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HOMO IURIDICUS AND LEGAL REASONING

Abstract: *The paper examines the method of ideal-typical concepts, which the author previously applied in his book Osnovi pravnog rasuđivanja (The fundamentals of legal reasoning). Since the book contains only a few remarks on the topic, the article aims to offer a systematic account of the method employed and its implications. In the book, the ideal type is constructed as homo iuridicus, the subject whose reasoning is guided exclusively by authoritative legal reasons. This subject is a rational, rather than an empirically existing agent. The paper argues that the ideal type provides a framework for conceptualizing legal reasoning without resorting to the idiosyncrasies of individual judges or particular legal communities. When the reasoning of such a homo iuridicus is compared to actual judicial practice, it becomes evident that judges do not always decide or justify their rulings solely by referencing authoritative legal reasons. In this way, the usefulness of Weber's notion of ideal-typical concepts for jurisprudence is brought to light.*

Key words: *Homo Iuridicus*, Ideal Type, Max Weber, Legal Reasoning, Interpretation of Law.

1. Introduction

At the beginning of the book *Osnovi pravnog rasuđivanja* (The fundamentals of legal reasoning), I emphasize its purpose and my intention: on the one hand, the book is meant to serve as a handbook on legal reasoning for students and practicing lawyers, and on the other hand, it aims to be theoretically and methodologically sound. These two objectives make the book both an easy and a difficult read. The central part dedicated to interpretive arguments, which is also the most practical part, is certainly an

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easier one. However, the credibility of this easier part would be questionable without the preceding theoretical and conceptual clarifications in the first and second parts.

However, these clarifications did not include methodological considerations. The book did not delve into detailed description or defense of the chosen methodological tool – the ideal-typical concept of *homo iuridicus*. Given that the primary aim of the book was to make it practical and accessible for practitioners, I believed that such discussions would be both difficult to read and tedious for the target audience. Therefore, the book includes only a few methodological notes and one section describing the positions of various tiers of legal professionals within the legal system, as well as their differing approaches to legal reasoning.[1]

This text should therefore be understood as a "methodological supplement" to the book. However, its primary purpose is not to serve as a methodological guide for reading the book (though it can fulfill that role as well), but rather to demonstrate – through the example of the phenomenon of legal reasoning – the applicability of Weber's method of ideal types in the conceptualization of social phenomena.[2]

Why is this phenomenon a suitable illustration of the value that legal theory can derive from this method? The primary reason lies in the complexity involved in conceptualizing the phenomenon of legal reasoning. To address the conceptual question "What is legal reasoning?", one must first determine which agents are being considered, and then identify which types of their actions – or more precisely, which segments of those actions – are the focus of analysis. Once the scope of the empirical phenomenon is narrowed, another question emerges: how can such a heterogeneous phenomenon, full of idiosyncrasies of individual cases, be captured under a single concept? Are there any shared (implicit) agents' motivations within these actions that can be reconstructed?

The answer to these questions can be grounded in the following social fact: law, as an institutional practice, plays a distinctive role in the lives of its addressees – a role that varies depending on the individual – and in doing so, shapes their perspectives on law and legal phenomena. While each person brings something personal to their experience of social relations and practices, there is also much that is shared in the beliefs and attitudes of individuals within a given community. What is shared stems from the fact that each individual's beliefs are embedded in

1 Dajović, G., 2023, *Osnovi pravnog rasuđivanja* (The fundamentals of legal reasoning), Belgrade, Pravni fakultet Univerziteta u Beogradu, pp. 21, 72–77.

2 The second purpose, of course, is to present the central ideas about legal reasoning that have been developed, in part through the application of the described method.

a broader political or legal culture, and that shared language, ideologies, as well as conventions and institutions, all help to shape those beliefs and attitudes.[3] This state of affairs suggests that the internal perspectives of different legal agents could in fact be constructed as ideal-typical models in the Weberian methodological sense. Ideal types are conceptual frameworks stripped of contingency, but grounded in reality – more precisely, they are constructed and "heightened" versions of reality. They serve to help us understand and explain meanings embedded in empirical phenomena.

For these reasons, the following section will outline Weber's approach to the methodology of cultural and social sciences, focusing primarily on his understanding of ideal types as a distinct category of concepts. At the end of the section, attention will be given to an example that demonstrates the suitability of this approach in jurisprudence. The third section will then present key insights about legal reasoning that can be derived using the ideal type of *homo iuridicus*, which are elaborated in greater detail in the book. Finally, before the concluding remarks, the benefits resulting from this conceptual approach to the phenomenon of legal reasoning will be identified – benefits that may also potentially apply to the study of other legal phenomena.

2. Weber's Ideal Types

2.1. ON WEBER'S METHODOLOGICAL APPROACH TO THE SOCIAL SCIENCES

Every theoretical (re)construction of legal practice (as well as any other social practice) faces, among other things, the fundamental epistemological dilemma: how to connect or "bring together" the conceptual and the empirical when studying that practice?[4] On the one hand, legal

3 Balkin, J., 1993, Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence, *Yale Law Journal*, Vol. 103, No. 1, pp. 107–108.

4 For example, Isaac Reed, in his book *Interpretation and Social Knowledge*, argues that the key debates in social science are not primarily about whether social facts exist and how we establish their existence (although these debates do occur). According to him, the main disagreements arise around "how we can claim to correctly and effectively explain, criticize, or interpret [social phenomena]" (Reed, I., 2011, *Interpretation and Social Knowledge. On the Use of Theory in the Human Sciences*, Chicago & London, The University of Chicago Press, p. 3). Therefore, Reed claims, "the responsibility of the social researcher is not only to report the facts, but to propose a deeper or broader understanding of them. When investigators attempt to do this, we reach for our theories" (*ibid*., p. 17).

theory aims to (re)construct and analyze general concepts related to law. On the other hand, although legal theory does not refer to specific legal systems in the way legal science does, it pretends to refer to the reality of law (admittedly, to "more general reality", so to speak). This question becomes even more pressing when the subject of theoretical inquiry is closely tied to legal practice itself, as is the case with legal reasoning or with the question what does it mean "to think like a lawyer".

Max Weber addressed similar questions, albeit within the broader context of the social and cultural sciences.[5] The fundamental question to which he sought a methodological answer concerns the relationship between the concepts and claims of the social and cultural sciences, on the one hand, and concrete historical and social reality, on the other. In this sense, Weber was particularly interested in "what is the logical function and structure of the concepts which [social science] uses" or more precisely, "what is the significance of theory and theoretical conceptualization (*theoretische Begriffsbildung*) for our knowledge of cultural reality?"[6]

According to Weber, the problem lies in the fact that, in the natural sciences, scientific concepts and laws are viewed as generalizing abstractions of concrete phenomena, while these concrete, individual instances are regarded merely as "representative illustrations" of those concepts and laws.[7] However, Weber argues that such an approach is not possible in the social sciences. Attempts to define scientific concepts in the classical manner (*per genus proximum*), according to which social phenomena in the social and cultural sciences could then be subsumed, are "nonsense"[8] due to the endless diversity of social phenomena and the very nature of those phenomena.

Precisely because of the nature of social phenomena, the social science researcher must understand (and to understand, must interpret) the subjective attitudes, perspectives, and motives of the agents in social relations. The social sciences strive for the understanding (*Verstehen*) of social phenomena – through the interpretation of the meanings individuals attribute to their actions. For this reason, Weber regarded sociology as "a science concerning itself with the interpretive understanding

5 Weber's ideas on methodology in the social sciences and on ideal-typical concepts are presented based on insights from his unfinished work Economy and Society and his key methodological essay, "Objectivity" in Social Science and Social Policy, originally published in 1904 (this article uses the version found in Weber, M., 1949, *The Methodology of the Social Sciences*, Glencoe, Free Press, pp. 50–110).

6 Weber, M., 1949, p. 85.

7 *Ibid*., p. 86.

8 *Ibid*., p. 93.

of social action and thereby with a causal explanation of its course and consequences."[9]

How did Weber construct his methodological approach in line with this understanding of sociology as a science?[10] First and foremost, the understanding of social action that truly serves the purpose of its causal explanation[11] relates to the meaning the agent attributes to it, in terms of motive. Weber held that it is the agent's actual motive that the investigator must seek to identify, since it is the true cause of the action that needs to be explained. It is important to note that Weber's formulations typically deal with whole patterns or sequences of behavior, rather than isolated actions.[12]

Regarding the context in which the researcher seeks to interpret meaning (motives), this can relate to the concrete actions of a specific individual, to those prevailing or average within a particular group, and finally, to those attributed to a constructed "typical" agent.[13] Of these three, the most important context of meaning is the latter, which is formulated through ideal types, since they are "deliberately constructed to project a hypothetical 'progression' of external behaviors that could be fully explained in terms of understandable 'motives'."[14]

For Weber, the problem of the ideal type is the central problem of all the social sciences.[15] The reason is that ideal types are a necessary episte-

9 Weber, M., 1978, *Economy and Society: An Outline of Interpretive Sociology*, Berkeley – Los Angeles – London, University of California Press, p. 4.

10 The answer to this question can hardly be a complete or precise account of Weber's methodology: firstly, because there is neither space nor need for that here, and secondly, because any attempt to present Weber's ideas of this kind inevitably faces inherent challenges related to his work – Weber's writing style is complex, his ideas are sophisticated, he employs specialized terminology, etc.

11 "[F]or a science which is concerned with the subjective meaning of action, explanation requires a grasp of the complex of meaning in which an actual course of understandable action thus interpreted belongs" (Weber, M., 1978, p. 9).

12 "The particular act has been placed in an understandable sequence of *motivation*, the understanding of which can be treated as an explanation of the actual course of behavior" (Weber, M., 1978, p. 9, emphasis by author).

13 "Understanding involves the interpretive grasp of the meaning present in one of the following contexts: (a) as in the historical approach, the actually intended meaning for concrete individual action; or (b) as in cases of sociological mass phenomena, the average of, or an approximation to, the actually intended meaning; or (c) the meaning appropriate to a scientifically formulated pure type (an ideal type) of a common phenomenon" (*ibid.*).

14 Ringer, F., 1997, *Max Weber's Methodology: The Unification of the Cultural and Social Sciences*, Cambridge MA, London, Harvard University Press, p. 114.

15 Schütz, A., 1967, *The Phenomenology of the Social World*, Evanston, Northwestern University Press, p. 224.

mological tool if we aim to not merely describe but to explain historical and social phenomena. Of course, sociology also employs average, empirical-statistical types, but according to Weber, "[t]heoretical differentiation (*Kasuistik*) is possible in sociology only in terms of ideal or pure types."[16]

2.2. ON WEBER'S IDEAL-TYPICAL CONCEPTS

For the sake of clarity, Weber's idea of ideal-typical concepts will be presented analytically, i.e., through brief answers to three questions. The first question is: what does "ideal" mean in this context? The second: what does "typical" mean? And finally, the third: what is the function of these concepts in the social sciences?

2.2.1. What Does "Ideal" Mean?

An ideal type is constructed by emphasizing only one aspect of reality, i.e., one particular motivation of social agents, in such a way that its diffuse, individual perspectives and motivations are abstracted and synthesized into a consistent, one-sidedly accentuated mental construct. Weber argued that such concepts cannot be constructed without taking into account the actual motives of social agents. At the same time, however, it is not possible to use the often unreflected motives, uses of terms, and understandings of phenomena held by real agents in their raw, unprocessed form – if they are to have any epistemological or heuristic value.

Therefore, when we say that an ideal-typical concept is "one-sided", we mean that it has been "purified",[17] i.e., cleansed of all incidental or secondary elements that are present in reality. When we say that it is consistent, we mean that a single conceptual pattern encompasses specific motives and perspectives of the agents in social life, in such a way that the selected and emphasized elements are internally connected into a logically coherent whole.

But how can we know whether an ideal-typical interpretation of the social agents' motives is reliable or epistemologically useful?

16 Weber, M., 1978, p. 20.

17 Rheinstein refers to ideal types as "pure" types (see Rheinstein, M., Introduction, in: Weber, M., 1954, *Max Weber on Law in Economy and Society*, Cambridge MA, Harvard University Press, p. xxxvii). After all, Weber himself also uses the terms "pure type" and "ideal type" interchangeably (cf. Weber, M., 1978, p. 20). The term "pure" seems to reflect Weber's original intent more accurately, while also avoiding the ambiguity he felt compelled to clarify – namely, that "ideal" does not mean desirable, prescriptive, or normatively correct.

First, an ideal-typical concept must be adequate in terms of the meaning it seeks to capture. As Weber puts it, one must "formulate pure ideal types of the corresponding forms of action which in each case involve the highest possible degree of logical integration by virtue of their complete adequacy on the level of meaning."[18] An interpretation is "adequate on the level of meaning insofar as, according to our habitual modes of thought and feeling, its component parts taken in their mutual relation are recognized to constitute a 'typical' complex of meaning."[19] What this somewhat opaque formulation implies is that by "habitual modes of thought and feeling" Weber is not referring to the thoughts and feelings of the researcher constructing the ideal type, but rather to those of the agents whose actions are being interpreted. However, in order for the researcher to be able to recognize the "component parts taken in their mutual relation," they must have some knowledge of those thoughts and feelings. Finally, the ideal type must be formulated as a pure and coherent construct, without any admixture of other relationships or contexts of meaning. The person so conceived behaves as a "type" only insofar as they act within the stipulated situation. In other situations, their behavior may not be typical at all.[20] For example, the ideal-typical concept of the bureaucrat explains only their behavior in the workplace, and not, for example, in their personal relationships with friends.

In addition to the "adequacy on the level of meaning," Weber proposes a second condition for the "verification" of the usefulness of ideal-typical concepts: causal adequacy. It is clear that a "pure" type does not have a direct counterpart in reality; it is not suited to serve as a conceptual pattern under which actual situations, relationships, or attitudes can be subsumed as concrete and complete instantiations of the concept.[21] However, although the social researcher "goes beyond" the observable forms of real subjective attitudes and positions of social agents, they should not ignore or distort them, since, after all, the real phenomena are what they ultimately want to explain.[22] Only if "there is some kind of proof for the existence of a probability that action in fact normally takes the course which has been held to be meaningful"[23] can the ideal-typical concept be said to be "causally adequate". In other words, this means that it can be empirically observed, with a reasonable

18 Weber, M., 1978, p. 20.
19 *Ibid*., p. 21.
20 Schütz, A., 1967, p. 236.
21 Weber, M., 1949, p. 93.
22 Reed, I., 2011, p. 91.
23 Weber, M., 1978, p. 12.

degree of approximation, that the ideal-typical motives could have led to a certain action and, more strictly, that they probably did so and that there is a likelihood they will do so again.[24]

Both types of adequacy are necessary for an ideal type to be epistemologically useful. No matter how often the behavior predicted by the type occurs in reality, without adequacy on the level of meaning, such regularities will remain unintelligible. Conversely, if the context of meaning is correctly grasped, but in practice the behavior does not unfold in any way as the ideal type "predicts", then the concept is useless.[25]

Weber assigns the highest degree of reliability to ideal-typical concepts based on so-called purposive-rational (*zweckrational*) motives. His favorite example is *homo oeconomicus*. In this kind of ideal-typical concept, both adequacy on the level of meaning and causal adequacy are at their highest, because if we assume that the behavior of the ideal-typical subject is purposive-rational, then the actions that follow from such motivation will also be rational means for achieving the intended end.[26] In such cases, "the relations of means and end will be clearly understandable on grounds of experience."[27] This type of ideal-typical concept will be discussed further below.

Finally, it is important to emphasize that ideal types are not prescriptive constructions. Weber insists that it is the scholar's elementary duty to approach social phenomena and the motives and standpoints of social agents in a value-neutral way. It means that they have to maintain a clear and strict distinction "between the logically comparative analysis of reality by ideal types in the logical sense and the value-judgment of reality on the basis of ideals."[28] For Weber, arguments based on value-judgments have no place in empirical research.[29] Therefore, the "ideal type [...] has no connection at all with value-judgments, and it has nothing to do with any type of perfection other than a purely logical one."[30] Ideal types are not normative or value-laden – they are epistemological constructs, grounded in empirical reality.[31]

24 Schütz, A., 1967, p. 236.

25 Weber, M., 1978, p. 22.

26 Ringer, F., 1997, p. 106.

27 Weber, M., 1978, p. 18.

28 Weber, M., 1949, p. 98.

29 Weber, M., 1978, p. 17.

30 Weber, M., 1949, pp. 98–99.

31 However, Weber does not deny the possibility – which is frequently realized in practice – that an ideal type may reflect ideals genuinely held by actual participants in social life, which they strive to realize in their practical actions or use as guiding maxims for regulating social relations (Weber, M., 1949, pp. 95, 98).

2.2.2. What Does "Typical" Mean?

The aim of every science is to organize the facts of the segment of reality it investigates through a system of concepts, whose content is shaped, refined, and revised through careful observation of empirical data, and through causal relationships, by formulating and testing hypotheses. This process continues until the system of scientific laws becomes sufficiently developed to allow us to speak of a "deductive science".[32]

In this regard, both philosophy and cognitive psychology today make use of classically defined concepts (*per genus et differentiam*), but also of so-called prototypical concepts. As for the former, it has already been noted that, according to Weber, they are inadequate for the purposes of the social sciences. Regarding the latter – prototypical concepts – their defining feature is that they capture properties of the phenomenon that are statistically most prevalent, i.e. average. These concepts abstract what is "typical", i.e., most frequent, from the empirical data, through induction.

However, the similarity in terminology should not be misleading: "typical", in this sense, is not the same as "ideal-typical". As already mentioned,[33] Weber recognizes the relevance of "average" phenomena and the need to conceptualize them, but he does not see this as a significant methodological challenge. They may well be captured through prototypical concepts, but they cannot fulfill the specific role that Weber believed interpretive sociology must play.

Therefore, when Weberian sociology refers to "typical cases", it does not mean empirically or statistically average ones, but rather "ideal types".[34] As Weber himself puts it, "[t]he goal of ideal-typical concept-construction is always to make clearly explicit not the class or average character but rather the unique individual character of cultural phenomena."[35] For example, the "typical" or average official in a corrupted legal system may be a fanatical or corrupt loyalist. But the "ideal-typical" *homo iuris* would be someone committed only to the valid legal order and motivated by that commitment, consistently applying it. The former becomes fully intelligible only in contrast with the latter.

2.2.3. What is the Function of Ideal-Typical Concepts?

According to Weber, ideal-typical concepts are not the goal of the social and cultural sciences – as concepts and theories often are in the natural sciences – but rather a means to an end. "The ideal-type concept [...]

32 Weber, M., 1949, p. 106.

33 See *supra* note 13.

34 Weber, M., 1978, p. 20.

35 Weber, M., 1949, p. 101.

is no [scientific] 'hypothesis,' but it offers guidance to the construction of hypotheses. It is not a description of reality but aims to provide unambiguous means of expression to such a description."[36]

Of course, anyone constructing an ideal type observes reality and selectively draws certain elements from it, in line with their research aims and interests, while omitting or discarding others. Without such a relation to reality, ideal types would lack any epistemological value or utility. However, Weber argues that their connection to empirical data lies primarily in the fact that the characteristic features of the type – those to which the abstract construct refers – are features that exist, either explicitly or implicitly, in the real world. These features become pragmatically clear and intelligible precisely through reference to the ideal type.

Ideal-typical concepts, as Weber explains, are "a technical aid which facilitates a more lucid arrangement and terminology [which allows us] to determine the degree of approximation of the [...] phenomenon to the theoretically constructed type."[37] The function of such concepts in empirical research is to serve as a reference point against which social facts can be compared, allowing us to assess the extent to which those facts approximate or deviate from the ideal types. This, in turn, enables the explanation of causal relations in social reality using relatively clear and structured conceptual tools.[38] Therefore, the construction and use of ideal-typical concepts are necessary for both heuristic and expository purposes, since the attitudes and motives of agents within concrete social relationships can be made fully explicit only through such constructions.[39] When ideal types achieve these goals, they fulfill their epistemological function, even though it remains clear that they diverge from empirical reality.[40]

36 *Ibid*., p. 90.

37 Weber, M., 1946, pp. 323–324.

38 Weber, M., 1917, Der Sinn der "Wertfreiheit" der soziologischen und ökonomischen Wissenschaften, *Logos*, Vol. 7, pp. 83–84.

39 Weber, M., 1949, p. 101.

40 Weber, M., 1949, p. 90. Weber's insight that ideal types, although not accurate descriptions of reality, are nonetheless epistemologically and heuristically justified, has found support in certain currents of contemporary epistemology. The ideas advanced over a long period by Catherine Elgin are particularly instructive in this regard. Elgin argues that "science routinely transgresses the boundary between truth and falsity. [...] It develops and deploys simplified models that diverge, sometimes considerably, from the phenomena they purport to represent". (Elgin, C. Z., 2017, *True Enough*, Cambridge MA – London, The MIT Press, p. 15). She illustrates this claim with numerous examples, concluding that thought experiments or theoretical concepts, the scientific model can nonetheless be epistemically valuable even when partially inaccurate, provided that it "exemplifies features it shares with the phenomena it bears on. By making those features salient, such a representation enables us to appreciate their significance for the phenomena" (*ibid*., p. 5). These kinds of epistemic tools filter out irrelevant

This applies especially to the abovementioned ideal types constructed on the basis of purposive rationality. Namely, purposively rational (*zweckrational*) action is the most intelligible type of behavior. Once the sociologist projects the course of action that would result from such rationality, they must then trace the deviations between that projection and the actual progression of behavior. This, in turn, enables the causal attribution of those deviations "from the rationally understandable 'progression' to divergences between the 'motivations' stipulated in the type and those actually moving the agents involved."[41]

In this sense, let us return to the ideal-typical concept of *homo oeconomicus*, who, in economic action, is motivated solely by rational economic objectives. According to this concept, if market actors were to behave in a strictly purposively rational manner, they would have to act in precisely one way and no other. This means, for example, that they would act in accordance with the principle of marginal utility and, more generally, would behave and make decisions so as to minimize costs and maximize benefits. By comparing such an ideal-typical concept of the economic actor with the actual behavior of real-world market participants, we are able to understand the influence of misconceptions, emotions, and biases on the actions and decisions they make.[42] In short, we can both understand and explain their real motives for economic decisions through the deviations of actual behavior from the ideal type.[43]

2.3. WEBER'S APPROACH – AN EXAMPLE FROM CONTEMPORARY JURISPRUDENCE

The potential relevance of Weber's methodological approach to the social sciences for jurisprudence was demonstrated by David Galligan through

factors, bringing the relevant characteristics into sharper focus and thereby revealing aspects of the phenomenon that would otherwise remain hidden (*ibid*., p. 2). Without going into the details of Elgin's theory, it is clear that her approach closely aligns with Weber's account of ideal types – as concepts rooted in but not fully representative of empirical reality, and as tools for epistemological insight. In a response to a question from the author, Elgin confirmed that Weber's model of ideal-typical concepts fully corresponds to her epistemological views, even though she does not explicitly mention him in her work (Belgrade Legal Theory Group online seminar, 4 March 2024, (https://www.youtube.com/watch?v=NkkrEQvSvDI, 10. 11. 2025)).

41 Ringer, F., 1997, p. 114.

42 The significant influence of these noneconomic factors on economic decision-making – stemming from the specific architecture of the human mind – is today considered beyond doubt (see Kahneman, D., 2011, *Thinking, Fast and Slow*, New York, Farrar, Straus and Giroux).

43 Weber, M., 1978, p. 21.

a somewhat unexpected example: H.L.A. Hart's theory of law.[44] Anyone familiar with Hart's work knows that at the very beginning of *The Concept of Law*, Hart describes his book, among other things, as "an essay in descriptive sociology".[45] However, this self-characterization of Hart's seminal work struck some scholars as confusing or even inaccurate,[46] given that orthodox theoretical opinion tends to categorize Hart's approach as "analytical jurisprudence", with conceptual analysis as its key method.[47]

Despite such doubts, it is undeniable that Hart's endeavor is at least partially empirical. As Hart himself explains, he employs an analysis of ordinary language use – an empirical method – to support claims about how law actually functions. Moreover, as Schauer highlights, prior to his academic career, Hart spent nine years at the bar as a practicing lawyer, which provided him with an "insider's" perspective on the legal system in action.[48]

However, Galligan goes a step further in affirming the empirical dimension of Hart's work. He argues that the significance of Hart's remark becomes fully clear only when his work is viewed through the lens of Weber's interpretative method and the use of ideal-typical concepts.[49] For Galligan, it is indisputable that Hart investigates law as a social phenomenon, as a social practice. Crucially, Hart's approach to this practice does not rely on the mere observation of external behavioral patterns but strives to examine how law appears from the perspective of those who are "inside" the legal system. As Galligan puts it, "to [...] neglect the way law is experienced and understood in a multitude of situations across communities [...] is to omit or neglect the social dimension."[50]

Therefore, to approach this dimension, it is necessary to understand the behaviors and actions of social agents, and to understand those, one must interpret their attitudes and motives, i.e., understand the meanings

44 See Galligan, D., 2015, Concepts the currency of social understanding of law: A review essay on the later work of William Twining, *Oxford Journal of Legal Studies*, Vol. 35, No. 2, pp. 373–402.

45 Hart, H. L. A., 1994, *The Concept of Law*, Oxford, Clarendon Press, p. v.

46 Coleman, J. L., 1998, Incorporationism, Conventionality, and the Practical Difference Thesis, *Legal Theory*, Vol. 4, No. 4, pp. 381, 387–95.

47 In fact, Hart himself states at the beginning of the book that it is "an essay in analytical jurisprudence, for it is concerned with the clarification of the general framework of legal thought" (Hart, H. L. A., 1994, p. v).

48 Schauer, F., 2004, Limited Domain of The Law, *Virginia Law Review*, Vol. 90, No. 7, p. 1912.

49 Moreover, this perspective reveals a possible answer to the question of "how analytical jurisprudence contributes to a social understanding of law" (Galligan, D., 2015, p. 383).

50 *Ibid*., p. 374.

behind their actions, interactions, and linguistic practices.[51] As previously emphasized, the Weberian approach to the social sciences presupposes that understanding social phenomena (social actions) depends on the meanings that social agents attribute to their own behavior. This meaning is revealed "by entering the social world and considering [...] how they experience, explain and justify what they are doing."[52]

According to Galligan, this is precisely what Hart does. Focusing on the analysis of ordinary language use and with a keen sensitivity to the concepts embedded within that language,[53] Hart recognizes the significance of the internal perspective of agents in legal thought and action, as well as its explanatory power.[54] However, in order to construct appropriate concepts, he must decide which segment of a social practice should be singled out for examination, and then, based on observing that segment, identify the ideal-typical concepts implicitly present within it. In this regard, "Hart settled on the segment involving courts, lawyers and other officials,[55] within which he judged the concept of rules to be implicit." "In constructing concepts, Hart was attentive to social practice, focusing on how [...] the officials understand their actions as rule-based."[56]

What does that mean? Hart believes that rules in social life (and in the legal order) play a significant role since members of a community attribute to them the meaning of binding standards of behavior. Thus, the existence of a social rule does not simply imply that there is a regular, external pattern of behavior among members of the community in a given situation,

51 As Galligan puts it, "the assumption is that people's actions are guided by meanings, so that to understand meaning is to understand action" (*ibid*., p. 382).

52 *Ibid*., pp. 383–384.

53 "Language is the intermediary between thought and action: the meaning of action, the way people subjectively regard an action, such as following rules, is known from the language they use in speech and writing" (Galligan, D., 2015, p. 385).

54 Hart did not adopt the idea of the internal point of view from Weber, but from Peter Winch (see Hart, H. L. A., 1994, p. 289). Moreover, Hart was not entirely consistent in his use of the term, applying it to denote different phenomena (see Tamanaha, B. Z., 2006, A Socio-Legal Methodology for the Internal/External Distinction: Jurisprudential Implications, *Fordham Law Review*, Vol. 75, No. 3). Nevertheless, this does not undermine the applicability of Weber's method to Hart's theory. On the contrary, it appears that this approach allows for a sharpening and refinement of Hart's original ideas.

55 When it comes to officials, it is important to note that Hart most often refers to the attitudes of judges and courts, rather than, for example, prison guards or tax inspectors. In any case, he does not include any segment of ordinary citizens. As Galligan points out, if an observer turns their attention to other segments of society, they will find that "the meanings the parties attribute to their experience of law differ from Hart's depiction of rule-governed behaviour, sometimes subtly, at other times strikingly" (Galligan, D., 2015, p. 389).

56 *Ibid*.

but it also involves the practical stance of those addressed by that pattern; Hart calls this practical stance toward rules the "internal point of view". Officials' attitude toward rules,[57] therefore, has a characteristic "internal aspect",[58] because they "view behaviour [in accordance with a rule] as a general standard to be followed by the group as a whole."[59] Furthermore, they have what Hart terms a "reflective critical attitude" toward the behavior of those officials who violate the rule.[60] All in all, the consequence of taking the internal point of view toward a rule is the "acceptance"[61] of that rule as both a reason for acting and a reason for criticizing the actions of others. In short, to take the internal point of view toward a rule[62] is to accept the rule as a source of reasons.

Why does Galligan regard the internal point of view as an ideal-typical concept? Because it is not the attitude of every "insider" within a legal system – perhaps not even of a majority of insiders. It is therefore not a simple empirical generalization but a rational reconstruction of the motivations and attitudes of the system's officials. Someone within a legal system may fail to treat the rules of that system as standards for their own conduct or for the conduct of others (above all with respect to the rule of recognition). The famous Holmesian "bad man", for example, adopts the external point of view even though he may be an insider within a legal system.[63] Hart, however, maintains that this concept is indispensable for

57 Of course, when it comes to officials, this kind of attitude toward rules is postulated only in relation to the so-called *rule of recognition*, understood as the ultimate and supreme rule of a legal system. Since the focus of this paper is not to provide a full account of Hart's theory, but rather to examine it through the lens of Weber's notion of ideal-typical concepts, there is no need to dwell on this issue here.

58 Hart, H. L. A., 1994, p. 56.

59 *Ibid*.

60 *Ibid*., p. 57.

61 The counterpart of "acceptance" is "rejection". A rule is "rejected" when it is not taken as a standard for one's own behavior or the behavior of others, but is instead merely acknowledged for its potential to bring about unpleasant consequences if violated. As Shapiro puts it, "[a]nyone who accepts the rules has, according to Hart, taken the internal point of view. Anyone who does not accept the rules, either because he is like the bad man and takes the practical, but non-accepting, point of view, or because he is merely observing and hence does not take a practical stance at all, has taken the external point of view" (Shapiro, S. J., 2006, What is the internal point of view, *Fordham Law Review*, Vol. 75, No. 3, p. 1160).

62 As Kaplan rightly notes, it would be more accurate to say that the internal point of view is not directed at the rule itself, but "is directed at patterns of behavior, or emerging patterns of behavior, and it is partly in virtue of this that these patterns become rules" (Kaplan, J., 2017, Attitude and The Normativity of Law, *Law and Philosophy*, Vol. 36, No. 5, p. 471).

63 Holmes, O. W., 1897, The Path of Law, *Harvard Law Review*, Vol. 10, No. 8, pp. 457, 459–461.

understanding a legal order as a system of (primary and secondary) rules, and that failing to construct it leaves a large part of the social practice we call "law" without an adequate explanation. This is precisely where the epistemological and theoretical significance of this ideal-typical concept lies – a significance that Weber ascribes to such concepts generally.

The claim that an internal point of view is taken toward certain established patterns of behavior, which thereby become rules and reasons for action, is of great theoretical importance because it serves as a constraint on our theories of law. As Kaplan succinctly explains, "[s]ince law is normative in this minimal sense, habit or sanction-based positivist theories of law are doomed. Hart can capture rules, whereas Holmes, Austin, and Bentham can only capture regularities."[64] In this way, our understanding of law as a social phenomenon is improved, while at the same time cases of what Hart calls the "pathology of a legal system" are brought to light.[65]

3. *Homo Iuridicus* as the Legal Reasoner

3.1. *HOMO IURIDICUS*

The term *homo iuridicus* is not unfamiliar within the discourse of legal and humanistic disciplines. It is true that in this discourse it appears less frequent than related terms, such as *homo oeconomicus*, *homo faber*, and *homo politicus*. On the other hand, the term is polysemous. For instance, some argue that there exists an academic (or more precisely, a legal-theoretical) *homo iuridicus*, embodied in Hans Kelsen's view on the purity of legal theory.[66] Alternatively, it is suggested that there exists a *homo iuridicus* from the perspective of legal regulations and norms, understood as a subject of the law's narrative as presented in the valid legal text.[67]

Although the term *homo iuridicus* is used in various contexts, its different meanings are loosely connected in the sense that "the notion of *homo iuridicus* pertains to a human person in his law-oriented role. This is

64 Kaplan, J., 2017, p. 484.

65 Hart, H. L. A., 1994, p. 117.

66 Basta, D. N., 2001, Slobodan Jovanović i Hans Kelzen, *Annals of the Faculty of Law in Belgrade*, Vol. 49, No. 1–4, pp. 25–43.

67 See Chauvin, T., 2014, Homo iuridicus. *Człowiek jako podmiot prawa publicznego*, (*Homo iuridicus*. Man as a subject of public law), Warsaw, C. H. Beck, p. 5. From the perspective of the Latin roots – *homo* (human, as a being distinct from animals and deities) and *iuridicus* (a noun denoting either a judge or a place where courts are held) – the combination of these words in this context is not particularly felicitous. Strictly linguistically, the term *homo iuris* might be more appropriate in such (extra-judicial) contexts.

an important [...] role for all legal professionals and scholars."[68] But what does it mean for a person in social life to play a law-oriented role, and why is this role especially relevant for legal professionals and scholars? A vivid answer to this question is offered by John Finnis, who observes that "a lawyer sees the desired future social order from a professionally structured viewpoint, as a stylized and manageable drama. In this drama, many characters, situations, and actions known to common sense, sociology, and ethics are missing, while many other characters, relationships, and transactions known only or originally only to the lawyer are introduced."[69]

As the examples of usage suggest, when conceptualizing reality through the ideal-typical notion of *homo iuridicus*, it is necessary to define the segment of experience under consideration toward which the agent's motives and actions are directed, and which serves as the empirical material for its "distillation". Since the ideal-typical construct must be grounded in actual agents and their motives and actions, it is first necessary to determine which agents are involved and, second, which actions and decisions are relevant, in relation to which these agents adopt certain stances that will form the basis for constructing the ideal type.

The answer to the first question is already suggested in Finnis's words: these are professional legal practitioners. As noted in the introduction, in all types of social relations, the manner in which actions are performed and reasoning is conducted is largely determined by the social role occupied by an individual. Based on this role, the individual understands which decisions and behaviors are socially acceptable and which are not. This connection between a specific social role and patterns of reasoning can be observed across different professions and, accordingly, within the legal profession. Thanks to their expertise, experience, and training, lawyers actively participate in the shaping of legal practices and adopt a specific stance toward the law.

However, a question arises: are lawyers a monolithic group, or do different segments within the legal profession play distinct roles in the creation and application of the law, holding different attitudes and motivations toward the legal system? While the legal profession as a whole may be considered a source of potential information from which the ideal-typical *homo iuridicus* can be conceptualized, it seems most appropriate to focus on the practice of judges (as a subset of lawyers). Several reasons support this approach.

68 Schilfgaarde, P. van, 2019, *Law and Life. Why Law?*, Cham, Springer Nature, p. 104.

69 Finnis, J., 2011, *Natural Law and Natural Rights*, Oxford, Clarendon Law – Oxford University Press, pp. 282–283.

First, judges' understanding of legal reasoning is shaped by the institutional position they occupy – they are vested with the authority to resolve any legal dispute brought before them in an impartial and conclusive manner. Second, because they adjudicate concrete legal disputes, their decision-making is necessarily oriented toward legal reasoning, as they are required to justify their rulings, i.e., to provide publicly stated reasons for their decisions. Third, these factors together explain why the mode of judicial reasoning is both complex and (potentially) rational.[70]

The second question in formulating the ideal type of *homo iuridicus* concerns, as noted earlier, the specific actions and decisions of judges toward which they adopt particular stances and which serve as the empirical basis for constructing the ideal type. The answer lies in drawing a distinction between the kinds of issues a judge typically reasons about when deciding a case – namely, the distinction between a "question of law" and a "question of fact". Understanding this distinction is crucial for grasping what *homo iuridicus* reasons about when engaging in legal reasoning. For if reasoning "about law" or "within law" is to warrant the designation "legal", this implies that such reasoning differs in some essential respect from ordinary factual reasoning, i.e., reasoning about facts.[71]

What, then, does this distinction consist in? Despite the practical and theoretical difficulties surrounding their differentiation, "questions of law" and "questions of fact" differ fundamentally in the mode of reasoning by which answers to them – and the justifications of those answers – are reached. A "question of law" is addressed through interpretive argumentation, whereas a "question of fact" is resolved through evidential reasoning. Accordingly, although factual reasoning in law has certain specific features, it does not differ in any essential way from the reasoning of a physician, a detective, or a meteorologist when they deliberate about a diagnosis, the circumstances of a crime, or weather conditions. For this reason, the ideal-typical concept of legal reasoning attributed to *homo iuridicus* is constructed only with respect to the stance he adopts when reasoning about "questions of law".

Consequently, when legal reasoning is directed toward the application of positive law in disputed cases (and most such cases are decided in court), it is developed and refined by judges acting as officials within the legal system. Their decisions, motivations, and attitudes provide the empirical material for constructing the concept of *homo iuridicus* as the legal reasoner.

70 Dajović, G., 2023, pp. 74–75.

71 Put differently, "thinking like a lawyer" centers on legal reasoning.

Finally, once the questions "who is the subject of reasoning?" and "what does the reasoning concern?" have been addressed, it is necessary to answer the question "how does the agent reason?" Judges, after all, are first and foremost human beings. Since the conscious, "reasoning" component constitutes only a fragment of the architecture of the human mind, judges – like all individuals – rely, in their practical action and decision-making, on deliberation, as well as on intuition, heuristics, emotions, moral convictions, etc. Although the conscious and unconscious, fast and slow "systems" of human thought and decision-making are inextricably intertwined,[72] it is nonetheless possible, at the level of an ideal-typical construct, to isolate them analytically. Accordingly, the ideal type of *homo iuridicus* is oriented toward the conscious, rational mode of legal thought, with reasoning itself serving as the defining expression of this legal mindset.

Such a rational approach to judging, given the already mentioned fact that judges, like all humans, are susceptible to irrational, intuitive, and biased decision-making, can be reliably constructed only if one observes the justification process of their decisions, rather than the underlying psychological decision-making itself. In practice, judges do not resolve contested questions of law solely on the basis of reasoning grounded in applicable law; their decisions are influenced by intuition, heuristics, prejudices, moral and political beliefs, and other factors. By contrast, the process of justifying a decision is primarily grounded in legal reasoning. It follows that, in legal practice, the decision-making process and the justification process are not causally linked. In other words, judges often do not decide based on the (legal) reasons they later state in their explanations. Therefore, in constructing the ideal-type *homo iuridicus* as the legal reasoner, one relies on the practice of justifying decisions[73] concerning contested questions of law. These justifications are predominantly expressed in the reasoning (or grounds) of the judicial decision.

3.2. *HOMO IURIDICUS* AND LEGAL REASONING

How does the ideal-typical *homo iuridicus*, constructed in this way, engage in legal reasoning? What is the key element of their stance toward reasoning about questions of law? To address these questions, it is useful to recall two widely recognized (and in a sense also ideal-typical) modes

72 Kahneman, D., 2011, pp. 15–24.

73 Hence, in *Osnovi pravnog rasuđivanja* I take argumentation to be a "verbalized, social, and rational activity" through which, in formal terms, the process of justifying decisions on a legal dispute is conducted – without implying, of course, that such justification always occurs in practice exactly as described in the ideal-typical construct.

of practical reasoning, which stand in opposition to one another: purely practical reasoning and legal reasoning.

According to the first mode, the agent decides and acts on the balance of all relevant reasons. In doing so, they are not bound by any prior authoritative reasons, such as rules or commands from an authority dictating what should or should not be done in a particular situation. The agent considers all valid substantive reasons and, through reasoning, arrives at a conclusion (a decision) about how to act.

By contrast, *homo iuridicus* grounds his reasoning exclusively on so-called authoritative reasons, which preempt consideration of all other relevant reasons. When such an ideal-typical agent reaches a decision, he takes the applicable legal provision as a premise and decides in accordance with the facts as described in the provision, even in cases where a particular decision-maker, considering all relevant reasons, might have reached a different conclusion.[74] In short, the core element of reasoning for the ideal-typical *homo iuridicus* is reliance on authoritative legal reasons contained in the formal and factual sources of law.[75]

It is precisely based on these characteristics that the central part of the book reconstructs the activity of legal interpretation, understood as a core component of *homo iuridicus*' legal reasoning, since authoritative legal reasons – contained in both formal and factual sources of law – are discursive constructs.

In the book, the activity of legal interpretation is primarily related to so-called "hard" cases, so that the distinction between them and "easy" ones is explained in detail,[76] followed by an account of the main reasons

74 According to Schauer, an understanding of the law's inherent narrowness and the ways in which its characteristic modalities effectively filter out arguments, relevant facts, and values that might be considered in other decision-making contexts, lies at the core of understanding both the phenomenon of law and the nature of legal reasoning (Schauer, F., 2004, p. 1910).

75 Analysis of judicial reasoning practice suggests that judges also rely on so-called supplementary or "factual" sources of law. The distinction between formal and factual sources is explained in theory as follows: "Where legislation, for instance, is a formal source of law, judges consider themselves duty-bound to use it and (in all but exceptional circumstances) enforce the norm derived from it. When it comes to non-mandatory sources of law, [...] judges do not take themselves to be duty-bound to use them, but still to be permitted or to have good reason to do so" (Shecaira, F. P., 2015, Sources of Law Are not Legal Norms, *Ratio Juris*, Vol. 28, No. 1, p. 18). Examples of these other, permissive or factual, sources of law include judicial precedents, legal scholarship, decisions of courts in other jurisdictions, and so forth.

76 If the outcomes are certain and no disagreements can be grounded in any of the reasons that could render a case contentious, we are dealing with an "easy" case. In such cases, the process of justifying the decision typically amounts merely to citing the applicable norm and describing the established facts that fall under its terms (Feteris,

why "hard" cases arise.[77] Furthermore, the book describes how interpretation and argumentation are connected, i.e., how interpretive arguments are (rationally) constructed. In this sense, in Vandevelde's words, the book attempts "to describe what [lawyers] do, even if they are not entirely aware that they are doing it, much in the way that a coach might assist a tennis player in analyzing her forehand stroke."[78] Or, using applied terminology, how the ideal-typical *homo iuridicus* engages in interpretive reasoning.

In *Osnovi pravnog rasuđivanja*, fifteen interpretative arguments are described in detail, mostly classified into four basic types. These are well-known (both in theory and practice) as types of interpretative argumentation or methods (canons) of interpretation: linguistic, teleological, systemic, and historical. Their use is not only widely accepted but anthropologically grounded[79], according to some authors, while normatively justified according to others.[80] From the perspective of *homo iuridicus*,

E., Argumentative patterns with symptomatic argumentation in the justification of judicial decisions, in: Eemeren, F. H. van, (ed.), 2017, *Prototypical Argumentative Patterns. Exploring the relationship between argumentative discourse and institutional context*, Amsterdam – Philadelphia, John Benjamins Publishing Company, pp. 129–130). It is true, however, that contrary examples can also be found in judicial practice. For instance, Žaklina Harašić cites cases in which the court employed elaborated interpretive arguments even though they were dealing with easy cases (see Harašić, Ž., 2006, Problem razgraničenja „lakih slučajeva" (easy cases) i „teških slučajeva" (hard cases), *Zbornik PFZ*, Vol. 56, No. 1, pp. 98–102). The construction of the ideal type of *homo iuridicus* as the legal reasoner allows for understanding such instances of legal practice as unnecessary "aberrations".

77 In "hard" cases, the legal provisions do not provide a clear answer, either because (1) it is linguistically indeterminate in relation to the specific case; (2) they contradict the text of another valid legal provision; (3) they yields a clear but, for some reason, unsatisfactory or "bad" answer; or (4) they provide no answer at all. However, in addition to this first-order indeterminacy – rooted in the legal texts themselves – there exists a second-order indeterminacy, which arises from disagreement over the ranking of interpretive methods. This second-order indeterminacy stems from differing normative theories of interpretation, understood as systematic accounts of how legal texts ought to be interpreted (Dajović, G., 2023, pp. 93, 128).

78 Vandevelde, K. J., 2011, *Thinking Like a Lawyer: An Introduction to Legal Reasoning*, 2nd ed., Boulder, Westview Press, p. 143.

79 For instance, Winfried Brugger finds that these four types of interpretative argumentation are, so to speak, anthropologically rooted in human personality. Consequently, "judicial interpretations must take all four perspectives into account [...] (i) they cannot be reduced to any one of these perspectives, since all form the constitutive parts of the perception and definition of our personal, political, and legal identity" (Brugger, W., 1994, Legal Interpretation, Schools of Jurisprudence, and Anthropology: Some Remarks From a German Point of View, *American Journal of Comparative Law*, Vol. 42, No. 2, p. 420).

80 For example, "[b]ehind linguistic interpretation lies an aim of preserving clarity and accuracy in legislative language and a principle of justice that forbids retrospective judicial rewriting of the legislature's chosen words; behind systemic interpretation

however, their use is rational, because legal texts, for example, are linguistic constructs (hence linguistic arguments), they are embedded within the legal system (hence systemic arguments), they are created as intentional acts (hence arguments from intent and historical interpretation), and, being human creations, they serve specific (practical) purposes or goals that can be rationally discerned at the moment of their application (hence teleological arguments). Yet, it is also noted that *homo iuridicus* does not provide an answer to the question that arises when these arguments conflict. In other words, he remains neutral with respect to the correctness of any normative theory of legal interpretation; adherence to any such theory would effectively convert him into a *homo ethicus* or *homo politicus*.

3.3. WEBER'S IDEAL TYPES OF LEGAL SITUATIONS AND *HOMO IURIDICUS*

Weber himself constructed certain ideal types of situations within the legal system, concerning law-making and law-finding activities. In *Economy and Society*, he formulateed two key ideal types of situations: the irrational and the rational.[81]

The irrational type is characteristic of systems in which officials do not create or apply law according to preestablished, general rules. It can appear as formal – when legal agents make decisions not through reasoning but, for instance, by rolling dice, consulting an oracle, or invoking divine judgment – or as substantive – when decisions are made *ad hoc*, on a case-by-case basis.[82]

Rational situations also have both substantive and formal ideal types. Law-makers and law-finders are substantively rational insofar as they consciously follow (to a greater or lesser extent) conceived and articulated general principles of some kind. These principles may be ethical, political, religious, or of any other nature that is used as a basis of legal rules. In this sense, substantially rational systems can be found, for example, in Soviet, Sharia, and English law alike. This concerns practical rationality, understood as the adoption and consistent application of a

lies a principle of rationality grounded in the value of coherence and integrity in a legal system; behind teleological/deontological interpretation lies respect for the demand of practical reason that human activity be guided either by some sense of values to be realised by action or by principles to be observed in it" (MacCormick, N., 1993, Argumentation and Interpretation in Law, *Ratio Juris*, Vol. 6, No. 1, pp. 16–29).

81 Weber, M., 1978, pp. 656–658.

82 "Lawmaking and lawfinding are substantively irrational on the other hand to the extent that decision is influenced by concrete factors of the particular case evaluated upon an ethical, emotional, or political basis rather than by general norms" (*ibid*., p. 656).

more or less determined set of principles (whether supra-legal or extra-legal) when creating and applying law.

In contrast, logical (formal) rationality in law-making and law-finding exists when legal agents act exclusively on the basis of general legal rules formulated through abstract concepts. In Weber's own words, law-making and law-finding are formally rational in the logical sense insofar as "the legally relevant characteristics of the facts are disclosed through the logical analysis of meaning and where, accordingly, definitely fixed legal concepts in the form of highly abstract rules are formulated and applied."[83] The subsequent use of the term "logically formal rationality" clarifies that Weber refers precisely to the method later known as "conceptual jurisprudence".[84]

A system based on formally logical legal rationality exhibits well-known characteristics: each decision is the application of general legal rules to a specific dispute, each decision is reached through a purely logical operation (a legal syllogism), deducing the individual decision from the general rule – and that law must constitute a "gapless" system of legal propositions or must at least be treated as if it were such a system. Weber's ideal-typical Bureaucrat embodies the legal agent who perceives and acts on law in this manner.

Based on the aforementioned, the distinction between Weber's ideal-typical formally rational legal agent and the *homo iuridicus* is most clearly seen as follows. While Weber's formally rational legal agent appears only in so-called "easy" cases, the *homo iuridicus* emerges also in "hard" ones. Consequently, in resolving such disputes, he cannot rely solely on the logical interpretive tools that Weber associates with his formally rational ideal type; rather, he employs a broader and more sophisticated set of interpretive tools. It should be emphasized, however, that these remain interpretive tools in service of attributing meaning to authoritative legal texts, to which he remains as faithful as possible. In this way, the ideal-typical *homo iuridicus* becomes simultaneously more complex and more useful, aiding in our understanding of the stances and reasoning of legal agents (judges) in "hard" cases, which, although less frequent in legal reality, are of greater practical significance and research interest.

4. Functions of the Weberian Approach in a Concrete Case

At this point, it is necessary to consider the functions of the methodological approach adopted in *Osnovi pravnog rasuđivanja*, namely its theoretical and practical utility. The first function is to delineate the ques-

83 *Ibid*., p. 657.

84 Rheinstein, M., 1954, pp. xlix–l.

tions that the book addresses. Accordingly, the book does not discuss abstract (doctrinal) interpretation, proportionality analysis, or constitutional review, which some authors classify under legal reasoning. The reason is that these issues fall outside the activities of the ideal-typical *homo iuridicus* as the legal reasoner.

Second, the characteristic of ideal-type concepts, similar to geometric solids such as a sphere or cube, is that they represent constructs that are not found in "pure" form in reality. For instance, in the actual world of legal decision-making, *homo iuridicus* is embodied only sporadically and partially. This is clearly emphasized when attention is drawn to the fact that the architecture of legal thinking in practice is not constituted solely by reasoning, but also engages intuition, emotions, heuristics, and so forth. Furthermore, a more extensive account of several empirical studies – examining, for example, the influence of political preferences[85] or cognitive biases[86] on judicial decisions, as reported in the book – further reinforces this conclusion.

Moreover, even when it comes to the justification of decisions, judges rarely conform fully to the ideal-type. For example, one seldom finds in judicial opinions the elaborate argumentative schemes described in the book. Additionally, these opinions often exhibit vague or even "improper" uses of various interpretative arguments, and sometimes arguments are simply superfluous. Several passages in the book highlight this. However, the applied methodology allows for a theoretical critique of misapplied or redundant argumentation, since the ideal-type *homo iuridicus* serves as a benchmark for evaluating practice. Naturally, this is not intended for normative substantive, but for epistemic evaluation.

This brings us to the third function of the applied methodology: the ideal type serves as an epistemological tool for understanding social reality. Accordingly, the ideal-type concept allows for the analysis of existing practice – e.g., when studying the case law of certain courts in light of a survey and analysis of the interpretative arguments that they employ. Moreover, the concept can generate and test useful theoretical hypotheses about the practice itself. In a concrete instance, for example, it makes it easier to identify the points at which actual legal practitioners (judges, for instance) reason like ordinary people or when they reason like politicians – situations in which such reasoning is, so to speak, inevitable due to the nature of sources of law or legal institutions. This insight is important because it highlights why and in what situations judges (and other legal practitioners) do not reason solely according to authoritative legal

85 Dajović, G., 2023, p. 45, n. 53.

86 *Ibid*., p. 149, n. 225.

reasons, but also rely on purely practical reasoning. Practical prudence is a rational supplement to the "legal prudence" of *homo iuridicus*.[87]

5. Conclusion

One effective way to tackle the challenge of conceptualizing social practice is through ideal-type concepts. In Weberian sociology, ideal types serve as methodological constructs designed to strip away contingencies, incidental details, and epistemologically redundant elements from real-world phenomena, and to simplify and highlight certain features of agents' relationships and stances that are meaning adequate. In this way, they provide researchers with an epistemic tool for understanding and explaining social reality.

The ideal-type *homo iuridicus* is neither a normative prescription nor a mere description. It is not simply a generalization of empirical data, nor does it depict a standard or typical case of legal reality, even though it has an empirical grounding. Rather, it is a model capturing the some salient aspects of a legal practice, organized into a coherent and logically consistent representation. "This 'construction' has a 'utopian' character, in that it is obtained by conceptually 'heightening' certain aspects of reality" (Ringer, F., 1997, p. 111).

The ideal-type *homo iuridicus* offers a useful way to conceptualize legal reasoning, avoiding the idiosyncrasies of individual lawyers' or judges' reasoning, or the variations found across legal communities within specific systems. Legal reasoning is therefore understood through this rational but hypothetical agent, whose judgments are guided by authoritative legal reasons.

When the reasoning of *homo iuridicus* is compared to what actually occurs in legal practice, the points where this reasoning proves insufficient for deciding every legal case become clear. In this sense, the construction of *homo iuridicus*, as the legal reasoner, clearly supports the conclusion – often overlooked in public discourse – that it is an illusion to view judges as agents who base their decisions solely on authoritative legal reasons. This conclusion, together with the analysis of Hart's concept of the internal aspect of rules, shows that Weberian methodology can serve as a reliable ally for legal theorists seeking to conceptualize important legal phenomena and deepen our understanding of them.

87 Several sections of the book illustrate this point – for example, through discussions of value hierarchies in teleological interpretation, the concretization of legal principles, uses of *argumentum ad absurdum*, and consequentialist reasoning.

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PRAVNO RASUĐIVANJE *HOMO IURIDICUS*-A

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APSTRAKT

Predmet članka je metoda idealtipskih koncepata koju sam primenio u knjizi „Osnovi pravnog rasuđivanja". Pošto knjiga sadrži samo nekoliko raštrkanih beležaka o toj temi, javila se ideja da se, u posebnom članku, detaljnije objasni primenjena metoda i njeni efekti. U knjizi je idealni tip konstruisan kao *homo iuridicus*, subjekt pravnog rasuđivanja, kojeg pri rasuđivanju motivišu isključivo autoritativni pravni razlozi. On je racionalan, a ne stvarno postojeći, agent. Pokazuje se da je idealni tip pogodan način da se konceptualizuje pravno rasuđivanje, a da se ne zalazi u idiosinkrazije rasuđivanja konkretnih pravnika ili zajednice pravnika unutar pojedinih sistema. Kada se rasuđivanje takvog *homo iuridicus*-a uporedi s onim što se događa u stvarnosti, uočava se da sudije svoje odluke niti donose niti opravdavaju autoritativnim pravnim razlozima u svakom konkretnom sporu. Na taj način se pokazuje korisnost Veberove ideje idealtipskih koncepta za jurisprudenciju.

Ključne reči: *homo iuridicus*, idealni tip, Maks Veber, pravno rasuđivanje, tumačenje prava.

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