Sofija Lekić[1]

Contemporary Roman Catholic Doctrine – "Only" a Mild Influence on Modern Law, or a Legal System in Its Own Right?

Abstract

The impact of religion on the development of legal system has been a widely known fact for as long as jurisprudence existed. However, the similarity between religious doctrines and legal systems has often been greatly overlooked. The aim of this paper is to draw attention to the close resemblance between "ordinary" legal systems and the normative systems of religious doctrines, especially the contemporary Roman Catholic doctrine. Although the legal system, like almost any concept in legal theory, cannot be precisely defined, using the comparative analysis of various theorists of law, an attempt at giving at least a remote definition of a legal system will be made. Following that, an analysis of the contemporary Roman Catholic doctrine, beginning with the second half of the 19th century, will attempt to 'fit' the religious norms into the 'mould' of the definition of a legal system. Lastly, an attempt at a conclusion will be given, depicting the nature of the connection between the legal system structure and the doctrine of Roman Catholicism.

Key words: legal theory, legal system analysis, religion, contemporary Roman Catholic doctrine, religion as a legal system

1. Introduction

Ever since it came to exist, the theory of law has been trying to explain as many different elements and aspects of law as possible. During the evolution of legal thought, many different ideas and views have broadened the spectre of possible influences on law and legal systems. Some of them were well-known at the very beginning, like the need to regulate the allocation of resources and the sharing of the workload; others, like the effect of foreign politics, were 'discovered' a little later. However, one of the first influences, and sources of normative systems similar to legal systems, to be known was religion.

Primitive, tribal peoples are often taken as an example of what the earlier stages in the evolution of legal organisation could have looked like. By looking at less-developed civilisations, the differences between primitive and modern legal structures are observed. Primitive peoples' societies are ruled by magical rules (norms). Even though their cultures aren't advanced enough

[1] University of Belgrade – Faculty of Law, Under-graduate studies of law, First year;
University of Belgrade – Faculty of Political Sciences, Under-graduate international studies, First year;
lekic044920@student.fpn.bg.ac.rs

for written laws and deliberate legal constitution, the relationships between the members of the community are ruled by numerous customs and magic beliefs, like taboos.

The taboos in primitive societies were a presentation of the magic beliefs of the society, quite similar to the later religions. The taboos were of a restrictive nature – everything for which a taboo existed was prohibited, and everything else was allowed, which gave them a role of "primary, unwritten codifications". (Avramović and Stanimirović 2018, 46)

Similar to those primitive societies, the more advanced medieval civilisations were also ruled by certain religious rules. The secular power of the ruler was closely related to the sacral power of the religious leader – the ruler of the state was believed to be the regent of God, and the rules enforced by the ruler were mostly religious in nature. During that time, when the development of strictly secular laws was still at a fairly early stage, the religious rules had the role of normative structures of the society.

However, the modern world is much more advanced. Civilisations are mostly literate, and religion no longer holds such a predominant role in the lives of the people, at least not all of them. Also, nowadays, members of one people almost always belong to different denominations of a certain religion, and more often than not to diametrically different religions as well. This would have made the use of religious rules as the highest normative system in those societies impossible, even if it wasn't for the more secular nature of contemporary law.

Still, the rules of certain religions are still in use in certain society groups. Although they are no longer often connected to states and national legal systems, their power is still strong among the believers. This raises the question of their nature – considering the similarities between their role in societies and the role of legal systems in states, are they a certain type of legal systems as well?

The number of religions and their denominations in the modern world is quite high, and it is growing almost by the day. Some of those religions have a fairly simple and short list of rules; the others are filled with specific commands and have a more complex organisation. One of those religions whose normative systems are more elaborate is Roman Catholicism.

The Roman Catholic Church is an institution no less complex than one of the ordinary secular states. It has its own codification (The Catechism of the Catholic Church), a leader/ruler among people (The Pope), a way of electing the said leader and of making important decisions which concern its ways of operation. It also has numerous rules about the way its members, the believers, should act. Many of its elements have changed over the centuries, and the contemporary Roman Catholic doctrine is a system of much greater complexity than the earlier stages of its development. Many concepts, institutions and principles of action have been added during that time, making the system more precise and complete. However, is all of that enough for its normative system to be called a special type of a legal system? The aim of this paper is to at least try and give an answer to that question.

2. The nature of the concept of a legal system

To answer the question whether the contemporary doctrine of Roman Catholicism can be considered to be a legal system in its own right, the concept of a legal system in itself must first be defined. Although it may seem simple, the definition of a legal system has proven to be a challenge for generations of legal theorists. There have been many different definitions, given by a vast number of theorists. Some of those complement each other, others are argumentatively in disagreement. Together, they still can't be said to define the concept of a legal system in a completely satisfactory way; the reasons for this are both the incapability of the legal theory to give a definitive answer to the question posed, and the ever-changing nature of the concept itself.

In this paper, various opinions of many legal theorists will be consulted and compiled so as to give a remote 'list' of characteristics of a legal system. The definition constructed that way must not be taken as definitive, and it is not supposed to be such. Rather, the definition comprised of such a broad variety of opinions can and should only be taken as a prototype definition, a "group of certain characteristics which [...] are neither mandatory nor sufficient, but are rather considered to be typical" (Vasić, Jovanović and Dajović 2019, 11).

In their attempts at defining the concept of a legal system, different theorists used different approaches. Some tried to construct a one-sentence definition, which would explain the main characteristic of the concept. Others depicted the elements out of which the legal system consisted. Lastly, certain definitions attempted to explain the concept of a legal system by listing various types of legal systems.

2.1. 'One-sentence' definitions of a legal system

Most definitions people encounter, at least in the earlier stages of their education, are short and to the point – "Gravity is the force with which an object presses down on the surface it lies upon or tightens the string it is hanged on", or "The cell is the essential structural and functional unit of the structure of every living being". The simplicity and short format of such definitions were used as a model for a number of definitions of a legal system as well.

One of the most widely known and respected legal theorists to formulate a definition of a legal system like this was Hans Kelsen. According to his theory, "the legal system is a system of legal norms" (Kelsen 1992, 55) and "[a]ll norms whose validity may be traced back to one and the same basic norm form a system of norms" (Kelsen 1949, 111). Consequently, Kelsen's theory, for the purposes of this article, can be summed up as follows: all norms whose validity stems from one and the same basic norm form a legal system.

Another such definition was given in Lukić and Košutić (2008), describing a legal system in a somewhat different way: "By the name of a legal system is called the [...] logically organised non-contradictory whole of general legal norms which are grouped together and depend on each other" (332). While Kelsen focused on the common origin of validity of norms as a unifying

factor of a legal system, thereby making the core of his definition the hierarchical relationship between the basic norm and the other norms, Lukić and Košutić analysed the relations between the norms as equal elements of the system, which put the focus on their horizontal inter-dependence.

In Raz (1980) the definition given wasn't strictly a 'one-sentence' one; however, it still aimed to declare a general characteristic common to all legal systems: "Every legal system prohibits the use of force in certain conditions (at least when force is used to obstruct the execution of sanctions) and permits (or prescribes) the use of force in certain other circumstances, i.e. in the course of executing certain sanctions. In every legal system all the laws have internal relations to the laws forbidding the use of force or to the laws permitting or prescribing the use of force in the execution of sanctions" (192-193). This definition's centrepiece is the concept of force and its role in a legal system. While legal systems aren't usually considered to be built on the foundation of force, the role of force is definitely one of great importance in legal system, which influenced the definition given by Raz.

A legal system may also be defined as follows: "A system of law is [...] a systemised whole of positive law norms" (Mitrović 2005, 249), or "A typical system of legal norms is the all-encompassing and highest system of norms in a society" (Vasić, Jovanović and Dajović 2019, 16). All these definitions are attempts at giving a concise explanation of an extremely broad concept; although their value is unquestionable, alone they fall somewhat short of fully defining the concept of a legal system. For that reason, other, more complex definitions need be taken into consideration.

2.2. Definitions listing the elements of a legal system

As it has already been shown, various definitions were made in the attempt of giving a short, precise explanation of the legal system. However, certain legal theorists considered such a format of definitions insufficient for the topic defined, so they turned to somewhat broader and less concise explanations. In doing so, they did not attempt to answer the question of what a legal system is, but rather what it consists of. Even though many theories support this way of defining the legal system, only a few which, in the author's opinion, are most relevant for this article, will be mentioned.

First to be mentioned is the widely known theory of H. L. A. Hart:

> [I]mportant points of similarity between different legal systems [are] (i) rules forbidding or enjoining certain types of behaviour under penalty; (ii) rules requiring people to compensate those whom they injure in certain ways; (iii) rules specifying what must be done to make wills, contracts or other arrangements which confer rights and create obligations; (iv) courts to determine what the rules are and when they have been broken, and to fix the punishment or compensation to be paid; (v) a legislature to make new rules and abolish old ones. (Hart 1994, 3)

Another, less detailed but rather specific theory postulates that "[e]very legal system contains certain rules determining the establishment of new law and the disappearance of old" (Salmond 1902, 102) and that "there must be found in every legal system certain ultimate principles, from which all others are derived, but which are themselves self-existent" (Ibid, 110) . These two theories complement each other – while Hart's theory gives a more detailed explanation, it depicts a rather rudimentary set of requirements, easily fulfilled by many primitive laws. On the other hand, Salmond's definition is a lot less precise, but at the same time stricter. The condition of a determinable mechanism of changing and nullifying laws is a rather advanced concept, especially considering the long period of history during which the line between law and custom barely existed, or did not exist at all.

Lastly, "the most important characteristics [of a legal system] are institutionalism, coerciveness and normativity" (Vasić, Jovanović and Dajović 2019, 16). This theory, similar to Salmond's one, seems better suited to contemporary legal systems than to those of further past. The condition of institutionalism implies a fairly advanced form of social organisation, which momentarily rules out the aforementioned primitive legal orders.

Between these 'list-of-elements' definitions, while it cannot be said that all, or even most of the important elements of legal systems have been determined, a solid frame has been set for further analysis, namely the last type of definitions which will be discussed in this article – those which describe various types of legal systems.

2.3. Definitions listing various types of legal systems

The last type of definitions to be covered in this article are those definitions which attempt to explain the concept of a legal system by describing different sorts of legal systems. Although these definitions are not really definitions *per se*, since they do not define a topic using other, familiar concepts, they still have a role in the defining process. These pseudo-definitions operate on the concept of the thing being a sum of its parts – the more types of legal system one knows and recognises, the more they know about the concept of a legal system in general.

One of these definitions describes the following two types of legal systems:

> Systems of norms can be distinguished into two different types [...] according to the nature of the highest principle of validity in the system. Norms of the first type are 'valid' by virtue of their substance. [...] Norms of this type are the norms of morality. [...] Norms of the second type of system, norms of the law, are not valid by virtue of their content. [...] [Such legal norm is valid] only because it was arrived at in a certain way – created according to a certain rule, issued or set according to a specific method. The law is valid only as positive law, [...], only as law that has been issued or set. (Kelsen 1992, 55-56)

Another definition, given in Lukić and Košutić (2008), proposes a somewhat more complex division of legal systems, using a number of different criteria:

> By [(i)] the place of religion in a specific social order, legal systems are divided into religious [...] and layman [...]; by [(ii)] the role of law in the global societies, into those who are important factors in the organisation of the social order (Greek-Roman-German and Anglo-American legal families) and those who are not [...]. On the other hand, legal system may primarily strive for [(iii)] the conservation of the existing order (traditional societies) or its progressive development (modern societies). Finally, a very significant criterion of the classification of legal systems is [(iv)] the type and rank of their legal sources. [...] [I]n the majority of national laws there is a multitude of legal sources. [...] However, the role and inter-relations (rank) of those law sources are not the same in different national legal systems. By that criterion of the sources of law, legal systems are divided into the European-continental (Greek-Roman-German legal family), the Anglo-American, the Islamic, the Hindu, the Chinese and the Japanese. In comparative law often encountered was [(v)] the classification of legal systems according to the sources and elementary characteristics of law, which result from the elementary characteristics of the social order they are a part of. According to that, there existed or now exist: the western legal systems, the legal systems of Asia and Africa and the legal systems of USSR and East-European countries. [...] Inside every one of these legal systems exist a further sub-classification. That way, inside the western system there are the German-Roman [...] and Anglo-Saxon legal systems, on one side, and the Nordic legal systems on the other. The legal systems of Asia and Africa [...] are divided into: the African custom laws, the Islamic legal system, the Hindu, the Chinese and the Japanese legal system. (Lukić and Košutić 2008, 342)

This definition lays out a detailed scheme of sorting the existing legal systems. However, the majority of its content may only be applied to the systems whose identities are already known. The potential of this definition in the field of identifying certain structures as legal systems for the first time is somewhat less prominent than the impact it has had on the comparative law analysis; however, at least some of its parts hold value in this field as well. For the purposes of this article, most value will be found in the beginning part of the definition, especially in the (i) and (iii). The (ii), (iv) and (v) parts hold relevant conditions of division, however, the types of legal systems cited as the results of said divisions cannot be applied to the question posed in this article.

3. Definitions of law relatable to the concept of a legal system

Various definitions of a legal system have already been covered in the previous section. However, there still remains a solid number of definitions relevant to this article which do not define the legal system in and of itself, but rather the concept of law in general. Although it is

obvious that not every law can be considered a legal system, a better understanding of the criteria of the identity of law may prove as a significant aid in determining the identity of a legal system. For that reason, a number of definitions of law will be covered as well.

First definition to be mentioned claims that "[a] good action is one which agrees with the law; a bad action is one which disagrees with the same" and that "a law is said to be the cause of correctness in an action, not so much because an action, undertaken from any cause at all, squares with the law, but primarily because the action proceeds from the dictate of the law, and from dependence upon the law, that is, with the intention of rendering obedience to the same" (Pufendorf 2009, 235-236) . This definition puts the focus on the internal element of actions, placing the intention and motive before the result of the action itself.

A somewhat more institutional take on the definition of law describes it as "merely the theory of things as received and operative within courts of justice" (Salmond 1902, 633). On the other hand, a definition somewhat lacking in objectiveness in relation to the topic of this article is one given in the Catholic encyclopedia: "By law in the widest sense is understood that exact guide, rule or authoritative standard by which a being is moved to action or held back from it. [...] Law is a principle of regulation and must, like every regulation, be traced back to a willing and thinking being" (Herbermann, et al. (eds.) 1913, 53).

While these definitions alone cannot determine whether any structure, including the Roman Catholic doctrine, may be considered a legal system, joined by the mentioned definitions of legal system, they may prove to be a useful asset in this research, which is the reason of their mentioning in this work.

4. The integrative definition of a legal system constructed for the purposes of this article

By laying out and analysing various singular definitions of legal systems and laws in general, many ways of approaching the identity of a legal system have been mentioned. Now the time has come for those definitions to be integrated into one structure, a definition which will be used for the purposes of this article. This definition may not even be called a definition in the narrowest meaning of that word; its form resembles more that of a list of requirements of each and every kind mentioned in the previous sections. Therefore, its structure will seem somewhat chaotic and fragmented. Still, the question of its structure should not pose a problem for this article, since the definitions of the legal system is not its primary aim, but only a means to an end. However, since it does not presume to be considered to be of same quality as the definitions previously discussed, this 'compilation' of requirements will be labelled a quasi-definition.

In the first place, a legal system is a group of positive, non-contradictory, legal norms, which depend on each other and together comprise a highest system of norms in a society (Mitrović 2005, 249, Lukić and Košutić 2008, 332, Vasić, Jovanović and Dajović 2019, 16). In addition to this, a legal system must specify the range of its effect. This criterion does not appear in any of the mentioned definitions; however, no legal system regards the practices of all the people in the

world, but rather regulates a specific territory, society of state. Because of this, it is the author's opinion that the determination of the range of applicability as well is an important characteristic of a legal system.

Secondly, the validity of all its norms may be traced back to one basic norm, or certain principles from which the others can be derived but which are themselves self-existent (Salmond 1902, 110, Kelsen 1949, 111, Kelsen 1992, 55). Also, the norms themselves can be traced to a willing, thinking being (Herbermann, et al. (eds.) 1913, 53).

The third element concerns the content of the legal system. The criteria set in this area include, logically, the five elements of every legal system set in Hart (1994) – "(i) rules forbidding or enjoining certain types of behaviour under penalty; (ii) rules requiring people to compensate those whom they injure in certain ways; (iii) rules specifying what must be done to make wills, contracts or other arrangements which confer rights and create obligations; (iv) courts to determine what the rules are and when they have been broken, and to fix the punishment or compensation to be paid; (v) a legislature to make new rules and abolish old ones" (3), out of which the criterion (v) is mentioned in Salmond (1902) as well (102). Beside those, a legal system must include norms which prohibit the use of force in some, and permit it in other situations (Raz 1980, 192-193).

In the fourth place, the characteristics of a legal system must be institutionalism, normativity and coerciveness (Vasić, Jovanović and Dajović 2019, 16). Institutionalism insists on the fact that "law is established, changed and applied by certain institutions" (Ibid, 17). Normativity is the characteristic of the law that "through norms [it] gives people a specific kind of a reason for acting and deciding [in a specific way]". Lastly, the coerciveness of law means that "behind its norms (but not all of them!) stands the pressure of the state [society] for us to follow them" (Ibid, 20). Even though this definition defines the state as the source of the pressure for people to obey the laws, for the purposes of this article the definition will be taken as if the definition meant the society instead of the state. Despite the obvious problem of the Roman Catholicism not having a state with borders within which the legal system would be valid, the fact remains that legal systems existed even before states in the modern sense of the word did. Because of that, substituting society for state, at least in the author's opinion, does not change the spirit of the definition.

The fifth element of this quasi-definition does not concern the elements of a legal system, but some of the aforementioned divisions among different legal systems. In the process of trying to identify the Roman Catholic doctrine as a legal system, it will also be 'sorted' into some of the 'categories' of legal systems laid out by legal theorists. Namely, the divisions considered will be the one between systems whose norms are norms of morality versus those whose norms confirm their validity through the process through which they were created (Kelsen 1992, 55-56), and the differences between religious and layman legal systems, as well as those of traditional societies as opposed to those of the modern ones (Lukić and Košutić 2008, 342).

Lastly, the criterion of the recognition by the courts of justice (Salmond 1902, 633) will be examined, as well as the role of the motive (Pufendorf 2009, 235-236), similar to the idea of conscience, in the concept of law-breaking and legal guilt.

5. The analysis of the elements of definitions of various legal theorists which did not become a part of the integrated quasi-definition

While the majority of aspects of legal theories mentioned at the beginning made an appearance in the quasi-definition as well, some elements were omitted. Whereas the quality of the mentioned definitions remains irrefutable, some of their elements couldn't fit into the overall concept of a legal system built in the quasi-definition, so they were left out. The following section analyses the reason behind these adaptations.

The definition given in Lukić and Košutić (2008), besides the elements incorporated into the quasi-definition, also postulated the logicality of the organisation of a legal system, as well as the general nature of its norms (332). However, not every system during the history of legal system evolution had a logical organisation. In the earlier stages of legal system development, norms were created according to the need for regulating certain aspects of social life, without much organisation. In the present times, these situations are somewhat less common; still, the constitution of Great Britain is an example of a system which could not so easily be described as one with a logical organisation. The fact that the legal system values written codifications, singular laws and legal customs as legal sources of equal or similar strength does not seem to be a trait of a logical organisation; still, the legal system of Great Britain is one of the most influential legal systems in the world.

The other controversial element of the definition given in Lukić and Košutić (2008) is the general nature of norms. The first difficulty pertaining to this condition is the vagueness of the concept of general. No matter how general a norm may be, it can still be considered more specific than another one. Step by step, every norm would be discarded, because of a more general one, until the legal system became only one norm – presumably, the basic norm mentioned in Kelsen (1949, 1992).

The definition given in Raz (1980) claims that all the laws in a legal system have internal relations to the laws defining the prohibition and permission of the use of force in different situations (192-193). If taken in a very specific meaning, this would mean that every law had something to do with force. However, it is known that many norms in existing legal system neither prohibit nor permit the use of force – the norms about the number of members of the Parliament, the norms about the requirements for someone to run for president, the age restrictions on marriage etc. All these norms set the requirements which must be fulfilled in order for something to be done; however, in case of their not being fulfilled, no force is applied – the only effect is the lack of the wanted result. If, however, the connection between norms about the use of force and other norms in a legal system is taken in the broadest sense imaginable, it

only describes the connection between any two norms in the same legal system, making the definition of the criterion redundant.

In Mitrović (2005) the legal system was, among other things, described as a systematic whole (249). While certainly not incorrect, or even problematic and controversial, it is the opinion of the author that it is logically impossible for a system not to be systematic. For that reason, the criterion of the legal system being a systematic whole has been omitted, because there is no reason for examining and proving a fact which is already evident.

The last definition which has undergone some form of 'corrections' before being included in the quasi-definition was the one given in Vasić, Jovanović and Dajović (2019). Beside the elements integrated in the quasi-definition, this definition also claimed the all-encompassing nature of a legal system (16). While this aspect of the definition served to underline the broadness of the legal system concept, as compared to various other normative systems, it sets a requirement impossible to achieve, from the perspective of any of the existing legal system as well. No legal system today, or at any point in history, regulated all aspects of social life. Beside the fact that the rules would be impossible to determine, the regulation of such rules would be both impossible and unneeded, as well as liberty-damaging.

6. The concept of contemporary Roman Catholic doctrine

The tradition of the Roman Catholic doctrine is many centuries old. The existence of the Roman Catholic Church as an independent entity dates back to 1054. and the Great Schism, which separated the then one Christian Church into the Roman Catholic and the Eastern Orthodox Church, and the doctrinal foundations have existed long before, during the one Church.

However, even though the doctrine has been established centuries ago, with the passage of time many practices, and even some elementary principles have been changed or modified. In the light of such differences, the view on the Roman Catholic tradition as a series of different periods becomes justified.

The topic of this article is the contemporary Roman Catholic doctrine. The reason for this concretisation lies in the inherent width of the Roman Catholic tradition, and the impossibility of examining it in its entirety along the course of one article. However, it must be noted that there is no established division of the Roman Catholic tradition accepted in theological theory. For the purposes of this article, the period of contemporary Roman Catholic doctrine begins in the second half of the 19th century, with the First Vatican Council held in 1869/1870.

The border has been set on the First Vatican Council for various reasons. Generally speaking, a period of around 150 years is long enough for objective analysis and examination of the effectiveness of certain proclaimed practices. On the other hand, it is short enough for focused, in-depth research, and maintains a relatively homogenous structure, with few significant

changes. However, the more significant reason for choosing the First Vatican Council as the starting point lies in the council itself.

The Council was a specific event at the very beginning. Starting with the fact that it was the first ecumenical council of the Roman Catholic Church in more than 300 years. Also, it was one of the few councils after the Great Schism which included some of the leaders of the Eastern Churches as well. The council established the primacy of the Pope in the hierarchy of the Catholic Church: "[W]hoever succeeds to the chair of Peter obtains, by the institution of Christ himself, the primacy of Peter over the whole Church" (O'Malley 2018, 254). This was, and still is, one of the main sources of dispute between the Roman Catholic Church and other Christian denominations.

The other, possibly even more significant change brought on by the First Vatican Council was the concept of the infallibility of the Pope:

> "[W]ith the approval of the sacred council, we teach and define as a divinely revealed dogma that when the Roman pontiff speaks *ex cathedra*, that is, when in the exercise of his office as shepherd and teacher of all Christians, in virtue of his supreme apostolic authority, he defines a doctrine concerning faith or morals, to be held by the whole Church, he possesses, by the divine assistance promised to him in blessed Peter, that infallibility that the divine Redeemer willed his Church to enjoy in defining doctrines concerning fatih or morals. [...] [S]uch definitions are of themselves, and not by the consent of the Church, not subject to reform. (O'Malley 2018, 259-260).

This change brought on even more dissatisfaction and critique from other Christian denominations, and is the reason behind many of the inter-denominational disputes today as well. Also, the change had a strong impact on the Roman Catholic Church as well, giving it a more unified foundation of the doctrine, but also changing the mechanisms of the Church's functioning, further separating the contemporary Roman Catholic doctrine from the earlier Roman Catholic tradition.

7. The application of the quasi-definition on the contemporary Roman Catholic doctrine

Now that both the quasi-definition and the temporal frame of Roman Catholic doctrine analysed have been set, the analysis of the main question of this article may begin. The analysis will be conducted in six phases, analogous to the laid-out criteria of the quasi-definition.

7.1. The first criterion of a legal system

The first criterion of the quasi-definition states that the legal system is a group of (i) positive, non-contradictory, legal norms, (ii) which depend on each other, and (iii) together comprise a highest system of norms in a society, which has (iv) a determined range of applicability.

Part (i) of this criterion is majorly evident without specific analysis. The norms of the Roman Catholic are, at least formally speaking, positive norms – they are still applied and considered valid today. Also, the doctrine is founded on certain principles which make it nearly impossible for contradictory norms to exist. The fundamental sources of the doctrine are the Holy Scripture, Catechism of the Catholic Church [CCC] and the Code of Canon Law [CCL], out of which the latter two are somewhat complementary, and carefully constructed so as to not contradict any part of the Holy Scripture. That leaves the element of legal nature of the norms, which is somewhat more complex to determine.

The title of the CCL suggests that the norms of the Roman Catholic doctrine possess a quality of legal nature. Some of the institutions of the Roman Catholic Church, especially the Papal courts, which will be covered in more detail in section 7.4, also suggest that the doctrinal norms are observed as legal norms in the Roman Catholic society. Lastly, should the Roman Catholic doctrine fulfill the rest of the criteria of a legal system, the identity of a legal system would concequently affirm the legal nature of the norms as well. Therefore, the analysis of this element will be concluded here with a strong conviction of its fulfillment, but still with the role of confirmation left to the final conclusion of the article.

Part (ii) insists on the inter-dependence of the norms of a possible legal system. This criterion underlines the integrated nature of a system, as well as the logical systematicality of its structure. As is the case with every legal system, the norms of the Roman Catholic doctrine are not *all* inter-dependent, at least not in an explicit way. However, all the norms are dependent on at least one of the following two – the text of the Bible or the decision of an Ecumenical coucil or a Pope. Furthermore, every norm depends on the central idea of believing in the LORD and His word.

Part (iii) places the legal system at the highest level of systems of norms in the society in which it is applied. Although today almost every Roman Catholic lives in a state with a legal system which presumes to be of a higher power than the Roman Catholic doctrine, the doctrine as well considers itself higher than the secular legal systems. The fact remains that people are more likely to answer to secular courts during their lives on Earth; still, the norms of the Roman Catholic doctrine rarely if ever demand something which is forbidden by state law, especially in modern, liberal-democratic states of the modern times. Nowadays, a follower of the Roman Catholic doctrine more often than not only has to abstain from certain types of behaviour which are permitted by the state law. That way, a person following the Roman Catholic doctrine places the doctrinal system of norms above the legal system of the state, making it the highest system of norms from their perspective.

The last part of the first criterion, part (iv), demands that a legal system determines the range of its applicability. This criterion is one of the more explicitly fulfilled ones, clearly stated in the CCL (1998) : “The canons of this Code regard only the Latin Church” (c. 1). The title of the CCC also restricts the application of its norms to the Catholic Church. Since the word ecclesiastical, an adjective used for anything concerning the truth, comes from the Greek

ekklesia, defined as an assembly, it is evident that the concept of the Church does not mean the institution or the building, but rather the people identified as its parts. Therefore, the range of applicability of the Roman Catholic doctrine encompasses all the people who consider themselves members of the Roman Catholic Church.

7.2. The second criterion of the legal system

The second criterion of the quasi-definition delineates (i) the common source of the validity of all norms, in the form of one basic norm or a set of certain, self-exitent principles, as well as (ii) the possibility of tracing all norms back to a willing, thinking being.

Part (i) is related to the part (ii) of the first criterion, in that it poses the faith in God and His word as the central source of the validity of norms of the Roman Catholic doctrine. The strength and validity of the norms is found in the doctrinal belief that "[f]aith is certain. It is more certain than all human knowledge because it is founded on the very word of God who cannot lie" (CCC, 157). The certainty of faith over the human reasoning is mentioned in the dogmatic constitution Dei Filius : "[We do not have faith] because of the percepting the inner truth of things in the light of natural reason, but rather because of the authority of God who reveals them, who can neither be deceived nor deceive"(Pius IX, 1870)

Part (ii) is, coincidentaly, answered in the same way as part (i) – by the authority of the LORD, "[f]or there is no power but of God: the powers that be are ordained of God" (Rom 13:1; King James Version [KJV]). Similarly, "[f]rom him originates every rule [about God]" (Avgustin 2004, 220).

7.3. The third criterion of a legal system

The third criterion of the quasi-definition mentions six elements that a legal system must possess. The elements delineated in this criterion are: (i) rules prohibiting or demanding certain types of behaviour under penalty; (ii) rules demanding compensation for harm done to others; (iii) rules specifying what has to be done in order to make wills, contracts or arrangements which confer rights and create obligations; (iv) courts to determine the laws, the situation of their breaking and the punishments; (v) legislature to establish/abolish laws, and (vi) rules concerning the prohibition/permission of the usage of force in certain situations.

Part (i) is easily confirmable, even to those with little knowledge of the Roman Catholic doctrine. The norms concerning prohibition and demanding of certain types of behaviour comprise the majority of the doctrine. The most widely known illustration of such norms are the Ten Commandments, such as 'Thou shall not kill' (prohibition), or 'Honour thy father and thy mother, that thy days may be long in the land which the Lord thy God giveth thee' (demanding). The threat of a penalty is less specific than in the ordinary legal system – every breaking of rules is a step further towards Hell and eternal damnation.

Part (ii) poses a somewhat more complex condition. Since the Roman Catholic doctrine revolves around the idea of people sinning against God, the idea of compensation seems somewhat less pronounced. However, that does not mean it is non-existent: “Many sins wrong our neighbor. We must do what is possible in order to repair the harm (e.g., return stolen goods, restore the reputation of someone slandered, pay compensation for injuries)” (CCC, 1459). Although the idea of compensation is mention here more as an introduction to the part of the article concerning the absolution of sins before God, it does not change the fact that compensation for other people who have been harmed is enforced as well.

Part (iii) demands rules concerning contracts between people. In a syntactically litteral way, the condition demands “rules specifying what must be done to make wills, contracts *or* other arrangements which confer rights and create obligations” (Hart 1994, 3, italics by S.L.). Taken that way, only one of the three mentioned elements would need to be fulfilled in order to consider the condition met. This would be fulfilled by the norms concerning the creation of marriage, which is considered to be a form of contract. The norms concerning marriage are numerous, ranging from the celebration of marriage, which “normally takes place during Holy Mass” (CCC, 1621), to the conditions that have to be met in order for marriage to be possible – “The parties to a marriage covenant are a baptised man and woman, free to contract marriage, who freely express their consent; ‘to be free’ means: (i) not being under constraint; (ii) not impeded by any natural or ecclesiastical law” (CCC, 1625); and the norm saying that “[t]he consent must be an act of the will of each of the parties, free of coercion or grave external fear [...] If this freedom is lacking the marriage is invalid.” (CCC, 1628). However, if the condition is taken as it was most possibly envisioned by Hart, that a legal system must regulate all three of the mentioned elements, the situation concerning the Roman Catholic doctrine would be a lot less clear. The reason behind the lack of norms regulating other contracts and obligations or the creation of the will lies in the presumption of honesty in every member of the Roman Catholic Church. In that light, further regulation of such obligations does not seem necessary. However, this makes the part (iii) of the third criterion a weak point of the possible Roman Catholic doctrine legal system.

Part (iv) of this criterion, at first, seems too modern and secular for the concept of Roman Catholic doctrine. Courts of Justice are associated with developped, secular legal systems of states, and as such seem out of place in the context of a centuries old religious doctrine. However, that is not the case. As it will be further explained in section 7.4, the Roman Catholic doctrine does possess courts, several types of them in fact. Furthermore, the idea of Final Judgement, which “will reveal even to its furthest consequences the good each person has done or failed to do during his earthly life” (CCC, 1039), is actually the Court of Justice in the realm of Christianity in general, and consequently in the Roman Catholic doctrine as well.

Part (v) is especially characteristic in the contemporary period of the Roman Catholic doctrine, since it is during that period that it became most pronounced. The legislature to establish and

abolish laws lies with the Pope, as has been established on the First Vatican Council, which has already been discussed.

Part (vi) is also one of those binary conditions, demanding both rules which prohibit and those which permit usage of force in certain situations. The first part of the condition does not even need to be analysed in depth – the Roman Catholic doctrine values non-violence and kindness very highly. However, the part permitting usage of force is somewhat more complex. The history of the Roman Catholic Church is filled with occurences in which force has been used with the Church's permission, encouragement or even by the Church itself – the Inquisition, the Crusades... However, the contemporary period does not hold such blatant examples of the Roman Catholic Church using force. The fulfillment of this condition does not need to be looked for in the actions of the Catholic Church against other people, however. A perfect example of legitimate usage of force in the Roman Catholic doctrine is of transcedental nature – the existence of Hell: "The Son of man [Jesus] shall send forth his angels, and they shall gather out of his kingdom all things that offend, and them which do iniquity; and shall cast them into a furnace of fire: there shall be wailing and gnashing of teeth" (Matt 13:41-42, KJV)

7.4. The fourth criterion of a legal system

The fourth criterion of the quasi – definition consists of (i) institutionalism, (ii) coerciveness, and (iii) normativity of the legal system.

Part (i), the institutionalism, as has already been said, insists on law being established, changed and applied by certain institutions. The institutions of the Roman Catholic Church are varied and numerous – starting with the Pope, and continuing with the cardinals, the Roman curia, the Congregations, the Pontifical Councils, the Tribunals (papal courts), the Pontifical commissions, Offices, the Swiss guard etc. (Stanković 2017, 79-96). However, in the terms of the Roman Catholic doctrine, and not the politics of the State of Vatican, the most important ones are the Pope and the Tribunals. As it has already been mentioned before, the Pope has the power to establish and change laws. The application of said laws lies with God in the ultimate sense; however, the Tribunals also have an important role.

The Tribunals, also labeled the Papal courts, are the courts of the Roman Catholic Church. There are three different tribunals – The Apostolic Penitentary, The Apostolic Signatura and the Roman Rota. The Apostolic Penitentary is concerned with strictly confidential cases and the matter of confessions. The Apostolic Signatura is the Supreme court of the Holy See; the verdicts of this court are not suspectible to objections. One of the most prominent roles of the Apostolic Signatura is its activity in the nullification of marriage contracts. The Roman Rota is a collegial court with three judges ruling every case. It is of an appelational nature, and its verdicts often have an interpretational value.

Part (ii), the coerciveness, as it has already been discussed, maintains that behind the norms, but not all of them, stands the pressure of the society for people to follow them. The pressure

mentioned in this condition has its analogy in the threat of eternal damnation in case of disobedience, as well as the possibility of excommunication (for the most serious offences), and the loss of support from other members of the Church. It is possible to imagine that the coercive power of the Roman Catholic doctrine is weak also because of the fact that nothing obligates people to surrender themselves to its laws, since life can go on for them without recognising the authority of the Roman Catholic doctrine; however, by renouncing the laws of the doctrine, a person stops considering themself a member of the Roman Catholic Church, and consequently is no more a subject of its laws, so the condition of coerciveness has no meaning anymore.

Part (iii) of this criterion, the normativity, does not stop at the existence of norms which regulate various aspects of social life. It rather gives people a specific, more powerful than others, reason for acting and making decisions in a specific manner. The question of this more powerful and important reason is clearly expressed in Bahnsen (1985): "Will your life be founded upon the sure rock of God's word, or the ruinous sands of independent human opinion?" (13). It is also present in the already discussed opinion that "[f]aith is certain. It is more certain than all human knowledge because it is founded on the very word of God who cannot lie" (CCC 157).

7.5. The fifth criterion of a legal system

The fifth, similar to the sixth criterion of the quasi-definition, is not a criterion *per se*. Rather, it is an attempt at further describing the characteristics of the Roman Catholic doctrine under the assumption of its identity as a legal system. The fifth phase of the analysis concerns itself with recognising whether (i) the norms of the Roman Catholic doctrine legal system are norms of morality or norms which confirm their validity through the process through which they were created; (ii) whether the Roman Catholic doctrine legal system is a religious or a layman legal system, and (iii) whether the society of the Roman Catholic doctrine legal system is a traditional or a modern one.

The division (i) seems absurd at a first glance. Everything about the Roman Catholic doctrine suggests a moral nature, so a logical conclusion would be that the norms of the Roman Catholic doctrine legal system would be norms of morality. However, a more detailed analysis of the differences between the norms of morality and the norms confirming their validity thorough their process of establishment, set out in Kelsen (1992) reveals that "all particular moral norms can be derived from the general basic norm by way of an act of intellect, namely, by the way of deduction from the general to the particular" (56). However, all the norms of the Roman Catholic doctrine cannot be deduced from the basic norm, whereas, on the other side, norms of the Roman Catholic doctrine confirm their validity through the process of their establishment – and "[a] law is established when it is promulgated" (CCL, c. 7). Therefore, although the norms of the Roman Catholic doctrine are moral in nature, they are not norms of morality, but norms which confirm their validity through their establishing process.

The division (ii) also seems unnecessary and obvious at a first glance, and really is superfluous. However, the fact that the Roman Catholic doctrine could, having the identity of a legal system, be sorted according to the divisions set by various legal theorists, strenghtens the idea of the spirit of a legal system contained in the doctrine itself. Therefore, the fact that the Roman Catholic doctrine legal system would be a religious legal system if it were confirmed to be a legal system at all, holds no value in terms of describing the doctrine, but rather of argumenting the possibility of its legal system identity.

The last division to be covered in this section, the division (iii), concerns the type of a society to which the society of the Roman Catholic doctrine legal system would belong to – traditional or modern. Since the views of the Roman Catholic Church on the majority of social issues during the history have been predominantly conservative, it stands to reason that the society of the Roman Catholic doctrine legal system would be a traditional one as well. Such an opinion would be mostly valid, but it has to be mentioned that the Roman Catholic Church also reformed some parts of its doctrine when the need arose. The most significant contemporary reform in the Roman Catholic Church is the use of vernacular languages in Holy Mass, permitted by the Second Vatican Council. Therefore, the Roman Catholic doctrine legal system society is mainly traditional, but it can be said that it also has some mildly modern elements.

7.6. The sixth criterion of a legal system

As it has already been mentioned, the sixth criterion of the quasi-definition is not a criterion *per se* either. Rather, it explains the effect of some of the concepts mentioned in various legal theories on the analysis of the hypothetical Roman Catholic doctrine legal system. This phase of the analysis will concern itself with the (i) recognition of the norms of a legal system by the courts of justice and (ii) the role of the motive in the determination of legal guilt.

The first concept of this phase, the recognition of the legal norms by a court of justice, has already been mentioned a few times. The concept of the Papal courts – tribunals has already been explained in enough detail, so that topic will not be revisited in this section. However, the topic of the Final Judgement, left somewhat under-described and feeble in the previous section, will be additionally explored. The idea of Final Judgement is expressed in the following words: “For we must all appear before the judgement seat of Christ; that every one may receive the things done in his body, according to that he hath done, whether it be good or bad” (2 Cor 5:10, KJV). The responsibility before the Final Judgement court is closely related to the concept of freedom as well: “ Freedom is the power, rooted in reason and will, to act or not to act, to do this or that, and so to perform deliberate actions on one’s own responsibility” (CCC, 1731) and “[f]reedom makes man responsible for his acts to the extent that they are voluntary” (CCC, 1734)

The Final Judgement is also the ‘place’ where the concept (ii) comes to light. The motive is of more importance than the act itself. An example of this is the following verse of the Bible: “But I say unto you, That whosoever looketh on a woman to lust after her hath committed adultery with

her already in his heart" (Matt 5:28, KJV). The concept of the conscience is also relevant to the idea of the motive: "Conscience is a judgement of reason whereby the human person recognises the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed" (CCC, 1778). Therefore, the motive of an act, the intention of the person committing an act is the factor determining whether a person has broken the law (sinned) or not.

8. Additional remarks relevant to the correlation between the Roman Catholic doctrine and law/legal systems

The following opinions of various legal theorists are relevant to the question posed in this article, but are neither definitions nor arguments, but rather statements suggesting the possibility and probability of the legal system identity of the Roman Catholic doctrine, and therefore potentially helpful for determining whether the Roman Catholic doctrine may be considered a legal system or not.

"Legal systems are always legal systems of complex forms of social life, such as religions, states, regimes, tribes, etc" (Raz 1980, 188); "The state (its organs) is not the only institution to which law can be connected. That can sometimes also be international institutions [...] or institution inside the state (e.g. the church)" (Vasić, Jovanović and Dajović 2019, 17, ft. 14) "Custom and religion may be the material sources of a legal system no less than that express declaration of new legal principles by the state, which we term legislation" (Salmond 1902, 54-55). These three opinions suggest the possibility of a religious doctrine being a legal system as well, which is a positive effect on the idea of the Roman Catholic doctrine, as a highly systematic and organised religious doctrine, as a legal system as well.

"Law, as a principle of social ordering, is I suggest, a function of justice – justice as solidarity. That's a point at which, I like to believe, the disciplines of religion and law converge" (Sturm 2008-2009, 377); "Theology without law leaves the ecclesiastical community bereft of an ordered life. Law without theological meaning surrenders persuasiveness and deteriorates into rigid legalism" (Coughlin 2003-2004, 2-3). These two opinions do not even mention the concept of a legal system; still, they bring closer together the phenomenon of religion and the idea of law in general, making the idea of a religious doctrine as a legal system all the more plausible.

9. Conclusion

The analysis of the Roman Catholic doctrine according to the quasi-definition of a legal system defined in this article suggests that the Roman Catholic doctrine possesses strong elements of the identity of a legal system. Apart from the legal nature of the norms, which has been left for the result of the analysis to prove it, the only other criteria of the quasi – definition that are somewhat weak are the rules requiring compensation for those who are harmed in some way (present, but fairly marginalised) and the under-developped contract, obligation and will-creating processes (the only contract mentioned is the marriage). However, since the quasi-definition has been created as a prototype definition, a moderate weakness of a small number of criteria is not

an impediment to the identity of the analysed phenomenon. Therefore, while the effect the Roman Catholic doctrine has on other, orthodox legal systems is irreffutable, it is the conclusion of this study that the Roman Catholic doctrine also possesses the elements necessary for it to be acknowledged as a legitimate, albeit slightly atypical, legal system.

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