IOSR Journal Of Humanities And Social Science (IOSR-JHSS)
Volume 28, Issue 4, Series 2 (April, 2023) 31-43
e-ISSN: 2279-0837, p-ISSN: 2279-0845.
www.iosrjournals.org

Die Grundnorm: Hans Kelsen's Solution to the Problem of Normative Foundation

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Abstract
The Normative Foundation Problem is debated from the beginning of legal doctrine, receiving numerous answers, almost always of a jusnaturalistic nature, until the end of the Modern era. Heir and exponent of the juspositivism founded by John Austin in the 19th century, Hans Kelsen postulates the existence of a Fundamental Hypothetical Norm (Grundnorm), validating first of all the norms of a specific legal order, and of the order itself as cohesive unit. Herbert Hart, also a juspositivist, later creates his own model of legal order, offering as a solution to this problem a Rule of Recognition, criticizing Hans Kelsen's Kantian logic, especially regarding its abstractionist nature.

Keywords: Normative Foundation Problem; Fundamental Hypothetical Norm; Hans Kelsen; Rule of Recognition; Herbert Hart.

Date of Submission: 26-03-2023 Date of Acceptance: 08-04-2023

I. Introduction

The Problem of Normative Foundation can be formulated as follows: "Where does the law begin? What is its first command?" - as one can see from the outset, these are not simple questions to answer. In fact, it is fair to say that it constitutes, par excellence, one of the most complex issues in legal science, making it evident that, before even approaching its core, other questions of similar difficulty must be answered, such as, "What is law?". As expected, the historical concern of thinkers around this fundamental problem has filled countless pages in the centuries-old record of legal debate.

Throughout this discussion, various solutions are proposed: while some participants argued that law would begin in a general order of the cosmos, others defended its inception in the divine persona; while some sought its origin in the curious phenomenon of human reason, others pointed to the social construction of conduct habits in a community. This profuse divergence, however, allowed for a small expansion of understanding on the subject at each moment of dialectic, simultaneously clarifying previously omitted points and exploring new approaches to attack the problem. One of these approaches, which has grown exponentially in importance since the late 19th century, was that proposed by Legal Positivism.

Although they can be considered relatively recent names (reiterating that, as a subject, law has existed for more than three millennia), legal positivists Hans Kelsen and Herbert Hart deserve significant attention in this debate: the former, almost unanimously regarded as the foremost exponent of the doctrine, is largely responsible for the fact that, at this historical moment, the idea of law as an autonomous social science is not absurd - in the General Theory he proposed, he laid technical and conceptual foundations that spread across the legal education of nearly all established nations; the latter, in turn, succeeded in the difficult task of advancing positivist thought, likewise constructing his own General Theory and establishing an academic counter-voice that remains highly relevant and current.

Thus, it is pertinent for legal philosophy to examine in depth what these two authors postulated about the Problem of Normative Foundation: Kelsen, in the form of his Hypothetical Basic Norm constructed on Kant's epistemological methods, and Hart, in the form of his Rule of Recognition constructed in the mold of British empiricism and in dialogue with the realist perspective of law. This, therefore, is the purpose of the present work: to briefly present the thinkers who, over the centuries, have offered solutions to the aforementioned problem; to expose and explain Kelsen's logic for his solution, and finally, to expose and explain Hart's solution, establishing a dialogue between these two latter theorists, comparing their theories.

To achieve these objectives, the deductive method was employed here, observing the most reliable sources available, giving preference to the works of their original authors, even if translated, to substantiate the bibliographic research.

1. Hans Kelsen and the Pure Theory of Law

Hans Kelsen (Prague, 1881 - Berkeley, 1973) is one of the leading figures in Legal Positivism. The impact of his studies can be directly measured by the fact that, when metaphorically examining contemporary legal practice and education, it is possible to find some of his formulas and definitions so fully assimilated by legal practitioners and scholars that, already considered basic and self-evident, they are detached from his name due to their common use - "but, if one searches in his writings, 'he is there'"[1]. In truth, the body of his extensive work goes beyond the realm of law, addressing Epistemology, Politics, Sociology, and other areas of the Human Sciences.

Upon becoming a full professor at the Faculty of Law at the University of Vienna (1911), Kelsen led a notably intense professional and academic life. He participated in drafting the 'Austrian Constitution Project,' which was approved in 1920 (marked as the main architect of centralized constitutional review, widely adopted by subsequent constitutions), and became a member and permanent advisor of the Austrian Constitutional Court in the same year. Due to the Nazi regime, he moved several times across Europe, ultimately immigrating to the United States in 1940. He then taught at Harvard University and later at the University of California, Berkeley, where he retired as a professor in 1952, never ceasing his intellectual activities, and passing away 21 years later.

Some of his works stand out for their importance and innovation among an extensive list of publications, such as "Fundamental Problems of Public Law" (Hauptprobleme der Staatsrechtslehre - 1911), "The Problem of Sovereignty" (Das Problem der Souveränität und die Theorie des Völkerrechts. Beitrag zu einer Reinen Rechtslehre - 1920), "General Theory of the State" (Allgemeine Staatslehre - 1925), and "General Theory of Law and State" (General Theory of Law and State - 1945). However, with little or no controversy, it can be said that "Pure Theory of Law" (Reine Rechtslehre - 1934) is Kelsen's most well-known and criticized work.

Between the covers of this book, the author explains his solution to the Problem of Normative Foundation in the form of the infamous Hypothetical Basic Norm (Grundnorm). Considering the scope and breadth of the work at hand and the practical limitations of this study, it is imperative to clarify that there is no intention in this chapter to present the entire content of the Pure Theory (not least because it would make no academic contribution to merely expose a work that is already written and widely debated - the reader would be better off reading and interpreting it in its original form); here, for the purpose of examining the implications of interpreting legal reality, only the concepts that form the author's logical sequence in constructing the answer to the aforementioned problem will be addressed, from the meaning of the legal act to the end of his propositions on the dynamics of the legal order, including his normative theory.

1.1 The Path of the Pure Theory

The Pure Theory of Law is a work whose repercussions continue to resonate nearly a century after its publication. Thus, it is of interest for the present study to analyze the reasons why Hans Kelsen considered the need for such a work, the internal and external objectives of the piece, and the means chosen to achieve these objectives.

1.1.1 The Reasons

When Hans Kelsen entered the doctrinal debate of his time, there was no comprehensive general theory based on Austin's call for a strict epistemological delimitation of law. As previously mentioned, the various schools of thought presented widely divergent conceptions of the concept of law against each other, and they continued to construct systems for understanding and analyzing the legal phenomenon in a syncretic manner. They made use of notions, concepts, and logical constructions from other areas of the human sciences and, moreover, sought to do so through value-laden methodologies regarding the content of norms. *In verbis*:

[...]a glance at the traditional legal science, as it developed during the 19th and 20th centuries, clearly shows how far it is from the requirement of purity. In a completely uncritical way, jurisprudence has become entangled with psychology and sociology, with ethics and political theory. This confusion can perhaps be explained by the fact that these sciences refer to objects that undoubtedly have a close connection with the law.[2]

In this way, for example, while the historicist line of reasoning aimed to evaluate certain concrete norms based on their compatibility with the Volksgeist, the modern natural law school, similarly, did so by comparing them with natural laws deduced from Reason. Believing that these cross-perspectives of law prevented it from ultimately attaining the status of a true and autonomous science, Kelsen constructed and adopted the fundamental principle of 'purity' to guide the Kantian transcendental-logical methodology he would use throughout his work. He aimed to "avoid a methodological syncretism that obscures the essence of legal science and blurs the boundaries imposed

[1] SGARBI, Adrian. 2009, p. 46.

[2] KELSEN, Hans. 1994, p. 1.

on it by the nature of its object."

1.1.2 The Ends

Having presented the author's reasons for developing his theory, it is also necessary to clarify the objectives of the work: Kelsen makes efforts to answer the questions "What is law?" and "How does law behave?", founded on the principle of purity adopted, as explained in the previous section. By adhering to the limitations he deemed necessary to stay strictly within the legal field, the Pure Theory aims to provide an objective description of the metaphorical arrangement and functioning of the law's gears, assembling an explanatory system that can, with a reasonable degree of predictability, describe its behavior. On this, the Austrian writes:

The Pure Theory of Law is a theory of positive law - of positive law in general, not of a specific legal order. It is a general theory of law, not an interpretation of particular legal norms, national or international. [...] As a theory, it aims solely and exclusively to understand its own object. It seeks to answer this question: what is law and how does it operate? However, it is no longer concerned with the question of how law should be or how it should be made. It is legal science, not legal politics.[3]

Although he makes it clear that he does not deny the connection with other disciplines, the author argues for the existence of law as an autonomous science, possessing its own tools and lenses through which it can be studied in a technical and unique way without the need for borrowing conceptual elements from other fields. Kelsen, as mentioned, is a successor of Austin in the desire for a well-defined epistemological delimitation of what is relevant and what is not for the object of study, aiming to "free legal science from all foreign elements." Thus, questions dealing with elements such as "Justice" and "Morality" are not relevant to the aims of the Pure Theory, since according to Kelsen, they belong to separate fields.

1.1.3 The (Methodological) Means

Upon analyzing Kelsen's work, it is unequivocal to notice that he is a neo-Kantian thinker - the influence exerted by the Prussian philosopher can be seen in the use of a wide range of themes and concepts, such as the notion of hypothetical relation. In the Pure Theory, therefore, it is not surprising to find the use of Kant's transcendental idealism methodology. To explain its functioning, however, it is necessary to expose the debate between the schools of thought of modern rationalism and British empiricism in the field of epistemology.

John Locke, leading British empiricism, described in his work "An Essay Concerning Human Understanding" that, initially, the human mind resembles a tabula rasa, a blank page on which information is placed through experimentation in the concrete world - this notion summarizes the school's thought: in essence, human knowledge would be constructed "from the outside in" from sensible experiences. Although this notion was developed by subsequent thinkers, the core of its doctrine consists fundamentally of this idea, from which the inductive method was derived as the preferred form of investigation. This inductive reasoning, in turn, consists of concluding a major premise from the observation of minor premises, in this case, through a sampling system (e.g., from the premises "Kaladin, Dalinar and Adolin are men" and "Kaladin, Dalinar and Adolin are mortal" one could conclude that "All men are mortal").

Rationalism, on the other hand, is diametrically opposed to empiricism: the proponents of this theory advocate centrally for the opposite movement of reasoning, that is, "from the inside out," denying that true scientific knowledge can be constructed through experience, but only through logical-demonstrative operations. The most significant symbol of this position is considered to be René Descartes, famous for determining, through this method, that the only possible starting point for the verification of the truth of things is the subjective verification of consciousness ("I think"), and has as a logical consequence, the existence of the interpreter ("I think, therefore, I exist").

Kant, however, promotes a kind of reconciliation between the two conceptions. In his transcendental idealism, he argues that although all knowledge made over time begins in the empirical field, there are those that can be acquired by operating "Pure Reason" to produce knowledge that the philosopher calls a priori, since they are universally valid and completely detached from any experience, e.g., "Two parallel lines will never meet in space." Kelsen, in this way, uses both the inductive method (mainly in the initial part of the work, where he analyzes the "acts commonly understood as legal," performing a kind of 'ethology' of Law) and the deductive method (mainly in the logical concatenations carried out for the construction of his tiered structure of legal norms).

1.2 Conceptual Foundations

For a better presentation of Kelsen's thought, it is necessary to clarify the meaning of some of the concepts he puts forth: indeed, the Austrian author uses some conceptions thought by other authors (such as Kant and Hume, for example) which, in his academic circle, would be evidently of their origin - however, the passage of time and the increased prominence of the work has made it more difficult to mentally connect these concepts with

[3] KELSEN, Hans. 1994, p. 1.

their original authors. Thus, considering that the author handles the aforementioned notions quite naturally, seemingly with some certainty that the reader is at least partially familiar with the concepts, their explanation is imperative. Similarly, due to insufficient time for a thorough examination of his concepts of legal statics and dynamics, they will be summarized here.

1.2.1 The Distinction Between the Planes of Being and Ought-to-Be

David Hume was a radical 18th-century empiricist: in what is considered his most important work, "A Treatise of Human Nature," Hume pioneered the attempt to bring the empirical method to the discussion of inherently mental issues. In this work, he argues that cause-and-effect relationships are not strictly verifiable as necessary through the empirical method, but only as a gradual solidification of a psychological conviction that 'A, since in all observations to date, preceded B, therefore is the cause of B,' which is not, in fact, an absolutely reliable piece of information. Similarly, Hume asserts that propositions between facts and values cannot be governed by causal relationships. *In verbis*:

In every system of morality that I have encountered so far, I have always noticed that the author proceeds for some time in the ordinary way of reasoning, establishing the existence of God, or making observations concerning human affairs, when suddenly, I find myself surprised to see that instead of the usual propositional copulas like is and is not, I do not find a single proposition that is not connected to another by an ought or ought not. This change is imperceptible but of the utmost importance. For as this ought or ought not expresses a new relation or affirmation, it ought to be noticed and explained; at the same time, a reason should be given for something that seems entirely inconceivable, namely, how this new relation can be derived from others that are entirely different.[4]

Hans Kelsen briefly elaborates on the difference between being and ought-to-be at the beginning of his work. In fact, he seems to adopt the stance of this so-called "Hume's Guillotine", according to which, since they are two planes with logical propositions of absolutely distinct value and meaning, there cannot inherently be any necessary/causal relation - in short, if B is, it does not imply that it ought-to-be, and similarly, if B ought-to-be, it does not imply that it is so in objective reality. However, this does not prevent something from simultaneously being as it ought-to-be. In this sense:

The distinction between being and ought-to-be cannot be further deepened. It is an immediate given of our consciousness. No one can deny the statement: such a thing is - that is, the statement through which we describe a factual being - is essentially different from the statement: something ought to be - with which we describe a norm - and that from the circumstance of something being, it does not follow that something ought to be, just as from the circumstance that something ought to be, it does not follow that something is. However, this dualism of being and ought-to-be does not mean that being and ought-to-be are placed side by side without any relation. It is said: a being can correspond to an ought-to-be, which means that something can be in the way it ought to be.[5] (p. 6)

The relationship to be drawn between propositions dealing with being and propositions dealing with ought-to-be does not bear similarity to those made between two factual statements that can be organized in a relation of causality (e.g. "If A is, then B is"; "If the metal is heated, it expands"). Since a statement about what ought-to-be does not necessarily imply a statement about what is, there is another principle that should guide our thinking about the relationship between these two different types of propositions (e.g. "If A is, then B ought-to-be"; "If a thief steals, he ought-to-be punished"). This principle is called the Principle of Imputation, which Kelsen posits as being in contradiction to the Principle of Causality.

1.2.2 The Principles of Causality and Imputation

The Principle of Causality, therefore, is of a descriptive nature since, if valid, it objectively points to reality as it happens, in a cause-and-effect relationship where 'B happens because A preceded it' - this is the principle predominantly adopted in empirical investigations for the construction of knowledge. The relationship of causality implies a necessity, an inflexible and absolute consequence of one proposition in relation to another, which occurs independently of any subjective sense.

The Principle of Imputation, on the other hand, is of a prescriptive nature - 'B ought to happen because A preceded it'. This sense of "ought," however, is a prescription (imputation) derived from a human act of will, in a subjective character, which gives rise to this ought-to-be and extends over time even if the will that originated it perishes. This is the notion that Kelsen uses to explain the interaction between the content of the legal norm and the natural act that corresponds to it. On this:

In the description of a normative order of human conduct with one another, that other organizing principle,

[4] HUME, David. 2000, p. 509.

[5] KELSEN, Hans. 1994, p. 6.

different from causality, is applied, which we can designate as imputation. [...] In the legal proposition, it is not said, as in the natural law, that when A is, B is, but that when A is, B ought to be, even when B, perhaps, is not actually so. The fact that the meaning of the copula or connection of the elements in the legal proposition is different from the connection of the elements in the natural law results from the circumstance that the connection in the legal proposition is produced through a norm established by an act of will, therefore -, while the connection of cause and effect, which is affirmed in the natural law, is independent of any intervention of this kind.[6]

1.2.3 Legal Statics and Legal Dynamics

To better explain how norms behave within a given legal system, Hans Kelsen creates two theories for his approach: one, which he calls static theory, deals with Law as an integral block of norms in force, acting as a machine in which all parts are in their proper place, in proper operation - this approach, for practical order needs, does not serve the purpose of the present work, and will not be discussed in depth; the second, called dynamic theory, examines the body of norms of a legal system as a mutable process, in a system of revocations and innovations, as if analyzing the protocols for the maintenance of the metaphorical machine, in the proper way to replace its parts - this, indeed, is of interest. On this:

[...]we can distinguish a static theory and a dynamic theory of Law. The former has as its object the Law as a system of norms in force, the Law in its static moment; the other has as its object the legal process in which the Law is produced and applied, the Law in its movement. [...] The production of general legal norms, that is, the legislative process, is regulated by the constitution, and formal or procedural laws, in turn, take it upon themselves to regulate the application of substantive laws by courts and administrative authorities. Therefore, the acts of production and application [...] of Law, which represent the legal process, only interest legal knowledge insofar as they form the content of legal norms, as they are determined by legal norms. In this way, the dynamic theory of Law is also directed at legal norms, namely, those norms that regulate the production and application of Law.[7]

1.3 The Act, the Norm, and the Legal System

Building on the concepts and methodology already discussed, Kelsen begins his exploration of Law, progressively developing his own models of legal act, norm, and legal system, in a logical sequence. In this section, we will address this sequence, following the stages of the author's thought.

1.3.1 The Act and its Objective Legal Significance

The first step taken by Kelsen in entering the body of pure theory is to discard any attempt to, starting from a division of the scientific field between social and natural disciplines, locate Law in either of the two areas. In fact, he points out that this separation cannot be made simplistically or indiscriminately, since, understanding that society is "the real or effective coexistence among men, it can be thought of as part of general life and, therefore, as part of nature" - thus being, even if one followed the understanding of part of the doctrine that Law is an 'applied social science', it would not be possible to deny that, at least with regard to part of its object, there is a need to analyze phenomena that occur in the real world.

In this sense, the author promotes an empirical analysis, observing that when faced with a fact customarily classified as legal, it is possible to separate it into two fundamental elements:

[...] first, an act that takes place in space and time, sensorially perceptible, or a series of such acts, an external manifestation of human conduct; second, its legal significance, that is, the significance that the act has from the point of view of Law.[8]

For better visualization, one could say that, for Kelsen, the 'legal fact' exists on an ethereal and insensible plane, superimposed on the plane where the 'physical fact' simultaneously occurs: For example, the 'physical fact' constituted in the movement of a hand writing on a piece of paper may have a corresponding 'legal fact' constituted in the signing of a contract. It is imperative to use the expression 'may have' here, instead of 'will have', because the author points out that the act has a 'subjective meaning' (the legal significance that its perpetrator believes it has) and an 'objective meaning' (the legal significance that, in fact, the act has), and these will not necessarily always be aligned.

The primary question then becomes: how can one ascertain the objective meaning of a legal fact? Kelsen explains that to do so, a specific mental operation must be performed, which confronts the 'physical act' with the content of a particular legal norm - to determine, for example, whether the physical act of an individual causing

[6]KELSEN, Hans. 1998, p. 86.

[7] KELSEN, Hans. 1998, p. 79.

[8] KELSEN, Hans. 1998, p. 2.

the death of another constitutes the legal fact 'homicide', it is necessary to compare their conduct with the content of the norms expressed by the criminal and procedural criminal code governing them. In other words, only through the analysis of the content of a legal norm can one ascertain, from the real world, the corresponding legal significance of a 'physical act': *In verbis*, "The norm functions as an interpretation scheme"[9].

1.3.2 The Norm (and the Legal Norm)

The resolution of the problem presented in the previous topic raises, however, a new doubt: what is a norm? And moreover, what is a legal norm? On this subject, the author states:

With the term "Norm," one wants to signify that something must be or happen, especially that a person must behave in a certain way. This is the meaning that certain human acts have when they intentionally address the conduct of others.[10]

Later, Kelsen describes that "'Norm' is the objective meaning of an act of will through which conduct is prescribed, permitted, or especially, allowed, in the sense of being granted to someone's competence."[11]. One must ask then, what is the factor that differentiates this act of will from the others? What makes taxation due and robbery undue? For the author, the issue is based on the idea that a norm, in order to exist as such in an objective sense, requires a foundation of validity to support it - it demands that, for it to exist, another older norm has permitted its determination based on the act that created it. For example, one can only verify the normative nature of legislation enacted by a certain parliament to the extent that another previous norm (this one called 'superior') lends the relevant legal meaning to the legislative acts of the parliamentarians in question - in this case, the Constitution that instituted them as members of the legislative power, authorizing them to enact laws. The author states that only then could it be said that the norm expressed by the law in question is 'valid'. In this sense:

If the legislative act, which subjectively has the meaning of ought-to-be, also has this meaning objectively, that is, has the meaning of a valid norm, it is because the Constitution lends the legislative act this objective meaning. The act of creating the Constitution, in turn, has normative meaning, not only subjectively but also objectively, provided that it is assumed that we must behave as the author of the Constitution prescribes.[12]

It is this logic of determining validity, Kelsen explains, that allows distinguishing an enforceable order from a non-enforceable one; the fundamental difference between the command of a member of a criminal organization, demanding money from a shopkeeper, and the command of a tax agent who, in practice, similarly requires payment: the first, although at first glance believed to be valid to the extent that it is based on another command from a higher-ranking member in the criminal organization, is not, in fact, valid since there is no previous norm that authorized the aforementioned superior to issue such commands; the second, on the other hand, follows the normative chain adequately, knowing that the agent's act is based on the law and that the law is based on the constitutional norm that authorized the parliament to do so, it is therefore considered valid and, consequently, enforceable.

1.3.3 The Legal Order

Kelsen understands that Law constitutes a systematized set of norms within a legal system. However, he points out that there are other orders that likewise organize themselves in this way, such as Morals and Logic. As before, we are faced with a problem of distinction: what makes Law different from other orders? At first, the author explains that it is a normative order that regulates human conduct, prescribing or prohibiting certain ways of behaving - he also points out that there were certain historical moments when this was not exactly the case, giving examples of proceedings that took place in antiquity and the Middle Ages when an object or an animal was accused. For the author, these events are reflections of a cosmic-animistic view of normative systems, in which not only people were subject to the law.

This view changed, however, in the transition from the Middle Ages to the Modern Age, as the general doctrinal view shifted away from the idea of divinely emanated natural law for all living beings and became focused on rationality - a faculty understood as exclusively human - in such a way that it began to be understood that it is precisely human conduct that should be regulated (although not necessarily always in an objectively relational manner with another human being - one can regulate a person's conduct in relation to space, animals, plants, etc.).

[9] KELSEN, Hans. 1998, p. 4.

[10] KELSEN, Hans. 1998, p. 5.

[11] KELSEN, Hans. 1998, p. 6.

[12] KELSEN, Hans. 1998, p. 9.

However, the fact that it regulates human conduct does not make the legal order unique: it still needs to be further distinguished. Again, in an empirical analysis, Kelsen observes that the legal phenomenon is universally endowed with a coercive nature, instituting sanctions that affect the legal rights of the offender, such as deprivation of economic assets, freedom, or in some legal systems, life - in fact, it is precisely this coercive and inhibitory characteristic of conduct considered harmful to society that the contractarian works of Hobbes, Locke, and Rousseau refer to. As a logical consequence of this valid legal possibility of applying harm (a harm as an immanent social sanction correcting or mitigating the offense, and not merely an expression of disapproval), it must be understood that the legal order legitimizes someone to practice it, imbuing them with this competence. *In verbis*:

"In this sense, the social orders we call Law are coercive orders of human conduct. They demand a certain human conduct to the extent that they link the opposite conduct to an act of coercion directed at the person who behaves in such a way (or their relatives). This means that they give a certain individual the power or competence to apply a coercive act to another individual as a sanction."[13]

Kelsen also notes that not only do legal orders tend to coincide on most of the established forms of applying the said coercion, but in those he calls 'more developed', there is a general tendency for these same conducts to be prohibited to the individual belonging to the society in which they prevail, with the safeguard of cases where it constitutes a reaction to an unjust harm - the whole idea of 'self-defense'. In summary, permission to apply the force necessary to enforce the law is specifically directed by the legal order, resulting in a general tendency of a monopoly of coercion on the part of the legal community. In this case, if primitive legal systems operated on the principle that whenever one individual's use of force against another is not prohibited, it would be negatively permitted, the 'more evolved' systems would operate on the opposite principle: any use of force not expressly permitted is negatively prohibited, centralizing this power in specific bodies (usually state ones).

This monopoly, thus, would promote collective security by ensuring that individuals are legally protected from being subjected to the force of others. The author understands that peace is the absence of the use of physical force and points out that the more centralized this authority is, the more likely the "Peace of Law" can be achieved (noting that this is a relative peace, as Law is, by nature, an order of occasional coercion, which allows its application in certain cases - otherwise, it would lose its usefulness). *In verbis*:

Collective security reaches its highest degree when the legal order, for this purpose, establishes courts with mandatory jurisdiction and central executive bodies having at their disposal means of coercion of such a magnitude that resistance normally has no prospects of succeeding. This is the case of the modern state, which represents a highly centralized legal order.[14]

1.4 The Problem of Normative Foundation

Here, we arrive at the most relevant problem of our study. It is interesting to note that historically, in the debate on the concept of law, thinkers inevitably ascended in their logic in search of a final and supreme foundation for the validity of the positive normative command, arriving at a divine entity: first in the pantheonic authorities of Olympus and, later, in the wisdom of the Hebrew-Christian God. Even modern natural law authors like Rousseau and Kant, who advocated reason as the basis of the legal phenomenon, attributed it to divine will, to varying degrees.

Historical and Exegetical schools finally set aside this transcendental background, seeking the validity of norms in mundane and objective elements: respectively, in legal tradition (jurisprudence) as a social phenomenon of community transformation and in the normative literalness of codes set by a virtually omnipotent legislative authority. Positivist doctrine, in turn, similarly sought to position itself as a 'philosophical option' in this discussion, also needed to find an answer to this problem, clarifying its stance on what makes a given norm or set of norms valid. In this sense, the author opens the Pure Theory topic on Legal Dynamics:

If law is conceived as a normative order, as a system of norms regulating the conduct of men, the question arises: What grounds the unity of a plurality of norms, why does a given norm belong to a particular order? And this question is closely related to this other one: Why does a norm have validity, what constitutes its foundation of validity?[15]

Thus, from his own model of legal act, legal norm, and legal system, Kelsen formulated a solution to the question, using some of the gnosiological categories developed by Immanuel Kant.

[13] KELSEN, Hans. 1998, p. 36.

[14] KELSEN, Hans. 1998, p. 41.

[15] KELSEN, Hans. 1998, p. 215.

1.4.1 The Fundamental Hypothetical Norm as a Solution

From the exposition in topic 1.3, the initial recursive nature of Kelsenian thought is evident - if, to verify the legal meaning of a physical act 'A', it is necessary to confront the content of a norm and this, in turn, is itself the legal meaning of an act 'B', it follows an endless hierarchy, since another norm would need to be pre-existing to this last one, for it to have been possible to assess it from said act 'B' that created it, and so on, in an endless concatenation of higher norms above lower norms, all under even higher norms - hence the need to understand a final normative that integrates the entire system. The author discusses this:

All norms whose validity can be traced back to one and the same fundamental norm form a system of norms, a normative order. The fundamental norm is the common source of validity of all norms belonging to one and the same normative order, their common foundation of validity. The fact that a norm belongs to a particular normative order is based on its ultimate foundation of validity being the fundamental norm of that order. It is the fundamental norm that constitutes the unity of a plurality of norms as it represents the functioning of the validity of all norms belonging to that normative order.[16]

Entwined with this problem, however, is another: Who could establish this norm? If an entity were authoritative enough to set it, then this would not be the supreme norm, as there would necessarily be another that granted such authority to this legislator. Following the Kantian guideline, the Austrian thinker established that this norm could never be established due to a direct logical conflict in the interest of ending the hierarchy. The Grundnorm (fundamental norm) should hover above the well-known pyramid of the hierarchy of norms:

As the highest norm, it must be presupposed since it cannot be established by an authority whose competence would have to be based on a higher norm. Its validity can no longer be derived from a higher norm, and the foundation of its validity can no longer be called into question.[17]

1.4.2 The Static Principle and the Dynamic Principle

Once the position and function of the Grundnorm are defined, Kelsen initially assumes the possibility of its establishment according to two distinct parameters - generating, as a consequence, two legal systems of fundamentally different natures: in the first hypothesis, in which the Grundnorm is governed by the so-called 'static principle,' the fundamental norm has a specific behavioral command content, functioning as a major premise from which all minor premises can be deduced and, conversely, each norm of the minor premises can be directly traced back to the Grundnorm to the extent that it is the logical consequence of its immediately higher norm.

Thus, if the Talionic command, for example, were presupposed as the fundamental norm for a normative system in the moral field, in the formula 'Treat your neighbor as they treat you, in equal measure,' two minor premises could be deduced from it through a logical operation, such as 'Inflict harm on those who harm you' and 'Promote the good of those who do good to you'; subsequently, from these two deduced sentences, one could go further, reaching even smaller premises, such as 'Take a tooth from your aggressor for each tooth they take from you' for the first, or 'Return the borrowed coin, and likewise lend yours to those who have helped you' for the second.

In this static system, therefore, all minor premises are entirely contained in the content of the Grundnorm, regardless of the number of degrees of separation between them and it - that is, the fundamental norm provides both the foundation of validity for the system and its norms, and, likewise, the direct and specific content of each and every norm it refers to. In the author's words:

As all norms of a system of this type are already contained in the content of the presupposed norm, they can be deduced from it through a logical operation, by drawing a conclusion from the general to the particular. This norm, presupposed as a fundamental norm, provides not only the foundation of validity but also the content of validity of the norms deduced from it through a logical operation. A system of norms whose foundation of validity and content of validity are deduced from a norm presupposed as a fundamental norm is a static system of norms.[18]

Although Kelsen initially assumes this model, he refutes the real possibility of establishing a static system of norms within the field of reason. For the author, the problem for such an endeavor would be the simple observation that a fundamental norm of this nature would require a content that is immediately evident - that is, demonstrable as valid through reason. However, since the static fundamental norm has content, the logical consequence is the prior existence of a legislating reason - understanding that Reason is the faculty of thinking logically valid structures, the author rejects the idea of an immediately evident normative content since "the

[16] KELSEN, Hans. 1998, p. 217.

[17] KELSEN, Hans. 1998, p. 217.

[18] KELSEN, Hans. 1998, p. 218.

function of reason is to know, not to will, and the establishment of norms is an act of will."

For Kelsen, the orders that, a priori, seem to function in this way, inevitably rely on a supra-human instance that has put forth the imagined fundamental norm (which, as already stated, could not be put, but presupposed). If this norm is put by an authority, then one can presuppose the higher norm that merely granted this authority - thus, for example, imagining a Catholic normative system apparently governed by the static principle, in which the fundamental norm would consist of formula 'X' (The Ten Commandments), it turns out that the real fundamental norm would be 'Y' ('one must obey the commands of God'), which would constitute the Authority as the legislator and, thus, able to legislate the formula 'X'. In this example, it is possible to see that the real hypothetical norm is 'Y', and this, unlike 'X', does not have specific content, since the will of the divine legislator could change and, thus, deconstruct the norm 'X'. A legal system whose fundamental hypothetical norm is devoid of direct command content, then, would be said to be governed by the dynamic principle. *In verbis*:

This norm can only provide the foundation of validity, not the content of validity of the norms based on it. These form a dynamic system of norms. The principle according to which the foundation of the validity of the norms of this system operates is a dynamic principle. The dynamic type is characterized by the fact that the presupposed fundamental norm has as its content only the institution of a norm-producing fact, the attribution of power to some legislative authority or - which means the same - a rule that determines how the general and individual norms of the system based on this fundamental norm should be created.[19]

1.5 Final Considerations On Kelsen's Thought

Thus, we come to the end of the necessary exposition of Kelsen's thought for the purposes of this work. Throughout these more than twenty centuries of doctrine, it is undeniable that the older the scientific field, the greater the number of individuals who have dedicated cognition to it, and consequently, more opportunities for intellectual divergence have arisen.

Law, whose roots are generally pointed out in close temporal proximity to the very emergence of human society, does not escape this logic: even the seemingly simple task of conceptualizing the term that designates this area of knowledge - in various languages and connotations, in the flow of history - constitutes a methodological problem that has spanned this entire period without a final answer, and the debate on the subject, as exposed so far, has produced an uncountable number of different formulations, not only in varying degrees of scope and utility but often paradoxical or simply incompatible with each other.

The thinker Herbert L. A. Hart, who will constitute the core of the last stage of this research, defines this framework well in the introduction of his most recognized work, "The Concept of Law":

Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question 'What is law?'. Even if we confine our attention to the legal theory of the last 50 years and neglect classical and medieval speculation about the 'nature' of law, we shall find a situation not paralleled in any other subject systematically studied as a separate academic discipline.[20]

In the course of the argument, Hart points out several of the formulas in question alongside their subsequent respective questions, commenting that the authors of these latter, for the most part, were not visionaries or philosophers exclusively dedicated to exploring legal metaphysics but primarily lawyers mainly concerned with practicing or teaching law, stumbling upon such methodological problems and formulating their considerations as the absence of a solution to the theoretical problem implied consequences of an eminently practical order, revealing a certain endless nature of 'action-reaction' in the development of the theme. He further adds that although they may at first glance provoke the strangeness of contemporary academia insofar as they appear to be self-evident postulations if analyzed as mere cold definitions or without due context, in fact, they are observations of truths that, at the time, remained unduly ignored, and whose exposure not only closed a given segment of the subject but routinely opened several others. In his words:

Yet these seemingly paradoxical utterances were not made by visionaries or philosophers professionally concerned to doubt the plainest deliverances of common sense. They are the outcome of prolonged reflection on law made by men who were primarily lawyers, concerned professionally either to teach or practise law, and in some cases to administer it as judges. Moreover, what they said about law actually did in their time and place increase our understanding of it. For, understood in their context, such statements are both illuminating and puzzling: they are more like great exaggerations of some truths about law unduly neglected, than cool definitions. They throw a light which makes us see much in law that lay hidden; but the light is so bright that it blinds us to the remainder and so leaves us still without a clear view of the whole.[21]

[19] KELSEN, Hans. 1998, p. 219.

[20] HART, Herbert. 1994, p. 1.

[21] HART, Herbert. 1994, p. 2.

Thus, being unable to avoid this complex topic, yet simultaneously not integrating its exact purposes, this work did not independently enter this debate. It is understood, in fact, that it is not absolutely necessary to reach a definition that sees the dispute as exhausted (even because it is not understood as finite), but only that the one that is logical, useful and sufficient is adopted so that an adequate basis can be established under which it is possible to build thought: society should always seek to adopt the postulations and classifications that best seem to serve the objectives of the common good, even though this seems very difficult to define. In this sense, therefore, the concept of Law formulated by Hans Kelsen up to this point will be summarized here:

Indeed, when we confront with each other the objects that, in different peoples and at different times, are designated as "Law," it immediately results that they all appear as orders of human conduct. An "order" is a system of norms whose unity is constituted by the fact that they all have the same basis of validity. And the basis of validity of a normative order is [...] a fundamental norm from which the validity of all the norms belonging to that order is derived.[22]

The Kelsenian definition recognizes Law, therefore, not as a norm in itself, but as a paradigmatic systematized set of norms dealing with human conduct, whose structure, when replicated in its image in different societies, gives rise to different legal systems. For the Prague-born author, this ordering must then delimit individual freedom, regulating the conduct of its subjects for the proper functioning of the social machine. The differentiating element of Law in the face of other social orders of conduct is, for Kelsen, its coercive nature in the face of non-compliance with its norms, not only foreseeing sanctioning consequences for the non-compliant agent, but also authorizing a different individual to make it happen by the necessary means. In this sense:

Another common characteristic of the social orders we call Law is that they are coercive orders, in the sense that they react against situations considered undesirable, because they are socially harmful - particularly against undesirable human behaviors - with an act of coercion, that is, with an evil - such as deprivation of life, health, freedom, economic goods, and others - an evil that is applied to the recipient even against their will, if necessary using physical force - coercively, therefore. [...] In this sense, the social orders we call law are coercive orders of human conduct. They demand a certain human conduct insofar as they link the opposite conduct to a coercive act directed at the person who thus conducts themselves (or their family members). This means that they give a certain individual the power or competence to apply a coercive act as a sanction to another individual.[23]

2. Herbert Hart and the Concept of Law

Herbert Hart (Harrogate, 1907 - Oxford, 1992), like Hans Kelsen, is one of the most important and debated jurists of the twentieth century. After the publication of his major work, "The Concept of Law," there is great notoriety in his involvement in an intense academic debate with, among others, some of his followers, of whom Ronald Dworkin can be highlighted: this controversy took place, on a particular level, about Hart's position regarding judicial discretion and, on a general level, about the original asepsis of the positivist perspective concerning the role of Morality in Law. From this dialectic, commonly referred to as the 'Hart-Dworkin Debate' and still ongoing, a division emerged among positivist legal philosophers, creating an exclusivist and an inclusivist current of Morality.

In his work, Hart constructs an autonomous General Theory of Law based on the imperative model previously presented by John Austin, extensively criticizing some of his conceptions, without denying his importance. The following sections will address Austin's conceptions more deeply and then some of the criticisms made by Hart, as well as his constructive logic in this revitalization of Austin's analytical perspective.

2.1 Brief Notions About Hart's General Theory

John Austin, in his academic odyssey founding Positivism, determined in his work that the true object of legal science would be, synthetically, the law, issued by a sovereign, under the threat of sanction - a set he called 'positive law'. This focus on the idea of the imperative command earned the theory the nickname 'imperativist,' insofar as it sought to explain the origin of legal-normative validity in the coercive and vertical imposition of a sovereign's will. In this sense, although rejecting any analysis related to the institution of the status quo of a system as such, by arguing that all law comes from the sovereign, Austin seems to have started from Hobbes' hypothetical human collective scenario, post-establishment of the social contract and already structured by and in the form of the Leviathan.

2.1.1 Criticism of Austin

The idea of Law solely as a command whose non-compliance is punishable, however, is questioned by Hart - in his view, the simplicity of the definition given by Austin is insufficient insofar as, imagining a system in this manner, it would lack the necessary mechanisms to adequately organize a community, which would inevitably

[22] KELSEN, Hans. 1998, p. 33.

[23] KELSEN, Hans. 1998, p. 35.

generate three major problems.

Firstly, a society governed by a legal system bound by imperative nature norms would be afflicted by the absence of a cohesion and validation element that differentiates legal norms from other social norms (for example, etiquette norms). Thus, in the event of any doubt about which are and which are not enforceable legal commands - or even, what the specific extensions of a given command are - there would be no proper procedure to resolve it, inevitably resulting in a serious defect of uncertainty.

As a second problem, the legal norms of such a society could not be deliberately created, modified or excluded by a unified act of legislation, since, in a way analogous to the first issue, it would lack a prescribed procedure to do so. As a consequence, the only way to modify the body of norms would be through customary means, positivizing the norm of conduct through the habit of obedience as a particular behavior, initially optional, gradually becomes mandatory by general use, and conversely, excluding from the legal system the norm of conduct that, although initially mandatory, begins to be consistently violated without sanction and ceases to be observed. In this way, it would be a severely rigid system, afflicted by a defect of staticity;

Thirdly, in the inevitable occurrence of violation of any normative due to the lack of a central authority to apply sanctions, or even, in the event of doubt about the violation or not of a certain norm due to the absence of a conflict-resolving authority, the offenders of this society would inevitably go unpunished, evidencing a defect of inefficiency.

2.1.2 Primary and Secondary Rules

Thus, to solve the problems pointed out, Hart proposes a classification of the legal system into two types of 'rules': primary rules, in this case, consonant with Austin's thought and referring to the prohibition or prescription of social behaviors whose non-compliance is punished by a sanction; and secondary rules, responsible for the organization and structuring of the State itself (Laws on Laws), endowed with the capacity to assign powers and criteria for the modification and application of primary rules, as well as to establish their validity parameters. *In verbis*:

The remedy for each of these three main defects in this simplest form of social structure consists in supplementing the primary rules of obligation with secondary rules which are rules of a different kind. The introduction of the remedy for each defect might, in itself, be considered a step from the prelegal into the legal world; since each remedy brings with it many elements that permeate law: certainly all three remedies together are enough to convert the regime of primary rules into what is indisputably a legal system. We shall consider in turn each of these remedies and show why law may most illuminatingly be characterized as a union of primary rules of obligation with such secondary rules. [24]

To solve the efficiency problem, Hart proposes the existence of Secondary Rules of Judgment/Adjudication - these rules would establish the so-called judge-state, endowing it with the competence to decide whether, in a given situation, a certain person violated or not one of the primary rules, also endowing it with the power to prescribe the coercive sanctions to which the primary rules refer.

The defect related to staticity, in turn, would be resolved through the provision of Secondary Rules of Modification, instituting the ways in which one must proceed to establish a new rule or modify or exclude an old rule, thus allowing better performance in adapting the legal reality to social reality.

As a third and final solution, this time to the problem of uncertainty, Hart postulates the existence of Secondary Rules of Recognition, to establish which Primary Rules are legal or, even, parameters by which the validity of a legal norm is verified. This concept, finally, is Hart's solution to the problem of normative grounding, existing in analogy with Kelsen's Basic Norm (Grundnorm).

2.2 Criticisms of Kelsen's Solution

In the postscript of his book, Hart expressly acknowledges the similarity of his postulate regarding the Rule of Recognition with Kelsen's Basic Norm (Grundnorm), both having an identical function: in the systematic model constructed by each author's theory, it allows for determining whether a given norm belongs to a legal system, determining, therefore, whether it is valid or not. Hart, however, makes a point of directly addressing how he understands that his concepts differ, raising some points in criticism of that placed in Kelsen's Pure Theory of Law.

First, when we observe the Rule of Recognition, we notice that Hart places it as an element always empirically verifiable: for example, to ascertain whether a regulatory act issued by a mayor is valid, one can search for the rule of recognition that attributed said competence to him, whether in the municipal organic law, the State Constitution, or even the Federal Constitution. Seeking the validity of this second rule, in turn, would lead to another, initiating the same problem faced by Kelsen concerning the infinite concatenation in a search for validity - Hart, however, believes that there is a final Rule of Recognition in each legal system, which may even exist in

[24] HART, Herbert. 1994, p. 94.

various forms of 'common' positive law. In his own words:

> Wherever such a rule of recognition is accepted, both private persons and officials are provided with authoritative criteria for identifying primary rules of obligation. The criteria so provided may, as we have seen, take any one or more of a variety of forms: these include reference to an authoritative text; to legislative enactment; to customary practice; to general declarations of specified persons, or to past judicial decisions in particular cases. [...] For whereas a subordinate rule of a system may be valid and in that sense 'exist' even if it is generally disregarded, the rule of recognition exists only as a complex, but normally concordant, practice of the courts, officials, and private persons in identifying the law by reference to certain criteria. Its existence is a matter of fact. [25]

In this sense, Hart rejects Kelsen's abstract approach in his theory, which, being a notorious applicator of Kant's concepts, operated analogously to the transcendental logic to arrive at the idea of a presupposed and hypothetical norm - for Hart, this reasoning does not clearly solve the problem of normative foundation, as it is based on a sequence of operations of reason that move away from reality and, therefore, make its identification in the concrete legal world difficult. Moreover, while Kelsen points to the need for the Basic Norm because he believes that the legal system requires a validity assumption, Hart immediately dismisses this need precisely because he understands that the Rule of Recognition is sufficient as positive law.

Continuing with his criticism, Hart points out that the Basic Norm, in the proposed model, will always have the same content or, at least, very similar contents: the idea that the first Constitution - or those who established it - must be obeyed. In his position, however, if there is already an existing Constitution in a given legal-normative system, in the sense that the reality represented by the courts and authorities consider as law those norms that follow the validity criteria dictated by it, according to its establishment and organization, the search for an ulterior validity assumption becomes, for his empiricist dictates, absolutely unnecessary.

Thus, Hart's direct criticisms of Kelsen are fundamentally based on the consequence of their different methodologies. Hart, an Englishman nourished by the British epistemologically empiricist doctrine, sees little reason in Kelsen's search for explanations that have such a transcendental nature, recalling a new version of the criticism posed by the Realist School of Law to the speculations of the rationalist currents.

II. Conclusion

With the advent of the Modern era, the decline of religious hegemony in Europe and the shift of the central axis of thought towards anthropocentrism, purely rationalist philosophical currents emerged, leading to a gradual realization that Natural Law would hardly suffice to solve the problems inherent to human coexistence in a collective setting. During this period, contractualist explanations for the formation of society and the construction of organized States emerged, and their positive law systems became necessary, in fact, to give effectiveness to the norms derived from nature.

In the contemporary era, following the French Revolution of 1789, two schools of thought emerged to contrast with the Modern Natural Law view: The German Historical School and the French Exegetical School. The former, denying the abstractions made by the rationalists, postulated that Law is an intrinsically historical phenomenon, and the norms should be evaluated from a perspective of validation that used custom as a criterion. The Exegetical School, on the other hand, born from the post-revolutionary bourgeois desire for legal mechanisms guaranteeing the fundamental rights achieved, combined with the related phenomenon of codification initiated by the Napoleonic Civil Code, came to understand that Law is solely what is established by law as law, based on the idea of the omnipotence of the legislator and limiting the role of the judiciary to the literal application of the normative text, whenever possible.

Finally, in the person of John Austin, the Positivist doctrine emerged, simultaneously rejecting the valorization of customs given by the Historical School and the notion of natural law as a normative foundation. For this new current, it would become imperative to undertake the difficult task of formulating a general theory that strictly delimited the object of study of Law and focused on the analysis of positive law.

Hans Kelsen, then, embarked on a highly successful attempt to formulate this theory desired by Austin. Adopting 'purity' as a methodological principle of his Kantian epistemological methodology, Kelsen began his thinking by analyzing the physical acts considered as part of Law, arriving at the idea that a certain conduct exists in different ways regarding its factual consequences and its correlative legal significance. The norm, for the author, would be the adequate instrument to verify, by its content, the legal significance of a certain act - however, being the very genesis of the norm, invariably, also derived from a legal act, his model is built as a hierarchy of norms. Noting that this logic would result in an infinite legal system, Kelsen then postulates his solution to the Normative Foundation Problem: a Basic Hypothetical Norm, which, unlike other established norms, would be presupposed, serving as a validity parameter for all other norms and the legal system as a whole.

[25] HART, Herbert. 1994, p. 100.

In a similar attempt to achieve the result intended by Austin, Herbert Hart built his own General Theory, criticizing his understanding that Law would be limited to norms of conduct emanating from a sovereign and subject to sanctions. For Hart, the simplicity of Austin's definition would imply a society whose legal system would be plagued by the vices of uncertainty, static nature, and inefficiency - offering a solution, the author proposes a system where norms would be divided between primary (imperatives of conduct, like Austin's) and secondary (to provide mechanisms for application, modification, and validity for primary norms). Among these secondary rules, more specifically the one that would solve the uncertainty problem, lies his own solution to the Normative Foundation Problem, since they would be norms specifically aimed at attributions of competence and assessments of validity.

In the present study, it is concluded that a large part of the divergence between the two solutions is a consequence of the different philosophies adopted by the thinkers - Hart (notably more empiricist, including due to the British heritage in the subject) constructs his critique of Kelsen to the extent that he uses considerations that seem excessively complicated, abstract, and difficult to visualize in legal reality, entering into long and obscure logical sequences that would little serve to actually clarify the point being discussed.

In any case, although both concepts are committed to solving the Problem of Normative Foundation, they lend themselves to approaching it in two different ways, with advantages and disadvantages in their applicability. Finally, it is hoped that the comparative analysis of both has contributed to a better understanding of the *quid*.

Bibliography

[1]. Agostinho, A. (1996) Cidade Celeste. Lisboa: Fundação Calouste Gulbenkian. Available in: <http://bit.ly/3ZhyNKP >. Access on March 20 of 2023.
[2]. Andrade, R. (2014) Pessoa e Direitos da Personalidade. Saarbrücken: Novas Edições Acadêmicas.
[3]. Aquino, T. (2017) Suma Teológica. Brasil: Alexandre Correia. Available in: <http://bit.ly/40zZ1t4>. Access on March 20 of 2023.
[4]. Aristóteles. (1991) Ética à Nicômaco. São Paulo: Nova Cultural. Available in: <http://bit.ly/3JQ27SU>. Access on March 20 of 2023.
[5]. _____. (2005) Retórica. Brasil: Imprensa Nacional - Casa da Moeda. Available in: <http://bit.ly/3TJcb4T>. Access on March 20 of 2023.
[6]. Blanning, T. (1998) The French Revolution: Class War or Culture Clash?. Londres: Macmillan.
[7]. Bobbio, N. (1999) O Positivismo Jurídico: Lições de Filosofia do Direito. São Paulo: Ícone Editora.
[8]. _____. (2010) Teoria Geral do Direito. São Paulo: Martins Fontes, 3rd ed.
[9]. Gonçalvez, A and Quirino, Regio. (2018) A Norma Hipotética Fundamental de Hans Kelsen e a Regra de Reconhecimento de Herbert Hart: semelhanças e diferenças entre os critérios de validade do Sistema Jurídico. Florianópolis: Sequência. Available in: <https://tinyurl.com/3dw7rzbh>. Access on March 20 of 2023.
[10]. Grócio, H. (2004) O Direito da Guerra e da Paz (De Jure Belli ac Pacis). Ijuí: Ed. Unijuí/Fondazione Cassamarca.
[11]. Hart, H. (1994) The Concept of Law. Oxford: Clarendon Press.
[12]. Hobbes, T. (2003) Leviatã. Brasil: Maria Bereniz Nizza da Silva. Available in: <http://bit.ly/3zaup5M>. Access on March 20 of 2023.
[13]. Hume, D. (2000) Tratado da Natureza Humana. São Paulo: Editora UNESP.
[14]. Kant, I. (2001) Crítica da Razão Pura. Brasil: eBooks Brasil. Available in: <http://bit.ly/40u8ke6>. Access on March 20 of 2023.
[15]. Kelsen, H. (1994) Teoria Pura do Direito. São Paulo: Martins Fontes, 4th ed.
[16]. Locke, J. Dois Tratados sobre o Governo. São Paulo: Editora Martins Fontes. Available in: <http://bit.ly/3Kco6oK>. Access on March 20 of 2023.
[17]. Maurício, R. (2017) Reflexões sobre o Jusnaturalismo: O Direito Natural como Direito Justo. Salvador: Direito UNIFACS - Debate Virtual. Available in: <http://bit.ly/40iSR0K>. Access on March 20 of 2023.
[18]. Pedrosa, R. (2008) Direito em História. Rio de Janeiro: Lumen Juris, 6th ed.
[19]. Platão. (2003) A República. Brasil: Ênio Padilha. Available in: <http://bit.ly/3K9xYPN>. Access on March 20 of 2023.
[20]. Rousseau, J.J. (2002) Do Contrato Social. Brasil: eBooks Brasil. Available in: <http://bit.ly/3FPC3GA>. Access on March 20 of 2023.
[21]. Sgarbi, A. (2009) Clássicos da Teoria do Direito. Rio de Janeiro: Editora Lumen Juris, 2nd ed.
[22]. Sófocles. (2005) Antígona. Brasil: eBooks Brasil. Available in: <https://tinyurl.com/mpzfn6cu>. Access on March 20 of 2023.