legal norm that amended the older one. At this point, he did not stray far from some Soviet textbooks from the mid-1940s (Golunski, Strogovič 1946, 225), as well as from pre-war Belgrade authors dealing with classical theory (Taranovski 1923, 473–474).

From the beginning, Lukić tried to specify the very aim of interpretation, which the Soviet authors had not detected and defined. Naturally, their interpretations targeted the meaning of the legal rule, but they never specified what that meaning really ought to be. Since they believed that the meaning of a norm was achievable by its textual analysis, historical background and systemic context, it seemed that the Soviet authors implicitly perceived this meaning as the lawmaker's authentic will. However, by 1945, this so-called *subjective* meaning of a norm as the aim of its interpretation was heavily criticized and half-abandoned by the mainstream contemporary legal theory of the time. This was the reason why – if not already in his 1946 *Encyclopedia*, then surely in his 1952 *Material* and 1954 *Theory* – Lukić did not uncritically follow the Soviet approach but, instead, thoroughly discussed the *pro et contra* of both the subjective *and* objective theory of interpretation. The result of this decade-long self-questioning was a steady change of Lukić's course, which finally culminated in the second edition of his *Introduction to Law* in 1961. From then on, the aim of interpretation was to discern the objective, or, more precisely, the *right* meaning of the norm that coincides *grosso modo* with its *ratio legis.*[36]

The definition of this right meaning of a norm (perceived as *the meaning that a norm should have, had the lawmaker been aware of the social need protected by it,* not a meaning that the lawmaker simply gave to a norm) was provided for the first time in 1961, not evolving much since (Lukić 1961a, 316; 1985, 349).[37] In other words, the sense of a norm lay in a certain social need that should have been recognized and codified by the lawmaker. This was in perfect compliance with the Marxist vision of the permanent interaction between the law and the society. As part of the social superstructure, the law necessarily reflects the dynamics of the social basis and ultimately the interest of the ruling class. Consequently, positive legislation is a socially and historically determined, not a voluntaristic phenomenon. The purpose of law is, therefore, subject to rational and scientific discovery driven methodologically by the principles of historic materialism.

This undoubtedly jus-naturalistic profile of Lukić's theory[38] has been strongly emphasized throughout his teaching of the interpretative techniques. Basically, it was derived from the Soviet theory, which itself

[36] The concept of right meaning appeared earlier on in his work. For the first time, but without any definition, it was mentioned in the 1952 *Material* (Lukić 1952, 144–145) and again, more developed, in the 1954 *Theory* (Lukić 1954, 213–219).

[37] Actually, it is a year older. Lukić's presented this theory of interpretation for the first time in an article titled *The Right Meaning of Legal Norm* (Lukić 1960, 253–271).

[38] Lukić had never denied this. In fact, during the 1980s the Marxist natural law became one of his preferred topics (Lukić 1980; 1986).

borrowed a lot from the classical theory of law. For both the Soviet and the classical authors there have been two types of interpretative techniques. The first aimed at finding sensible meaning through linguistic and logical analysis of the normative text. The others fall into a category of analytical approaches and tools deriving the meaning of a certain norm from its broader historical or legal context.[39] Lukić modified this teaching in two segments. Initially, he reduced the initial set of four techniques by removing the linguistic one from it, only to introduce a new interpretative technique – the so-called *teleological* interpretation. Both these interventions are of equal importance.[40] Namely, Lukić did not simply replace the linguistic with the teleological interpretation. He singled out the former in order to promote its status to a privileged technique for achieving the basic, so-called *linguistic*, meaning of a norm. Regardless of the fact that the linguistic meaning was not necessarily the *right* one, it was the first step that anyone interpreting the norm should take. Its aim was to define an elementary framework of possible meanings as the starting point in the quest for the right one. In other words, whatever the right meaning of a norm may be, the search for it cannot cross over the boundaries that a linguistic interpretation had previously identified.

Lukić's insistence on the latter, limiting and linguistically defined framework of meanings may indicate his affinity towards Kelsen's theory of interpretation. However, a crucial difference in their reasoning questions this ostensible resemblance. Kelsen's idea that the interpreter's final choice is always a matter of their will (i.e. that the interpreter choses one of the meanings from a given linguistic framework) seemed unacceptable to Lukić. This Kelsenian semi-voluntarist conception of interpretation has been resolutely opposed by his idea of interpretation as a purely scientific undertaking: the right meaning of the norm could be the only one and it was always rationally discernable.

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[39] The Soviet interpretation theory remodeled the classical one, which has been paradigmatically presented in Korkunov's *General Theory of Law*, (Korkunov 1920, 486–492), however, the Soviet modifications were not substantial. Unsurprisingly, Golounsky and Strogovič treated all these techniques not as methods of *interpretation*, but rather as methods of *explanation* (Golunski, Strogovič 1946, 231). It seems that they also reduced the linguistic method to a *grammatical* one, while the research of semantic meaning was the subject of logical interpretation. However, the basic idea remained the same: that the so-called synthetic (i.e. historical and systematical) methods were to be consulted only if linguistic and logical methods failed to provide a suitable answer.

[40] The interventions did not develop simultaneously, though. Lukić had always insisted on the normative text as the reference frame for any interpretative work. On the other hand, there was no mention of the teleological method before 1954 (Lukić 1954, 231), and even then, it was a single-page explanation (Lukić 1957a, 243). Lukić's teaching of legal interpretation, as it was presented above, had not been completed before 1961 (i.e. in his study *Interpretation of law* and in the second and, from historical point of view, the most important edition of his *Introduction*).

What makes this quest for the right meaning a scientific endeavor is its method: the teleological interpretation. Its idea is to reveal the aim of a norm by exploring its social purpose. Since the aim of every single norm (as well as the whole legal order) in Marxist perspective is to exercise certain influence on the social reality by promoting and protecting the interest of the ruling class, and to that end to discern that interest, it is the aim that offers a plausible answer to the question of the right or objective meaning of a norm. Inasmuch the interest of a ruling class is not a consequence of aleatory circumstances, but rather that of historical dialectics, this teleological interpretation cannot be but an applicative method of scientific socialism.

Naturally, this was not an original invention by Radomir Lukić. Similar; incipient reflections could be found in Denisov's 1948 textbook (Denisov 1949, 434–436).[41] However, it did not necessarily mean that Lukić was directly inspired by this or any other Marxist author. Long before this Soviet textbook was published, Đorđe Tasić had suggested a similar approach, which relied on the French pre-war sociological theory of law determining the meaning of a norm, by its social purpose.[42] Such ideas were further developed in the Parisian doctoral thesis of Radomir Lukić, Tasić's young assistant. His 1939 doctoral thesis was inspired by Léon Duguit's writings and aimed at reconciling Kelsenian normativism with the sociological approach to law.[43] A decade later, it would be reinterpreted in a new ideological perspective. Eventually undoubtedly Marxist, Lukić's teaching on objective interpretation was not at all of Marxist origin.[44]

3. CONCLUSION

The very title of Radomir Lukić's textbook relativizes the common perception that it was a syncretic combination of Marxist legal theory and Kelsenian normativism. The fact that Lukić followed Soviet models from the late 1930s and 1940s, as well as that he preferred to deal with the

[41] Denisov was also the Soviet author who defined interpretation as an intellectual process of establishing the *right meaning* (Denisov 1949, 430).

[42] Tasić says: "In order to discern the meaning of a legal rule, we have to understand the way it is issued from the society and what that legal rule is expected to be, or what it could be expected to be, by taking into consideration the social circumstances and opinions." Later on, he used the term teleological *interpretation* to describe the concept (Tasić 1941, 81 and 84).

[43] This will remain Lukić's conviction until the end (Lukić 1995).

[44] This support the claim that "Lukić's Marxist explanation of law as a social phenomenon, however, can be reinterpreted in the broader terms of social conflict without undermining the whole system of his theory of law [...]" (Hasanbegović 2016, 660).

Theory of *State and Law*, rather than with the Theory of *Law and State* as Kelsen did, is indicative of the Marxist matrix in his textbook structure: The origin of Law is the State inasmuch the only legal rule worthy of its name is the one sanctioned by the supreme political authority. Understanding sanction as an integral element of the legal rule (i.e. the fourfold norm structure) was the logical outcome of this approach, which prevailed in the Soviet legal theory after 1931. Paradoxically, it was this very same Soviet etatism that justified incorporation of normativism into the Soviet and also Lukić's legal theorizing. Stalin's State was not the one that was perceived as withering away, but rather developing and growing stronger on its course of endorsing a socialist society in transition to communism. The Soviet state of the time, like any other, relied on law as a privileged means of promoting and protecting the interest of the ruling class. Instead of denying the perspective of State and Law, Soviet theory started justifying their needs and, consequently, rehabilitated the analytical studies of the law, as a normative phenomenon.

This turnover in the Soviet legal thought was well-received by Yugoslav theoreticians. After the Tito-Stalin split in 1948 and consequential Constitutional reforms, they felt inclined to experiment with normativism more liberally. In Lukić's case, this resulted in the gradual incorporation of a series of Kelsenian analytical categories and mechanisms, such as the legal norm, legal act and legal order, and their validity, reinterpreted and adapted to the Marxist premises, as described in this paper. Nevertheless, even if such historical circumstances undoubtedly instigated Lukić's synthesis, they had surely not caused it in its own right. Lukić's preoccupation was not of a political, but strictly a theoretical nature. From his early writings to his final days, Lukić strived to explain the legal rule as a social fact, without denying its normative aspect. This lifelong project was not particularly original, but it gave a structure and explained the inner logic of Lukić's Marxist-Kelsenian synthesis. Although syncretic, Lukić's work was most certainly not eclectic.

Lukić's theory of interpretation was the paradigm for his Marxist (actually French, inspired by Duguit and Gény) and Kelsenian synthesis. The core of this teaching – the idea that the right meaning of a norm is not the meaning assigned to it by the lawmaker, but the one the lawmaker should have given to a norm had they known the social need protected by the norm – complies perfectly with the Marxist understanding of law as a part of the social superstructure that must reflect the dynamics of the social basis (i.e. the interest of the ruling class), and must therefore be the subject of a rational and scientific discovery process, governed by the historical materialism method. This teaching, however, although

Marxist, was not of Marxist origin. It was a reinterpretation of Lukić's Parisian doctoral thesis from the late 1930s, inspired by the French theory of social law, mostly Duguit's and Gény's ideas that the sense of a norm lies in the social reality and needs to be discerned by legal science and duly codified by the lawmaker. From this perspective, legal norms are only formal expressions of social rules as empirical facts, so the law is but a technique formalizing sociological outcomes. Kelsenian normativism – tackling all those categories and mechanisms in the form of tools and skills comprising the legal discourse – was probably the best expression of this technique as an external, though not an essential aspect of law. To discern the latter, according to Lukić, legal theory *stricto sensu* should step back and yield to social science. Or is it, perhaps, to scientific socialism?

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