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A counter-mine that explodes silently: Romano and Schmitt on the unity of the legal order

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ABSTRACT

This contribution is intended to provide an answer to a controversial question: Why does Carl Schmitt – perhaps the firmest advocate of the state unity – not only mention and praise Santi Romano’s book on the legal order – a work that can be rightfully considered an uncompromising defence of legal pluralism – but even list him among his inspirers? While a given (and essentially flawed) interpretation of Romano’s institutional model, like that provided by Schmitt, actually makes his concrete-order thinking better suited to cope with the legal pluralism of modern social theory (and this is a possible answer to the opening question), it ultimately reveals the serious deficiencies of what can be defined as Schmitt’s institutional decisionism. Contrary to what Schmitt believes, indeed, Romano’s social ontology decisively contributes to demonstrate how the argument Schmitt uses in his general attack on social pluralism can also be re-deployed in its defence. Yet, Schmitt’s reappraisal of Romano’s concept of institution, questionable as it may be, addresses and tackles a crucial issue – probably, the crucial issue of both the entire book and his legal institutionalism as a whole – that Romano himself appears to be unable to solve and that still remains an open and challenging question for most social theorists.

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A social ontology of everyday life

Although the author would probably have rejected such a description, *The Legal Order* can be rightfully considered as an attempt to provide, and argue for, a *legal ontology of the social*. By this term I refer to a comprehensive and yet minimal account of the nature, character and basic features of social life that aims to grasp the basal constituents of social existence, conceived as a complex network of different and even conflicting practices relevant from a legal standpoint. To be sure, most often than not, the ontological part of a theory or approach to a given domain appears to be not always well-demarcated from other – ‘thicker’ – parts of that theory. However, while one may argue that all perspectives on social life either implicitly assume or constitutively presuppose ontological understandings of what they aim at describing in its basic elements, there are very few books that properly explain how such a theoretical foundation *actually* lies at the root of any institution of our everyday life – that is, of

the concrete functioning of law in society. Accordingly, as the general question ‘What is law?’ remains a haunting presence across Romano’s entire book, the focus is rather on what is to be viewed as the smallest component and thus the basic structure of the social life from a legal perspective, as almost a particle of legal matter so minute as to admit of no division. In sum, assuming that the legal order is all that exists, Romano’s fundamental aim is to investigate the nature of its basic elements.

In doing so, he argues for an approach to the legal domain that has been termed ‘legal institutionalism.’ In a nutshell, Romano’s theory sees law in general to be connected to the multiple ways in which individuals organize themselves into interacting networks in pursuit of a common aim – ranging from standing in a line at the post office to the coexistence of sovereign states in the supranational sphere. What Romano labels ‘institution’ is precisely this basic structure of any form of social organization, conceived as ‘a complete and unified order’ (Romano, 2017, p.13). Within this perspective, the legal order is thus grounded on the laborious and enduring activities carried out by individuals at every level and in every field of society. As Romano famously states, where there is law there is society (*ubi ius ibi societas*) and where there is society there is law (*ubi societas ibi ius*). In the same pages, Romano gives an indirect answer to the key question of whether social and legal order are really one and the same thing just expressed in two different ways. As a premise, he states that ‘[w]hat remains in the purely individual sphere, and fails to overstep the individual’s life as such, is not law’ (12). While one may contend that, if we assume – as Romano does – that patterns of conduct are always socially mediated, it is far from being obvious what a ‘purely individual sphere’ could be, let us take it for granted and consider the two essential features that, according to Romano, allow us to differentiate legal from social order. To enter the legal field, a social relationship – that is, a relation between individuals – must be ‘a concrete unity, though formally and extrinsically – one that is distinguished from the individuals who comprise it’ and that is ‘effectively constituted’ (12). On this premise, neither friendship – a social relationship that, according to Romano, cannot be distinguished from the individuals who comprise it – nor a class of similar but unrelated people – a social relationship that is not constituted in a conscious and visible way – can be considered legal relationships, that is, institutions: ‘Any legal order is an institution, and vice versa, any institution is a legal order: the equation between the two concepts is necessary and absolute’ (13). The basic particle of society, from a legal standpoint, is thus to be viewed in the concept of institution, defined as any entity or social body that has ‘an objective and concrete existence’ (17). While any relationship, whether legal or not, is comprised of a plurality of interactions, the institution binds them together in ‘a closer and more organic bond’ (32) supported by ‘a social super-structure [...] upon which not only their distinct relationships, but also their own generic position depends, or that sway them’ (33).

If one assumes that ‘[e]very force that is actually social and thus organized, for this very reason, morphs into law’ (21), it is obvious that legal pluralism turns to be not only a fact, but also the normal and inherent condition of the legal field. This is why Romano states in the opening sentence of the second part of his book – titled ‘The Plurality of Legal Orders and Their Relationships’ – that ‘there are as many

legal orders as institutions' (50). Yet, Romano immediately adds that, in dealing with such a coexistence, we have to distinguish between two different perspectives. From an external – that is, theoretical – perspective, every institution is not only legal but also legitimate (more properly, legitimate as legal). From an internal – that is, practical – perspective, that very institution can be considered neither legal nor legitimate (illegitimate as illegal) by other institutions. For our purposes, it is worth emphasizing the fact that the theory of legal pluralism advanced by Romano does not lead to the acknowledgment of an alleged pacific coexistence between alternative legal orders, a sort of pre-established harmony under which every institution contribute to the creation of a higher order that in turn grants them legal recognition. Quite on the contrary, Romano is crystal-clear in affirming the *inherent agonial character* of the legal domain as comprised of competing and often mutually exclusive forms of regulation. There is thus no (cogent) reason, from a theoretical standpoint, to deny the legal nature even of a revolutionary group or a criminal gang or a terrorist sect inasmuch as they all are social organizations aiming at establishing (and at once based on) a legal order. It is not the task of legal theory to answer the question of which of the competing institutions at play deserves – in whichever sense we take the word – to win the competition in this struggle for recognition. Rather, its scope must be confined to determine the boundaries of the legal field, by making clear that: (1) while any social context consists of a plurality of coexisting legal orders, a comprehensive institution that indistinctly encompasses and transcends all the others – whether the national state or even the international community – does not exist; (2) a large number of competing and yet equally legitimate institutions struggle to establish a given social order – a supremacy that is not aimed at gaining an absolute control on society as a whole, but rather at granting recognition to one model of social organization among other possible ways to structure that very interactional context; (3) having the interest and the means to do so, any institution is in some way entitled to defend itself against other institutions whose aim is to directly or indirectly challenge the legal order it maintains – a legitimacy affirmed as a matter of fact, rather than on moral or normative grounds.

In sum, *The Legal Order* is to be viewed not only as providing 'the most rigorous account of the institutional theory of law that emerged at that time,' as Loughlin (2017, p.xi) correctly observes in his preface to the text, but also as a prime example of a pluralist theory of society. Even more relevant, Romano's pluralism is but the direct consequence, in the political sphere, of his institutional approach to the law. To put it more plainly, what is theoretically an institutional theory of law turns practically into political pluralism. Given the practical implications of Romano's theory, it is therefore very surprising that Carl Schmitt, the legal theorist who is perhaps the firmest advocate of the state unity, not only is one of the first authors to

mention Romano's book in his very relevant *On the Three Types of Juristic Thought* (published in 1934), but even lists him among his inspirers both in the 1930s and even in his late writings, where he states that 'Hauriou, like Santi Romano, are my masters. (...) Perhaps, rather than masters, it is more appropriate to say predecessor' (Schmitt, 1983, pp.166–167). As Schmitt can hardly be considered a true supporter of social pluralism, his appreciation of Romano's institutional theory deserves more attention than it has received in recent literature on the two authors.¹ On this premise, in what follows I will try to shed some light on what precisely attracts Schmitt's interest and leads him to endorse Romano's pluralist perspective. It is my claim that, contrary to what Schmitt believes, Romano's social ontology decisively contributes to demonstrate how the argument Schmitt uses in his general attack on social pluralism can also be re-deployed in its defence. By relying on Ernst Jünger's well-known description of Schmitt's thought as 'a mine that explodes silently,' one could argue that Romano's inherent pluralism ends up being a counter-mine that in turn explodes silently; that is, an element that eats away at Schmitt's attempt to restore state unity from the inside and blows up, or at least severely damages, the decisionist bloc. More explicitly, while a given (and essentially flawed) interpretation of Romano's institutional model, like that provided by Schmitt,² actually makes his concrete-order thinking better suited to cope with the legal pluralism of modern social theory, it ultimately reveals the serious deficiencies of what can be defined as Schmitt's institutional decisionism. Yet, a discussion of Schmitt's use of Romano's conceptual toolkit should not be viewed merely as a further, more or less hidden, dialogue between Schmitt and another prominent author of his times. On the contrary, Schmitt's reappraisal of Romano's concept of institution, questionable as it may be, addresses and tackles a crucial issue – probably, *the* crucial issue of both the entire book and his legal institutionalism as a whole – that Romano himself appears to be unable to solve and that still remains an open and challenging question for most social theorists.

Schmitt's attack on (internal) pluralism

The very ideal of plural loyalties expected within the same social context – an essential and distinctive feature of every form of legal pluralism – is in direct contradiction to Schmitt's view of the political. To be sure, in more than one text Schmitt emphasizes that the political world is in its very nature the realm of pluralism – a pluralism 'of races and peoples, of religions and cultures, of languages and legal systems' (Schmitt, 1999, p.204). The problem, as Schmitt himself affirms, is not pluralism as such but where to place it. The space of pluralism is beyond and between the states, not within

¹One might wonder why Schmitt feels the need to add Romano's version of legal institutionalism to his discussion of the clearly state-oriented one advanced by Maurice Hauriou. Indeed, if Schmitt's aim is to prove the effectiveness of a sovereign entity as the only way to deal with social pluralism, the eulogy of the state by Hauriou is not simply the best, but probably the only (institutionalist) solution. One reason may be that Schmitt becomes aware that Hauriou's argument ultimately begs the question of legal pluralism as such, since – as Romano himself pointedly remarks – he 'has restricted the concept of institution to one kind of social organization apt to reach a certain level of development and perfection,' that is, to 'organized entities with a constitutional and representative structure' (Romano, 2017, p.16).

²I cannot expand here on the limits of Schmitt's reading of Romano. For a detailed discussion, see Croce and Salvatore, 2013, Chap. 7.

them. Real pluralism entails a previous differentiation and a clear-cut distinction of bordered communities that, by reducing internal pluralism to a manageable degree, makes a political pluriverse possible and desirable. While vital in the supranational sphere, Schmitt concludes, radical pluralism within the state is likely to lead to a fatal dissociation between the structuring elements of a political unity. This major concern explains why Schmitt brings a charge of anarchism against (in particular) the English pluralist school of Harold Laski and G.D.H. Cole, probably the two most prominent theorists of political pluralism of his time. Schmitt's critique of Laski and Cole is particularly relevant for our purposes as it allows us to make a distinction, and thus a comparison, between what he regards as two different versions of social pluralism, an anarchist and a structuring one. At the same time, dealing with Schmitt's rejection of the pluralistic theories of the state propounded by Cole and Laski offers an indirect answer to a troubling question that looms large over present discussion: Why was Schmitt suddenly interested in the theory of a legal scholar who openly declared himself a pluralist and devoted the second part of his *opus magnum* to the inherent plurality of legal orders?

Radical pluralism must be rejected, Schmitt argues in the fourth section of *The Concept of the Political*, because it explicitly denies 'the sovereign unity of the state, i.e. the political unity, by stressing time and again that the individual lives in numerous different social entities and associations.' No one of these overlapping communities can be said to be 'unconditionally decisive and sovereign' so as that 'the conflict of loyalties can only be resolved from case to case' (Schmitt, 2005, pp.40–41; translation slightly revised). The basic thesis of the pluralistic theories of the state – that is, the state is in its very essence equal to other kinds of human associations – is precisely what Schmitt considers to be the end of politics. Yet, Schmitt contends, placing the state next to, and no longer above, other associations posing two serious problems. The first is that the dissolution of any hierarchical ordering leaves unanswered the question of 'how to decide the inevitable conflict of many different relationships of fidelity and loyalty' (Schmitt, 1999, p.200). We are thus left with two possibilities: either we find an alternative deciding entity or the political as such is doomed to collapse. Given what Schmitt describes as their commitment to liberal ideals, pluralists generally reply that it is up to individuals to decide for themselves whenever a conflict of obligations arises. But Schmitt has an easy task in rejecting this argument by claiming that it is both an empirical mistake and a dangerous illusion to regard individuals as almighty social actors able to move at will from one group to another without losing their freedom, 'as one might hop from ice-floe to ice-floe' (200). The dissolution of the state, Schmitt goes on, far from resulting in greater individual freedom, opens the door to a motley array of powerful social groups that will make the decision on the basis of their own interests and at the expense of all non-members. But what if there is a conflict of decisions between groups? It seems that we are again left without a social force able 'to prevent all other opposing groups from dissociating into a state of extreme enmity' (203). The collapse of the state leaves us with no real option: once state unity has vanished, there is no possibility to bring order out of social chaos. Schmitt's conclusion is crystal-clear: 'A pluralist theory is either the theory of state which arrives at the unity of state by a federalism of social associations or a theory of the dissolution or rebuttal of the state' (Schmitt, 2005, p.44).

While one can easily understand why this first limit is regarded by Schmitt as the key problem of any pluralist theory of the state, given the relevance of the decision for his concept of the political, for our purposes it turns out to be the less interesting precisely because its importance crucially depends on the acceptance of some highly controversial and questionable assumptions that lie at the heart of Schmitt's own theorizing (the primacy of decision, the emphasis on enmity, the rejection of compromise and so on). A pluralist theory of the state presents yet another serious problem, which is much more relevant both as such and in order to answer our original question. Indeed, the second criticism levelled by Schmitt does not rest on Schmittian grounds, but pays attention to the consistency of pluralist arguments and use their own premises to identify both an ideological bias and a flagrant contradiction within them. The first argument of this second criticism focuses on 'the question as to the specific content of the political' (44). If the political is no longer conceived as the unifying factor and the ordering principle meant to settle disputes within society but merely as an association among other, then it remains unclear which is its aim and thus its *raison d'être*: 'Above all, it has to be explained why human beings should have to form a governmental association in addition to the religious, cultural, economic and other associations, and what would be its specific political meaning' (44). This first, and more explicit, argument is still not very convincing as it largely relies, again, on Schmitt's basic assumption of the political as the domain of enmity. The question posed by Schmitt – what is the rationale of the political, if not conceived as the utmost degree of intensity of a union or a separation? – and the conclusion he implicitly draws – without this radically agonal character, the existence of a political domain is both practically useless and even theoretically inexplicable – make sense only inasmuch as they are taken for granted in the premises (that is, by begging the question and adopting a Schmittian perspective). Different and consisting ways of conceiving the political can be suggested even from a radically pluralist perspective. On the contrary, although Schmitt only touches on it in quite general terms, his second argument appears to be much more compelling: 'What appears finally is an all-embracing, monistically global, and by no-means pluralist concept, namely Cole's *society* and Laski's *humanity*' (44). Schmitt's criticisms against the corrosive effects of an unordered society, as well as his attacks on the deception of humanism, are well known. But, in this case, the conceptual core of the argument lies elsewhere. What Schmitt seems to suggest here is that a pluralist theory of the state is ultimately unable to account for and explain the political pluriverse; that is, the actual existence of different and politically independent social unities – the states as well as any sovereign political entity. If the social world is but a network of different forms of associations, all placed on an equal level and essentially self-sufficient, what is the reason for statehood, that is, for the persistence of intermediate bodies between the lower (individuals) and higher (humanity) degree of association? Implicit in Schmitt's reply to the advocates of a pluralist approach to the political is the idea that the state, as a transcending entity that gives to the plurality of groups and associations its unity, is both needed as a condition of possibility (and thinkability) of the very existence of a pluriverse of states and to be conceived as a separate and superior domain with regard to all other existing associations.

Romano, Schmitt and the law as a selective device

So, let us go back to our original question. Given Schmitt's vehement opposition against the pluralistic theories of the state, why Romano with his explicit legal pluralism? I think that, from a Schmittian standpoint, Romano's legal institutionalism is instrumental in coping with Schmitt's main concern in the first half of the 1930s, that is social pluralism, in a way that not only prevents the collapse of the state but even presents its strengthening as the only viable solution for any highly conflictual political context. Within this perspective, three major features of Romano's theory of law must have attracted Schmitt's interest as particularly relevant for a decisionist approach to legal institutionalism. (1) An institutional perspective allows Schmitt to overcome most of the weaknesses of his former decisionism (first of all, its free-floating occasionalism and lack of normative content) by emphasizing the relevance of social practices and the ordering potential of normality in a social context marked by the growth in power of a motley array of sectional interest groups. Law is no longer the demiurgic act of a sovereign decision but something that emerges out of social interactions, a raw material that lawmakers select, rough out and assemble, but not produce.³ In sum, Romano makes Schmitt aware that the book of law is written in social language and thus, to understand how order can be achieved, one has first to capture the basic elements comprising it, that is, its institutional texture. With the sole exception of '[w]hat remains in the purely individual sphere and fails to overstep the individual's life as such' (Romano, 2017, p.12) – an exclusion certainly not unwelcome to Schmitt's fierce anti-liberalism – all that exists can be translated and reassessed in legal terms. With words that recall Schmitt's description of the political as having no substance of its own and crossing through all social domains, Romano affirms that 'it is altogether pointless to try, as many do, to pin down the characters that distinguish law from religion, morality, customs, so-called conventions, economy, technical rules, etc. Each of these manifestations of the human spirit can in whole or in part be incorporated in the legal domain and give content to the latter, every time it falls within the scope of an institution' (22). (2) While rewriting the world in legal terms and granting legal recognition to all institutions, Romano on the one hand denies the existence of an institutional unity able (and willing) to transcend all other unities and, on the other hand, establishes, if not a clear hierarchical order, dependent relationships between different institutions. Emphasis is laid on the 'effective, concrete and objective' (32) character of some institutions, which seems to distinguish them from others and to place them at once next to and above subordinated social bodies.⁴ If, as I think, some ambiguities exist about what equal recognition entails in Romano's legal institutionalism, they are not primarily due to his theorizing, but rather to the fact that the boundary between organization and order is a very porous one, mostly if we come to deal with the concrete existence of a functioning system of interactions. If one assumes that social organization is the basic pillar of the legal order, then the *equal* recognition of *all* institutional forms is doomed to remain only a theoretical assumption – 'an

³On Schmitt's fundamental turn from sovereign decisionism to institutional decisionism (including the most recent literature on that), see Croce and Salvatore, 2016.

⁴For an in-depth discussion of what the author describes as a dilemma concerning the role of the state within Romano's works, see Croce, 2011, as well as the introductory essay of the present symposium.

exclusively legal criterion [...] independently of its relations with other entities and with the state' (65) – once we move from the perspectivism of unrelated social groups to the effectiveness of an existing legal order. (3) Independently of the troublesome question of legal recognition, Romano explicitly acknowledges the agonal character of the legal domain, that is, the coexistence of different legal orders with different visions of the world within the same social context. What is more relevant for our purposes is that Romano goes even further by emphasizing how a given number of them are not only different but also conflicting.

We are now able to answer our original question. Despite his pluralism, Romano's legal institutionalism is praised by Schmitt because, unlike the pluralist theory of the state by Cole and Laski, it frames the legal order in a way that, according to Schmitt and with the ideal disagreement of Romano, makes the merging of self-sufficient contexts of interactions and decisionist selection not only possible but necessary. Schmitt's (partial) endorsement of Romano's legal theory is instrumental in showing how a decisionist filter turns out to be needed even from an institutional standpoint, once this latter moves from theoretical assumptions to practical outcomes. By drawing the border of the legal field with Romano beyond Romano, Schmitt is now able to demonstrate that the law itself, and not just a political approach to it, is – and can never completely avoid being – *a selective and exclusionary instrument*. To say it otherwise, Schmitt takes advantage of the crucial ambiguity concerning the double role Romano seems to assign to the state both in promoting other (and thus subordinated) institutions and in settling disputes between them – a double role that makes the state at times an institution among other institutions, other times 'an institution of institutions' (50) (as Schmitt himself defines the state in *On the Three Types of Juristic Thought*). While Romano appears to be uncertain whether the pre-eminence of the state should be acknowledged or not and, in case, if it is merely due to power differentials or rather to some unique feature that distinguishes it from other institutions, Schmitt is able to turn this uncertainty in a pointless attempt to formulate a 'decisionless' concept of legal order. Accordingly, Schmitt overcomes such a deadlock by providing a quite pragmatic answer to Romano's doubts. Primacy should be given to the state because of its key role in making a concrete legal order possible. The crucial question of state power is an inevitable and pressing legal question, not merely a political one. By conflating facticity and normativity (that is, factual and conceptual necessity), Schmitt gets rid of Romano's distinction between actual force and legitimacy and argue that the distinctive feature of the state is to be viewed in its being necessary for the very existence of a legal order, that is, in its making a given legal order (among others) possible, if (and when) necessary through coercive means.

At the end of the day, Schmitt contends that we cannot think of legal institutionalism without assuming a previous decisionist selection made by a *pre-judicial* sovereign entity that singles out and recognizes as legal a finite number of social practices and institutions and at once cuts out those that may be harmful to them. So, Schmitt really has the last word – literally the deciding voice – on the unity of the legal order? Is Schmitt right in arguing that the concept of institution presupposes the concept of decision? I think that there is evidence to challenge this conclusion and that we can do this on the basis of a critical argument advanced by Romano himself in the section of *The Legal Order* where he discusses the relationship between national states and the

international legal order. In rejecting what he considers to be the ‘metaphysical, almost mythical’ view of a legal self-sufficiency of states in the international domain, Romano writes: ‘If states are independent from each other, from a legal point of view this position does not pre-exist international law, as it is established by it; and the principle by which states cannot be obliged but by norms that they themselves have contributed to produce through their own will is a principle of positive international law, which then presupposes an already constituted and valid international law’ (Romano, 2017, p.28). In a similar vein, Schmitt bases his concrete-order thinking on a decision thought of as isolated and located in a sort of pre-legal state of nature, thoroughly free and independent from the very social practices it is called upon to assemble in a consistent and effective way. It is true that, unlike his previous decisionism of the 1920s, in the concrete-order thinking the decision turns out to be more an act of selection than a demiurgic creation – a turn that, as said above, allows Schmitt to overcome most of the serious weaknesses of the previous version. Yet, the groundlessness of the deciding act is merely reduced, not eliminated. If interpreted by bearing in mind Romano’s claim that there is no legal entity that is not already-and-always social and that state power can never be ‘a de facto power, a pre-legal attribute of the state itself’ (39), Schmitt’s institutional decisionism appears to be unable to grasp the socially constructed nature of the decision itself, nor is this exception – emerging out of nothingness in a world made of social institutions – justified on some grounds. Why does the sovereign decide in a given way and according to a given idea of what an ordered society amounts to? Is not the very emergence of a sovereign entity – both as such and with regard to its own political aims – to be traced back to the social cradle and thus to be explained as the outcome, and not the originating source, of an already existing social organization? In sum, one may challenge the pre-eminence of the decision by stressing that its legal relevance proves to be a consequence, and not the cause, of the emergence of a given legal order. Hence, it can be argued that it is an already established legal order that explains the effectiveness of the decision, not the other way around.

Towards critical institutionalism

To be sure, the importance of Romano’s work goes far beyond a comparison with other, still relevant, legal theories. Then, why read *The Legal Order* one century after its original publication? Among the possible answers to this question, I would like to emphasize, as the editor did in the introductory essay, the fact that, by linking the inherent content of law to its social emergence, Romano’s institutional theory offers highly valuable conceptual tools to deal with the many changes that are affecting the relationships between the state and a plurality of legal phenomena emerging in contemporary societies.⁵ As perhaps the most impressive critic of any attempt to deny the legal relevance (and thus the relevance for any legal theorist) of various and even unperceived forms of social organization, Romano’s main ideas still shed light on wider concerns about law and society in a fragmented world, and mostly on both the political relevance of and the political influence on legal recognition. What is more, Romano’s legal institutionalism ends up being at once a form of critical institutionalism, and this for three main reasons. (1) With his radically anti-reductionist

⁵For the relevance of Romano’s theory to the current study of international law, see Fontanelli, 2011.

approach to social reality (one that prevents any exclusion motivated by ideological reasons), Romano offers us a comprehensive account of all social phenomena that turn out to be legally relevant, and in so doing overcomes the limits of those legal theories that ‘either exclude from their definition – because they are not sufficiently abstract or general – certain directives that evidently are part of the law, or they extend the meaning of the norm to such an extent that it strains common understanding’ (Loughlin, 2017, p.xviii). (2) By conceiving the legal world as a complex and ideally all-embracing network of institutions, Romano interprets the law as a social continuum where the lines of demarcation dividing different institutions are always blurred and where there exists no single entity either actually able or legally legitimate to transcend all the others. This means that societies are born without built-in leading institutions and that any political order – in the sense of a politically enforced pre-eminence of one institution among and over the others – is always an artificial and mutable construction. (3) Consequently, Romano stresses the relevance of power relationships even from a purely legal standpoint. To be sure, they are of very different kind. On the one hand, power is conceived as the legal result of a gradual social acceptance of time-tested interactional practices by those who adopt them. On the other hand, power is described as a form of material force that has sufficient resources at its disposal to enforce a given legal order by according or refusing legal recognition to institutions other than its own. As a result – and this is in my opinion his most valuable contribution – Romano provides us with a legal theory that, while describing them as closely connected with social interactions, frames the political and the legal field as two directly interacting but ultimately independent ways of assembling the social.

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