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Law as social science or humanity? Some notes on "academic determinism"

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Abstract

The European Research Council (ERC) funding scheme classifies law within the social sciences and humanities sector, identifying legal science as a social science. The paper presents the case-study of such a classification as a deterministic model of evaluation and assessment of legal research. This may impact on career opportunities of individuals as well as on scientific independence, tacitly predefining the selection of research topics and legal methodology. The paper argues that ERC encourages a successful trend of conducting legal research to obtain funding, through the application of indicators. Their aim is to show which process has been followed to achieve and measure results. Legal science then risks being reduced to the analysis of legal performance. In this context, re-reading some writings of Polanyi on social sciences as well as on the critique of economic determinism sheds light on forms of academic determinism that affect the way of carrying-out research.

Key words

Law; social sciences; humanities; academic determinism; ERC; Polanyi

Resumen

El sistema de financiación del Consejo Europeo de Investigación (CEI) clasifica el Derecho dentro del sector de las ciencias sociales y las humanidades, e identifica la ciencia jurídica como una ciencia social. Este artículo presenta el caso práctico de dicha clasificación como modelo determinista de evaluación y valoración de la investigación jurídica, lo cual puede repercutir en las oportunidades profesionales de las personas, así como en la independencia científica, al predefinir tácitamente la selección de los temas de investigación y la metodología jurídica. El artículo sostiene que el CEI fomenta una tendencia de éxito en la realización de investigaciones jurídicas para obtener financiación, mediante la aplicación de indicadores. Su objetivo es mostrar qué proceso

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se ha seguido para alcanzar y medir los resultados. La ciencia jurídica corre entonces el riesgo de reducirse al análisis del rendimiento jurídico. En este contexto, la relectura de algunos escritos de Polanyi sobre las ciencias sociales, así como sobre la crítica del determinismo económico, arroja luz sobre las formas de determinismo académico que afectan a la forma de llevar a cabo la investigación.

Palabras clave

Derecho; ciencias sociales; humanidades; determinismo académico; CEI; Polanyi

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1. Introduction

The article explores the way in which the European Research Council (ERC) funding scheme classifies law within the social sciences and humanities sectors, clearly identifying legal science as a social science within the panel SH2Institutions, Governance and Legal Systems. The aim of the article is to show a significant trend in the ERC evaluation of research to better understand the role played by legal science in the context of the social sciences and humanities.

SH 2 includes four subpanels devoted to four branches of the law: legal studies, comparative law, law and economics (SH2_4), constitutions, human rights, and international law (SH2_5); political and legal philosophy (SH2_8);[1] digital approaches to political science and law (SH2_9); and five subpanels devoted to political science and international relations.[2] In addition to legal science, which has various ramifications, the Social Sciences and Humanities sector includes three other panels: Individual, Markets and Organizations (SH1), The Social World and Its Interactions (SH3) and Studies of Cultures and Art (SH8). Humanities are instead clearly distinguished into The Human Mind and Its Complexity (SH4), Texts and Concepts (SH5), The Study of the Human Past (SH6), Human Mobility, the Environment, and Space (SH7).[3]

This paper focuses on the epistemic status of legal science, arguing that the ERC classification is an extraordinary opportunity to foster research; however, it risks limiting the scope of legal science and its methodological variety if it is coupled with a predetermined evaluation process. The match between evaluation panels and legal research topics, as well as its strict framing into the four related subpanels of social sciences, does not consider the historical stratifications and peculiarities of the development of legal systems and legal science. In fact, the pre-assumption of the law as a social science ruling out its humanist component affects not only the selection of research topics and the repartition between fundings but also the methodologies that are taken into consideration. For example, the UK and the Netherlands are constantly the two countries with the highest concentration of funded projects in law.[4] This means that the model of legal research is tailored mostly according to non-formalistic approaches.

In the ERC system, legal methodology—basically composed of legal analysis, interpretation and critical thinking about possible application—is often assimilated into methodologies of other social sciences that have little to do with legal research. As a result, legal science is reduced to one of its components, which is law as technical machinery, focusing on its function of creating a legal framework for the object of research projects. Law is then often used as a tinsel that is juxtaposed to the topic. Nonetheless, the composite nature of the law as social science and humanity explains why legal science lies at the crossroads of rule-making and values, never solving the

[1] In April 2023 ERC developed a consolidated version of the Work Programme 2024 that introduces some changes, now including a new panel SH8 restoring balance between social sciences and humanities, while law and economics moved from SH1 to SH2.

[2] Political systems and governance (SH2_1), Democratization and social movements (SH2_2), Conflict resolution, war, peace building (SH2_3), International relations, global and transnational governance (SH2_6), Humanitarian assistance and development (SH2_7).

[3] See Panel Structure 2024 Calls https://erc.europa.eu/sites/default/files/2023-03/ERC_panel_structure_2024_calls.pdf.

[4] See ERC statistics: https://erc.europa.eu/projects-statistics/statistics

problem of *Wertfreiheit*, regardless of any theoretical approach to it. This creates a systemic risk of shifting between the object of social sciences towards the objectives of the research. The deterministic effect of modelling the successful way of conducting legal research to obtain funding and increase reputational ratings also has a strong impact on individuals' career opportunities but may to some extent compromise academic independence, creativity and quality of rigorous thought. The result can especially touch upon the measurability of research outputs that are presented as a form of research production through countable criteria and indicators. In the long run, such a tendency risks reproducing a fixed market of knowledge, which is regulated by the application of quantitative indicators to either legal methodology for research or legal performance. The application of quantitative legal research involving the scientific measurement of phenomena and appropriate generalization based on data analysis is increasing. This creates a systemic failure event within the same cluster of social sciences consisting of the shift between the object of social sciences and the objectives of the research. In this context, rethinking the ongoing pathway of legal science in the context of ERC frontier research is highly appropriate.[5] The aims of the article are the following: to show a significant trend in the ERC evaluation of research that welcomes standardized methodologies for all social sciences tailoring a model on hard sciences (section 2); to address the problem of academic determinism with specific focus on law (section 3); to discuss the inclusion of the law within social sciences (section 4); to apply Polanyi's theories on market determinism and the role of social sciences to the ERC case study (section 5, 5.1 and 5.2).

2. The case of the ERC funding scheme

Currently, access to research funding is one of the most relevant variables upon which academic careers depend. Effective funding chances direct young scholars' research interests, especially with the aim of achieving positive evaluation of research projects to find suitable academic placements. The European highest-level institution in the field of frontier research is the European Research Council (ERC), which utilizes precise classifications of disciplines into scientific micro-sectors. Research projects fitting this scheme may be granted funding depending on their demonstrated scientific excellence. Law is included in the ERC sector "Social sciences and Humanities", which is tacitly accepted as one example of social science. In fact, in the ERC system, law has been associated with the whole area of social sciences and humanities, together with political science and international relations (SH2). The other subject matters included in the social sciences and humanities are economics, finance and management (SH1); sociology, social psychology, education sciences, communication studies (SH3); cognitive science, psychology, and linguistics (SH4); literary studies; literature and philosophy (SH5); archaeology and history (SH6); human geography, demography, health, sustainability science, territorial planning, and spatial analysis (SH 7); social anthropology; studies of cultures; and studies of arts (SH8).

[5] "ERC is dedicated to funding uncharted territories, fosters interdisciplinary collaboration, and pushes the boundaries of knowledge. This research often leads to valuable insights and practical applications that address complex global challenges, benefiting society as a whole" (European Research Council, *Mapping ERC frontier research*: https://erc.europa.eu/projects-statistics/mapping-erc-frontier-research).

The inclusion of the law within social sciences generally implies that the assessment and evaluation of projects in law are carried out throughout a standard process mostly based on the use of quantitative criteria, which are supposed to ensure evidence of the fulfilment of certain requirements based on the underlying idea of accountability in funded research. In fact, scientific excellence is the sole criterion of evaluation and is at the core of the peer review evaluation process, regardless of thematic priorities. It is applied to evaluate the ground-breaking nature, ambition and feasibility of research projects and its potential impact, as well as the intellectual capacity, creativity and commitment of the principal investigator. The evaluation form utilized by reviewers includes standard questions, two of which seem to be particularly out of the scope of legal research: "To what extent are the objectives ambitious and beyond the state of the art (e.g., novel concepts and approaches or development between or across disciplines)?" and "To what extent does the proposal involve the development of novel methodology (based on the full Scientific Proposal)?".

In fact, the ERC scheme is allegedly aimed at encouraging blue-sky research, e.g., research that is not necessarily linked to any real-world application or at least not in an immediately apparent manner.[6] Ground-breaking and blue-sky research are problematic for legal science in a global context. The ground-breaking nature of research according to the ERC scheme is basically related to overcoming the limitations of the state of the art. This is somehow contradictory in legal science, as scientific steps for the elaboration of theories and legal systems are inherently slow and always in continuity with the past, even if results can be divergent. In legal science, often, the most important result is not the finding but the argumentative process through which the capacity for critical thinking emerges. Blue-sky research is also very far in its scope from legal science, whose ultimate aim is the opposite of being abstract. To avoid abstractness, basic research in law should be based on a relevant context, and the closest one is indeed the country system; however, national legal traditions cannot be the obvious context of global research.

Consequently, legal researchers who aim at having a chance of success need to literally create ideas from scratch that are not grounded in real contexts because everyone who has legal expertise knows that lawyers cannot invent anything new and decontextualized from experience. Both facts and rules already exist, and novelty is always related to interpretation, combination, aggregation and application of law and legal science. However, the groundbreaking novelty needed by the ERC is the idea. On these premises, it is counterintuitive that for lawyers, the ERC may represent a misleading model of legal scholarship that obliges people who want to obtain funding and better career opportunities to find fancy theorizations and apply quantitative methods to their research, regardless of the object of their research.

Consequently, legal science accepts the compromise of being not credible in producing a distinctive form of knowledge and accepts the risk of being replaced by other disciplines that are more consistent with the requirements.

[6] If this is true in the aims, it is also to be considered that ERC's portfolio contributes to major EU policy priorities, such as EU Biodiversity Strategy 2030, Food 2030 policy, European Green Deal, EU Data Strategy, EU4Health Programme, see https://erc.europa.eu/projects-statistics/mapping-erc-frontier-research

If considered in a decontextualized way, this trend risks creating a form of academic determinism because of the specific consequences of evaluating research on job placement as well as on the market of knowledge. Some of the conditions for access to funding, including the methodology used to achieve the objectives of scientific projects (which in fact represents a substantive and robust part of applications), are predetermined through indicators and quantitative methods that aim to forecast how excellent research can be in advance and, therefore, what excellence means.

These metrics are not necessarily applicable to legal research, particularly to all fields of legal research. The result is a sort of scientific static reproduction that makes research funding, research contents, methodology applied and ultimately academic reputation dependent and interrelated with each other. This constellation is encapsulated in procedures, both institutional and informal, surrounding the match between the supply and demand of funding that is based on evaluation processes. The social implications of this scenario are relevant: the increasing tendency to carry out legal research towards this remunerative scheme nearly independently from what research is caring about; the emphasis on the originality of ideas understandable by all and above all by nonspecialists rather than on specific contents; the reduction of chances in job placement for those scientists who are not successful in adhering to this scheme of excellence; the substitution of the law with other social sciences to better reach and quantitatively assess the goals of a certain policy in the areas covered by the European political agenda; the instrumentalization of access to funding as a value's attribution for research that impacts the reputation of promising scientific careers; the prolonging precariousness of researchers who need to tailor their research interests to the market of knowledge demand if they want to receive funds instead of genuinely focusing on their research interests; and the waste of resources for funded projects in social sciences considering that the ERC funding scheme is standardized for social sciences and hard sciences projects over a maximum of five years and of an enormous amount of money, whatever the project is about.[7]

Given this premise, the first problematic issue to be addressed is that blue-sky research in law must be national, while frontier research is mostly transnational. This is particularly relevant in the legal domain, while research related to a country system is structurally different from global studies or transnational law. This difference in scope produces something that seems obvious but not if it is considered carefully. In a transnational context, law is increasingly unleashed from constitutional structures and cultural patterns of legal systems and tends to be more standardized in terms of formats, topics and functions and more easily interchangeable with other narratives.

The second aspect to be considered is that competition between research projects cannot be reduced to a mechanism for distributing funding among social sciences that amounts to approximately 20% of funding among hard sciences, including physical sciences and engineering and life sciences, or approximately 80%.[8] This discrepancy can be understood and even accepted because of the real impact that hard sciences may have

[7] Recalling a famous statement by Niklas Luhmann, when he was appointed as Chair Professor of Sociology at University of Bielefeld in 1969, he was asked to report on his current research projects and answered "Theory of society; duration: 30 years; costs: none" (Luhmann 1997/2012–2013).

[8] See ERC statistics: https://erc.europa.eu/projects-statistics/statistics

on progress, scientific discoveries and technological development, without which any possibility of growth is excluded; moreover, what is not truly acceptable is that 20% of funding should be split across social sciences and humanities according to the same criteria used to attribute funding to hard sciences projects. As noted by Rorty, what differs between the natural and social sciences is whether or not they have a stable vocabulary (Rorty 1981). In this context, social sciences in general and legal science in particular are most likely destined to fail. It is worth thinking that the H2020 Framework Programme, the panel Institutions, Values, Environment and Space (SH2), gained 4.7% of the total funded projects, and of these 23% of the most used disciplines in the funded projects, was law. Amongst the most commonly used topics, human rights and political systems were the least common, whereas governance and policy were the least common.[9] One of the reasons for such a repartition is that the ERC budget is predetermined because the call budget is split among the panels in proportion to the budgetary demand of the proposals allocated to each panel. This important principle would enable comparable success rates across the individual panels regardless of how many proposals each panel evaluates.

However, basic research is completely distorted by the fact that the ERC is actually instrumental in negotiating better career opportunities. A different logic in terms of distributing resources could be more fruitful: funding more projects in the social sciences and humanities with the lowest budget would ensure better chances for more people.

3. ERC "academic determinism"

Examining the expectations dominating the ERC system in all areas of legal science, we can observe that while positive law is increasingly recognized only because of its degree of technicality, legal science, in all possible dimensions, is generally expected to develop through a methodology that is also accepted by other social sciences to which the law allegedly belongs. Generally, knowledge sustainability refers to quantitative indicators whose aim is to make knowledge uniform and undisputed. This form of standardization is presented as the "objectivity" of scientific excellence and increasingly makes the law at the disposal of other sciences that take care of conceptualizing phenomena, theories and approaches. In other words, as much as the law is based on measurable indicators, it performs well, legitimizing the understanding that the law no longer needs to reflect upon the basic conditions of social existence to work. It may work in an ancillary position toward governance. This logic is exemplified, in another context, by the use of global indicators for legal purposes, generally of soft law (Infantino 2019, p. 82), most of which are not directly aimed at assessing the impact of legal architecture and of legal practice on the matter considered. According to Infantino, an indicator can be defined as a collection of data organized into a classification that is intended to represent the past or future performance of various units. Data are generated through a process that simplifies raw information about a complex social phenomenon. Data, in this simplified and processed form, can be used to compare particular units of analysis (such as countries, institutions, or enterprises), either synchronously or diachronically, and to assess their performance with reference to one or more standards. Indicators then provide a

[9] See ERC Social Sciences and Humanities factsheets: https://erc.europa.eu/sites/default/files/document/file/FACTSHEET-SH-2022.pdf.

simplification of complex information; the incorporation of an evaluative judgement often mirrors an underlying theory, of which the indicator is an expression and confirmation—the comparative aspect between various units and/or over time.

An example of an indicator shows that, in the context of the market of knowledge, whose research funding represents a valuable example, there are at least two conflicting factors to be considered: first, the market of knowledge determines the weight and value of certain sciences with respect to other sciences, with the consequence that social sciences are more penalized than hard sciences due to their practical irrelevance for natural phenomena, and within social sciences themselves, the law is undermined based on the cognitive bias that the law is essentially a system of rules; second, the mimetic approach of social sciences towards the metrics used to assess hard sciences has been increased by the advent of globalization and emerging technologies. With respect to these factors, legal methodology finds itself not at ease because its inherent evolving nature depends on the normative interpretation as well as on the contextual application of changing patterns (Samuel 2008, p. 315).

The increasing use of indicators to self-verify the feasibility of a research project is not a neutral operation. The European single market also risks becoming a single market of knowledge for growth. This approach implies the use of common methodologies across disciplines that do not have a strong impact on industry but can rather convey messages to society. However, the risk of creating monopoly of knowledge is that the impact of research is not necessarily relevant in the related scientific domain. This explains why the law's interaction with other social sciences can have different outcomes. Legal science is precisely a combination of humanities and social sciences; qualitative and quantitative methods; and analytical and hermeneutic, historical and technical methods. It cannot be subject to the methodology of any other social science but rather its own. Its own methodology is entirely dependent on the interpretation of its sources. The interpretation of the sources and institutional and social processes produced cannot disregard value judgments that also lend themselves to interpretations that are plausible in ruling social relationships. In that sense, law becomes a social science, but only with its own methodology that is not servant to any other social science.

Both the applicability of law capable of producing certainty and the interpretation that changes over time contribute to developing a science that is such and is appreciable precisely in relation to the opportunity to evolve by adapting to the fact and therefore by definition subject to change.

Often, lawyers are charged with not being particularly open to different epistemic logics in legal reasoning. To address these issues, one very misleading solution has been the tendency to transform the legal approach to some issues into a set of indicators to be more comprehensible.

The overall architecture of the ERC system is strongly modelled on this assumption because it violates the idea that the social sciences can be understood by non-specialists through attractive but verifiable hypotheses. However, the process by which legal science is classified by the ERC as a social science must also be shown, while it is instead taken for granted. The first short-listing of research projects is carried out by panels of non-specialists, e.g., specialists in areas of social sciences that are not related to the social science specifically identified for the project. The ambition, good in its intention but

sometimes dangerous in its effects, is that the relevance of legal science should be as true and strong as it is confirmed by non-specialists.

Therefore, the risk generated by the possibility for legal researchers to compete given these premises is that the law can be supplied and often replaced by other social sciences that apply quantitative methods having deeper keys to look at global phenomena and that the law is reduced to technical aspects related to governance and regulation. What is truly missing in this logic is a further reflection on the fact that, if it is true that the authoritative structure of the law cannot be perfectly quantified through indicators, this does not mean that it relies only on rules but also on their interpretation and the cultural ability to produce, interpret and apply them in the long run (Roux 2015). The production of rules in their technical format has not much to do with countable factors that justify certain policies. A legal phenomenon – defining it as a fact that is relevant according to a legal framework – can never be entirely reduced to numbers because the law is only a general prediction, while legal science is much more, all that lies behind and beyond it. The law will then never erase the nonrationalized core of power (what Polanyi calls "metaphysics"). Thus, legal methodology should be helped by other social sciences in understanding that part but should not be replaced by them. The explicability and improvement of legal interpretation through the help of history, political science, sociology, economics, technology, and statistics can also make this difference.

4. Law as a social science: what implications?

In the context of scientific competition, the ERC classification of legal subjects produces a false representation of the capacity of the law to address social issues through its own methodology, essentially because in the field of humanities, there are fewer publications in English (König 2016) and because law has a very strong territorial characterization that clashes with the transnational goals of "frontier" research. Additionally, the selection of research topics obviously reflects the interests of the political agenda, which arise from the conjuncture of applications and reviews (demand and supply), notwithstanding the fact that it should address blue-sky research. However, the segmentation of subsectors impinges on the capacity of the law to address politics. More often, the law is instrumental only for political objectives or for demonstrating the results of political science.

This, on the one hand, creates a shift in the power relations among disciplines that is driven by forms of "academic capitalism"—the subjection of academic mechanisms under the auspices of various markets, such as for example, the job market, reputational market, publication market, and policy-driven research—whereas historically, the function of social sciences and humanities has been "to stabilize, legitimize and explicate the character of nation-states in sociological, political, economic, cultural and psychological terms" (Baier and Gengnagel 2018, p. 85). The reference to the nation-state should be understood as a reference to a national cultural tradition that has been replaced in the ERC system by linkage with the process of EU integration, changing most of the social sciences and humanities' reference systems towards the topics of their respective research fields. However, European science policy has been characterized by cultural differences across European traditions and does not reflect a European awareness of social issues (Hoenig 2018). Modelling social sciences on hard sciences and standardizing scientific interests somehow recalls Polanyi's idea of "abstract liberalism

in the handling of knowledge" (Polanyi 2014b, p. 117). This is also contrary to the original aim of universities in Europe, which was conceived as a *studium generale* (De Ridder-Symoens 1991, p. 35). As observed by Thomas Kuhn, scientific knowledge, like language, is inherently the common property of a group; otherwise, it is nothing at all. To understand this phenomenon, we need to know the specific characteristics of the groups that create and use it (Kuhn 1970, p. 252).

Investigating the conditions under which the law within the general sector "social sciences and humanities" is involved is useless if we do not clarify the purpose of such a classification (Horwath 2004, p. 9). While there is a common understanding that the law can be included among social sciences and humanities, very few oppose the common belief that the law is a social science (Cairns 1935, p. 489). What about the "humanities"'? Even the research strand on law and humanities shows that the mainstream sense is to distinguish law from humanities. However, the double soul of the law is deeply rooted in the tension between the social sciences and humanities that emerges constantly. It is not necessarily the case that law is entirely classifiable as a social science since it has a long tradition as a human science. Law can be considered a social science in terms of structure and a humanity in terms of content. This fact is not entirely explicable or referable to legal disciplines. The law must investigate human activities in their reality but test them in their regulatory tightness that approximates a social law.

The potential of the inclusion of the law within social sciences depends on the ability of the law to be compatible with social sciences' concerns and to incorporate them into its different applications and according to its own rules. For instance, the law lays down a process of differentiation from other social systems while they also differentiate each other (Luhmann 1982, p. 122 and 229). Polanyi argues that the method is truly the factor that selects those elements of the "matrix", what he defines as the original object of the natural interest in knowledge, which is relevant with respect to the method. It consists of a reflexive reframing of the object of our natural interest—where we mean by reflexive reframing a decision on a decision, since the object of the law is generally a decisional structure—throughout the exclusion of some elements that are not adapted to the method and that, in relation to the law, may represent decision-making alternatives, for example.

In Horwath's words, the legal methodology's task is "making structures and devices out of rules", in the sense that the mere application of rules is not sufficient to elaborate a method; rather, rules should be approached throughout a cultural elaboration of historical concepts, legal categories, and specific expertise. With respect to the implications, it is to be borne in mind that to pursue goals that are generally classifiable as authoritative or performative, the law cannot be the sole object of preestablished models – should they be mathematical, technical, economic or proper of any other science – because, unlike other social sciences, legal science also cocreates the object of its scientific interest: only the law can state what the law is.

Nonetheless, the law may reflect scientific models along and within its own linguistic structures, which are performative as far as they put on the same frequency three elements: self-consciousness, the relation of the person with physical reality and the social interaction in the context of this reality (Kelley 1990, p. 8).

Given this context, the inclusion of the law within the social sciences is certainly not a neutral task because it disregards the self-referential character of the law—e.g., the fact that the conclusions regarding a hypothesis derive from the same system of reference of the hypothesis and that the remit of relevance of that hypothesis is included within a limited number of predefined instruments that can be subject to interpretation but according to the rules of the system. Specifically, this implies that the method of social sciences differs from the method of law in the sense that it pursues its objective to "*seek to develop testable* hypothesis" (Macey 1997, p. 172), potentially leading to conclusions that contradict them.

The law, instead, cannot be contradicted by its own methodology because its objective is not merely aimed at verifying a hypothesis. The fact that a hypothesis is true or false is irrelevant for the law as long as it is valid and has nothing to do with legal methodology. Legal methodology is instead the use of legal knowledge and expertise that needs to be interpreted and applied to answer a legal question. Such a legal question never contradicts the hypothesis according to the law, although it may contradict, in practice, urging a new hypothesis. The fact that there is no exit from this scheme does not mean that legal knowledge is based only on the law but also on all other sciences. However, when applying Polanyi's thesis, if the law is no longer able to address the relevant elements of its natural interest through its own methodology and is completely tailored to the methodology of other sciences, this can only produce forms of legal technicism as a compulsion to repeat, by which the law raises its performative character without any substantive justification.

The law cannot take for granted the assumptions of the social sciences if it wants to perform as an autonomous system. As correctly noted by Teubner,

> In a complex process of examination, the law is challenged by the external problem analyses of social theories, but only if they are usable according to the law's own selection criteria (rules and principles, either performative and binding), and it reconstructs these internally in its own language, in which it can then match problems and solutions together. (Teubner 2014, p. 207)

The transfer of knowledge is technically impossible, and it is nothing but "an internal legal reconstruction of external demands made by society, by people, and by nature" (Teubner 2014, p. 209).

The law cannot entirely overlap with social sciences or humanities because its mechanism of functioning is coercive and cannot be confutable if not by itself. Therefore, the methodology of the law cannot be blurred by the idea of an integrated methodology that taps into different disciplines.

Like in other social sciences, the law's aim is not to increase the knowledge about the reality that it tries to regulate. Its object is a reflexive one. It aims at producing knowledge about itself. Samuel argues that "law does not, in other words, take as its object social reality – or at least an aspect of social reality – to produce a model that increases our knowledge of this reality. Law has as its object only itself" (Samuel 2008, p. 295).

If the law conforms to social sciences, on the one hand, trying to adapt to a more integrated methodology but progressively loses its matrix—which is the interest in regulating society while observing social change—the risk for the law is to become a

means in the hands of closer realms of knowledge, such as technology. The very peculiarity of the law is the composite nature of the matrix. It cannot be entirely reduced to the capacity to provide generalized predictions, to receive obedience under the threat of sanctions, or to avoid conflicts or regulate society as a whole or individual conduct. Should the law maintain all these elements of the matrix, it could not use the method of any other science but only its own—legal justification—as the way by which legal methodology considers other social sciences. Like other social sciences, the law focuses only on those elements that are relevant for its own methodology.

This means that while natural laws have nothing to do with our way to understand natural phenomena in the sense that they are pre-existing and thus "discovered", social laws greatly affect our assessment and our capacity to evolve because of their composite nature to be oriented toward social reality but defined by the law (Samuel 2008, p. 295). In other words, while natural sciences are characterized by a less controversial division of competences regarding all aspects of natural interests that objectively need to be approached through different scientific methods, social sciences impact a subjective layer of reasoning that contributes to expanding knowledge on a noncompulsory basis and without a consensus on their necessity.

In practical terms, the risk of indiscriminate use of social sciences would make it possible at least theoretically to replace a social science with another depending on the perspective used to approach a problem because of the non-strictly necessary character to define our ends. This seems to be an absurd take, but it becomes a more realistic issue if we only think of this: never one might argue that chemistry is more efficient than physics or mathematics in addressing an issue, whereas there are frequent debates on the adequacy of certain social sciences more or less than others in addressing specific issues.

In this respect, Polanyi's reflection is extremely thorough, as it precisely points out the risk that social sciences run: "[T]he most important effect of the social sciences, we submit, lay in the direction in which their influence was cumulative, namely, in creating confusion in the minds with regards to the values underlying social adjustments" (Polanyi 2014b, p. 115).

5. Polanyi's legacy on determinism and social sciences

5.1. Polanyi's critique of market determinism and a critique of academic determinism

Polanyi's critique of market determinism (Polanyi 1947a, 1947b, 1971) turns out to be very insightful for examining a particular form of determinism, which I define as "academic determinism". Access to the ERC funding scheme is the key to academic determinism: it generates the expectation that the reputation achieved by gathering ERC funding is highly valuable for determining job chances.

Traditionally, scientists had the opportunity to make progress in their careers starting from a basis. Instead, the ERC determines access conditions shaping a model of social sciences that does not mirror the peculiarities of legal science.

A critique of market determinism is theoretically helpful for understanding the performance of social sciences, including that of law. Since the social sciences also

influence the individual capacity for assessment, assessments need as much as possible to be prevented by any form of blurring with the natural sciences and among themselves.

Polanyi's analysis of market determinism is promising for establishing a connection between law, social sciences and possible forms of scientific determinism that builds on his theory. Polanyi refers to this phenomenon as follows:

> Where there is a separate economic system, the requirements of that system determine all other institutions in society. No other alternative is possible since man's dependence upon material goods allows of none other. That economic determination was the characteristic feature of the nineteenth century society was exactly because in that society the economic system was separate and distinct from the rest of society, being based on a separate set of motives—hunger and gain. (Polanyi 1947a, p. 101)

Polanyi presented the role of economics in the context of social sciences as an example of capitalism-driven scientism. Handling land and labor as commodities means "as if produced for sale" (Polanyi 1947b, p. 110). This fiction requires human destiny to be transposed into the laws of automation, and this phenomenon is typically modern (Polanyi, 2014a, p. 33). Polanyi specifically relates to the market economy and to its separation from other social spheres that has been triggered by the fear of starvation. This economic motive determines the entire life of society and its possible sustainability. If all the income derived from sales and goods can be obtained only by purchasing them as commodities, then economic motives such as hunger and gain concerning production become the only motives leading human action.

In such a scenario, the lack of other social institutions allows the complete subjection of land and labor to the incomes gained by sale and purchase (Polanyi 1947b, p. 111). Against (or in favor, it depends on the perspectives) this backdrop, it is known how relevant has been the role of the law for Polanyi.[10] The rules of sale and purchase not only reproduce themselves outside the economic sphere involving all life dimensions as long as they can be traded. This means the permanent mortgage on the freedom itself. Locating commodities into a separate dimension of economic life, dependent on scarcity, is the opposite of the ideal life and of our ends, which have nothing to do with primary needs. Here, Polanyi is fully aware of the ambivalent role played by the law, whose regulatory function represents only one function, the necessary one, which is technically neutral, e.g., can be emancipative or regressive,[11] although he comments that "the limiting factors arise from all points of the sociological compass". The dependence of men upon material goods gives no alternative choice if not continuing to live within a context of sale and purchase, subordinating the "substance of society itself to the laws of the market" (Polanyi 1957, p. 41).

In line with Polanyi's perspective on market determinism, the risk that knowledge can be subjected to the mechanism of sale and purchase can be contrasted by the emancipatory capacity of the law that fosters the integrated subsistence of society

[10] We can only here remember three legal regulations: the Poor Law Reform of 1834, creating a labor market; the Peel's Bank Act of 1844, transforming money into a commodity as wages were regulated by corn's price; the Anti-Corn Law Bill of 1846, "mobilizing land" by allowing mass transport of agricultural raw materials from one part of the planet to another, see Polanyi 1957, pp. 82-83 and 138.

[11] The well-known example of the Speenhamland Law that prevented the creation of a labor market from 1795 to 1834, see Polanyi 1957, p. 77.

instead of the bare material subsistence of individuals: "The function of power is to ensure that measure of conformity that is needed for the survival of the group" (Polanyi 1947b, p. 116). However, reducing legal science to a mere power technique and depriving it of values makes it theoretically possible to handle legal models from the perspective of market systems and threaten them as commodities through the exchange of indicators.[12]

Polanyi warns that the marketing view of society is destined to fail: "No human society is possible in which power and compulsion are absent" (Polanyi 1947b, p. 116). In this respect, imagining that the levelling action of the market may adjust to social conflicts is a mere illusion. In reality, social interactions and customs create human possibilities of subsistence in such a way that we may count as many quantifiable objects as many are social uses (Polanyi 2014c, p. 62). If the social use is reduced to the attribution of a price of exchange, this creates the false perception that the quantification of everything is determined by prices. Here, the social sciences play a role in preserving the creative power of bargaining, persuasion, empathy, exchange, social relations and elaboration of social rules. However, should one re-establish the possibility for men to free themselves from economic motives, the role of the social sciences becomes crucial in ensuring individuals with a space of freedom and critique.

5.2. The emancipatory role of social sciences

Polanyi identifies this task in the preservation of sovereignty over science by associated individuals: "The use of social sciences is not a technical problem of science. It is a matter of providing such a definition of a meaning of human society as will maintain the sovereignty of man over all instruments of life, including science" (Polanyi 2014b, p. 118).

To better understand this debate and its deep implications, it is worth retracing some of Polanyi's pages on the role of social sciences. In particular, two non-dated essays on the epistemology of social sciences, titled "How to make use of social sciences" and "Economics and the freedom to shape our social destiny", as well as the proceedings of a conference of 1950 entitled "The Contribution of Institutional Analysis to Social Sciences", are particularly enlightening for this purpose. The ambition of the article is to apply the idea of market determinism as deployed by Karl Polanyi to academic determinism, of which the ERC is a salient example. The main tenets of these writings can be summarized as follows.

First, Polanyi criticizes the alleged neutrality of social sciences insofar as it is not possible for them to differentiate the assessment of values underlying social adaptation from the scientific assessment of a social phenomenon. The main problem of social sciences is that they can help human beings pursue their ends but not to know in what they consist. In particular, Polanyi distinguishes the "matrix", considered the original object of natural interest related to all sciences, which is pre-existing, from the scientific methodology, which, in order to pursue its objectives, works in an abstract and selective modality picking up only those elements that adapt to itself and rejecting those residual elements

[12] This has been, for example, the case of doing business models based on the elaboration of "cross-country comparisons including rankings of the attractiveness of different legal systems for doing business" (Michaels 2009, p. 766).

of the matrix that are non-scientific and appear as "metaphysics". Polanyi investigates to what extent sciences – either natural or social – can deviate from the matrix, pointing out the risk of social sciences in doing so, as they cannot provide any knowledge about the ends of our action and at the same time expand in other areas just because they eradicate the relationship with the residual elements of the matrix.

The conceptualized forms of the natural interest of life are values. Social sciences, while removing values from their methodology, try at the same time to influence them. Then, real-life ends may clash with social-science ends.

Second, social sciences need institutional analysis, which consists of relying on the substantive meaning of economics rather than its formal meaning (Polanyi 1977, pp. 19-21). By substantive meaning, as anticipated in the second paragraph, Polanyi relies on the satisfaction of material needs that are integrated and not separated from economic institutions. Institutional analysis sheds light on how economic institutions may differ from noneconomic institutions only because of the concentration of more economic elements that may also exist in noneconomic institutions and because the former do not use the market as a point of reference. Within this framework, social sciences can contribute to defining the role of economics within human societies with respect to both economic and noneconomic institutions.

Third, the process of social adaptation needs to be inspired by social justice, but this goal impinges on market institutions, e.g., a self-regulating mechanism of both natural resources and human activities that shapes an autonomous economic sphere controlling its functioning. The concept of market institutions generated the idea that social institutions are determined by economic institutions based on the fallacy that the economy is equivalent to the market economy. In fact, Polanyi argues that economic motives such as hunger and gain have nothing to do with production in the sense that people are not able to move a human being to produce unless this happens within a preordered and rigorous organization of production, which is the market economy. This means that the system of demand, supply and prices works independently of economic motives. Additionally, Polanyi advocates for a model of free institutions whose principles are independent of the economic and technological aspects of production and based instead on the overall culture of society. The safeguard of societal syncretism is the task of social sciences that cannot flatten out on economics to discard ideals as nonrational elements but try to keep together justice and freedom.

Specifically, in terms of the epistemology of social sciences, Polanyi points out that a scientific method can be applied only to the elements that are inherent to a contingent case (situation) and that are proven to be compatible with the method used (Polanyi 2014b, p.111). This has many implications—from specialization in specific case studies that better exemplify a situation to reframing scientific research fields that originate or are logically connected with the contingent case—but essentially means that sciences, whatever social and natural, "cannot be pooled" and aggregated but can cooperate only throughout their application to specific aspects of a problem (Polanyi 2014b, p. 113).

In addition to economics-oriented methodology toward its formal meaning and producing a deterministic model, social sciences also risk focusing on some elements of natural interest and keeping ideals and values out of their remit (defined as "metaphysical" by Polanyi in the essay "How to make use of social sciences" (Polanyi

2014b, p. 110 and supra p. 5). Individual interest in the environment is the starting point of all sciences. All sciences limit their focus on the elements of the environment that are compatible with their methodology through a selective adaptative reciprocal process: "Scientific interest and scientific subject matter are the result of a process of mutual selective adjustment between the factors comprised in innate interest and the elements that form the matrix" (Polanyi 2014b, p. 110).

In Polanyi's words, the difference between hard sciences and social sciences is that the former progressively tend to totally abandon the "matrix", whereas the social sciences cannot, in principle, do this entirely. The very difference between the natural sciences and social sciences is that with respect to the latter, "[s] the use of science as an instrument, the matrix and the innate interest of life—or, in conceptualized form, the valuations of life—must be maintained, out of which science arose, the difficulty being that the social sciences naturally tend to influence these valuations themselves" (Polanyi 1947b, p. 116). Once the process of differentiation among the different elements of the matrix is completed, it is no longer possible to perform a fusion of social sciences. Two alternatives are envisaged: the foundation of a new science that is more strictly related to the object of a given scientific interest than the existing sciences and an ad hoc cooperation between existing sciences and their application to specific problems (Polanyi 2014c, p. 113). Polanyi argues that while in the field of hard sciences there is an overall consensus on practical matters that has not been altered by their impact, social sciences imply exactly the opposite problem insofar as they necessarily impact the goals of human action without providing a univocal perspective (Polanyi 2014b, p. 114). Polanyi observes that "the crux of the matter is that, while the social sciences may have enhanced man's ability to attain his ends, they certainly diminished his faculty of knowing what they are" (Polanyi 2014b, p. 114). From this perspective, human ends may definitely not overlap with the goals of the social sciences. The problem is whether social sciences help us clarify our ends or whether the "method" may become a constraint for this.

Polanyi's ambition is to explore the possibility of preserving as much as possible creative coexistence between the "matrix" and the progress of science, avoiding forms of scientific determinism that are based on a monologist separation of all scientific elements from non-scientific elements of the social sciences excluding the relevance of the matrix for the social sciences. Both scientific and non-scientific elements should be looked at instead in relation to their capacity to define social ends and our action regarding them. He strongly rejects the "indiscriminate use of science and the wholesale disregard for the essentially different ways in which knowledge affects man", envisaging a possible solution in handling knowledge "under the intellectual safeguards of social responsibility" (Polanyi 2014b, 116-117).

This aspect is highly relevant in light of Polanyi's core argument on social sciences: "In other words, man's life is a process of adjustment directed toward an environmental universe that consists precisely of the elements of the matrix that science tends to eliminate as metaphysical" (Polanyi 2014b, p. 116).

Polanyi's analysis proves enlightening and topical in outlining a crucial problem of the relationship between the social sciences and the law and between the social sciences and hard sciences. There are essentially two reasons for this: the applicability of the concept

of determinism to the evolution of law in the context of the social sciences and the flattening of the social sciences over the idea of naturalistic scientism through the removal of "metaphysical" elements from the matrix of natural interest.

We draw from Polanyi's theory of economic determinism to argue that academic determinism risks making social sciences fungible among each other through the application of quantitative factors that should resemble the accountability criteria of hard sciences. This turns out to be very dangerous to legal science because it reduces it to a mere technique that can be imposed as an instrument of governance and assessed through the fulfilment of formal requirements that affect the production of the law and, consequently, the object of legal science. The epistemological peculiarity of the law is instead to shape its object in the meantime it investigates it. Additionally, while the law shapes its object, giving relevance to a fact and investigating it as a scientific interest that has epistemological status, it also regulates it, closing the circle between a methodology and a possible application that is selected upon the discretionary activity of an interpreter.

6. Conclusions

ERC represents an extraordinary opportunity to improve research chances for engaged scholars and promote brilliant ideas, as long as it does not create determinism in doing research.

The experience of the ERC's assessment of legal research and the tendency to encourage it through mechanisms of accountability that are mostly represented by the use of quantitative indicators determine what happens in the market model through the creation of fictitious commodities: a market of knowledge that may exclude a kind of research that does not abide by certain requirements and that, of course, produces the attribution of value to science. In essence, determinism reverses the order of the selection of the method of the social sciences and of the factual elements of what Polanyi calls the natural interest. These elements are relevant to the method as long as the natural interest itself is available to different methodologies for the demonstration of a hypothesis. A natural interest in scientific research, therefore, is in searching for a better or worse method on the basis of predetermined premises and aims. This is made possible by the inherent ambiguity of the social sciences in accomplishing the investigation of scientific interest based on a subjective preunderstanding of it, in other words, on values.

As noted by Max Weber,

> The meaning of the configuration of a cultural phenomenon, as well as its foundation, cannot be derived, motivated and made comprehensible on the basis of any system of concepts of laws; however, comprehensive it may be because it presupposes the relation of cultural phenomena to ideas of value. The concept of culture is a concept of value. (Weber 2003, p. 41)

The way by which the law can be defined as a social science—as a science that studies the relationships between individuals within society as well as the interaction between legal systems and other social systems—cannot be reduced to technicalities; otherwise, it will fail to dominate its object. To survive as a social science, law must therefore always be capable of being a surplus with respect to its techniques.

However, this has been functional to a market logic in which all knowledge has been made interchangeable except for high specialization. This has contributed to the development of scientific scepticism toward ideals by helping people improve all types of knowledge according to which all the knowledge is the same and deserves an equal status.[13]

Polanyi should rethink the two solutions to address the impossibility of pooling sciences: whether the creation of a novel science is strictly related to a specific problem or to ad hoc cooperation between the sciences in relation to specific aspects. Both solutions prove to be easier in relation to the natural sciences, while the social sciences manifest the problem of the impossibility of being integrated. This casts doubt on the much sought-after interdisciplinarity. However, here, too, the terms must be understood: what kind of interdisciplinarity can be compatible with the respective methods of the social sciences? Only that kind of research preserves the specific competence of each single social science and thus identifies the objects that are specific to each science. However, such a conclusion would lead to an oxymoron in terms of the following reasons: basically, to be interdisciplinary, one must address different scientific objects rather than the same ones using different methods.

The greater success of the natural sciences compared to the social sciences is due to the government of natural events through science by means of unambiguous answers. Social sciences, on the other hand, have always entailed the risk not only of providing unambiguous tools for governing social events but also of questioning the underlying assumptions through them. The nature of the social sciences that is strongly akin to their own change as well as to the ì change of mankind as influenced by the social sciences is also common to the law's perspective. However, not recognizing this vital characteristic is to *eliminate* the possibility of its development. As far as the ineliminable propensity of the law for change in terms of social progress and emancipation is recognized, together with its ability to develop spheres of freedom through rules, it can and must be counted among the social sciences. On the other hand, if the function of law is increasingly reduced to the mere calculability and predictability of human and social behavior, this will lead to a genuine failure not only of legal science but also of the entire corpus of social sciences, the effect of which, as Polanyi recalled, must precisely be cumulative. In other words, social sciences need to bear the risk of their own overcoming by not giving way to the attempt to cage knowledge through univocal measurements and calculations.[14] Although the methodologies related to different social sciences cannot be compared, research findings deriving from the application of different methodologies, even if they are related to them, can often even occur across disciplines. This risk urges the law to be aware of what it is besides definitions and labels.

With reference to the ERC, this implies the need to take a position on the inadequacy of the current scheme for legal science, even assuming the responsibility of excluding legal science for frontier research funding. Although unpopular, this approach would be a way to preserve the coherence of a science that has coherence and cannot be pooled with

[13] Polanyi calls it the "fascist reaction against an abstract liberalism" (Polanyi 2014a, p. 117).

[14] The use of artificial intelligence for legal applications is only an emblematic example, although the computable tendency can be generalized.

other social sciences, denaturizing its own research interest and the variety of different legal traditions.

References

Baier, C., and Gengnagel, V., 2018. Academic Autonomy Beyond the Nation-State. The Social Sciences and Humanities in the European Research Council *Österreichische Zeitschrift für Soziologie* [online], 43, 65–92. Available at: https://doi.org/10.1007/s11614-018-0297-7

Cairns, H., 1935. Law as a Social Science. *Philosophy of Science*, 2(4), 1935, pp. 484-498.

De Ridder-Symoens, H., ed., 1991. *A history of the university in Europe* [online]. Cambridge University Press. Available at: https://doi.org/10.1017/CBO9780511599507

Hoenig, B., 2018. Structures, mechanisms and consequences of Europeanization in research: how European funding affects universities, Innovation. *The European Journal of Social Science Research* [online], 31(4), 504–522. Available at: https://doi.org/10.1080/13511610.2018.1497479

Horwath, D., 2004. Is Law a Humanity (or is it more like Engineering)? *Arts and Humanities in Higher Education* [online], 3(1), 9-28. Available at: https://doi.org/10.1177/1474022204039642

Infantino, M., 2019. *Numera et impera. Gli indicatori giuridici globali e il diritto comparato*. Milan: Franco Angeli.

Kelley, D.R., 1990. *The Human Measure. Social Thought in the Western Legal Tradition* [online]. Cambridge MA: Harvard University Press. Available at: https://doi.org/10.4159/harvard.9780674181984

König, T., 2016. Peer Review in the Social Sciences and Humanities at the European Level: The Experiences of the European Research Council. *In:* M. Ochsner, S. Hug and H.D. Daniel, eds., *Research Assessment in the Humanities* [online]. Cham: Springer. Available at: https://doi.org/10.1007/978-3-319-29016-4_12

Kuhn, T.S., 1970. *La struttura delle rivoluzioni scientifiche*. Turin: Einaudi.

Luhmann, N., 1982. *The differentiation of society* [online]. New York: Columbia University Press. Available at: https://doi.org/10.7312/luhm90862

Luhmann, N., 2012-2013. *Theory of society* (2 vols.). Redwood City: Stanford University Press. (Originally published in 1997 as *Die Gesellschaft der Gesellschaft* (2 vols.). Frankfurt am Main: Suhrkamp).

Macey, J., 1997. Law and Social Sciences. *Harward Journal of Law & Public Policy*, 21(1), p. 171.

Michaels, R., 2009. Comparative Law by Numbers? Legal Origins Thesis, *Doing Business* Reports, and the Silence of Traditional Comparative Law. *The American Journal of Comparative Law* [online], 57(4), pp. 765-796. Available at: https://doi.org/10.5131/ajcl.2008.0022

Polanyi, K., 1947a. On belief in economic determinism. *The Sociological Review* [online], a39(1), 96-102. Available at: https://doi.org/10.1111/j.1467-954X.1947.tb02267.x

Polanyi, K., 1947b. Our Obsolete Market Mentality. Civilization Must Find a New Thought Pattern. *Commentary*, 3, p. 109.

Polanyi, K., 1957. *The Great Transformation. The Political and Economic Origin of Our Time*. Boston: Beacon Press.

Polanyi, K., 1971. Carl Menger's Two Meanings of "Economic". *Studies in Economic Anthropology*, AS7, pp. 16-24.

Polanyi, K., 1977. The two meanings of economic. *In:* H.W. Pearson, ed., *The livelihood of man*. New York: Academic Press, pp. 19-21.

Polanyi, K., 2014a. Economics and the Freedom to Shape Our Social Destiny. in G. Resta and M. Catanzariti (eds.) *For a New West. Essays 1919-1958*, Cambridge, Polity Press, p. 33.

Polanyi, K., 2014b. How to Make Use of the Social Sciences. *In:* G. Resta and M. Catanzariti, eds., *For a New West. Essays 1919-1958*. Cambridge: Polity Press, p. 109.

Polanyi, K., 2014c. The Contribution of Institutional Analysis to Social Sciences. *In:* G. Resta and M. Catanzariti, eds., *For a New West. Essays 1919-1958*. Cambridge: Polity Press, p. 55.

Rorty, R., 1981. *Philosophy and the mirror of nature.* Princeton University Press.

Roux, T.R., 2015. The Incorporation Problem in the Interdisciplinary Legal Research. Some Conceptual Issues and a Practical Illustration. *Erasmus Law Review* [online], n. 2. Available at: https://doi.org/10.5553/ELR.000039

Samuel, G., 2008. Is Law truly a Social Science? A View from Comparative Law. *The Cambridge Law Journal* [online], 67(2), pp. 288-321. Available at: https://doi.org/10.1017/S0008197308000378

Teubner, G., 2014. Law and Social Theory. Three Problems. *Ancilla Iuris (anci.ch)* [online], p. 183. Available at: https://doi.org/10.2139/ssrn.2432631

Weber, M., 2003. *Il metodo delle scienze storico-sociali.* Turin: Einaudi.