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The unity of the legal order – an illusion in a multilevel and fragmented legal world? Law, logic, and the search for coherence beyond the nation state

Tiesību sistēmas vienotība – ilūzija daudzlīmeņu un fragmentētā tiesiskajā pasaulē? Tiesības, loģika un saskaņotības meklējumi ārpus nacionālās valsts

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unity of the legal order, constitutionalising; fragmentation, systemic integration, European Union law, constitutional pluralism, property protection, investment arbitration

ATSLĒGVĀRDI:

tiesību sistēmas vienotība, konstitucionalizācija, fragmentācija, sistēmiskā integrācija, Eiropas Savienības tiesības, konstitucionālais plurālisms, īpašuma aizsardzība, investīciju šķīrējtiesa

Introduction

In the novel *Tyll* by Daniel Kehlmann, the protagonist Tyll Ulenspiegel has a conversation with a Jesuit (who is somehow cooperating with a sort of Inquisition) discussing the question: "If God is almighty, could He create a stone so heavy that even He could not lift it?"[2] One guesses that, during the Thirty Years' War, this question touched upon

1 This essay was prepared with the assistance of ChatGPT for language refinement and formal adjustments. All ideas, arguments, and potential errors remain solely those of the author.

2 *Kehlmann, D.* Tyll. Rowoht: Hamburg bei Reinbek, 2024, pp. 72–74.

a delicate matter. At first glance, however, it appears logical that God – being almighty – should be able to create the heaviest stone, even one so heavy that He could not lift it. Otherwise, He would not be almighty. Right?

The Jesuit's answer to the question in the novel is close to: "Of course He can! God is too vast to be one with Himself. That is why there is the Lord of the Air and his companions. That is why everything that is not God exists. That is why there is the world." While this response – requiring absolute faith in god – may have seemed satisfying in its historical context, philosophy exposes the logical inconsistency rather than accepting it as mystery. Upon reflection, one concludes that the question destroys itself, since its premises are mutually exclusive; in other words, the very assumption of omnipotence makes the logic collapse.

The question this essay addresses may therefore seem closely related. According to logic, the rules of a legal system should form a unity – they must complement one another and not contradict each other. Otherwise, they would be incoherent or illogical if, for instance, in their wording or application, they led to opposite interpretations or conflicting results. Put differently: if situation X is deemed legitimate in a legal order, it seems incompatible to regard the same situation X as illegal under that same order. Right?

The idea that all legal norms form a unified, contradiction-free system was formulated by Karl Engisch in his 1935 essay "Die Einheit der Rechtsordnung"[3]. Engisch argued that every legal norm must be interpreted as part of a coherent whole; a contradiction between norms would undermine the integrity and authority of the legal order itself. In his view, the unity of law is both a methodological and a substantive postulate[4]: methodological, because interpretation requires coherence between provisions; substantive, because the law's claim to justice and predictability depends on such internal harmony.

This concept appears almost self-evident and deeply rooted in the logic of the rule of law. Predictability, equality before the law, and legal certainty all presuppose that like cases are treated alike – that identical conduct cannot at once be lawful and unlawful. Without this assumption, the idea of law as a rational enterprise would collapse. Yet, while compelling in theory, the claim to unity becomes problematic once law moves beyond the self-contained framework of the nation-state.

Engisch's concept was developed within a domestic legal context, where hierarchy and interpretive authority were clearly defined. Yet even within national systems, coherence is often assumed rather than demonstrated.[5] Extending this expectation to multilayered frameworks intensifies the problem. If a single state order already struggles to maintain consistency, can international or supranational legal systems – with their

3 *Engisch, K.* Die Einheit der Rechtsordnung. Winter: Heidelberg, 1935.

4 Ibid., p. 69

5 *Felix, D.* Einheit der Rechtsordnung: Zur verfassungsrechtlichen Relevanz einer juristischen Argumentationsfigur. Tübingen: Mohr Siebeck, 1998.

competing sources, institutions, and objectives – genuinely achieve unity? If there is one idea of law, can there be one global legal order, a kind of world constitution? Or must the unity of law, like Kehlmann's paradox, "follow a different logic"?

Engisch's notion of systemic unity, though grounded in national jurisprudence, raises questions about its applicability in legal orders beyond the national state. These concerns are particularly reflected in the debate on the constitutionalization of international law, which describes the emergence of constitutional features within the international system (II.2.a.).[6] According to this line of thought, international law has evolved beyond a horizontal structure of coordination and now exhibits elements of hierarchy, normative supremacy, and institutional self-limitation.[7] Some authors take this further, suggesting that the international order has acquired features of a constitutional framework governing states and international institutions alike.[8]

The *constitutionalization* approach, however, stands in contrast to an analysis developed by the International Law Commission on the fragmentation of international law, which views differentiation as the dominant feature of modern international law (II.2.b.). If *constitutionalization* is more than metaphor, it may represent a reformulation of Engisch's thesis: unity not as an existing fact, but as a normative demand guiding interpretation and institutional design. The question remains whether such coherence can be sustained in a functionally plural and normatively divided global order.

At the same time, the European Union (EU) provides a distinct but related model of legal integration (II.3.). Its legal system has been described as a legal order *sui generis* that extends the constitutional logic of coherence beyond the nation state. The EU's claim to autonomy, primacy, and direct effect reflects a project of internal unity that goes beyond the constitutionalist reading of international law – yet the European experience also exposes the limits of such unity when confronted with persistent national and normative diversity.

To address these problems, the following analysis (II.4) examines the protection of one legal concept – property (in a wider sense) – across several normative layers: international law, European Union law, and national constitutional law. If these regimes protect if not the same, a similar, legal interest according to compatible principles, this

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6 *Klabbers, J., Peters, A., Ulfstein, G.* The Constitutionalization of International Law. Oxford University Press: Oxford, 2009.

7 *Peters, A.* The Merits of Global Constitutionalism. Indiana Journal of Global Legal Studies, vol. 16, issue 2, 2009, Article 2. Available at: https://www.repository.law.indiana.edu/ijgls/vol16/iss2/2 [last viewed 24.11.2025].

8 *Fassbender, B.* The United Nations Charter as the Constitution of the International Community. Columbia Journal of Transnational Law, vol. 36, 1998, pp. 529–619; *Kumm, M.* The Legitimacy of International Law: A Constitutionalist Framework of Analysis. European Journal of International Law, vol. 15, 2004, pp. 907–931. https://doi.org/10.1093/ejil/15.5.907

might indicate an emerging unity of law. If, however, their rationales diverge or conflict, the assumption of unity will reveal itself as a fiction – a product of logical aspiration rather than institutional reality.

1. Between coherence and contradiction: The idea of the unity of the legal order in a fragmented world

1.1. The concept as developed by Engisch

In his 1935 essay "Die Einheit der Rechtsordnung", Karl Engisch developed the idea that a legal order must be understood as a coherent and internally consistent system rather than a loose collection of independent norms. Each legal rule derives its meaning from the total structure of the legal order; to apply one provision correctly is to presuppose the validity of the system as a whole. A contradiction between norms does not merely create interpretive uncertainty but undermines the very legitimacy of the law itself.[9]

Although this conception – today read in the sense of "absence of contradictions" – may appear persuasive within the closed system of the nation-state,[10] legal scholarship seems to agree that eventually, even national legal orders are too diverse to display a thorough unity.[11] If this already holds at the national level, it is all the more the case in international and supranational law, where recent developments expose significant limits. The rise of legal pluralism, functional differentiation, and overlapping jurisdictions created a normative landscape in which (even) relative coherence can no longer be presupposed but must be continuously constructed through other methodological means. The question today is not whether unity exists, but how – and to what extent – it can be maintained amid diversity.

1.2. Unity in international law? Constitutionalization vs. fragmentation

a. The Constitutionalization thesis

In recent decades, parts of international law have increasingly been described as undergoing a process of constitutionalization. It somehow seems to parallel Francis Fukuyama's "The End of History and the Last Man" in an optimistic way as it builds on an ongoing process of liberalization and juridification. The term refers to the emergence of

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9 *Engisch, K.* Die Einheit der Rechtsordnung. Winter: Heidelberg, 1935, p. 3.

10 However, see e. g. *Felix, D.* Einheit der Rechtsordnung: Zur verfassungsrechtlichen Relevanz einer juristischen Argumentationsfigur. Tübingen: Mohr Siebeck, 1998, pp. 144, 399.

11 *Felix, D.* Einheit der Rechtsordnung: Zur verfassungsrechtlichen Relevanz einer juristischen Argumentationsfigur. Tübingen: Mohr Siebeck, 1998, p. 399.

constitutional features within the international system – hierarchical structures of norms, general principles such as the rule of law and human rights, and institutional mechanisms of accountability – that transcend the traditional model of coordination among sovereign states.[12] This development is most visible in certain specialised fields: international human rights law and international economic law – in particular trade and investment law in the first two decades after the creation of the WTO – display relatively dense normative hierarchies, institutionalised dispute settlement, and even mechanisms that resemble to enforcement and that mirror constitutional structures.[13] The WTO dispute settlement system, the ICSID arbitration framework, and the human rights treaty bodies – such as the ECHR or the Inter-American Court for Human Rights (IACHR) – exemplify areas where international law increasingly resembles a structured legal order governed by general principles rather than mere consent.[14]

In other areas, however, constitutionalization remains fragmentary. International environmental law, humanitarian law, and security law still operate largely on the basis of political coordination, soft-law instruments, and context-specific regimes. Here, coherence depends less on hierarchical ordering than on functional cooperation. The interaction between these regimes frequently exposes the tensions of constitutionalization itself: trade law's emphasis on market access and investor protection may collide with human rights or environmental obligations, producing normative "collisions" rather than unity.

Thus, while constitutionalization marks a movement toward coherence, it simultaneously reveals the structural asymmetries of the international legal system. In some domains – particularly economic and human rights law – unity appears as an achievable interpretive ideal; in others, the centrifugal logic of sovereignty and policy differentiation resists constitutional ordering.[15] The concept therefore highlights a similar paradox to that, Engisch confronted within domestic law: coherence remains indispensable for legitimacy, yet impossible to achieve in full within a pluralistic normative universe.

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12 With further references: *Krajewski, M.* Völkerrecht. 3rd ed. Nomos: Baden-Baden, 2023, p. 51 para. 11, 12; *Herdegen, M.* Heile Welt in der Zeitenwende: Idealismus und Realismus in Recht und Politik. Beck: Munich, 2003, p. 84.

13 *Krajewski, M.* Völkerrecht. 3rd ed. Nomos: Baden-Baden, 2023, p. 24, para. 7; *Schewe, C. J.* Die Beteiligung nichtstaatlicher Akteure in Streitschlichtungssystemen des internationalen Handels. Nomos: Baden-Baden, 2008, p. 206.

14 Critical: *Herdegen, M.* Heile Welt in der Zeitenwende: Idealismus und Realismus in Recht und Politik. Beck: Munich, 2003, Chapter VI, p. 131.

15 *Krajewski, M.* Völkerrecht. 3rd ed. Nomos: Baden-Baden, 2023, p. 52, para. 14.

b. Fragmentation, interpretive unity and procedure

While some areas of international law show elements of constitutional structure, the international legal order as a whole remains characterised by fragmentation. The proliferation of specialised regimes – human rights, trade, investment, environmental protection, humanitarian law, maritime law – has produced a dense web of partly autonomous subsystems, each governed by its own institutions, procedures, and value priorities.[16] This diversity reflects the functional differentiation of the global legal landscape but also undermines any assumption of overarching unity. This holds even true for specific branches of international law, such as trade law. Here, overlapping trade agreements create a "spaghetti bowl" which might lead to confusion about the applicability of trade rules and which have also been regarded as undermining the global trade system established with the WTO.[17]

The International Law Commission (ILC) addressed this phenomenon in its 2006 Report on the Fragmentation of International Law.[18] The Commission noted that fragmentation is not a symptom of disorder but an inherent feature of the international system's evolution: as new functional needs arise, specialised regimes emerge with their own rationalities and methods of interpretation. Yet this differentiation also generates normative tension – for example, when trade law's emphasis on liberalisation conflicts with environmental or labour standards, or when investment protection regimes constrain state autonomy in pursuing social and ecological goals. These aspects are not only of academic interest but have been subject to a number of disputes in WTO law[19] and in EU law[20].

To mitigate such conflicts, the ILC identified several interpretive techniques aimed at preserving a minimal level of systemic coherence. These include the principles of lex specialis, lex posterior, and above all the method of systemic integration under Article

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16 *Krajewski, M.* Völkerrecht. 3rd ed. Nomos: Baden-Baden, 2023, p. 52, para. 14.

17 *Leal-Arcas, R.* Proliferation of Regional Trade Agreements: Complementing or Supplanting Multilateralism? *Chicago Journal of International Law,* vol. 11, No. 2, 2011, Article 23. Available at: https://chicagounbound.uchicago.edu/cjil/vol11/iss2/23 [last viewed 24.11.2025]; regarding the Spaghetti Bowl…" see the WTO website: https://www.wto.org/english/tratop_e/region_e/region_e.htm [last viewed 24.11.2025].

18 International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc. A/CN.4/L.682 and A/CN.4/L.702 (2006), paras. 56–95, 410–480.

19 A list of issues – such as GMOs or Hormones, Beef – can be found on the WTO website, download: https://www.wto.org/english/tratop_e/dispu_e/dispu_subjects_index_e.htm [last viewed 24.11.2025].

20 Most of the cases in Schmitz´diagram on the economic freedoms deal with these matters, download: https://www.thomas-schmitz-eu.de/Lehre/Jurisprudence-on-integration-1.htm#Grundfreiheiten [last viewed 24.11.2025].

31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT).[21] These interpretive tools do not eliminate contradictions; they rather offer a procedural grammar through which different regimes may be reconciled. In this sense, unity is no longer understood as the absence of conflict but as the capacity to manage contradictions through interpretation.

In addition to these interpretative means, procedure may mitigate the negative effects of fragmentation. Doctrines such as on *lis pendens* and on *res iudicata*,[22] aim to prevent diverging judgments in parallel proceedings before different fora. They thereby serve an objective that resembles, in functional terms, Engisch's idea of the "Einheit der Rechtsordnung".

Ultimately, fragmentation does not negate the concept of unity; it redefines it. The coherence of international law today resides not in its structure but in its practice – in the willingness and capacity of courts, tribunals, and institutions to interpret diverse norms within a shared communicative framework. The task of maintaining unity has thus shifted from architecture to hermeneutics: from the design of a single system to the craft of reasoning across difference.

1.3. A legal order *sui generis*: the European Union

If any legal system beyond the nation-state embodies Engisch's aspiration toward coherence, it probably is the European Union. The EU's legal order, grounded in its founding treaties and shaped by the jurisprudence of the Court of Justice of the European Union (CJEU), aspires to a degree of internal unity and autonomy unparalleled in other supranational frameworks.

In its early case law, particularly Van Gend en Loos (1963) and Costa v. ENEL (1964), the CJEU proclaimed two transformative doctrines: direct effect and supremacy.[23] These principles established that EU law confers rights directly upon individuals and prevails over conflicting national norms. The result was a legal order that no longer merely coordinated national systems but constituted an autonomous and self-referential framework – a legal order *sui generis*.[24]

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21 Vienna Convention on the Law of Treaties, 23 May 1969, 1155 UNTS 331, Art. 31(3)(c).

22 For the field of International Arbitration see e.g.: *Söderlund, C. Lis Pendens, Res Judicata* and the Issue of Parallel Judicial Proceedings. Journal of International Arbitration, vol. 22, issue 4, 2005, pp. 301–322. Available at: https://kluwerlawonline.com/journalarticle/Journal+of+International+Arbitration/22.4/JOIA2005017 [last viewed 24.11.2025].

23 Van Gend en Loos (Case 26/62) [1963] ECR 1; Costa v. ENEL (Case 6/64) [1964] ECR 585.

24 Schmitz provides an overview at a glance on the ECJs corresponding land-mark decisions: https://www.thomas-schmitz-eu.de/Downloads/Schmitz_EU-Law_diagram5.pdf [last viewed 24.11.2025].

The unity of EU law is maintained through both its structural and value-based dimensions. Structurally, it rests on the primacy of Union law and the obligation of national courts to ensure its uniform application. Particularly, the preliminary ruling procedure (Art 267 TFEU) ensures judicial dialogue between national courts and the CJEU and thereby enables the consistent interpretation and application of Union law across the Member States.[25] Teleologically, it is underpinned by the constitutional values of Article 2 TEU – respect for human dignity, freedom, democracy, equality, and the rule of law. Through these principles, the CJEU has sought to construct a coherent normative order capable of integrating diverse national legal traditions. Finally, the EU's extensive secondary legislation under Article 288 TFEU adds to a high degree of juridification.

Yet, this unity remains both incomplete and contested. From a Kelsenian perspective, the EU lacks a single uncontested Grundnorm; ultimate authority continues to be shared between the Union and its Member States.[26] In the PSPP decision of the German Federal Constitutional Court (2020), the tension between supranational and national constitutional authority reached something close to a climax, as the BVerfG challenged the CJEU's proportionality review and declined to follow the Court's ruling.[27] Such incidents reveal that the "unity" of the EU legal order is conditional and negotiated rather than absolute.

Substantive divergences among Member States further demonstrate the fragility of this unity. While Article 2 TEU defines shared values, their interpretation varies widely: constitutional identity debates in Poland and Hungary concerning the rule of law, judicial independence, and family rights stand in open contrast to liberal constitutional traditions in states such as Germany, France, or Sweden. These conflicts are not mere political aberrations but reflect enduring pluralism within the Union's constitutional culture.[28]

Consequently, the EU may best be understood not as a fully unified legal order, but as constitutional pluralism in practice – a system held together by dialogue, compromise, and procedural mechanisms rather than by a single normative hierarchy. It represents

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25 Court of Justice of the EU, Statistics concerning the judicial activity of the Court of Justice – 2024. Available at: https://curia.europa.eu/jcms/jcms/Jo2_7032/en/ [last viewed 24.11.2025].

26 Schmitz provides an overview on the Constitutional jurisprudence in the member states on the participation in the process of European integration: https://www.thomas-schmitz-eu.de/Lehre/Jurisprudence-on-integration.htm [last viewed 24.11.2025].

27 BVerfG, Judgment of 5 May 2020 – 2 BvR 859/15 (PSPP), ECLI:DE:BVerfG:2020:rs20200505.2bvr085915.

28 On the wider matter, see e.g. *Schewe, C. /Blome, T.* The Rule of Law Mechanism" and the Hungarian and Polish Resistance: European Law Against National Identity? Juridiskā zinātne / Law, No. 14, 2021, pp. 49–67. https://doi.org/10.22364/jull.14.03

the most advanced attempt to reconcile Engisch's ideal of systemic coherence with the reality of normative diversity. The EU legal order thus mirrors the central paradox of modern law itself: it must assert its unity precisely by managing, not abolishing, its internal plurality. Or, as the EU formulates its motto: "united in diversity".[29]

1.4. Multiple layers of law: Different shades of property

The tensions between unity and plurality become most tangible when a single legal concept – property – is examined across multiple normative levels. Each layer articulates its own understanding of ownership, protection, and legitimate interference, reflecting distinct historical and functional rationalities.

At the national level, Article 14 of the German Grundgesetz[30] enshrines property as a fundamental right, yet explicitly subjects it to a "social obligation" (Sozialbindung).[31] This formulation rejects an absolutist conception of ownership: property is embedded within the constitutional order and must serve the public good. The German Federal Constitutional Court has repeatedly stressed that the guarantee of property protects both individual autonomy and the social responsibility inherent in ownership.[32]

At the European level, property protection assumes a more complex and multi-faceted form. Within the internal market, the fundamental freedoms of movement – particularly of establishment and capital (Arts 49, 63 TFEU) – secure proprietary and economic interests through market access and competition. Parallel to this, Article 17 of the Charter of Fundamental Rights of the European Union guarantees the right to property but subjects it to restrictions justified by the general interest and proportionality.

A further European layer arises from the European Convention on Human Rights (ECHR). Article 1 of Protocol No. 1 protects the peaceful enjoyment of possessions but allows wide discretion for states to control or expropriate property in the public interest. The European Court of Human Rights (ECtHR) applies a structured three-step test – lawfulness, legitimate aim, and fair balance – while affording states a broad margin of

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29 See the corresponding website of EU: https://european-union.europa.eu/principles-countries-history/symbols/eu-motto_en [last viewed 24.11.2025].

30 In Latvia, Art. 105 *Satversme* of the Republic of Latvia expressly protects property; regarding the particularities of Latvia, see: *Lazdiņš, J.* Rechtspolitische Besonderheiten bei der Entstehung des lettischen Staates und seiner Verfassung. Journal of the University of Latvia. Law, vol. 7, 2014, pp. 9–20.

31 Art. 14 GG: "Eigentum verpflichtet. Sein Gebrauch soll zugleich dem Wohle der Allgemeinheit dienen."

32 BVerfGE 50, 290 (1979) – Investitionshilfe; BVerfGE 101, 54 (2000) – Nassauskiesung.

appreciation.[33] Accordingly, the ECHR system mediates between individual protection and collective welfare rather than enforcing an abstract right of ownership.

At the international level, property acquires yet another meaning through investment protection law, particularly under bilateral investment treaties (BITs) and the Energy Charter Treaty (ECT). These instruments guarantee investors protection against direct and indirect expropriation and ensure fair and equitable treatment (FET).[34] Arbitration tribunals, operating under ICSID or UNCITRAL rules, have interpreted these clauses expansively, often constraining the regulatory autonomy of states and raising questions about democratic legitimacy and coherence across legal orders.

The Vattenfall v. Germany proceedings vividly illustrate these tensions.[35] Following Germany's post-Fukushima decision to phase out nuclear energy, the Swedish energy company Vattenfall initiated arbitration under the ECT, claiming that the legislative measures constituted an unlawful expropriation and violated its legitimate expectations.[36] The German government defended the phase-out as a democratically enacted policy grounded in constitutional environmental and safety principles. The conflict was eventually settled, but the case revealed the structural paradox: a measure legitimate and even constitutionally required under one legal order could simultaneously be considered unlawful under another.

This multiplicity of protective regimes demonstrates how the same legal concept – property (in a broader sense) – acquires different meanings depending on context, institution, and normative logic. The more systems that claim to protect property, the less stable its definition becomes. Unity does not result from uniformity, but from the ongoing negotiation between different logics, such as constitutional, supranational, human-rights and economic logics. Law thus mirrors the plural structure of the society it regulates: it claims coherence, yet remains operative precisely because its internal inconsistencies can be managed.

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33 ECtHR, Sporrong and Lönnroth v. Sweden, Judgment of 23 Sept 1982, Series A No. 52; James and Others v. UK, Judgment of 21 Feb 1986, Series A No. 98.

34 See *Dolzer, R., Kriebaum, U., Schreuer, C.* Principles of International Investment Law. 3rd ed. Oxford University Press: Oxford, 2022, pp. 82–121.

35 The case has been extensively discussed by the German media and even has its own Wikipedia entry: https://de.wikipedia.org/wiki/Vattenfall_gegen_Bundesrepublik_Deutschland [last viewed 24.11.2025].

36 Vattenfall AB and others v. Federal Republic of Germany, ICSID Case No. ARB/12/12 (https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/12/12).

2. Between logic and life: The limits of rationality in legal science

Law, possibly more than other disciplines within the social sciences, aspires to logic. It seeks coherence, predictability, and formal correctness. From Aristotle's syllogism to Kelsen's Stufenbau and Engisch's Einheit der Rechtsordnung, legal reasoning has long been framed as an exercise in logical reconstruction. The jurist's task, in this view, is to ensure that the system remains self-consistent – that it "makes sense" in a way that can be followed and replicated. Logic provides the appearance of certainty, and with it, the legitimacy of the law itself.

Yet the law is not a purely rational construct. It operates in the social world, shaped by human behaviour, historical contingency, and collective psychology. Every legal rule represents a crystallisation of societal values; every judgment translates moral and political intuitions into formal reasoning. The aspiration to coherence therefore continually collides with the pluralism of human experience.

This collision is intrinsic to the discipline. The law simultaneously pursues several partially incompatible goals: justice, legal certainty, and social expediency. Justice appeals to moral intuition and fairness in the individual case; legal certainty requires generalisation and predictability; expediency demands responsiveness to social and economic needs. These aims pull in different directions. A rule that ensures predictability may appear unjust in a specific case; a judgment that realises justice may undermine stability for others. The "unity" of the legal order, if it may be seen at all, thus appears not as a fixed logical structure but as a delicate equilibrium between these competing objectives.

This may be seen as something similar to *Wertungswidersprüche* (contradictions of valuation, in Engisch´s terms) given that contradictions are not failures of reasoning but expressions of a pluralistic social reality. Law, as a social science, cannot be pure logic because the society it governs is not logical. Its function is not to describe the world but to structure coexistence within it. In this respect, the inevitable incoherences of modern multi-level systems are not flaws but features. It is the coexistence of diverse rationalities – constitutional, moral, economic, and political – that enables the law to respond to human complexity.

The paradox in Kehlmann's Tyll and the paradox of law share a similar emotional charge, though they differ in form. In Tyll, the problem is purely logical: omnipotence refutes itself once pushed to its extreme. In law, the problem arises when abstract logic confronts the disorder of life. Both, however, expose the same discomfort: reason yields results, that offend intuition. We feel unsettled not because the logic is wrong, but because it fails to satisfy our sense of meaning or justice. Logic reaches its limit where it meets the human.

In this sense, the "unity of the legal order" remains an ideal, but an impossible one – much like Kehlmann's stone. However, it would be an overstatement to draw a perfect parallel: law cannot "do anything." Yet one may say that different legal disciplines require and apply different degrees of logic.

Conclusion

The paradox in Kehlmann's Tyll – whether god was able to create a stone too heavy for him to lift – was ultimately not theological but logical: the assumption of omnipotence generates a contradiction that no answer can dissolve. The (simplified) answer provided by the Jesuit – *that god knows a different logic* – requires absolute belief and faith in god. A similar paradox appears when law imagines its own unity. Once we assume that a legal order must be coherent, consistent, and contradiction-free, every instance of fragmentation seems like a problem to be solved. Yet, as the preceding analysis shows, fragmentation is not an accident of legal evolution but one of its structural conditions.

Even within the nation-state, the appearance of unity conceals a constant negotiation among competing values. Modern constitutional orders balance individual freedom against social solidarity, market liberty against environmental protection, private autonomy against democratic control. These principles coexist not through logical harmony but through the pragmatic balancing of conflicting purposes. The German constitutional order, for instance, strives to reconcile liberty and social responsibility under Article 14 GG's concept of property; the result is not a single logic but a managed tension.

If unity is fragile within one legal system, it becomes even more elusive across several. National, supranational, and transnational orders differ in origin, authority, and purpose. They were shaped by distinct historical experiences and political compromises, and they operate according to divergent institutional logics. When they interact – as in the overlapping protections of property under constitutional, EU, human-rights, and investment law – their rationalities collide rather than merge. The closer these systems approach each other, the sharper the points of friction become.

Thus, the notion of a single "world legal order" remains persuasive only in abstract discourse. The international system lacks the shared normative foundation that would allow true unity, and even the European Union achieves coherence only through continuous dialogue and contestation. In Luhmann's terms, global law resembles a network of differentiated social systems: they communicate, coordinate, and occasionally conflict, but they do not fuse into a single hierarchy. Law is not a pyramid; it is a web.

The lesson of Tyll, then, is not that the idea of unity is naïve, but that its status is different from what it first appears. Unity is not a descriptive reality but a regulative ideal – a horizon that guides interpretation without ever being fully attainable. The strength of law lies not in eliminating contradiction but in enduring it, transforming tension into structure and incoherence into dialogue. A legal order that acknowledges its own plurality is not weaker for doing so. It is more honest, more resilient, and perhaps, in the end, closer to justice. And perhaps the parallel to the Jesuit's answer is this: just as the world, in his account, exists because God is

"too vast to be one with Himself," modern law persists not because it achieves unity, but because it is capacious enough to contain plurality without disintegrating under it.[37]

KOPSAVILKUMS

Šajā rakstā tiek pārskatīta Karla Engiša tēze par "tiesību sistēmas vienotību" un pārbaudīta tās pamatotība ārpus nacionālās valsts ietvariem. Rakstā salīdzināta starptautisko tiesību konstitucionalizācijas dinamika (jaunu normu hierarhiju veidošanās, tiesvedības lomas pieaugums, publisko tiesību principi) ar ANO Starptautisko tiesību komisijas skatījumu uz starptautisko tiesību fragmentāciju un sistēmisko integrāciju saskaņā ar Vīnes Konvencijas par starptautisko līgumu tiesībām 31. panta 3. punkta c) apakšpunktu. Eiropas Savienība kalpo kā salīdzinošs piemērs autonomai, vērtībās balstītai tiesību sistēmai, kas tiecas pēc saskaņotības, izmantojot tiešās iedarbības un pārākuma principus, taču vienlaikus paliek ierobežota ar konstitucionālo plurālismu un strīdīgu kompetenču sadalījumu (piemēram, Vācijas Federālās konstitucionālās tiesas *PSPP* lieta).

Turpinājumā, izmantojot īpašuma aizsardzības piemēru, rakstā tiek parādītas atšķirīgās pieejas nacionālajās konstitucionālajās tiesībās (Vācijas Pamatlikuma 14. pants), Eiropas Savienības tiesībās (iekšējā tirgus brīvības un Eiropas Savienības Pamattiesību hartas 17. pants), Eiropas Cilvēktiesību konvencijas sistēmā (1. protokola 1. pants, taisnīgā līdzsvara un novērtējuma brīvības doktrīna), kā arī starptautiskajās investīciju tiesībās (taisnīga un vienlīdzīga attieksme, netieša ekspropriācija un Enerģētikas hartas līgums), to atspoguļojot ar Eiropas Cilvēktiesību tiesas spriedumu lietā "Vattenfall v. Germany".

Analīzē tiek pamatots, ka "vienotība" vairs nenozīmē konfliktu neesību, bet gan spēju interpretācijas ceļā pārvaldīt normu sadursmes. Tiesību pretenzija uz saskaņotību saglabājas kā regulatīvs ideāls, taču to praktiskā īstenošana atspoguļo sociālās pasaules heterogenitāti. Raksta nobeigumā secināts, ka vienotība, lai arī metodoloģiski neaizstājama, daudzlīmeņu tiesību sistēma nevar tikt pilnībā institucionalizēta: juridiskajai argumentācijai ir jānes pretrunu smagums, nevis jācenšas tās izskaust.

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37 Here, I am alluding to Jānis Lazdiņš' sense for poetry: *Lazdiņš, J.* Pliekšāns' (Rainis') "Formula of Happiness". Juridiskā zinātne / Law, No. 13, 2020, pp. 153–163. https://doi.org/10.22364/jull.13.09