MONISM AND PLURALISM IN THE DYNAMICS OF POLITICAL POWER. FROM ROMAN TIMES TO THE PRESENT

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Abstract
Monism and legal pluralism, in their many variants, tend to be associated with forms of government that are inseparable from different levels of centralization. The legal-historical observation of societies from ancient times to the present day suggests this without much doubt. Pragmatically observed, the variations in their own time make it possible, if not to anticipate, at least to speculate on the future evolution of these variables. The political decision, which is apparently decisive at any given moment, thus becomes to some extent a necessity, in which only the contours are truly manipulable.

Keywords
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Summary

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INTRODUTION

The relationship between law, time, and political and social reality, due to the multiplicity of fields in which it is expressed, is extremely attractive to jurists from the point of view of scientific research.

Philosophy, both general and legal, are taken by me only as working tools in research and not as objects of research in themselves. Nevertheless, because they are essential or relevant components of the intellectual molds in which law arises, develops, and evolves, they are essential subjects whenever the topics considered go beyond the mere establishment or description of legal facts.

The historical study of law is occasionally taken as a work of strict erudition, given the apparent detachment from the present that would characterize it. Motivated mainly by the practical side, consciously or unconsciously shaped by the present, some have described it as the archaeological science of law.

The truth is that neither is it a domain disconnected from the present, nor is it a mere expression of abstract knowledge.

Many essays could be written on the apparent antinomy between pure and practical knowledge, reflected in a supposed opposition between university and real life taken as commonplace.

Of these, one would certainly end up focusing on one of the cornerstones of concrete knowledge, namely that of experience.

In fact, experience, as knowledge gleaned from life, about causes and effects linked to natural or human facts, cannot therefore be considered a-rational in its intra-personal genesis. Transported to the world of law, it reflects knowledge intuitively grasped through the reading of social problems and, to that extent, contributes decisively to the distinction between agents of law who are essentially memorizers and agents who hold *auctoritas,* as socially recognized knowledge. This is nothing that glossators and commentators didn't already know and say many centuries ago, based on the jurisprudential view they followed, which was later diminished and partly forgotten as jurists became servants of the state.

As for the overemphasis on the link between the science of law and the present, one could argue that the present itself doesn't exist.

Of the real, only the past, lived as a memory; of the expectable, only the future as an anticipation of the real, which, because it isn't real, would ultimately be reduced to the anticipation of a projection of the past already lived.

Just as health is a transitory state that doesn't bode well, the present would also be a transitory state that only bodes well for the connection between moments that no longer exist and moments that don't yet exist. The passage from one to the other, in other words, the time that is taken as the present, would only be considered real by fiction. The radical separation between the two would thus be nothing more than an illusion, and with it, the antinomy between the strands of legal knowledge that depend on it.

1. SOPHISM AND FICTION

Because reflections of this nature can take on the appearance of sophism and sophism, although an interesting expression of human rationality, is often considered intellectually sterile, or not very useful, we will stop here, retaining only the idea of *fiction*, as the salt that tempers speculative human thought and in particular legal thought.

Regardless of what is meant, we therefore dare to think that a jurist will only be a jurist in name if he doesn't carry in his intellectual baggage structuring traits of the relationship between norms and the time in which they arose. Not out of erudition, as we have said, but because the evolutionary perception of law will allow them to understand its spirit at each moment and confront it with change, preparing themselves intellectually for it.

But what kind of anticipation are we talking about? Certainly not the kind that an astrologer would promise using knowledge that the general public doesn't think they have access to. Yes, certainly not the kind that takes the form of evolutionary hypotheses, distinguishing the most likely

from the least likely, and it is certain that the handling of frameworks that have already been experienced will allow us to infer, with some plausibility, potential changes, whether desirable or necessarily occurring.

Since, as a rule, these pictures are not perceptible on the scale of the observer's life and are therefore immune to individual experience, only a long-term view will allow them to be identified in their features, causes and effects.

Along these lines we will be looking at issues in which the relationship between law and time is present. Thought out according to the theme proposed for the Colloquium, emerging from both the science of law and its political and social environment, pragmatism will not be foreign to the contours and conditioning factors. This will therefore be our contribution.

Above, reference was made to fiction as an intellectual mechanism.

Fiction *is* a *nomen* whose etymological origin lies in *fictio*. This can have various meanings, including *supposition*, *hypothesis,* or *invention*.

It is a concept that is of interest to those who work with science in general, although its use by jurists is particularly relevant. As an *assumption* or *hypothesis*, it is a starting point which, in the exact sciences, must be demonstrated logically and/or experimentally, and then consolidated as a certainty, possibly in the form of a law.

In the science of law, this can also be the case.

However, in general, it is not dependent on argumentative proof that it is used. It appears more usually when the doctrine, or a significant part of it, has already incorporated an idea of validity into the underlying concept that makes it tend to be unquestionable, in such a way that it can be used both as a point of arrival for future tests with objectives that have nothing to do with its validity, and as an operative instrumental concept within reasoning. In short, it has a meaning that is not far removed from that of an *inventio* that has ceased to be.

It is clear that the underlying concept is not immune to argumentative proof: in some cases it will aim to demonstrate its invalidity,

or validity only under a certain nature; in others, the need for its validity, in view of effects arising from it;

However, when the doctrine is generally accepted or accepted by the majority, the likelihood of the fictional concept making its way through society is significant. If the current legal-creative model is clearly pluralist, it may take some time, but it will eventually take hold. If it is clearly monist, or mitigated, it will depend on the relevance of the source with which it is mainly associated, and the possibility will be all the greater if it is generally useful from a pragmatic perspective. As doctrine, as a process of seeking solutions, tends to be dominant in the field of legal debate, it will probably find its place in any case. If, in the end, the legal-codifying system exists and incorporates it, in the positivist logic usually associated with this system, the doubt will no longer arise and the fiction will come to exist in dogma with all the necessary implications. The debate will then shift to the nature of the underlying concept, abandoning that of validity.

In short, fiction is relevant in the world of legal science and jurists are used to living with it. It remains to be seen why.

Essentially because it is useful. Without disregarding logical-legal considerations and the weighing up of ethical, moral, or religious coordinates, jurists, including those with legislative responsibilities, are obliged to consider usefulness and its implications, and then, for political reasons and intellectual coherence, they simply have to seek an argumentative construction that duly supports it.

There was nothing that the ancient commentators of common law didn't already know and practice, as shown by the behavior of the great Bartolo of Saxoferrato, who - according to one of his biographers - when a complex legal problem was put to him in public and after he had given his opinion, then asked his *memoriosus* secretary to find him texts in the Law, in this case the *Corpus Juris* - that would serve to substantiate the opinion given.

It's part of the nature of jurists and the Roman heritage is certainly no stranger to it. In fact, the *fictio juris* is there at every turn. You only must remember the perplexity that the pre-classics felt at accepting the continued validity of the will of the deceased after his death, for the purpose of

determining the *post-mortem* destination of his assets, to understand the felt need to fictionalize it as a condition for the validity of a reasoning that was particularly useful for the social order. For this reason, the will was not part of the *ius civile*, opting for trusts with the corresponding drawbacks, and only later, once the intellectual reservations mentioned had been pragmatically removed, was it incorporated into the *ius civile*.

This was also the case with other legal figures of the time and throughout time, even when the memory of Rome had already faded. It is enough to remember, for example, the understanding expressed in the 13th century by the famous jurist Sinibaldo Fiesco - the future Pope Innocent IV - at the genesis of today's fundamental concept of a legal person, when he stated that "*the corporation should be fictitiously taken as a person*", thus opening the door to one of the current currents that explain the nature of this personality. Or recall the Kelsenian *grund norm* in the 20th century, which, if it didn't exist, had to come into existence as a necessary logical presupposition for the pyramid of norms in the pure construction of law, paving the way for debates following the end of the Second World War.

Jurists live well with fictions, because they know that they can be indispensable for structuring useful or valuable concrete reasoning in the management of human relationships. They do this by looking at needs, pretending as valid concepts that they probably wouldn't arrive at through pure chained logical reasoning, incorporating them pragmatically into the science of law.

They therefore exist because their usefulness was decisive at a certain time. But even if it remains and the fiction subsists as an operative concept, the raison d'être behind it is not necessarily perennial. An understanding of the intellectual and material journey that resulted from it is therefore important to evaluate it at any given time and only juristic historiography, by its nature, provides the appropriate tools.

2. PRAGMATIC IMPLICATIONS

In the previous lines, we looked at a concept with undeniable pragmatic implications. We are therefore moving in the field of reflection specific to the science of law. However, there are other topics in which the law-time binomial is equally relevant to forming a certain picture and possibly drawing conclusions from it. We will now turn our attention to the relationship between legal production and the way in which political power was organized at different times in Western history. The intention is to find out whether, based on the observation of long historical series, significant trends can be observed that can be compared with future evolutionary hypotheses, as we mentioned earlier.

We thought it would be useful to make a few preliminary observations to better understand the sequence.

When we talk about society and the law, the idea that most naturally springs to mind is that the law exists because of problems in society. Problems arise for a variety of reasons, not *least* because of the collision of interests. Law comes into play to solve them, according to pragmatic or ideological assumptions, considering a sense of utility, unorganized cultural sensibilities, or intentionally created systems of thought.

When the collision is particularly strong, because it affects many elements of society or because it affects the most influential, the creation of norms becomes especially relevant. The agent can be either the inorganic community or institutional entities that emerge and act within it. Political power, as a sophisticated concept that identifies the power exercised by the party most able to control society, either because it actually holds it, or because it exercises it within the framework of pre-existing rules that it accepts, either voluntarily or because it is unable to change them, may or may not interfere in the creation of law, depending on whether there is a belief that such interference is legitimate. The motives vary between individual or group selfishness, altruism, the sense of fulfilling a higher duty, or simply pragmatically validated necessity.

Alongside legal creation is the problem of the validity of the law created. From the creator's point of view, the problem, whether good or bad, has been overcome by the creation itself. Not from the point of view of the individual or collective recipient. From this point of view, a positivist view will limit itself to assessing whether the rules that should have governed the creation have been respected, essentially from the point of view of the title or the regime. A non-positivist view, without underestimating these aspects, will tend to use broader criteria, evaluating norms by their content, according to supra-positive rules or values.

When you look at the history of Western law, it's not surprising that the most historically perceptible alternatives are the jusnaturalist and the positivist, the latter of which - although it was only at the end of the 18th century that it became anchored in ideologically structured constructions - was already perceived before - as suggested, for example, by the papal bull that deposed Emperor Frederick the Red-Beard in the 13th century - is apparently the most widespread today. Sociological alternatives, such as jusmarxism, or structural alternatives, such as institutionalism, have not historically had, or do not seem to have, comparable influence today. Casuistry itself, which can be traced back to ancient Rome at least until the advent of the Modern Age, although perhaps the one in which pragmatism is most visible, is currently distanced, first and foremost because the Roman-Germanic legal systems have moved away from it.

Since positivism is therefore the formulation that has been consciously or unconsciously most widely accepted by Western legislators and jurists in general, the truth is that the process of creating norms probably developed within formal frameworks or trends that were somehow pre-existing and went beyond them. This is a hypothesis that can only be equated by observing large sequential time series. Given the time available, we will focus on the relationship between the political organization of society and the creation of law.

3. WAYS OF CREATING AND REVEALIN LAW

Among the many ways of creating and revealing law, commonly known as sources, only law and custom have characteristics that make them clearly autonomous. The others, regardless of whether they are configured as jurisprudence, doctrine, precedent or other, are rarely modes of immediate creation of law, and can even often be traced back to forms of one of these.

Custom and law differ in terms of the intention to create law. When it does not exist, because it is not logically conceivable, it is custom. When it does exist, regardless of whether the specific moment of creation can be identified in time or space, it is a law. Law in the broad sense, of course, because the denomination used varies greatly.

The focus on creative intent, by facilitating the conceptual distinction, also makes it easier to relate it to the political organization of the society in which the phenomenon occurs.

It is to this extent that law is naturally associated with forms of organization in which political power is tied to a clearly identifiable entity, regardless of whether it is singular or collective in nature. Custom, on the other hand, is naturally associated with forms of organization in which power is dispersed, albeit informally, among different entities.

Using the concept of institution, as an *idea of a work or enterprise that lives and endures in the social environment,* as outlined by perhaps the best known of the institutionalists, Maurice Hauriou, it could be said that the law is preferably linked to societies in which one institution occupies a position that makes it capable of interfering in the internal life of all the others. In short, in a dominant position. Custom, on the other hand, tends to be preferentially linked to societies in which no institution occupies a position capable of generally interfering in the internal life of the other institutions, without their agreement. The ability to interfere does not necessarily mean effective interference, since non-interference can correspond to a political choice. In general terms, it can be said that the dominant institution referred

to above is currently the state, while the others are the other constitutions that make up the social fabric.

This synthesis is corroborated by historical observation. First, when we see that the state only acquires an active and captive place in political and legal theory in modern times, this means that it is only then that it is sufficiently dominant. Even if the term is applied to earlier times, the underlying meaning is not the same. In fact, the modern concept of the state, by integrating elements of a political and legal nature that could previously only be referred to separately, has risen to a level that is clearly superior to that of the other institutions that coexist with it. People, territory, and political power, understood as inseparable elements of a concept, are different in nature from the same concepts taken in isolation.

When we look at the evolution of societies over time, what we often find is a greater proximity between forms of organization in which political power is not exercised by a dominant institution and forms of legal creation that are predominantly customary. In contrast, when society is organized in a concentrated way, the preferred form is the law in its many variants.

Having said that, let's move on to looking at the chronological series.

The evolution of modern Western law, understood as the order in which Roman, Germanic and canonical components meet, for the purposes of the relationship between the political organization of society and the production of law, can essentially be observed in two great series which we will call, for convenience, epochs: the Roman and the post-Roman. This is an intentionally brief systematization, but for the purposes intended it is adequate. It obviously does not replace others for different purposes.

The first series corresponds to the Roman period. This is important because it bequeathed to posterity the fundamental bases of Western law that are still used today.

Private law, you might say, and not so much public law. But if we remember that a significant part of the civil law concepts that the nineteenth century pandects dogmatized were later received or exported to branches of the legal system that are now considered to be of a public nature, as they

were organized as scientific areas, the relevance of that moment, as a relevant matrix of Western law, is unquestionable. Furthermore, not all Western legal systems have preserved the distinction between the public and private hemispheres, which is why concepts with Roman roots are no longer present in them, even if they are occasionally camouflaged.

But it is also important because it has been such an extensive and rich millennial experience that it constitutes, in a way, a complete circle, because within it, from an organizational and political point of view, society has had time to experiment with almost every form of regime that is still conceivable in modern times, from forms in which power was extremely dispersed in society, exercised by magistracies on a basis of reciprocal control that clearly inspired modern *checks and balances* mechanisms, to authoritarian forms that, *mutatis mutandis*, have only been paralleled by modern dictatorships.

Looking at the variety of regimes and legal production, until the advent of the republican era, even if it was barely known, law seems to have been predominantly customary. Any laws that emerged at that time were not fully laws, but rather prescriptions with an essentially religious meaning and scope. Therefore, as they do not represent true normative creation, but merely the revelation of precepts of a higher nature, we are not dealing with laws, even in the broadest sense. The creation of law thus tends to be reduced to one source, namely custom. The law would be non-existent or of little relevance. We can therefore probably speak of a customary monism.

With the republican phase, in theory, power became available to all citizens through elections. Multiple forms of legal creation emerged, corresponding to different political forms of intervention by the people in social life, in total coexistence. Probably never before in European societies has there been such a level of pluralism. The framework of sources acquired a latitude that has not been surpassed to this day and although some forms of creation had a certain predominance, it cannot be said that there was a hierarchy of sources. All of them could provide solutions, and the balance was determined by jurists through *interpretation*. The law exists in various forms, but it has no primacy.

With the transition to the imperial phase, which initially appeared as a hybrid regime between a republic and a monarchy, the relationship between political power and the creation of law became closer.

As the prince concentrates power in himself, control of legal creation passes into his hands. At first, he doesn't destroy the previous pluralism. He simply tries to condition it, which he often succeeds in doing. Can we therefore speak of a shift from pluralism to monism? We don't think so. What is happening is that the creative autonomy of the sources is accommodated to the will of a guardian figure, first and foremost because the jurisprudents, as the main agents in the creation of law, are themselves accommodated to the figure of the ruler. It would therefore be preferable to describe these first moments - to which Romanists give the generic designation of principality - as one of mitigated or weakened pluralism.

Over time, the ruler's control of power strengthens, and the coexistence of sources becomes apparent. They exist, but they no longer create law. The prince begins the practice of legislating through the constitution, which is just one of many names that will be given to laws over time. The opposition between *lex* and *ius* (law and right) dates to this era, which in contemporary times illustrates some of the most interesting divides in today's legal world. But it is also worth noting that this preservation reveals a different legal sentiment from the one that in the future would characterize 19th century absolutism, when political power proposed replacing the old law with a new one, which only failed to materialize because the *ius civile* showed a resilience that could not be broken by Enlightenment minds.

At this stage, legal creation depends exclusively on the ruler, who exercises it through multiple types of normative acts (*constitutiones*). Previous law remains if it is not repealed through constitutions. In short, we can clearly speak of legal monism with full legal impact.

In summary, we have four main phases: a mitigated monism with a tendency towards customary predisposition, a full pluralism, a mitigated pluralism with a tendency towards legal predisposition and a full monism of an exclusively legal nature. These variations accompanied changes in the

organization of society and the way power was exercised: incipient concentration, full deconcentration, incipient concentration and full concentration.

Is this relationship coincidental, or does it correspond to a pattern that tends to repeat itself, regardless of the moment? To find out, we must continue to observe the historical, legal and political evolution of the West, now outside the Roman world.

The second chronological series to be considered is equally extensive, but not as long as the previous one. It covers the time between the end of the Roman world and the present day, roughly up to the third quarter of the 20th century. It corresponds to a set of moments that in traditional historiography are described as the medieval, modern, and contemporary eras.

In this case, too, several aspects need to be taken into account first. Two in particular.

One of these is the fact that this second chronological series does not have the political homogeneity of the previous one, in which everything happened within the same political-legal entity. In fact, although it covers roughly the same geographical area as the first series - in general terms, the territory that corresponded to the Western Roman Empire - during the course of the series, numerous legal-political entities will emerge that are completely independent of each other. Over time, several will become European states today. Others will disappear, becoming part of them.

Another is the fact that the phases to be considered in it had in their genesis does not change in the political regime, but changes in the profile of the ruler, with the regime tending to remain the same. Only close to the present day would some of these areas rehearse the transition from monarchies to republics.

Despite the differences at these two levels, for our purposes we believe it is legitimate to treat the underlying period as a single era, since the mental and political frameworks were roughly the same in all the entities that existed in this space over the time considered.

In the first phase, which we extend to around the 12th century, the ruler is little more than a *primus inter pares*. He has no natural legitimacy, seeking it from the oligarchies to which he himself belongs. The law is predominantly customary, of local or Germanic origin, with some other sources occupying niches of little importance. Kings do not generally feel motivated to make law, but rather to balance the interests of groups and individuals and to guarantee justice. We can speak of a monism with a tendency towards customary law.

In a second phase, from around the 13th century onwards, the various European political areas began to receive and apply the reborn Roman law internally, in a process of reception that had begun in the previous century. The jurists acquired significant weight as interpreters of this law and as creators of doctrine, showing some similarity to the ancient Roman jurisprudents. They became advisors to kings and induced them to take on the drafting of laws as a normal act of authority. Municipalities asserted themselves as economically and autonomously relevant entities, with their local ordinances. The king slowly assimilated the new trends, but still saw himself essentially as the guarantor of justice, before God and the people. Numerous legal sources coexist, and we can speak of full pluralism.

From the 15th century onwards, with the spread of humanism, the concept of the state improved. We enter the third phase. Machiavelli and Bodin appear on the scene and rulers finally realize the power they have at their disposal, a power that jurists had revealed to them based on the knowledge they had learned from Roman law, but which they had not yet fully exercised. Royal law then became the basis for legal creation and the other sources began to feel the weight of their lack of conformity with an emerging centralism. The first legal collections appeared. The different sources did not disappear, but they were all conditioned to the king's will, expressed in legal form. We can thus speak of a mitigated pluralism.

With the 17th century, the regime moved towards Enlightenment absolutism. Law came to be understood as an expression of reason. It does not formally extinguish the others, but conditions them, making them

almost irrelevant in terms of application and creation. One could speak of mitigated monism.

From the end of the 18th century, the liberal revolutions transformed absolute monarchical regimes into constitutional ones, occasionally into republican ones. The king, while remaining an important figure, was reduced to the symbolic level, but the power he had previously exercised did not disappear. It is transferred to the people, who hand it over to Parliament through mechanisms of representation. The law then reaches the highest level and becomes, in the form of a code, written reason. The other sources of law tend to disappear, or to have a residual or symbolic existence. We enter an era of full monism of legal incidence. Always on an upward trend in terms of the importance of the law, this phase will last in some places until the third quarter of the 20th century, in others until the 21st.

We therefore have four moments in this era: a mitigated monism of a tendentially customary nature, a full pluralism, a mitigated pluralism of a tendentially legal nature and a full monism of an exclusively legal nature. These moments accompanied changes in the organization of society and the way power was exercised: full deconcentrating, incipient concentration and full concentration.

4. FINAL NOTE

Reflecting on the synthesis described above, when we look at how power has related to the production of law in Europe, we can't help but notice the parallelism, *mutatis mutandis*, between what happened in Roman and post-Roman times. There are two most obvious findings.

It consists of the apparent link, in both series, between the concentration of political power in the person of the ruler and legal monism based on the law, and conversely, the link between the deconcentrating of power exercised in society and legal pluralism embodied in various sources.

As for the moments of transition, they would be characterized by mitigated monism or pluralism.

The other is the tendency to repeat the same evolutionary profile in the two chronological series, since regardless of the specific political regime in force at the time, the trend was apparently towards the transition from pluralism to monism, passing through intermediate phases.

But, while the former doesn't offer much doubt, a closer look at the latter suggests that the path is more complex than it first appears, or, if you like, less linear. The earliest Roman phase seems to have some similarities with the earliest post-Roman phase, since both seem to coexist with a certain degree of monism centered on custom, but not on law.

Framing this data in the time to which it refers suggests that the point of contact between such distant moments in time may have been the exercise of power by an oligarchy, in which the ruler was essentially a *primus inter pares*. In situations of this kind, monism would tend to be customary, as there are no favorable conditions for legal monism. In fact, legal monism would depend on the existence in society, at some level of diffusion, of a belief in the legitimacy of the holder of the power to govern, be it a specific ruler (regardless of whether they are a king, prince, emperor, dictator or other), or the people, directly or through mechanisms of representation, as is the case today.

Finally, it is also interesting to reflect on why a phase of concentration of power associated with absolute legal monism centered on the law, as occurred at the end of the late Roman imperial era, was succeeded by an era of monism with a customary incidence.

It doesn't hurt to admit that the cause was the restructuring of society associated with the entry of barbarian peoples and the subsequent dissolution of the Empire, with its implications for the previous, tightly controlled canons. We know that this happened at the end of the Roman world, and it is acceptable to admit that such a breakdown was accompanied by widespread refusal, doubt or mistrust as to the legitimacy of the existing power to regulate society through law.

Is it possible to draw conclusions for the future from the observations? We've already said that this anticipation is only hypothetical. However, the analysis carried out seems to contain evidence that is difficult to contradict and can at least be used to consider evolutionary hypotheses along the lines mentioned above.

As we know, the EU version of Europe is currently at a crossroads from which it is not easy to see a clear way out. The announced abandonment of one state, which is unlikely to happen, may be followed by others.

More out of faith than reason, we believe that this will not happen. Britain is the part of Europe whose people identify least with European identity and have invested the least in it. It's true that segments of other European peoples wouldn't disdain similar steps, but we don't believe that cultural pressure and the disconnection of identity are enough in such cases for many peoples to agree to give up the advantages of what they've already done together, especially when the Islamic terrorist threat begins to focus on everyone in general. It is therefore assumed that, with a few adjustments, the Community will be maintained.

That said, what can be drawn from the above observations? Given that the European countries that are part of it have, until recently, almost all lived in monist systems with a strong legal focus, is there any possibility of a significant change occurring at this level, as has happened in the past?

As for a return to a monism of customary incidence, that would be difficult. The complexity of society has already surpassed the level at which such an episode could naturally occur. However, we can't rule out the possibility of a very significant disruption, although reorganization would tend to be much quicker than in other times.

But it also seems undeniable that there is a drive in the current Community to recover some level of pluralism.

The coexistence of national legal systems and the Community legal system, which itself is made up of rules based on different sources, such as regulations, directives, *soft law*, etc., suggests that states may have gone too far down the path of legal monism. Or, at least, that it is not convenient or

possible to reproduce it at Community level, in the absence of indispensable political preconditions, which today are certainly unfeasible and possibly inappropriate.

In addition, political power itself is distributed across community, state and regional levels, a distribution that is now of enormous importance in the internal balance of various countries.

From our point of view, this moment is like what happened in the final phase of the reception of Roman Law in the 13th century, when national systems coexisted throughout Europe with the *utrumque*, i.e. the system resulting from the symbiosis of Roman and canon law. In which power was also distributed at local, national, and supra-national level, the latter in connection with the Sacred Empire and the Church.

As we have seen, this phase could be characterized as one of mitigated legal pluralism. It would then turn into mitigated monism before moving on to full legal monism. In modern times, the probable unfeasibility of strengthening state and community powers would suggest that the progression will not be in this direction, but possibly the other way around, towards full pluralism.