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1 Introduction

1 The recent resurgence of interest in the relationship between coercion and law in the English-speaking world is extremely positive, and fortunately this topic is no longer addressed only in a dismissive manner, as it has tended to be on the few occasions on which in recent decades it has been addressed at all. Two eminent American scholars, Frederick Schauer[1] and Kenneth Himma,[2] have dedicated their most recent books entirely to this subject. Despite being poles apart in terms of philosophical inspiration, they have reaffirmed the centrality, in any analysis of law, of its coercive nature, following an age-old tradition which, Himma recalls, can be traced back at least to Aquinas. I dealt with Schauer's book previously[3] and now I will briefly discuss that of Himma.

2 To dispel any doubt, I will say immediately that there are very few points in the book that I agree with, notwithstanding the fact that I believe, like its author, that coercion plays a crucial and ineluctable role in the legal world. However, in addition to the clarity and rare precision with which Himma argues his theses, I greatly appreciated two aspects of his book that I consider fundamental in any good philosophy of law: (1) the conviction that coercion can be adequately addressed only within an overall theory of law, which is indeed the one the author offers; (2) the idea that each conception of law inevitably presumes methodological choices, choices that must be expressed and justified, which the author does in various parts of the book but especially in Chapter 2.

3 To indicate the main reasons for my dissent, I will begin with the notion of coercion and the place that Himma reserves for it in law (section 2); I will then deal concisely with the method of conceptual analysis practised by the author (section 3); make some

considerations on the normativity of law (section 4); and conclude with a brief observation on the author's interpretation of some of Hart's theses (section 5).

2 Which coercion?

4 Himma sets out his Coercion Thesis (hereafter CT) in the opening of the book:

> According to the Coercion Thesis, it is a necessary condition for something to count as a legal system, as far as our conceptual practices are concerned, that it includes norms governing official behavior that authorize courts to impose coercive sanctions as a response to non-compliance with mandatory norms governing non-official behavior; a mandatory legal norm *L* governing non-official behavior counts as being backed by the threat of a coercive sanction, as a conceptual matter, only insofar as there is a legal norm governing official behavior that authorizes courts to impose a coercive sanction for non-compliance with *L*.[4]

5 I will merely point out the most macroscopic defects that to a coercivist stand out in CT. First of all, equating legal coercion with authorization to impose sanctions causes insurmountable problems. Since law is not the only normative system that provides and imposes sanctions, the author is forced to make two unacceptable moves to draw a plausible distinction between it and other normative systems. On the one hand, he flanks a concept of law *sensu stricto* with a concept of law *sensu lato*, including other normative systems that make use of sanctions. Relying for this purpose on a very improbable ordinary use, he takes the latter to include religious and institutional systems, such as those governing membership in a chess association or the National Football League. On the other hand, to identify legal systems *sensu stricto* and differentiate them from legal systems *sensu lato*, he adopts the criteria of the greater severity of the sanction and the asserted supremacy.[5] The latter criterion can easily be dismissed by observing that anyone, even a psychiatric patient who believes he is Napoleon, or Donald Trump after losing the 2020 presidential election, can *assert* his supremacy, but asserting it does not mean *having* it, even though it is far from simple to explain why.[6] The former criterion is also disputable: let us think about a sentence to eternal punishment in hell, terrifying for a sincere believer, or, to remain with earthly sanctions, a sentence for apostasy or social ostracism – all can have devastating effects on the life of those who suffer them. This criterion is not only disputable but also singularly entrusted to contingency in a discourse, such as his, completely pervaded by conceptual necessities. Indeed it is true that *today* some of the most common legal sanctions – notably imprisonment and capital punishment – are more severe, and generally perceived as such, than those imposed by other normative systems, but Himma does not explain why this is so. He only tells us that the greater severity of sanctions is designed to ensure that law pursues its essential purpose – maintenance of social peace. Yet this does not answer the inevitable question: why do religions, chess associations, the National Football League, etc., not impose equally or more severe sanctions in order to effectively pursue their own goals? To me the answer is crystal-clear: simply because the law in force precludes it, reserving for itself the exclusive use of force, with the exception of express dispensations and specific authorizations. It is precisely this – the monopoly of coercion – that characterizes *legal* systems as such in the eyes of common sense and differentiates them from any other normative system, which is thus usually considered extraneous to the legal domain. Therefore, the *specific*

difference between law and non-law lies in the monopolistic power the former holds to use physical force, both through sanctions and through other means.

6 Hence, law manages to pursue peace,[7] understood as the absence of *bellum omnium contra omnes*, not so much because it imposes draconian punishments but because of its peculiar relationship with the use of physical force.[8] And modern and contemporary law regulates this use not only positively, authorizing or (more often) prescribing the use of force by state apparatuses or exceptionally by non-officials, but especially by generally prohibiting its use, except by express dispensation. This explains why the law in force not only *claims* supremacy but actually *has* it, in the minimal sense of not having competitors that threaten to undermine it, as occurs in pathological situations.[9] In fact, violence against persons and violation of property rights can occur frequently even with the undisputed existence of a legal system, both by individuals and criminal organizations (narco gangs, mafias) which also might benefit from the protection or involvement of state apparatuses (e.g., South American death squads).[10] Even in such situations, in which orderly social life is very precarious and one can speak of peace only in minimal terms, it can be asserted that a legal system is in force until it implodes, giving way to anarchy, or until it is supplanted by a new one.[11] It is true then, as the author states, that law "has the longest arms and the biggest guns,"[12] but this is not happenstance: on the contrary, it is exactly that which to our eyes renders a normative system legal.

7 We can wonder, then, if it is appropriate to equate legal coercion with sanctions, in fact with penal sanctions alone,[13] and to consider the courts their exclusive administrators. [14] Such conditions are unduly restrictive, because they are not reflected in the reality of known legal systems, many of which would thus be excluded from the legal domain as outlined by Himma.

8 Firstly, not all sanctions are *penal* sanctions. Alongside them, the author, in truth, mentions civil and criminal contempt of court, which, however, are peculiar institutes of Anglo-American law. In any case, contemporary legal systems include administrative and civil measures usually inspired by both punitive and preventive purposes[15] – for Himma, the two aspects inherent in the notion of sanction – and these measures are often imposed by authorities other than the judiciary. However, in today's constitutional states, the courts are the supreme judge of the legitimacy of sanctions imposed by other authorities, as well as of the use of force employed by them – which, incidentally, further proves the subsistence of the general prohibition on such use of force.

9 Secondly, not all penal sanctions comply with the principles of personal responsibility and presuppose culpability, contrary to what Himma would seem to believe: this is true, although not always, only for rule-of-law legal systems. Just think of retroactive penal norms, of strict liability and vicarious or collective liability, of the creation of new crimes by analogy – that is, usual aspects of pre-modern law but unfortunately sometimes also present in modern legal orders, albeit inspired by the principle of legality, not to mention those in force in the contemporary non-Western world. These examples should also lead us to exclude from the domain of conceptual necessity the compresence of both a deterrent and a retributive function in sanctions.

10 Thirdly, contrary to what the author maintains,[16] sanctions are not the only manifestations of the force of law: what about the innumerable coercive measures such as preventive detention, compulsory medical treatment, or seizure of property? What

about customs duties, walls, barbed wire, snipers at the borders? They are all coercive measures, and in relation to them the sanction imposed ex post facto for the violation of penal norms and with retributive and preventive purposes appears to be only one among the possible coercive mechanisms. This point emerges when the author admits that there is an indisputable coercive aspect in civil law as well and that the very possibility of compelling a party to comply with a court order is ultimately linked to the cooperation of "officials with guns."[17]

11 Finally, it should be noted that, at least in constitutional states, officials are usually conferred not only a power but also a duty to impose sanctions: it is not left to their discretion to decide whether to impose them or not – provided that the conditions for them are met, which naturally could be subject to more or less discretionary evaluation.

3 Which method?

12 Another serious problem with Himma's book is that its field of reference, and consequently the level of generality of his theory, is far from clear. On the one hand, he presents his conception as general, indeed as universal, being aimed at illustrating what is metaphysically true of law in every possible world. On the other hand, he indicates a series of features that at most are typical of the law of certain times and places: especially of the contemporary law of Western countries, if not of common law systems alone (see section 2, on sanctions).

13 Hence, Himma presents his reflections as concerned with law *in general*, in short with every legal system, whereas all his work presupposes a very specific model of law which excludes not only pre-modern law but also the law in force in every other part of the planet. For instance, he maintains that it is part of the nature of law to be publicly promulgated (and the secret law of the pontifices?) using a common language (and Latin in medieval Europe?); moreover, he presupposes that every legal order embeds the separation-of-powers principle, understood as a distinction between legal functions if not between legal bodies (and the law of primitive communities?). It cannot be both: either the features of law he indicates are truly conceptually necessary, but then they must be true of every law, past and present,[18] whether governed by a Bill of Rights, Sharia, or age-old customs, or they are not, and thus we have been in the wrong for millennia in calling law that which is not law.

14 This oscillation between law in general and law here and now compels us to question the nature of the method used by Himma. I have already praised his choice – unusual indeed – to enunciate and justify his philosophical methodology. However, I find its basic features much less convincing. For Himma, philosophy of law deals with what is true of legal systems in all possible worlds, and in this it differs from sociology. For him, only a theory based on this methodology can count as an instance of conceptual analysis, which is a descriptive metaphysical enterprise to be distinguished from both an empirical and a normative investigation. From Frank Jackson the author borrows the well-known distinction between modest (MCA) and immodest (ICA) conceptual analysis.[19] The former "gives us insight into the metaphysical nature of a thing as it is determined by the conceptual framework we impose on the world through our empirically contingent linguistic practices."[20] The latter "is also concerned with explicating the metaphysical nature of something to which some concept-term refers,

but it seeks to explicate that nature as it really is independent of the conceptual framework that we impose on the world to understand it."[21] Himma says that his is MCA, not ICA.

15 In these few pages, I cannot adequately deal with conceptual analysis as conceived by the author; thus, I will merely point out some perplexities about the way in which he practises his MCA with reference to law.

16 Curiously, the book contains no trace of the distinction between the natural and the social world.[22] It is quite true that the starting point for both kinds of conceptual analysis is the conceptual framework that we impose on the world through our linguistic practices, which are essentially social. Yet it is one thing when these practices concern whales or stones, another when they concern law or other phenomena whose existence depends *entirely* on our social practices *and* on our ideas about them. In the latter case, the social dimension concerns not only how we portray the law but also the very object we portray. These levels are inextricably intertwined and influence each other, because law is made as much by our actions and opinions as by our discourses about them, as well as by the discourses we have about such discourses, and so on.

17 Another perplexity regards the way in which Himma puts his MCA into practice and distinguishes it from ICA. He says: "The difference between MCA and ICA … is that MCA seeks to understand the metaphysical nature of a thing as it is defined by the conceptual framework we impose on the world through our empirically contingent linguistic practices, while ICA seeks to understand the metaphysical nature of a thing as it really is independent of any such conceptual framework."[23] Yet both comprise a first (empirical) phase of recognition of our linguistic conventions, and they differ in that only MCA extracts from these conventions the logically implied or underlying philosophical principles, which represent "the ultimate standard for evaluating a conceptual theory."[24]

18 Whatever one might think of this view of conceptual analysis, the author's application of it to law is puzzling. He concisely develops the first phase of his MCA with a survey of the word "law" as defined by some English dictionaries. It seems very odd, however, to reduce our linguistic practices and our common intuitions relating to law to a collection of dictionary definitions, or rather to their lowest common denominator, since these lexical definitions are not so much instances of ordinary uses as a selection, purification, and normalization of them; in short, they do not exactly represent that basis of the MCA which Himma holds to be so crucial for its solidity.[25] Moreover, those educated on Oxonian and Hartian philosophical analysis are tempted to conclude that Himma, with his manner of performing MCA, validates Leiter's view of analytical philosophy as nothing but "glorified lexicography."[26]

19 This leads me to a third and decisive perplexity and the true sore point of Himma's MCA: the extraction from the examined lexical definitions (and/or from the contingent linguistic practices underlying them) of the philosophical assumptions they presuppose or imply. The passage from the first to this second phase of the MCA is truly mysterious because the author presents his main theses on the nature of law, starting from CT, simply assuming that they are rooted in current linguistic uses. However, there is another complication: on the one hand, the "shared philosophical assumptions about the metaphysical nature of law that ground these canons of usage and define the ultimate touchstone for evaluating conceptual claims about law"[27] would seem to act as supreme judge of the solidity of an MCA, even if they might be deficient or incorrect;

on the other hand, "insofar as the canons of ordinary usage are inconsistent with these assumptions, they do not accurately express the content of our conceptual practices with respect to the relevant concept-term."[28] The problem is crucial and concerns the possibility of MCA questioning the ordinary linguistic practices and the ideas embodied in them, or, to invoke J.L. Austin,[29] the possibility of determining whether ordinary language is the last word or only the first one. I do not find any clarification of this in Himma's book.

20 I will make two observations in this regard. Firstly, Himma's CT not only excludes much of the past and present legal experience, but it does not even seem to be grounded in either current linguistic intuitions or dictionary definitions. And how could it be otherwise? Common ideas about law are too muddled and vague to provide anything less indeterminate than equally muddled and vague notions. Prominent among them is the notion of coercion and the corresponding idea that sanctions are the characteristic instrument by which law compels us to do what we do not want to do. Yet the equation of coercion and sanctions and the connection between the latter and courts does not seem to be part of ordinary understanding, nor can it be derived from it. After all, contacts of non-officials with the courts are usually sporadic; it is much more likely that laypersons relate coercion to more familiar figures such as the policeman, the traffic warden, or the tax collector – in short to the personification of some administrative apparatus.

21 Secondly, not even Himma, in outlining his conception of law, can avoid making choices. They are inevitable, as is apparent when he admits that conceptual analysis, though modest, is sometimes forced to rectify our linguistic intuitions where unacceptable. Hence, contrary to the author's view, conceptual analysis can have a normative character – indeed it cannot fail to have it. And it is always immodest – indeed exceedingly so – at least if understood as an extrapolation of weighty philosophical theses from tenuous lexical definitions.

22 In ruling out the possibility of a normative conceptual analysis, Himma also denies that there can be moral reasons for changing the content of the concept of law.[30] I believe that any ordinary concept can be manipulated, often profitably, and that the elective instrument for this purpose is stipulative definition. This is even more true for the concept of law: the latter not only can be, but for the most part *is*, manipulated and shaped through normative choices.[31] This is inevitable if we are not satisfied with the vague ordinary concept of law. However, it is also obvious that the crucial importance of law in every society and the fact that it always impinges on the most vital aspects of our existence are potent factors that impel us to make conceptual choices, so as to portray the law in a way that conforms to our cognitive needs and/or our ethico-political values. If these choices were socially accepted, they would modify the law far more radically than any far-reaching legal reform. Nevertheless – and this is the point – choices concerning the concept of law are seldom made in the open; indeed, they are often portrayed as depictions of what law is in its essence. This is not surprising: presenting one's conception of law as a revelation of conceptually necessary characteristics of law and casting it in stone by giving it a semblance of irrefutability renders it decidedly more persuasive and socially influential than if it were presented as the result of subjective options open to refutation.

4 Which normativity?

23 At the risk of seeming to be the proverbial bull in a china shop, I confess that I cannot get excited about the discussion of the normativity of law, which so absorbs the Anglo-American world and also Himma, who dedicates four chapters of his book to it. The way this topic has been dealt with in recent decades has not advanced the post-Hartian theory of law; indeed, it has contributed to obscuring what Hart had adequately clarified, at least in principle. This debate has two main defects: (1) it is constantly undecided between methodological descriptions and prescriptions; (2) it continuously oscillates between the psychological dimension of attitudes regarding law, the semiotic characteristics of the latter, and the ethico-political questions of the legitimacy and the duty of obedience. Nor does Himma's discourse avoid these uncertainties and oscillations.

24 Reduced to the bone,[32] Himma's thesis is that law provides only practical motivating reasons of a prudential kind, having an objective, instrumental, and defeasible character. For him, a legal system is such only if it is reasonably contrived to furnish this kind of reasons. Sanctions are put in place to provide their potential recipients with prudential reasons for compliance. Since the normativity of law cannot be explained by resorting to reasons of a different type and force (e.g., moral reasons), excluding CT from the picture would preclude us from understanding the capacity of law to produce reasons.

25 My previous observations on coercion should make it clear why I consider Himma's fears to be unfounded. When coercion is viewed as a systemic characteristic of legal systems and as an essential feature of the ordinary concept of law, the concern with finding a solid anchoring to CT has no reason to be. Moreover, I see some serious problems with Himma's complex reasoning.

26 The first problem concerns the different role ascribed to officials and to private citizens. In fact, law would give prudential *motivating* reasons only to the latter, whereas norms addressed to officials would provide them only with *justifying* reasons, since their legal acts could be challenged by those subjected to their effects.[33] It would make no sense to talk about motivating reasons regarding officials, as they have already accepted the rule of recognition and thus decided prejudicially to comply with the law. Likewise, it would make little sense to talk about justifying reasons regarding the mandatory norms governing non-official behaviour, e.g., asking someone the reason that justifies his not committing murder.

27 This way of phrasing things fails to convince me, in part because, as Himma himself acknowledges, his remarks on non-officials do not refer to power-conferring norms; besides, even officials can be the subjects of mandatory norms. The latter are much more numerous than the author seems willing to admit, given that, especially in systems based on the rule of law, the exercise of public powers is often mandatory (not to mention the fact that officials acting as private citizens are subject to common mandatory norms).

28 To me, it is not plausible that different types of norms provide different types of reasons to subjects acting in different roles: the result is an extravagant image of law as a system whose normativity would be schizophrenic or two-headed. If justifying means giving reasons and if providing practical justifications means giving reasons for action,

it follows that justifying amounts to answering the question: why must I / must I not / can I do this? or: why did I / did you do this?, reconstructing the chain of reasons that support the practical conclusion – reasons which in law can only consist of those semiotic entities that are legal norms (and of descriptions of facts qualified by them). If this is so, it is unclear why these questions and the justifying reasoning that answers them cannot be concerned with mere conducts (omissions included) and legal acts, of both officials and non-officials. The only difference, and it is certainly no small difference in the legal world, is that modern law includes norms that confer on officials alone (indeed on limited classes of them, such as judges, but not only them) the duty to make explicit the legal justificatory reasoning supporting a practical conclusion. Certainly we do not normally go around asking people, "why did you not commit murder?" (in truth this example is a bit tendentious because normally it would not occur to one to adduce the *legal* reason for not killing people, since the moral reasons are considered pre-eminent). Yet, contrary to what Himma thinks, the question is by no means trivial, especially if referred to actions rather than omissions, since the answer to it may also convey information: "Why did you submit your tax returns?" Answer: "Because the deadline for filing them was today."[34]

29 Furthermore, the logical structure of the justifying reasoning seems the same whether we are dealing with non-officials (either engaging in mere conducts or exercising private powers) or with officials whose acts, even if carried out in exercising legal powers (and possibly also duties) that produce legal effects, are still human behaviours.

30 The decisive point is that justifications and motivations are not mutually exclusive. These dimensions may well coexist because they deal with two different aspects of human actions: the former looks at the structure of the justificatory reasoning, whose premise is a reference to one or more norms, and whose conclusion is a normative qualification of the action (or omission); the latter focuses on the psychological processes that lead to the person performing or not performing the given action. The former deals with semiotic entities and reasonings, the latter with facts, or rather their description. Motivating reasons, which I would call motives *sans phrase*, affect both officials and non-officials in the same way and are heterogeneous, contingent, and variable from individual to individual and within the same individual depending on the norms or the circumstances at hand. They can certainly be prudential motives, attributable to the fear of legal sanctions or to other factors (e.g., the desire to preserve one's reputation or to avoid social ostracism). There may be religious or moral motives, personal interest, respect for social customs, or even a lack of incentives to violate the law.[35] On the other hand, violation of the law does not indicate that fear of a sanction failed to act as a deterrent: just think of conduct influenced by powerful emotions such as anger, jealousy, etc.

31 It does not help our understanding of law to reduce the motives for law-abidance to a single one – the desire to avoid a sanction. Nor is it helpful to objectify this motive and elevate it to a unifying factor of the legal dimension and a conceptually necessary characteristic of law. Himma certainly does not neglect the variety of motives for law-abidance; indeed he is fully aware of it. Nevertheless, he treats it as irrelevant in his discussion of the normativity of law. In fact, the most controversial idea in his book is that the variety of motives that individuals have is not as important as the reasons they need to have, as rational beings responding to the dictates of practical rationality. And here is the point:

> The practices constituting something as a legal system would not be equipped to provide something rationally competent subjects are characteristically likely, as a descriptive matter of contingent fact, to treat as subjective motivating reasons to refrain from prohibited acts if those practices did not provide something that, as an objective matter of normative practical rationality, they *should* treat as motivating reasons to refrain from such acts. Subjects are plausibly characterized as *rationally competent* only insofar as they are reason-responsive in a way that *largely* conforms to objective norms of practical rationality.[36]

32 What exactly is this normative practical rationality? Only in vain will we search for an answer in the book. However, it would seem to be much more potent than instrumental rationality. If so, it would often have to prescribe violation of the law, since in several cases the latter is the most suitable course of action for achieving one's goals. Himma does not even tell us where this rationality comes from: he merely postulates its existence. Yet a reasoning of this kind emerges from some of his sporadic references: human beings must conform to normative practical rationality because they are indeed rational beings; human beings are rational because their behaviours generally reflect the dictates of normative practical rationality; in turn, the latter are such because they are widely shared by human beings, who thus behave as they have to because most people behave in this manner. This circular reasoning, continually moving from ought to is and vice versa, fails to illuminate the characteristics of normative practical rationality as well as those of human nature.

5 Coda: In defence of a Hartian interpretation of Hart

33 There is an aspect of the Anglo-American discussion of legal philosophy that continues to disconcert me: the fact that Hart's thought is generally subjected to systematic distortion. I am certainly not referring to the most slippery aspects of Hart's ideas, such as those regarding the internal point of view, acceptance, and the rule of recognition, but to those passages in *The Concept of Law* concerning coercion, which in my opinion are crystal-clear. In the Anglo-American world, Hart's book has been turned inside out, commented upon, and annotated word by word, comma by comma, almost like a sacred text. Therefore, it escapes me why it is systematically misunderstood, especially on the subject of the relationships between law and force, to the point that the author is now generally viewed (in the Anglo-American world, certainly not in Europe or Italy) as the initiator of the deplorable turn away from the coercion theory. These considerations also apply to Himma. I will touch briefly on two points, the first indirectly related to our topic, the second directly related.

34 The first point concerns the minimum content of natural law. As we know, this expression refers to certain contents common to law and morality that a legal system must possess in order to last over time, on the assumption that human beings and the world around them continue to be as they are. These contents are summed up in norms that limit the use of violence, establish some form of ownership, and recognize the binding character of promises – all supported by coercive sanctions. Clearly, this minimum content has nothing to do with the morality of law, i.e., it is not a minimum of decency or moral acceptability, and it certainly cannot be reduced to a collection of precepts with specific content. Yet it seems to me that this is how Himma understands it, as when he states that the Fugitive Slave Act of 1850 represents a violation of it.[37] There is no doubt, however, that for Hart the minimum content is fully compatible with

human sacrifices, the law of Talion, slavery, the stoning of adulterers, racial segregation, the Shoah, the gulags, and with all the other iniquities perpetrated by almost all past and present legal systems – as is clear from his theses on the relationship between law and morality.

35 The second point concerns international law. According to Himma, since Hart accepts the conceptual possibility of a legal system *sans* sanctions, coercion is not a necessary feature of law, as attested by international law, which he would depict as lacking sanctions. Himma uses the following well-known quotation to support this interpretation: "There are no settled principles forbidding the use of the word 'law' of systems where there are no *centrally organized sanctions*, and there is good reason (though no compulsion) for using the expression 'international law' of a system, which has none."[38] But Hart is not asserting that international law is devoid of sanctions; he is saying something quite different, i.e., that it is devoid of *centrally organized* sanctions. This is perfectly consistent with his (and Kelsen's) depiction of it as a rudimentary law, lacking a rule of recognition and specialized organs and functions. Hart clearly rejects a definitional approach to concepts, and to the concept of law, i.e., an approach aimed at indicating the necessary and sufficient conditions for the use of the corresponding terms.[39] Consequently, after illustrating the similarities and differences between state and international law, he leaves open the possibility of naming the latter law or not – hence, his idea is linked to his theory of concepts, and certainly not to his views on coercion. After answering affirmatively the question of whether international law is coercive, he observes that state law is "far more strongly coercive," which obviously implies that the former is as well.[40] When he moves from customary to treaty law and considers the UN Charter, he mentions the veto power of the permanent members of the Security Council only to point out a macroscopic difference from the functioning of sanctions in municipal legal systems, not to deny that the measures provided for by the UN Charter and examined by Himma in Chapter 9 of his book are genuine sanctions.

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NOTES

1. Schauer 2015.
2. Himma 2020.
3. Pintore 2017.
4. Himma 2020: v.
5. Himma 2020: 201.
6. Jori 2010.
7. However, the sacrosanct observation of Bobbio (1965: 326) should be remembered in this regard, according to which the theories that ascribe the goal of peace to law do nothing but reformulate the coercive element, peace being nothing other than order obtained by force.
8. As is known, the criminal sanctions used by contemporary Western systems tend to become increasingly mild, and it is interesting to note, also in the light of the discourse that follows, that we are nonetheless witnessing a progressive decline of violence against persons and property (Pinker 2011).
9. Hart 1994; Jori 2010.
10. As Kelsen reminds us, there is no ontological difference between an unlawful act and a sanction, between the violence authorized by law in the form of a sanction and the violence for which the sanction is imposed. The difference is merely one of legal qualification (Kelsen 2006).
11. Jori 2010.
12. Himma 2020: 201.
13. Himma 2020: 66.
14. In truth, Himma sometimes speaks of officials rather than courts, but it seems clear to me that he means to refer to judges.
15. Himma 2020: 54–5.
16. Himma 2020: 57.
17. Himma 2020: 60–1.
18. Himma 2020: 67.
19. Jackson 1998.
20. Himma 2020: 33.
21. Himma 2020: 33–4.
22. The exceptions are reduced to a few cursory remarks, as when he observes that the idea that law is necessary for peace is shared by ordinary people, whose opinions condition our practices (Himma 2020: 89).
23. Himma 2020: 35.
24. Himma 2020: 36.

25. This is somehow acknowledged by the author when he observes that "the prima facie case for the Coercion Thesis cannot rest on just these dictionary reports," since they could well "misreport the relevant canons of usage" (Himma 2020: 53–4). Therefore, even for him it is important to ascertain the "contingent linguistic practices" underlying the definitions. Yet there is no trace of such an investigation in the book.
26. Leiter 2007.
27. Himma 2020: 238.
28. Himma 2020: 238.
29. Austin 1961, 133.
30. Himma 2020: 30.
31. I prefer to speak of normative choices rather than specifically of moral choices because the evaluations that lead one to redefine a concept can certainly be moral and political (as most often occurs in the case of law), but they can also be of another kind, e.g., methodological, epistemological, or even metaphysical (a metaphysics might prescribe how the world must be).
32. Even attempting to summarize the author's highly complex reasoning would require a truly long discussion, which is not possible here.
33. Himma 2020: 116ff.
34. And it is a question that can also regard both the actions and the omissions of officials. Question (to a municipal employee): "Why did you not issue the residence certificate?" Answer: "Because no one asked me to do so" (implying "I have an obligation to issue, upon request, civil registry certificates, including certificates of residence").
35. Kelsen 1992: 31.
36. Himma 2020: 121 (Himma's italics).
37. Himma 2020: 136.
38. Hart 1994: 199 (italics mine).
39. Hart 1994: 213.
40. Hart 1994: 231.

ABSTRACTS

The author, like Himma, conceives law as essentially coercive. However, she maintains that his Coercion Thesis lends itself to various criticisms. She also expresses doubts about his views on conceptual analysis and his conclusions regarding the normativity of law. Finally, she believes that Himma provides a misleading account of Hart's ideas on the relationships between law and force.

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