ARTICLE

The complementarity between the virtue of law (the rule of law) and the legal virtues

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1 Introduction

The rule of law is commonly defined in contrast to the rule of men. Systems of rule of men are determined by human factors, and they can be unpredictable and overbearing. On the contrary rule of law systems are governed by rules, procedures, and institutions with the aim of mitigating the impact of human influences, since the idea that even the best legal rules, procedures and institutions can function properly without the right contribution of human agents is illusory. Suitable rules, institutions and procedures are needed but it is paramount to shape and improve the skills, abilities, and appropriate attitudes of those who take part in them. In this article I intend to connect the institutional and procedural dimension of law with the abilities and virtues of those involved in its practice through the notion of the rule of law, famously indicated as the virtue of law.[1] I am fully aware that the use of the term 'virtue' in these two cases – for human agents and for the law – could seem somehow equivocal, but, in the logic of analogies, I would say that the term applies first and properly to agents and secondarily to the rule of law.

There are many accounts of law in which the contribution of those taking part in the legal enterprise – both legal practitioners and lay people – is not emphasised enough or not at all. This is not the case of the Virtue Jurisprudence school and in general the virtue ethics applied to law, that have witnessed an increasing interest in the last years and still has potential to expand.[2] As is well known, the virtue approach has a long tradition in ethics and epistemology, from ancient Greek philosophy up to our days.[3] The approach is typically agent-centered – it commonly starts from human capacities and their related virtues – and produces taxonomies and classifications of virtues (cardinal, intellectual, moral) to be tested and applied

1 Joseph Raz, 'The Law's Own Virtue,' *Oxford Journal of Legal Studies* 39/1 (2019): 1-15.

2 Colin Farrelly and Lawrence B. Solum, eds., *Virtue Jurisprudence* (New York: Palgrave Macmillan, 2008). See also Amalia Amaya, 'Law and virtue theory,' in *Encyclopedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephen Kirste (Dordrecht: Springer, 2019). Available at: https://link.springer.com/referenceworkentry/10.1007/978-94-007-6730-0_159-1 (last accessed 27 December 2023).

3 Julia Annas, *The Morality of Happiness* (New York: Oxford University Press, 1993) and *Intelligent Virtue* (New York: Oxford University Press, 2011).

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in the different contexts.[4] Starting from this picture, it seems that there could be a standard virtue ethics approach to apply to care, medicine, business, law, research, teaching, and so on. In other words, once we have an idea of which traits are virtues and what they involve, then the scheme could be applicable not only to professional roles[5] but also to different human roles and activities. For the purpose of this article, I will call this path the 'orthodox' approach to legal virtues. I will try a different path. I will start from the practice of law and its virtue(s) and look for specific legal virtues, those better fitting with its nature. The difference between the two approaches lies in the direction of the research and in the shaping of legal virtues beginning from the nature of law.

In doing this, I will follow at least partly MacIntyre's effort to explain virtues by reference to the idea of social practice.[6] Virtues play the role of standards of excellence that embody the best fulfilment of the different social practices. As is well known, MacIntyre's approach is grounded on the rejection of an individualistic and abstract epistemology in favour of a narrative conception of the human reason embedded in a common tradition orienting common actions. From this point of view, only a particular society with proper goods to aim at could offer an intelligible context for virtues. In other words, only by looking from inside the practices is it possible to identify the right virtues for those practices. And this is what I will do with the practice of law. Nonetheless, I agree with Miller that there is something odd in the suggestion of totally self-contained practices, within which virtues can be understood and performed.[7] My thesis is neither that legal virtues are not related to typical human virtues, nor that they totally depend on specific practices, but rather that to build a fruitful approach to legal virtues we must look prominently at the practice in which they flourish. Taking the specificity of the practice seriously would lead to a strong differentiation in the accounts of virtues for each social practice. Nevertheless, this does not mean that other virtues could not be relevant in the practice of law, but that there are some distinctive legal virtues.

4 For a discussion on the main features of, and controversies about virtue ethics, Rosalinde Hursthouse and Glen Pettigrove, 'Virtue Ethics', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman (Fall 2023 Edition). Available at: https://plato.stanford.edu/archives/fall2023/entries/ethics-virtue/ (last accessed 18 December 2023).

5 Justin Oakley and Dean Cocking, *Virtue Ethics and Professional Roles* (Cambridge: Cambridge University Press, 2001). For these authors professional virtues imply a commitment to key human goods that are part of a flourishing life.

6 He is not the only one to follow this path. On the contrary, in some way, this is a demand for all virtue-ethicists, in so far as virtues are related to practical actions in contexts, actions that are contingent and up to us. The reason for quoting MacIntyre's work is that he has developed this view within a broader philosophical perspective, including an idea of rationality and a viewpoint on cultures. Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (Notre Dame: University of Notre Dame Press, 1981), *Whose Justice? Which Rationality?* (Notre Dame: University of Notre Dame Press, 1988), and *Three Rival Versions of Moral Enquiry. Encyclopaedia, Genealogy, and Tradition* (Notre Dame: University of Notre Dame Press, 1990).

7 David Miller, 'Virtues and Practices,' *Analyse & Kritic* 6 (1984): 49-60. I cannot develop this topic further.

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The aim stated would require serious investigation on the theory of law as a social practice, and on the relationships between the concept of law and the rule of law, as its virtue. From the standpoint of legal theory, it is controversial whether it is convenient to keep the concept of law and the rule of law separate, lest the contested and moral nature of the rule of law proves to be an obstacle to the practice of (positive) law, or whether it is possible to offer sound reasons in favour of linking the two topics.[8] The reason to fear the link indicated is the consideration that the value of the rule of law could jeopardise the separation between law and morality. To clarify this point properly would be necessary to discuss the general issue and its implications in depth,[9] but this is not the appropriate place. In this framework, I will consider plausible to distinguish between two different moral dimensions of the legal practice: its inner morality – the rule of law, closely related to the nature of the practice –[10] and the ends that the legal practice aims to pursue.[11] I will try to maintain the focus on the former.

The article is divided in three parts. First, I introduce an account of virtues that tries to refute the circularity and agent-dependent nature of virtues, a classic objection to the virtue approach, recently repeated.[12] My pivoting argument on this point will be the link between the rule of law and the legal virtues. Legal virtues are notoriously dispositions to act; thus, they are necessarily related to some human capacities. But there are specific legal virtues related to the practice of law whose most perfect execution is the rule of law. From this point of view, there is a lucky fate in the consideration of the rule of law as the 'virtue' of law as far as it

8 Jeremy Waldron, 'The Concept and the Rule of Law,' *Sibley Lecture Series* 29 (2008). Available at: https://digitalcommons.law.uga.edu/lectures_pre_arch_lectures_sibley/29/ (last accessed 27 December 2023).

9 As is well known, at least from the theoretical point of view, the origin of the rule of law's revival can be situated in the context of the debate on the relationships between law and morality developed during the second part of the twentieth century (Herbert L.A. Hart, 'Positivism and the separation of Law and Morals,' *Harvard Law Review* 71 (1958): 593-629 and Lon L. Fuller, 'Positivism and Fidelity to Law,' *Harvard Law Review* 71 (1958): 630-672). Fuller's proposal on the inner morality of law, to be distinguished from external moral values nonetheless present in legal systems, is at the bottom of the contrast between formal and substantive versions of the rule of law (Peter Craig, 'Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework,' *Public Law* Autumn (1997): 467-487), that cannot be discussed here. According to the former, for example, rule of law and human rights are two different things and can be separate. Suffice it to say that the most practical and legal approaches to the rule of law aim at their synergy. See Tom Bingham, 'The Rule of Law,' *The Cambridge Law Journal* 67 (2007): 76, but see also the Resolution adopted by the General Assembly on 16 September 2005 (A/60/L.1), World Summit Outcome, that renews the commitment 'to actively protecting and promoting all human rights, the rule of law and democracy and recognize that they are interlinked and mutually reinforcing and that they belong to the universal and indivisible core values and principles of the United Nations'.

10 This is the thesis of the father of the rule of law in modern jurisprudence: Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1964).

11 It involves the notion of a purposive practice, to be differentiated from self-contained practices, according to Miller, 'Virtues and Practices,' 51.

12 David Luban and W. Bradley Wendel, 'Philosophical Legal Ethics: An Affectionate History,' *Georgetown Journal of Legal Ethics* 30/3 (2017): 337-364. The authors appreciate virtue ethics among the most appealing current perspectives for legal ethics, but consider it vitiated by self-referentiality.

indicates the heart of the legal project and its best implementation. That is the reason why the main legal virtues should be derived from the rule of law.[13] My point is that in order to follow this path the rule of law must be conceived as a form of social ordering and not only as a set of institutions, as a mechanism, or as a checklist of requirements.[14]

Second, I will introduce a specific account of the rule of law, a sort of horizontal reading that is, in my opinion, the only possible candidate to support the legal virtues account. To link the rule of law and legal virtues, although in a schematic and sketchy fashion, in fact, it will be necessary to articulate a specific version of the rule of law, because not all its accounts are compatible with the virtues' approach. As will be explained below, the horizontal character of the rule of law refers to a form of association in which everyone, both legal practitioners and lay people, play a role according to proper competences and attitudes. For this reason, checklists must be matched with legal virtues.

Finally, an exploratory and non-exhaustive account of some crucial legal virtues will be elaborated on and discussed. The unconventional character of the virtues proposed (compared to the more orthodox taxonomies) follows from the idea that the legal virtues are not just the result of the fine-tuning of a conventional list of general virtues to the context of law. On the contrary, the samples of legal virtues I will offer will appear probably legally overdetermined. But given the premises, this is inevitable and to due to the specificity of the legal context.

2 The right skills for the right practice of law. About the opposition between rule of law and legal virtues

The importance of the debate on virtues in professional and public life stems in part from the insufficiency of the two dominants and alternative normative theories: deontology or duty-based ethics, and consequentialism or utility-based doctrines.[15] On the one hand, deontological approaches emphasise rules and principles according to top-down schemes of reasoning, not appropriate in pluralistic contexts, both in ethics and in law. The reason is that to agree on the consequences, we must agree on the premises. On the other hand, consequentialist theories establish that the rightness of an action is determined by its outcomes, usually declined in terms of costs and benefits (as in the case of utilitarianism).

13 I think that my argument does not need to describe the rule of law as a collective virtue, but it is not impossible an idea to test. On collective virtues see T. Ryan Byerly and Meghan Byerly, 'Collective Virtue,' *Journal of Value Inquiry* 50 (2016): 33-50.

14 The most famous checklist is formed by the eight *desiderata* proposed by Fuller in his The *Morality of Law* that we will discuss later, but checklists are common topics both for the rule of law and its practice. See for example the *Venice Commission of the Council of Europe 2016* on *Rule of Law Check List*. Available at: https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)007-e (last accessed 27 December 2023).

15 Marcia W. Baron, Philip Pettit and Michael A. Slote, *Three Methods of Ethics* (New Jersey: Wiley-Blackwell, 1997), Roger Crisp, 'A Third Method of Ethics?,' *Philosophy and Phenomenological Research* 90/2 (2012): 257-273.

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Virtue ethics is a complex approach, which is able to combine elements coming from the other two competing views and to add something new.[16] The approach based on virtues recognises a moderate and non-absolute weight to rules and principles – differently from deontological approaches – and a moderate weight to outcomes – different from consequentialist approaches. Rules are then rational means oriented to goods, instead of bedrocks. Outcomes are crucial in consideration of the importance of circumstances, but they are not conclusive. Virtue ethics holds that the determination of the action to perform depends on problem solving reasoning decided by moral agents with certain skills, in certain contexts, and aimed at obtaining specified goods.

Compared to its alternatives, virtue ethics is certainly concentrated on agents' flourishing and it draws attention to the importance of human beings' education and training. The implication of this feature is, in Aristotelian terms, circularity, i.e., the idea that the virtuous agent is the measure of virtue. From this point of view, virtue ethics goes in the opposite direction to the rule of law. The latter promotes the government of law over the government of man, according to the well-known dichotomy.[17] It is precisely human fallibility to move in the direction of building a system of procedures, rules, and institutions to ensure justice. My thesis – possibly shared by all those defending virtue ethical approaches to law – is that in the practice of law that dichotomy is false. The government of law (the rule of law) and the legal virtues are two sides of the same coin, even if – in my opinion – there is a head (the rule of law) and a reverse (the legal virtues). Legal virtues are required to uphold the rule of law, that for the purposes of this article will be considered the proper implementation of justice according to law.

I well know that the rule of law is a contested concept and its relationship with justice is problematic.[18] I am also fully aware of the ambiguities of the current talismanic invocation of the rule of law in the international and domestic domain and of its possible hypocrite misuses.[19] This is the reason why in the next paragraph I will defend a particular version of the rule of law, the only one compatible with the approach to virtues. The assertion of the complementarity between the rule of law and the legal virtues could prevent throwing the baby (the rule of law) out with the bathwater (its ambiguities and misuses).

16 Robert Spaemann, *Moralische Grundbegriffe* (München: Oscar Beck, 1986).

17 On the misunderstandings arising from the contrast between the rule of law and the rule of men, see Julian Sempill, 'The Rule of Law and the Rule of Men: History, Legacy, Obscurity,' *Hague Journal on the Rule of Law* 12/3 (2020): 511-540.

18 Jeremy Waldron, 'The Rule of Law,' in *The Stanford Encyclopaedia of Philosophy*, ed. Edward Zalta (Fall 2016 edition). Available at: https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/ (last accessed 27 December 2023).

19 Notoriously, Judith Shklar, 'Political Theory and the Rule of Law,' in *The rule of law. Ideal or ideology*, ed. Allan C. Hutchinson and Patrick Monahan, eds. (Toronto: Carswell, 1987), 1-16. Recently, Stephen Humphreys, *Theatre of the Rule of Law. Transnational Legal Intervention in Theory and Practice* (Cambridge: Cambridge University Press, 2010).

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One of the most important supporters of the Virtue Jurisprudence, Lawrence Solum, distinguishes between two ways of applying virtue ethics to the legal domain.[20] The first instrumental approach finds independent criteria for good legal performances (for the judicial reasoning, for example) and from there it derives the virtues of a good legal practitioner (a judge, in the example).[21] The second one identifies a normative theory about the virtues that legal practitioners must embody, often starting from a general account of virtues, and then proceeding down to how legal practitioners ought to be selected and prepared according to those standards. The approach pivoting on the rule of law is akin to the first one but it is not in search of independent criteria, because the rule of law is at the very heart of the concept of law.[22]

The main argument of my attempt to propose a third approach is that legal virtues are required to shape the 'right' practice of law and not only for its actors to flourish.[23] When applied to the legal practice of law neither rules, nor virtues are bedrocks. The test for a successful virtue ethics approach is the 'right action done'. Legal virtues are not mainly requested just for agents to flourish, but for *justice* being done, and the rule of law is an important part of this enterprise.[24] In my opinion, this has to do with a specific feature of justice as a virtue. While the other virtues regulate the behaviours of human beings in themselves, justice regulates their dealing with others (even if it is possible to affirm that every virtue has an other-regarding side[25]). But justice seems to be the only virtue that does not require an internal aspect as a condition for success.[26] It is not the disposition of the agent as such, but the other-regarding achievement that is crucial, to the point that it is possible to do the right action without the right disposition.[27] The object of justice is the way in which another person is treated, and therefore its measure is external. It is here that the rule of law comes up as law's *own* virtue,[28] as a standard indicating the best possible implementation of the practice of law. This is the reason why the rule of law plays an important role in determining legal virtues. As 'a good friend'

20 Lawrence B. Solum, 'Virtue Jurisprudence. A Virtue-centred Theory of Judging,' *Metaphilosophy* 34/1-2 (2003): 178-213.

21 See Amalia Amaya, 'Virtue and Reason in Law,' in *New Waves in Philosophy of Law*, ed. Maksimillian Del Mar (New York: Palgrave Macmillan, 2011), 123-143, and Claudio Michelon, 'Lawfulness and the perception of legal salience,' *Jurisprudence* 9 (2018): 47-57.

22 In this article, I will not distinguish the concept of law from the nature of law. The definition of law is not far from the nature of the legal practice and its distinctive features.

23 Aristotle explains that virtues make both the agent and its work good. Aristotle, *Nicomachean Ethics*, ed. Roger Crisp (Cambridge: Cambridge University Press, 2000), 1106a 15-25.

24 I do not state that the rule of law exhausts justice according to law.

25 According to Foot, virtues are beneficial for both their possessors and others. Philippa Foot, *Virtues and Vices and Other Essays in Moral Philosophy* (Oxford: Oxford University Press, 2002), 3.

26 Think of the well-known and paradigmatic case of the parable of the unjust judge and the persistent widow (Luke 18:1-8). A judge is repeatedly approached by a woman seeking justice. Initially rejecting her demands, he eventually honours her request so he will not be worn out by her.

27 Aristotle, *Nicomachean Ethics*, 1130a 1-5 and Aquinas, *Summa Theologiae* (Roma: Edizione Studio Domenicano, 2014), II-II, q. 58, art. 2. Aquinas comments precisely on the famous example of the unjust judge and the persistent widow.

28 Raz, 'The Law's Own Virtue,' 1.

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in the case of friendship,[29] the rule of law works as a sort of regulative ideal, resulting from a long experienced and consolidated practice of justice. It operates as an exemplary setting for a 'good law'. The rule of law is another way of indicating a successful legal practice, in other words, a just legal practice.

Here an explanation and a disclaimer are due. I support the idea – and this will be further clarified below – that the rule of law is a manifestation of justice, if not its best form, from the point of view of legal practice. This statement would require discussing some preliminary problems from the point of view of a theory or a philosophy of law: which relationship the rule of law has with the political community and the common good, and then with the different versions of distributive justice, as well as whether the rule of law is law's own virtue or just one of its virtues and how it interacts with these other virtues of law.[30] As already mentioned, I will assume that the version of the rule of law adopted is the central form of doing justice according to the law. Then I will shift from justice to the rule of law and back again with a certain agility. The ground for assuming this idea is related to the way in which I will depict the horizontal rule of law in the next paragraph.

Two last preliminary points. The rule of law as law's standard of excellence results from a variable and complex set of features combined as a matter of degree,[31] hence it cannot be reduced to a checklist (or a laundry list[32]) because what really matters with the rule of law deals with the whole purpose. This is a reason for stating that the rule of law could only be achieved with the choral contribution of different actors and institutions. At the same time, the rule of law is a work in progress, and

29 There is a long story about this analogy. At the very beginning of the twentieth century, and against some Natural Law thinkers according to which an unjust law is not a true law, just as a false friend it is not a friend, Rudolf Stammler replies that the most appropriate comparison is not with friendship, which is a concept already steeped in value, but with the sermon: an unjust law is a true law just as a bad sermon is nevertheless a true sermon. Stammler supports the idea that the concept of law is not contradicted by unjust contents. Nevertheless, he does not deny that the nature of law is informed by the principle of mutual respect between people united under it. See Rudolf Stammler, *The Theory of Justice* (Union NJ: The Lawbook Exchange, 2000). On the significance of this debate on the nature of law, Francesco Viola, 'Introduction: Natural Law Theories in the 20th Century,' in *A Treatise of Legal Philosophy and General Jurisprudence. Vol. 12: Legal Philosophy in the Twentieth Century: The Civil World*, ed. Enrico Pattaro and Corrado Roversi (Dordrecht: Springer, 2016), Tome 2, 16-17.

30 I am not going into the problem whether there are other virtues of law as the protection of human rights, democracy or distributive justice, to be distinguished from the rule of law or not (Raz, 'The Law's Own Virtue,' 1). I think that Raz's last article represents an important shift from his former position on the rule of law, the one emerging from his 'The Rule of Law and its Virtue,' in *The Authority of Law* (Oxford: Oxford University Press, 1979), 210-232. I cannot discuss this change here. See Carmen E. Pavel, 'Taking Hamlet out of the Play: In Defense of a Substantive Conception of the Rule of Law,' manuscript discussed in a seminar online, 2024.

31 Timothy Endicott, 'The impossibility of the rule of law,' *Oxford Journal of Legal Studies* 19/1 (1999): 1-18.

32 Waldron, 'The Rule of Law.'

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the checklists could serve to identify shortcomings and deficiencies,[33] but they do not exhaust the normative ideal of the rule of law.

Finally, it is worth noticing that there are many useful virtues and there is a continuity among them. (This is a point against the insulation of virtues in their own practice.) The virtues here proposed are by no means the only ones necessary for upholding the rule of law, but they have been selected because they are, firstly, obtained through the described approach, and, secondly, particularly important for the whole legal enterprise. It goes without saying that mine is neither the only possible approach for connecting virtues and law, nor necessarily the most fruitful. The explorations of how the standard virtues (moral, epistemic, cardinal) can be applied to the practice of law and, in particular, to the work of the different legal practitioners (judges,[34] lawyers,[35] public officials[36]), as well as the use of the resources of virtue ethics to develop a theory of legal reasoning,[37] are already contributing significantly to the theory and to the practice of law.

3 The horizontal rule of law

If it is difficult to sum up an account on virtues in a few words, it is impossible to properly introduce the rule of law, a contested concept from the point of view of its status, its contents, its justifications, and its extension. However, it is undeniable that both the contemporary practice of law, domestic and international, and the legal literature have converted the rule of law to a common value and ideal,[38] perhaps the most important one for any kind of social interaction. In its minimal meaning the rule of law aims at limiting the arbitrariness of power. As already stated, unfortunately, the rule of law is often abused and/or reduced to a checklist of institutional requirements. But this is its poorest version or at least incomplete.

33 Keith Thompson, 'The rule of law, arbitrariness and institutional virtue,' *Alternative Law Journal* 44/2 (2019): 161.

34 Lawrence Solum, 'Virtue Jurisprudence: A Virtue-Centered Theory of Judging' and Iris Van Domselaar, 'Moral quality in Adjudication: On Judicial Virtues and Civic Friendship,' *Netherlands Journal of Legal Philosophy* 44/1 (2015): 24-46, that I will discuss below.

35 With a practical and educational cut, see James Arthur, Kristján Kristjánsson, Hywel Thomas, Michael Holdsworth, Luca Badini Confalonieri and Tian Qiu, *Virtuous Character for the Practice of Law. Research Report* (Birmingham, Jubilee Center For Character and Virtues, 2014). Available at: https://www.jubileecentre.ac.uk/?project=virtuous-character-for-the-practice-of-law (last accessed 24 December 2023).

36 Anthony A. Molina, 'The Virtues of Administration: Values and Practice of Public Service,' *Administrative Theory & Praxis* 37 (2015): 49-69.

37 Amalia Amaya and Claudio Michelon, ed., *Faces of Virtue in Law* (London: Routledge, 2019).

38 Even those that are against the rhetoric of the rule of law and indicate it as an 'international slogan' eventually recognise its importance in almost all the different legal traditions. See Martin Krygier, 'The Rule of Law: Pasts, Presents and Two Possible Futures,' *Annual Review of Law and Social Science* 12/1 (2016): 199-229. As an introduction to the rule of law see Brian Tamanaha, *On the Rule of Law. History, Politics, Theory* (Cambridge: Cambridge University Press, 2004) and *A Concise Guide to the Rule of Law*, in *Relocating the Rule of Law*, ed. Gianluigi Palombella and Neil Walker (Oxford: Hart Publishing, 2009), 3-15.

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Looking at the history of law, it is possible to observe that there are different versions of the rule of law, and these are constantly changing overtime. In continental Europe, the most famous and well known is the tradition of the *Rechtsstaat*, a typically domestic and public account of the rule of law, elaborated by the nineteenth-century German legal science. It requires the separation of the legislative, executive and judiciary powers and the principle of legality, in its two variants: preserving rights *through* the law and public powers acting *by* the law. The mechanism serves the protection of individual rights: not only negative liberty rights, but also any other rights established by law. However, the position of individuals in this historical model has been controversial as long as legislative power was unlimited. As is well known, the centrality of adjudication in the common law, but also modern constitutions attempt to reduce the effects of this setting of public powers. In particular, the common law tradition has emphasised the principle according to which no government is above the law. In addition, and notwithstanding the theoretical difficulties that this could represent for some scholars defending the formal versions of the rule of law, the European tradition since the Second World War is that of the complementarity of the rule of law, human rights, and democracy.[39] The reason is precisely the awareness that the totalitarian movements that led to wars in the twentieth century were often hidden behind formal versions of the rule of law.

Many definitions of the rule of law tend to connect it with the familiar top-down model of state law. Both the continental and the common law traditions converge on this reading. This is precisely what can be called a vertical reading of the rule of law: the one focused on the authoritative relationship between rulers and ruled, often reduced to some requirements for public powers. But the point to focus on is that the rule of law is neither constrained to public powers, nor to the domestic sphere.[40] From the point of view of legal philosophy, this thesis matches up with the giving reasons nature of law, according to which its purpose is to guide people's behaviour. Law does so through authoritative reasons for actions. The directives are targeted to agents that are all equally rational and able to deliberate, and capable of self-determination (they are free), but mainly subordinate.

39 See Art. 2, Treaty on European Union. See also Joseph H.H. Weiler, 'Deciphering the Political and Legal DNA of European Integration. An Exploratory Essay,' in *Philosophical Foundations of European Union Law*, Julie Dickson and Pavlos Eleftheriadis (Oxford: Oxford University Press, 2012), 137-158.

40 Whereas the main settings of the rule of law in states are well known, even if not necessarily consolidated, the same cannot be said for the law beyond the state. This is a reason for the importance of legal virtues of practitioners that must support and make up for it in the international sphere. A recent attempt to focus on virtues in the international setting is Jan Klabbers, *Virtue in Global Governance. Judgement and Discretion* (Cambridge: Cambridge University Press, 2022). Kofi Annan famously defined the international rule of law as 'a principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency'. United Nations Doc. S/2004/616 (2004), para. 6.

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But the rule of law must be distinguished from a managerial direction of actions, that Fuller famously contraposes to the rule of law.[41] The point is that the relationship between authorities and subordinates must be conceived as horizontal and reciprocal and not as vertical and unidirectional. The rule of law imposes duties on the authorities and requires their accountability. It is not justified without mutual constraints regarding the ways in which authorities rule and those governed comply. Compliance is the result of the government respecting some duties for the sake of the addressees. This mutuality of constraints equalises both the rulers and the ruled. Reciprocity implies that authorities and individuals cooperate in shaping their interactions on equal, proportionate terms. On the one hand, authorities promulgate clear, prospective, practicable, and stable rules; those rules apply also to the same authorities and authorities apply those rules with impartiality and consistency. On the other hand, individuals comply with rules and decisions in responding to this setting and they participate in the implementation of a system of co-responsibility both between rulers and ruled, but also among those ruled, because only it is possible from within the system to demand responsibility from others. The justification is that it is possible to call another accountable only accepting one's own accountability. In this sense, the rule of law is the way of ordering those relationships, and not just a way of governing people.[42] This is the reason why we can say that the rule of law attracts our loyalty: in so far as it is considered not only efficient, but fair. From this perspective, the rule of law starts from the recognition of the crucial role that everyone plays in the practice of law. This account of the rule of law could focus on specific virtues of legal practitioners (including legislators and those who exercise public powers) but also of lay people. Both kinds of actors must recognise and accept their co-membership, and act according to it.

In the traditional liberal reading of the rule of law, the attention has generally been focused on avoiding arbitrary interferences on liberty, but equality is also opposed to arbitrariness, since it excludes every form of unreasonable domination.[43] As a matter of fact, many of the features listed in the famous checklists of the rule of law regard the avoidance of that specific kind of domination and, consequently, the due equal concern for everyone. Generality introduces a requirement of justification since all forms of discrimination must be adequately validated. Discrimination is tolerable only if it rests upon a reasonable classification. And every classification must be revised by adjudication, whose role is to consider the way in which those categories apply to individuals. This kind of equal interaction is also realised by the possibility of knowing the norms because of their publicity, clarity and prospectivity, together with the equal access to institutions destined to settle disputes. Equality is met if people's standing in that network of relationships is equal within the constraint of reasonable categories proposed by the rules and their singularity is

41 Fuller, *The Morality of Law*, 210.

42 See also Gerald J. Postema, *Law's Rule. The Nature, Value, and Viability of the Rule of Law* (Oxford: Oxford University Press, 2022).

43 Philip Pettit, 'The basic liberties,' in *The Legacy of H.L.A. Hart: Legal, Political, and Moral Philosophy*, ed. Matthew H. Kramer (Oxford: Oxford University Press, 2008), 201-211.

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respected by fairness. The rule of law is not only about freedom as independence from the power of another, but also, as already explained, about equal freedom even between authorities and subordinates, and among those affected by the same rules.[44] This could be a way of representing justice according to law. It does not depend on external moral values introjected in law, but it is grounded on its very nature.

Though this is a schematic presentation of a huge debate, three points can be emphasised. First, the rule of law is not only a way of governing, but a way of association, and it requires certain dispositions and qualities – legal virtues necessary to shape reciprocal relationships – from those who participate in it. Second, neither institutions and procedures, nor public or private actors can realise the rule of law alone. In fact, the set of characteristics of the rule of law is not the result of the work of a single agent or institution, but of a multiplicity of cooperating actors and institutions: legislators, judges, lawyers, and parties, but also lay citizens. This does not exclude that officials and institutions could act as the guardians of that system of interactions, but the rule of law is not only their job. Third, under this reading, the rule of law and justice according to law could converge. For the practice of the rule of law, in addition to some settings, institutions and procedures, some virtues are requested of legal practitioners and lay people.

4 Which virtues for the virtue of law?

When finally dealing with the question 'which virtues are requested in order to support the virtue of law?' there are choices to be made explicitly and backed up by reasons. There are some possible alternatives that, in my opinion, do not move from lists of virtues designed around human faculties but rather try to connect the legal virtues to the specificity of law. Just following each one, it will be possible to identify some legal virtues able to uphold the rule of law, even if I will propose a different list that fits better with the outlined approach. The problem whether different sets of virtues would be required at different stages of rule of law development could be a further expansion of my research.[45] Consider for example the differences between societies well equipped by relatively functioning institutions but with endemic corruption and those just after a civil war or in the first stages of rule of law implementation. My guess is that different virtues would be required to build and sustain the rule of law in all those different cases, but all of them would be within the frames and the characters of the practice of law as determined by the rule of law.

44 Isabel Trujillo, 'Liberty and Equality as the Morality of the Rule of Law,' in *Encyclopaedia of the Philosophy of Law and Social Philosophy*, ed. Mortimer Sellers and Stephan Kirste (Dordrecht: Springer, 2022). Available at: https://link.springer.com/referenceworkentry/10.1007/978-94-007-6730-0_698-1 (last accessed 27 December 2023).

45 I thank the two referees that have examined my work for their suggestions on this and many other points.

A first choice to be made is between negative and positive accounts of virtues. The rule of law is usually understood as a device to limit the arbitrariness of power. The temptation is to concentrate on all those features able to temper and moderate power, according to the famous idea of a bridle.[46] In some ways this is the main point made by the influential work of Krygier. The author is perplexed as to the possibility of finding a general content of the rule of law beyond the idea that any kind of arbitrary rule must be rejected.[47] This is already a very dense indication, because it concerns not only the limitation, but also the moderation of the exercise of power. Shortly I will examine an approach inspired by his work, but that follows a different argumentative strategy. In any case, negative approaches are better performed through prohibitions and commands, i.e. through duty-based methods, whereas virtues seem more appropriate to positively guide human behaviour. It seems to me that the reading of the rule of law as a social ordering tool demands positive virtues, that are able not only to limit and to channel the exercise of power, but especially to build fair relationships.

One possible and valuable starting point to foster a positive account of legal virtues linked to the rule of law is to focus on the different meanings of arbitrariness and to look for the opposite qualities. Arbitrariness could mean many things, but in the history of the rule of law there are threemost commonly used senses: decisions without control, lack of predictability, and failing to consult those affected.[48] We would add anarchy, understood as the lack of a legal order.[49] The struggle against arbitrariness could then be assembled around corresponding lines to be translated in virtues: asking those in power to make reasonable decisions and to declare their reasons, which in turn must be relevant and well-informed;[50] assuring equality thanks to predictability, practicability, and respect for citizens' expectations; and allowing participation. A good proposal will try to make the most of these requirements without converting them into a checklist: intellectual and deliberative virtues, transparency; fairness, practical wisdom and respect; empathy, and the virtues of leadership. Against social anarchy we need widely accepted reasonable rules.

A second choice regards the alternative between two ways of dealing with legal virtues: specifying different virtues for different legal actors,[51] or identifying some

46 In his last book, Postema develops the idea that the rule of law provides a bulwark of protection, a bridle on the powerful, and a bond constituting and holding together an ideal mode of association. Postema, *Law's Rule*.

47 Krygier, 'The Rule of Law: Pasts, Presents and Two Possible Futures.'

48 John Finnis, 'Limited Government,' in *Human Rights & Common Good. Collected Essays vol. III* (Oxford: Oxford University Press, 2011), 84-106.

49 Timothy Endicott, 'Arbitrariness,' *Canadian Journal of Law and Jurisprudence* 27/1 (2014): 49-72.

50 Raz, 'The Law's Own Virtue,' 8. The topic has been further elaborated as the requirement of explainability in relation to the application of artificial intelligence in the practice of law. John Zerilli, 'Explaining Machine Learning Decisions,' *Philosophy of Science* 89/1 (2022): 1-19.

51 For judges, the already quoted Lawrence B. Solum, 'Virtue Jurisprudence. A Virtue-centred Theory of Judging'; Amalia Amaya, 'Virtue and Reason in Law;' Iris Van Domselaar, 'Moral quality in Adjudication: On Judicial Virtues and Civic Friendship'. For lawyers see David Luban and Wendel W. Bradley, 'Philosophical Legal Ethics: An Affectionate History,' 337-364.

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common virtues, even if their implementation may be diversified in relation to different kinds of actors. From the point of view of the different legal roles, the latter could appear less attractive, but following the former something could be lost, in particular some features pertaining to the choral character of the whole legal enterprise of the rule of law.

In the quest for specific virtues for judges, Van Domselaar has identified some judicial virtues drawing on the opinion of experts and on the social consensus in the light of the Aristotelian *endoxa*.[52] This approach consists of observing what is generally required of judges (but it could be used also for other legal practitioners), examining social expectations as they emerge, for example, in the widespread codes of ethics or deontological principles. Starting from there, it is possible to elaborate a list of judicial virtues, that, according to Van Domselaar, consists of: judicial perception, judicial courage, judicial temperance, judicial justice, judicial impartiality, and judicial independency.[53] In my opinion, there is a peril in anchoring legal virtues to the content of the ethics of roles or professions, and an advantage in anchoring them to the very nature of the practice of law. The second option is controversial but decisive for the different actors involved: if they are not fine-tuned to the practice of law, their work is not only ethically deficient, but pointless.

If it is decided to look for some common virtues, one possible strategy is to expand the virtues of one of the actors to all of them. This is the approach followed recently by Thompson.[54] He explores the consequences of Krygier's insistence that it is arbitrariness that we must control to succeed in the rule of law project. He notes that, in general, it is the poor behaviour of wicked leaders to weaken the confidence of citizens in the rule of law's project. He chooses then to follow the teaching of ancient philosophers according to whom no legal system is safe without personal virtues in public service, a proposal clearly elaborated in the wake of the complementarity between the virtue of law and the legal virtues. He enlists at least nine judicial virtues: independence, impartiality, courtesy, civility, the provision of reasons for decisions, transparency, procedural fairness/due process, the provision of some form of hearing, and the provision of all the relevant evidence to all the parties potentially affected by a decision.[55] Hence, he observes that the rule of law virtues already expected of judges could be well extended to executive, legislative and corporate actors. But the problem is that the overall picture matches up with the vertical account of the rule of law, and perhaps with an emphasis on the negative side of legal virtues.[56] Incidentally, I would like to highlight that it is not a

52 Van Domselaar, 'Moral quality in Adjudication: On Judicial Virtues and Civic Friendship,' 26.
53 Van Domselaar, 'Moral quality in Adjudication: On Judicial Virtues and Civic Friendship,' 27-34.
54 Thompson, 'The rule of law, arbitrariness and institutional virtue.'
55 Thompson, 'The rule of law, arbitrariness and institutional virtue,' 163.
56 Impartiality as a virtue of the judgment – not only by the judge even if eminently in their case – has to do with a positive guarantee of equality of treatment through careful listening to the parties and their reasons. It is not just a device aimed at excluding interests and conflicts or at promoting neutrality, that implies to refrain from judgement. It requires objectivity in weighing reasons and justice in considering every party involved with equal attention and concern.

coincidence that the most developed literature on legal virtues is related to judges:[57] they are able to limit legislative and administrative powers, but *quis custodiet ipsos custodes?* (who controls the controllers?). The only alternative to falling into a *regressus in infinitum* is the idea of a choral participation to the rule of law, in which the control on the exercise of power is socially ensured. In addition, it seems that in the case of judges, the thesis of the two sides of the coin is proved: the rule of law is strictly conjoined to the virtues of judges.

Comforted by all these valid attempts, but in consideration of the focus on the rule of law as a shared commitment aimed to shape fair interactions and looking for some common virtues for both legal practitioners and lay people, it seems to me that three legal virtues are crucial: reflexivity, fidelity to law, and team work. The first regards the epistemic approach to law, the second concerns the commitment of those taking part in the practice of law, and the third concerns the horizontal and participatory contribution to the rule of law.

Taking part in the rule of law presupposes what Simmonds calls reflexivity.[58] This consists of making explicit or implicit appeal to the rule of law in the practice of law. Law is a project to be realised, and the rule of law is at its core. Reflexivity is a virtue that affects the cognitive dimension of those who take part in the practice of law. It is the ability of carrying out the rule of law with flexibility, awareness of the context, and capacity of innovation, if the rule of law needs to be applied in different and new contexts. This ability is contrary to exclusively theoretical approaches to law; to external and manipulative readings of law; as well as to sceptic accounts of the concept of law, such as those reducing law to politics or to brute force,[59] as well as to those accounts of the rule of law as exhaustive checklists. From this point of view, reflexivity could be understood as a special part of practical

57 Aquinas, quoting Aristotle, says that 'men have recourse to a judge as to one who is the personification of justice'. Aquinas, *Summa Theologiae*, II-II, q. 60, art. 1.

58 Nigel Simmonds, 'Reflexivity and the Idea of Law,' *Jurisprudence* 1/1 (2010): 1-23. The literature on reflexivity is very rich and not uniform. Reflexivity has been at the centre of a revision of the internal/external point of view of the sociology of law, by Pierre Bourdieu, *In Other Words: Essays Towards a Reflexive Sociology* (Stanford: Stanford University Press, 1990). It has been at the core of a reaction against the expansive legalisation of various spheres of social life, by Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law,' *Law & Society Review* 17/2 (1983): 239-286. It is still a topic in the epistemology of research according to which methods used to describe phenomena contribute to the construction of phenomena themselves, as in Emilie M. Whitaker and Paul Atkinson, *Reflexivity in Social Research* (Cham: Palgrave Macmillan, 2021). In the legal field, reflexivity fits also with the idea according to which legal science does not only describe law, but takes part in constructing it (from where the notion of *Juristenrecht* is derived).

59 Reflexivity moves in the opposite direction to the separation between the idea of law and the practice of law, and it contrasts the recent trend to eliminativism, the idea according to which legal practitioners do not need the concept of law to exercise their professional role. Lewis A. Kornhauser, 'Doing Without the Concept of Law,' *NYU School of Law, Public Law Research Paper* 15/33 (2015). Available at: https://ssrn.com/abstract=2640605 (last accessed 27 December 2023). Eliminativism implies also that what we call legal is nothing more than a disguised power decision, or that there are no legal obligations because ultimately all obligations are moral.

wisdom, the moral skill of doing the right thing in the right way.[60] It has different applications in the case of practitioners and lay people, but it is suitable for both kinds of actors, and, in both cases, it depends on the distinctive character of law.

In the case of legal practitioners, reflexivity leads to a conception of legal science not as a theoretical or technical expertise, but rather as an art (the art of doing justice according to law). Legislators, judges, lawyers, advisors, and civil servants are called to reflect on the legal action at stake and to commensurate it with the rule of law as the core of a fair social ordering. In this sense, the rule of law can be identified as the mark of the legal mindset. Reflexivity is not only a key of the legal practitioners' ability to absorb and translate social inputs into legal terminology, but it is the condition for the crafting of fair legal solutions to social issues. This is possible in so far as law maintains a bond with that social dynamic without formalistically homologating the different demands. Reflexivity avoids the risk of flattening the practice of law to technicalities, abuse of power, or utilities of the most powerful. It makes the legal practitioners the builders of a fair social ordering.

Nowadays, this virtue is particularly important for another reason. Legal practitioners are called upon to conceive of the process of lawmaking in a context in which extra sources beyond the state are becoming increasingly important. Legal normativity springs from places other than the state, often in competition with state law, and sometimes prevailing over it. The deconstruction of the traditional scheme of sources rejects the adequacy of purely formal solutions based on traditional regulatory hierarchies. The absence of a hierarchy in pluralistic legal systems requires a particular responsibility of the legal practitioners. In other words, the classical reading of legality – acting in accordance with law – is not enough. Inter-legality is a category that better represents interconnections among different legal orders.[61] The international framework is a good lab for this challenge: a crucial role is attributed to legal practitioners (not only judges, but also lawyers) in the international scene to the point that it can be considered a sort of *Juristenrecht*, a law shaped by the same legal actors and their doctrines.[62] In this context, Koskenniemi has stressed the need of a constitutional mindset,[63] that in my opinion could be well described in terms of the rule of law's mindset. This is the beginning of an epistemic change in modern law in which the role of legal practitioners and their abilities should be emphasised.

In the case of lay people, reflexivity aims also at eliminating exclusive external approaches to law. Ordinary people tend to expect justice from the law, simply

60 Barry Schwartz and Kenneth Sharpe, *Practical Wisdom: The Right Way to Do the Right Thing* (New York: Penguin, 2010).

61 Gianluigi Palombella, 'Approaching Inter-legality,' *Rivista di Filosofia del diritto* 11/1 (2022): 7-90.

62 Jean D'Aspremont, *International Law as a Belief System* (Cambridge: Cambridge University Press, 2017).

63 Martti Koskenniemi, 'Constitutionalism as Mindset: Reflections on Kantian Themes About International Law and Globalization,' *Theoretical Inquiries in Law* 8 (2007): 9-36. See also Jan Klabbers, 'Towards a culture of formalism? Martti Koskenniemi and the virtues,' *Temple International Comparative Law Journal* 27/2 (2013): 417-436.

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looking at whether and how justice is done by legal practitioners. Without reflexivity it is hard to understand that the success of the practice depends on every actor's involvement. In their case, reflexivity leads not only to upholding the rules by respecting them as part of their contribution to the rule of law, but also to demanding accountability and transparency from those who wield power, as well as to participate in improving the system. The latter is the task of transformative justice,[64] which involves legal practitioners and citizens alike in the enhancement of rules and institutions, each of them according to their role and all of them as citizens engaged in social change. The distinction between participation as legal practitioners and citizens in improving rules and institutions could dispel temptations of some roles' activism, which is very often the result of hubris or arrogance: an important challenge for all legal professions.

If reflexivity is a cognitive disposition, fidelity to law is a solid commitment to the task of realising the rule of law.[65] The rule of law as a quality of a fair set of relationships implies accepting equality for all those who are involved in such relationships.[66] It demands rejection of privileges and power abuse, first and foremost when we ourselves could take advantages from power. But fidelity is not just the domain of self-restraint. It is precisely in following the rules and taking part in the practice with fair play that both legal practitioners and citizens show that they do not want more for themselves than what they are asking from others.[67] This disposition is also a good definition of justice according to the law; it is not just about refraining from doing something, but about treating others as equals in our interactions. The rule of law is about treating others with the respect that their equal dignity entails.[68]

Finally, the choral character of the rule of law requires the legal virtue of team work, i.e., the disposition to take part in the legal practice engaging in a common

64 Transformative justice is designed to produce changes in social settings. It is generally considered as an alternative to retributive and restorative justice because it is directed to challenge the premises on which those practices of justice are grounded. It could be said simplistically that transformative justice is the task of legal practitioners as citizens. Paul Gready and Simon Robins, ed., *From Transitional Justice to Transformative Justice: A New Agenda for Practice* (Cambridge: Cambridge University Press, 2019).

65 On this point I am following Postema's *Law's Rule*, in turn inspired by Fuller. At page 20 he describes fidelity as the principle that maintains that 'the rule of law is robust in a polity only when its members, legal officials and legal subjects alike, take responsibility for holding each other to account under the law'. Nevertheless, he does not describe it as a virtue, but as a principle.

66 In a different perspective, Wendel connects the fidelity to law to the goods that law is able to produce. First of all, its capacity to settle normative controversies in a morally pluralistic society. W. Bradley Wendel, *Lawyers and Fidelity to Law* (Princeton: Princeton University Press, 2010).

67 The golden rules of fair play adopted by FIFA and many other sports governing bodies are: 1) play to win but accept defeat with dignity; 2) observe the rules of the game; 3) respect opponents, teammates, referees, officials and spectators; 4) promote the interests of the practice; 5) honour those who defend the practice's good reputation; 6) reject corruption, drugs, racism, violence, gambling and other dangers; 7) help others to resist corrupting pressures; 8) denounce those who attempt to discredit the practice; 9) use the practice to make a better world.

68 Trevor R.S. Allan, *Constitutional Justice. A Liberal Theory of the Rule of Law* (Oxford: Oxford University Press, 2001), 38.

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action to which everyone could contribute. On the one hand, without that cooperation legal rules and institutions are ineffective.[69] This means that cooperation is a condition for law to properly work. On the other hand, cooperation is the end of law in the sense that law serves cooperation. Team work means that each team member acts to contribute to the ends of the team. It does not necessarily require to adapt one's intention to those of others, but rather to have an extra intention to contribute to build the social order.[70]

A good example of team work is what has been called institutional loyalty: the specific attitude necessary in those situations in which certain behaviours are not required by mandatory rules supported by sanctions, but when the project of cooperation in building legal settings and institutions it is at stake, because these elements are essential for the success of the whole practice (a perception introduced by reflexivity). From this point of view, team work is not only related to human agents or public officials, but it also refers to the relationships among institutions, that in turn depend on human actors who work at those bodies. Examples in the European Union[71] or the appeal to the principle of sincere cooperation in carrying out tasks which flow from treaties could be the requirement for national courts to interpret rules in conformity with European law.[72] In both cases, the action due is not produced by the threat of a sanction, but depends on the willingness to cooperate. Team work is also implicit in the minimal meaning of the rule of law as separation of powers, requiring the intertwining of different actors and institutions with different competences, according to the principle of loyal cooperation of public powers.

Team work also concerns the participation of citizens and parties in the dynamic nature of the law, not only by complying with the rules. Apart from taking part in the deliberation of statutes, through the typical democratic procedures, Fuller famously stated that also adjudication performs a peculiar mode of participation in the decision of the case by those affected by the conflict.[73] To carry out this participation consistently with the nature of the law, parties must offer reasoned arguments related to cases. Through their lawyers, parties produce reasons for interpreting the facts and the law in a certain way. The corroboration of the importance of this participation can be found in the fact that contemporary legal systems are increasingly sensitive to the effective contribution of the parties at *any*

69 This is easy to prove in the context of the 'law and development' literature, that emphasises both the rule of law as a key element to nation-building, and group-based programs. Of course, the cooperation is to be understood as inclusive as possible: it would involve political, economic, and institutional actors. See Matthew Andrews, Lant Pritchett and Michael Woolcock, *Building State Capability* (Oxford: Oxford University Press, 2017). Nevertheless, in this article, the focus is on the specificity of the legal virtues in the light of the rule of law's centrality.

70 John Gardner, 'Reasons for Teamwork,' *Legal Theory* 8/4 (2002): 495-509.

71 *Von Colson and Kamman v. Land Nordrhein-Westfalen*, *European Court Reports* n. 1891 (1984), § 26, based on Art. 5, Treaty on European Union.

72 Art. 4, Treaty on European Union.

73 Lon L. Fuller, 'The Forms and Limits of Adjudication,' *Harvard Law Review* 92/2 (1978): 353-409.

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stage of the legal procedures.[74] In turn, this participation shapes one of the classic legal guarantees that can be traced back to the rule of law according to which no one can be sentenced without being heard. An old legal principle of *jus gentium* states that parties must be involved in the decision regarding them because *quod omnes tangit ab omnibus approbari debet* (what touches all ought to be approved by all). This principle conveys two demands. On the one hand, the demand for an active and inclusive participation and, on the other hand, for consultation in deliberation. There are important implications of that principle in many other branches of law: obviously in the legislative, where the legal contribution – to be distinguished from the political dimension – could be identified in the deliberative character of participation, as well as in the procedures of consultation and accountability in administrative law.

5 Conclusion

All possible virtues are welcome and can be exercised in the legal field, from courtesy to acceptance, from fortitude to magnanimity. But to call some of those virtues 'legal' we must look not only at the legal actor or at the legal context but rather at the very nature of law and at its specific way of achieving justice. This specific way is the rule of law understood as a way of ordering social relationships. The legal virtues would then be those more suitable to uphold the rule of law. Against external approaches and merely technical readings of the law we need reflexivity, which helps to commensurate each legal action with the rule of law. Against utilitarian and detached approaches to law, fidelity indicates the attachment of each actor to the core project of law. Against unilateral and super-competitive participation, we need team work in which each actor plays their part, but also contributes to a choral enterprise that cannot succeed without mutual support. The alternative is to think of the rule of law as a mechanism similar to the invisible hand, in which the outcome does not depend on intentional teamwork, but on accidental facts. The complementarity between the rule of law and the legal virtues requires members' commitment to the whole project.

In this article, I attempted a different approach in applying virtue ethics to the practice of law. Instead of starting from human capacities and their virtues, I started from the nature of law, identifying its specificity in a particular reading of the rule of law. Then, I identified some common virtues for legal practitioners and lay people. The proposed virtues can be discussed and contested for many reasons, but only from within the practice of law itself, according to the complementarity of the virtue of law (the rule of law) and the legal virtues.

74 One example is the extension of the adversarial principle in the process of the interpretation of the law in litigation, a principle traditionally alien to continental legal culture that is spreading more and more in those systems.

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