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7-15-2021

## The English Awakening of Santi Romano's Ordimento Giuridico: a Review of The Legal Order

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### Citation Information

Kassaian, Ata. "The English Awakening of Santi Romano's Ordimento Giuridico: a Review of The Legal Order." *Osgoode Hall Law Journal* 58.2 (2021) : 453-465.

<https://digitalcommons.osgoode.yorku.ca/ohlj/vol58/iss2/6>

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## The English Awakening of Santi Romano's *Ordinamento Giuridico*: a Review of The Legal Order

### Abstract

MORE THAN A CENTURY after its first publication, Santi Romano's *Ordinamento Giuridico* is finally available to an English-speaking audience, as *The Legal Order* (TLO), thanks to Mariano Croce's efforts in translating the work.

## Book Review

## The English Awakening of Santi Romano's *Ordinamento Giuridico*: a Review of *The Legal Order*<sup>1</sup>

ATA KASSAIAN<sup>2</sup>

MORE THAN A CENTURY after its first publication, Santi Romano's *Ordinamento Giuridico* is finally available to an English-speaking audience, as *The Legal Order* (*TLO*), thanks to Mariano Croce's efforts in translating the work.

*Ordinamento Giuridico* is a seminal work of legal theory and a cornerstone of legal pluralism and legal institutionalism. Romano was a professor of Administrative Law at the genesis of a nascent Italian nation state grappling with entrenched non-static institutions.<sup>3</sup> From 1929 to 1944, Romano was the President of the Council of State, Italy's highest court for matters of administrative

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1. Santi Romano, *The Legal Order* (Routledge, 2017) [translated by Marco Croce] [*TLO*]. Published as a part of Routledge Law and Politics: Continental Perspectives series, Croce's translation is complemented by a foreword from Martin Loughin and an afterthought by the translator. Loughin's foreword describes the evolving role of the state in the period from the late 19th to the early 20th century, when industrialization and socio-political change called for a rethinking of the state and state law. He also outlines legal theoretical currents of positivist, evolutionary, and institutionalist schools of law as the backdrop to Romano's reflections and work. Croce's Afterword helps further situate Romano's visionary definition of the law and engages in a critical analysis of *TLO*.
  2. B.C.L./LL.B. McGill University. The author is indebted to Filali Osman for introducing him to Romano's *Legal Order*, the late Rod Macdonald for showing the applications of legal pluralism, Richard Haigh for his generosity in editing and substantially improving the initial draft, and editors of the Osgoode Hall Law Journal. This review was undertaken in a strictly personal capacity and the author takes responsibility for any shortcomings or misstatements.
  3. *Romano, supra* note 1 at 112.

law.<sup>4</sup> His scholarship and experience offered him insight into resolving labour disputes, adjudicating administrative conflicts, and reconciling legal enactments with social realities. In *TLO*, Romano acknowledges international law, the Catholic Church, and organized crime as institutions with their own rules outside the state's legal system. The strength of Romano's theory is that it does not ignore or modify facts to fit a definition of the law; for Romano, it is the conceptual framework that must be adjusted to accommodate realities, not the other way around.<sup>5</sup>

## I. PART I OF *TLO*: DECONSTRUCTING INCOHERENT THEORIES OF THE LAW

Originally published in 1917, Part I of *TLO* starts with a deconstructionist analysis of the legal theories popular at the time.<sup>6</sup> Romano introduces definitions of the law and demonstrates their limits by exposing their inadequacies when applied outside the specific factual confines in which they are typically used. Having demonstrated the inconsistencies in these theories, Romano sets out to find a coherent general definition of the law. He eventually concludes that: (1) law should be traced back to society; (2) law should involve order or rules; and (3) law should not be viewed as a social phenomenon, but as "an entity in its own right."<sup>7</sup>

Romano's first target is the positivist idea of law as a body of enacted rules. He illustrates the strength of this definition by evoking a judge sifting through statutes or edicts for a bedrock to support a judgment.<sup>8</sup> Romano then goes on to point out that the legislative process is imperfect and piece-meal, and that inevitably, there will be statutes and regulations that contradict each other. He concludes that defining law as the general body of rules is flawed and ignores underlying principles.<sup>9</sup> This is notably the case where there is incompatible divergent administrative guidance on the same type of situation, emanating from

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4. *Ibid.*

5. *Ibid* at 7.

6. Although Romano wrote the *TLO* decades before Derrida's *Writing and Difference*, Part I of the *TLO* is a great example of a deconstructionist analysis; it is worth mentioning that at the time of publication of Jacques Derrida's thesis, a French translation of Romano's work was not yet available; the first French translation of the *TLO* was published in 1975. See Jacques Derrida, *L'Écriture et la Différance* (Seuil, 1967) at 409-29.

7. Romano, *supra* note 1 at 12-13.

8. *Ibid* at 4.

9. *Ibid* at 3-5.

different equally authoritative sources. An early Canadian constitutional law debate on the same issue concerned overlap between provincial and federal heads of power, which was eventually resolved by the doctrine of paramouncy where, in case of overlap of provincial and federal powers, federal legislation overrides even compatible provincial legislation. The principle of absurdity, which forms part of Canada's modern approach to statutory interpretation, gives currency to Romano's dismissal of absolutist positivism: absurdity allows a judge to ignore the express wording of a legislation where it counteracts the object and purpose of a larger legislative framework. The fact that a legislative provision may be intentionally ignored to uphold an unwritten "object and purpose" shows that our legal system now accords with Romano's understanding insofar as it admits that to view the law as a body of enactments is to miss an important part of the picture.

Romano then turns his attention to the moralist concept that the law is a baseline for ethical behaviour, judging it to be "partly true and partly seriously mistaken."<sup>10</sup> For Romano, the law "not only represents an amount of morality, but also of economy, customs, technique."<sup>11</sup> It would be a fallacy to believe that what the law contains is a minimum baseline of anything. The fundamental aspect of law is determined by the institution in which it is materialized, *i.e.*, "the law is the vital principal of any institution, that which animates and holds together the various elements that compose it."<sup>12</sup>

Describing the law as indissociable from the "institution"—defined in *TLO* as a community that goes beyond filial bonds and has a legal element—Romano affirms that the "concept of institution and the concept of a legal order, considered as a unity and as a whole, are absolutely identical."<sup>13</sup> The norm then, whether a statute, treaty,<sup>14</sup> or judgment, becomes merely an expression of the law, not its essence.<sup>15</sup> The idea that the law is the institution, and something different from the sum of its rules, harkens back to Socrates' "ideal of the law," and his unwillingness to frustrate a verdict against his own life, or the biblical idea that "the letter [of the law] killeth, but the spirit giveth life."<sup>16</sup>

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10. *Ibid* at 22.

11. *Ibid*.

12. *Ibid* at 24.

13. *Ibid* at 16.

14. *Ibid* at 28.

15. *Ibid* at 47.

16. 2 Corinthians 3:6.

Having settled on “the institution,” as the simplest general definition of the law,<sup>17</sup> Romano then sets out the criteria for what he considers to be an institution:

[I]n order for an institution to arise, the existence of persons connected to each other through simple relationships is not enough, as there must be a closer and more organic bond. The formation of a social super-structure is required upon which not only their distinct relationships, but also their own generic position depends, or that sway them. Therefore, it is impossible to envisage an institution only composed of two physical persons; for these will remain two individualities, unable to morph into one.<sup>18</sup>

To qualify as an institution, the community or society must have an ordering effect in social relations that goes beyond filial bonds or one-off interactions. Romano’s institution—or legal order—is the very concept of “imagined order” which Yuval Noah Harari describes as the bond holding large human communities together and allowing them to cooperate.<sup>19</sup>

Next, Romano presents the idea of relevance: a conflict of laws rule of sorts, for assessing how institutions interact.<sup>20</sup> Romano’s relevance has many of the hallmarks of Derrida’s *différance*: just as Derrida’s *différance* tells the critic that meaning can only be deferred or understood through difference,<sup>21</sup> for Romano, it is through comparison and observation of interactions between legal orders – their relevance to each other – that a jurist or observer can appreciate the nature of a legal order.<sup>22</sup> Through relevance, one can also assess the extent to which an administrative, judicial, or legislative decision may impact the broader legal or social spectrum.

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17. Romano, *supra* note 1 at 17-19.

18. *Ibid* at 32-33.

19. Yuval N Harari, *Sapiens: a Brief History of Humankind* (Harper, 2014) at 113. Another theoretical concept that resembles Romano’s legal order or institution is Althusser’s concept of an “ideological state apparatus,” with the distinction that a legal order includes non-state and even anti-state institutions. For an analysis of ISAs, see Louis Althusser, “Ideology and Ideological State Apparatuses (Notes Towards an Investigation)” in *Lenin and Philosophy and Other Essays* (Monthly Review Press, 1971) 127 at 142-47, 166-76.

20. Romano, *supra* note 1 at 43.

21. Derrida, *supra* note 6 at 410.

22. Romano, *supra* note 1 at 43.

## II. PART II OF *TLO*: PRACTICAL APPLICATIONS OF THE LEGAL ORDER

If Part I of *TLO* is a quest for a coherent general definition of the law, Part II shows the practical applications and uses of defining the law as the “legal order” or “institution.”

Having underlined the multiplicity of legal orders,<sup>23</sup> Romano provides examples like international law,<sup>24</sup> the Church,<sup>25</sup> and organised crime<sup>26</sup> as distinct, non-state legal orders, each sovereign in its own realm. This sovereignty persists even though subjects of a legal order may be simultaneously subject to another legal order with contradicting rules. For example, a state legal order may adopt rules pertaining to the use of Church assets or regulate behaviour of its members in ways that may oppose tenets of ecclesiastic principals or Canon Law. However, the internal hierarchy of the Church will remain intact despite state interference with its assets or parishioners: any change to the Church’s legal order must come from within.<sup>27</sup> In fact, the historic strength of the Church’s legal order is the main reason why Quebec’s civil code permits a judgment for separation and support payments without divorce, thereby accommodating separating spouses who feel compelled to honour the Catholic Church’s doctrine of indissolubility of marriage.<sup>28</sup>

Romano provides a non-exhaustive list of different types of institutions for illustrative purposes and to facilitate analysis.<sup>29</sup> First, there are original institutions, derivative institutions, and intermediate institutions. While a derivative institution may be a product of an original institution, its relationship to the original institution may be complementary, dependant, or antithetical. Second, institutions may have a particular or a general purpose. Third, the constitutive parts of an institution have an impact on its reach and its relevance to the outside world. Fourth, the level of complexity of an institution is also an important factor, which often has a correlation to whether the institution is an original, derivative, or intermediate institution. A more complex institution such as a state may have a number of derivative institutions such as regional

23. *Ibid* at 50-51.

24. *Ibid* at 54.

25. *Ibid* at 55.

26. *Ibid* at 58.

27. *Ibid* at 57-58.

28. Arts 493-515 CCQ; AM Bilodeau, “Quelques aspects de l’influence religieuse sur le droit de la personne et de la famille au Québec” (1984) 15 RGD 573 at 586.

29. Romano, *supra* note 1 at 67-68.

governments, municipalities, ministries, et cetera. Fifth, an institution can be considered as “perfect” or “imperfect,” meaning it can be autonomous and self-sustaining, or owe its existence to another perfect institution. The dependence of an institution on another may be positive or negative. Lastly, a legal order may or may not have legal personality. Having legal personality elevates the status of an institution and allows it to assert itself. The significance of legal status is captured well in the HBO series, *The Wire*, for example, where Omar Little rightfully draws parallels between a criminal defence lawyer who “robs drug dealers” by charging exorbitant fees to defend them in court and his own criminal operation of robbing them at gun point.<sup>30</sup> Omar’s profession is illegal, however, while a criminal defence lawyer is part of a professional order with legal status.

In addition to the broad categories above, Romano provides five heads of “relevance”: subordination, presupposition, mutual independence and simultaneous reliance on a third legal order, and succession.<sup>31</sup> Subordination occurs where a legal order may be subordinated to another. An example of this is the idea of paramountcy in Canadian constitutional law, requiring that where a provincial and federal head of power legitimately occupying the same space are in conflict, the federal law should be given precedence. Romano also gives the example of “soft” subordination, exemplified by international law “hovering” over the state legal order. Presupposition occurs where a legal order takes the existence of another for granted. Presupposition does not necessarily imply superiority or subordination: municipal law presupposes a broader administrative legal order; a confederation presupposes constitutive states; and supranational international institutions presuppose the existence of national legal orders. The third head of relevance is mutual independence and simultaneous reliance on a third legal order. Romano cites the relationship of independent states, within a broader international legal order, as an illustration of this. The state legal orders function independently, but there is a broader international legal order that enables that peaceful co-existence. Next, spontaneous voluntary subordination includes the ideas of judicial comity or *forum non conveniens* in private international law as examples of where a legal order voluntarily submits part of itself to another. Finally, succession arises where a legal order is subsumed in another, but transforms it in the process.

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30. Paul Owen, “The Wire re-up: season two, episode six – Levy and Omar: who is the real criminal?” (30 June 2009) online (video): <[www.theguardian.com/media/organgrinder/2009/jun/23/wire-television](http://www.theguardian.com/media/organgrinder/2009/jun/23/wire-television)>.

31. Romano, *supra* note 1 at 70-71.

Romano applies his analytical framework to concrete examples in order to better understand the dynamics of public international law;<sup>32</sup> the relationship between the Church and state;<sup>33</sup> and the intricate balance of factory production and labour unions.<sup>34</sup> One notable conclusion made by Romano is that non-state legal orders may be more powerful and result in an individual having deference to the whims of another person or entity, even though that individual may have superior rights in law—superior rights that they choose not to invoke because of powerful “social” forces.<sup>35</sup> An example cited by Romano is a father who chooses to pay a dowry for his daughter, even though it is illegal under Italian law.<sup>36</sup>

### III. REVIEWER’S COMMENTS: PUTTING CROCE’S TRANSLATION IN CONTEXT

The influence of Romano’s work permeates scholarship looking at institutional evolution<sup>37</sup> and reforms of complex systems involving multiple stakeholders, institutions, and states.<sup>38</sup>

Despite the absence of an English translation, English-speaking legal scholars have often made reference to Romano’s ideas, with some notable examples catalogued in Filippo Fontanelli’s *Santi Romano and L’ordinamento giuridico: The Relevance of a Forgotten Masterpiece for Contemporary International, Translational and Global Legal Relations*.<sup>39</sup> However, the notable absence of any reference to Romano’s work in recent anthologies of legal theory or legal philosophy

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32. *Ibid* at 73-80.

33. *Ibid* at 80, 86, 90.

34. *Ibid* at 96-100.

35. *Ibid* at 98.

36. *Ibid* at 94.

37. Maria Adele Carrai, “It is not the end of History: The Financing Institutions of the Belt and Road Initiative and the Bretton Woods System” (2017) online: *Transnational Dispute Management* <[www.transnational-dispute-management.com/article.asp?key=2471](http://www.transnational-dispute-management.com/article.asp?key=2471)>.

38. Allison Christians & Stephen Shay, “General Report” in *102A Cahiers de Droit Fiscal International: Assessing BEPS: Origins, Standards, and Responses 17* (International Fiscal Association, 2017), online (pdf): <[dash.harvard.edu/bitstream/handle/1/33139067/102A-GenReport.pdf](http://dash.harvard.edu/bitstream/handle/1/33139067/102A-GenReport.pdf)>; Kim Brooks, “Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value” in Richard Krever & John G. Head, eds, *Tax Reform in the 21st Century* (Kluwer Law International, 2008).

39. Filippo Fontanelli, “Santi Romano and L’ordinamento giuridico: The Relevance of a Forgotten Masterpiece for Contemporary International, Translational and Global Legal Relations” (2011) 2 TLT 67 at 70, n13.

demonstrates the necessity of Croce's endeavor.<sup>40</sup> Croce's translation joins the ranks of prior efforts which rendered Romano's work accessible in French, German, Portuguese, and Spanish, and at last allows English-speakers to directly engage with it as a primary source.

Given conceptual dissonance between English common law and continental civil law, a review by a common law jurist familiar with civil law concepts and terminology may help improve future editions of the translation. Consistently using standard common law terminology for concepts such as "bodies corporate", "conflict of laws rules", "royal prerogative", and "non-pecuniary obligations", where *TLO* presently uses phrases like "moral entities"<sup>41</sup> "norm of collision",<sup>42</sup> "special power of supremacy",<sup>43</sup> and "obligations that do not have a patrimonial character"<sup>44</sup> would add clarity to the text. Additional footnotes may also be helpful to update certain areas that have seen changes since Romano's publication of 1945.<sup>45</sup> For those well-versed in the French language and familiar with civil law concepts, the abridged translation and commentary by Jacques Bergé may prove a good compliment to Croce's translation.<sup>46</sup>

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40. Although Romano's work lends itself to the subject matter, it is not mentioned in either of these recent legal survey publications: Oren Perez and Gunther Teubner eds, *Paradoxes and Inconsistencies in the Law* (Hart Publishing, 2006); Ian Ward, *Introduction to Critical Legal Theory 2nd Ed.*, (New York, 2004).

41. Romano, *supra* note 1 at 14.

42. *Ibid* at 85.

43. *Ibid* at 108.

44. *Ibid* at 105.

45. The following passage is faithfully translated in the publication: "international law does not have the power to deny the validity of the distinct ramifications of the state order, which is located in a different sphere, impermeable to international law." *TLO*, *supra* note 1 at 70, §36. While this statement is true in certain jurisdictions, most jurisdictions, specifically monist jurisdictions such as Italy, have moved towards a model of direct application of international law and a system of hierarchy of rules, an example of which is *Arret Niccolo* in France. See CE, 20 October 1989, *Raoul Georges Nicolo contre commissaire du gouvernement* [1989] Rec 108243.

46. Jean-Sylvestre Bergé, *Les ordres juridiques* (Daloz, 2015).

#### IV. OVERCOMING THE ROMANO DILEMMA: THE CANADIAN MISSING LINK

A frequent critique of Romano's theory is its failure or reluctance to legitimise the state legal order and to define how norms come about and what distinguishes mandatory and optional norms.<sup>47</sup> The absence of arguments posited to legitimise the state legal order is known as the Romano dilemma.<sup>48</sup> For Croce, there is no theoretical resolution to the absence of attribution of legitimacy in Romano's theory. Croce sees Romano's theory as a conceptual framework which allows jurists to view and understand social phenomena through a legal lens. For Fontanelli, legitimising the state or any legal order is irrelevant in the context of Romano's theory, as Romano views the creation of the legal order as a non-judicial process.<sup>49</sup>

In his Introduction to *TLO*, Martin Loughin posits that Romano was himself cognizant of the fact that his theoretical framework does not address whether his work is "a thesis on the plurality of legal orders in society or on the modern form of law as a concrete-order," saying that in a 1909 speech, "[Romano] recognized that the challenge for the idea of the state as the 'institution of institutions' is that of *somehow* being able to transcend these [non-state legal order] interests and realize the common good."<sup>50</sup> Remarkably, the late Professor Patrick Glenn, when concluding his odyssey surveying legal systems such as the civil law, common law, Talmudic Law, Sharia, and other legal orders or traditions, concludes his grand contribution to legal pluralist scholarship by saying that many or all of these legal orders may co-exist in major cosmopolitan areas, and that despite "application

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47. In this portion of the publication, Croce critically engages with Romano's work. See Mariano Croce, "Afterword: The juristic point of view: an interpretive account of the Legal Order" in Santi Romano, *The Legal Order* (Routledge, 2017) 111 at 127.

48. *Ibid* at 128.

49. See Fontanelli, *supra* note 39 at 76. Fontanelli states:

Similarly, any investigation into the voluntarist commencement or foundation of the order would be, according to Romano, a non-judicial attempt. As it follows, Romano's legal order is a static snapshot of the organisation, in which human voluntary action plays little either in supporting or changing the system; the latter, in turn, evolves spontaneously. Human action and the norms regulating it are disregarded by Romano, whose equivalence between (static) order and law echoes Hegel's equivalence between reality and rationality.

50. Martin Loughlin, "Santi Romano and the institutional theory of law" in Santi Romano, *The Legal Order* (Routledge, 2017) xi at xxii [emphasis added].

of non-state legal traditions to many questions of personal status, family law and succession—the state, *somehow*, persists.”<sup>51</sup>

While this is not highlighted by Croce, Loughin, Fontanelli, or Bergé’s commentaries, the late Professor Roderick A. Macdonald, who studied at Osgoode Hall Law School and the University of Ottawa Faculty of Law before going on to teach at the faculties of Law at both Windsor and McGill universities, resolves this analytical conundrum by going back to the individual and developing the notions of subjective-subjectivity and inter-normativity to define the norm-generative process: it is the individual who initiates, perpetuates, or weakens a legal order by his or her individual actions.<sup>52</sup> The tapestry of the legal orders supporting the many interactions and relationships within a society is weaved by individual actions and decisions.

Macdonald’s critical legal pluralism compliments Romano’s legal order. Whereas Romano allows us to grasp a detailed snapshot of the various legal orders affecting or influencing a specific action or transaction, Macdonald legitimises those legal orders and demystifies the norm generative process through subjective-subjectivity (the idea that a subject of a legal order opts to subject herself to a rule or legal order; hence subjection to a rule or legal order is a subjective choice made at the individual level) and internormativity (the idea that an individual will be confronted with competing demands from different norms emanating from separate legal orders to which they are simultaneously subject;<sup>53</sup> internormativity can also be seen as the micro-equivalent to relevance in Romano’s macro framework). Macdonald’s article exposing informal associations between former and current camp managers, whom he refers to

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51. Patrick H Glenn, *Legal Traditions of the World*, 2nd ed (Oxford University Press, 2004) at 365 [emphasis added].

52. Martha-Marie Kleinhans and Roderick A Macdonald, “What Is a Critical Legal Pluralism” (1997) 12 CJLS 25.

53. Roderick A Macdonald, “Custom Made-For a Non-chirographic Critical Legal Pluralism” (2011) 26 CJLS 301 at 324:

Our normative commitments thus vary depending on our various configurations of self, which is shaped and informed by our personal motivations, bonds to others, institutional affiliations, and identity markers. Each of these aspects of our selves, the plurality of identities we “live by,” is variably ascribed by ourselves and also prescribed by others to varying degrees. Individuals may feel bound to a web of multiple, sometimes conflicting legal regimes, whether by virtue of their affiliations with various social groups, by their own individual normative standards, through their interaction with institutions (families, clubs, churches, schools, self-regulating bodies, corporations, communities, etc.) that reflect, reinforce, and implement these standards. Law emerges, then, through these interactions and relationships and not through coercive means.

as the *Vielle Garde*,<sup>54</sup> is a good example of how going back to the individual provides a concrete demonstration of how a legal order is legitimised and evolves through subjective-subjectivity. The state persists because of the complex web of relationships of individuals across legal orders who subjectively subject themselves to the state legal order when bargaining their allegiances to different legal orders:

A *critical* legal pluralism presumes that legal subjects hold each of their multiple narrating selves up to the scrutiny of each of their other narrating selves, and up to the scrutiny of all the other narrated selves projected upon them by others. The self is the irreducible site of normativity and internormativity. And the very idea of law must be autobiographical.<sup>55</sup>

Macdonald's work in improving the administrative process,<sup>56</sup> harmonizing the law of secured transactions,<sup>57</sup> and developing new ways of teaching the law<sup>58</sup> is a testament to the enabling effect of pragmatically and objectively applying Romano's framework to understand "the law," while remembering the potential of the individual who lies within, at the centre of the interlocking web of legal orders vying for their allegiance.

## V. ENDURING RELEVANCE

Romano's definition of the law allows actors involved at different levels, be it rule setters, adjudicators, subjects, or would-be disrupters, to understand the rules of the game or system. It enables actors to identify the legal orders at play and to judge the relevance of such legal orders, facilitating a decision.

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54. Roderick A Macdonald, "Les Vieilles Gardes. Hypothèses sur l'émergence des normes, l'internormativité et le désordre à travers une typologie des institutions normatives" in JG Belley, ed, *Le droit soluble: Contributions québécoises à l'étude de l'internormativité* (Librairie générale de droit et de jurisprudence, 1996) at 233-72.

55. Kleinhans & Macdonald, *supra* note 52 at 46.

56. Macdonald was involved with public inquiries such as the Canadian Truth and Reconciliation Commission and the Quebec Charbonneau Commission. Macdonald's contributions in different areas are also catalogued in: Andrée Lajoie, "La vie intellectuelle de Roderick Macdonald: un engagement" (Les Éditions Thémis, 2014); *The Unbounded Level of the Mind: Rod Macdonald's Legal Imagination* (McGill University, 7 February 2014) online: <[www.mcgill.ca/macdonald-symposium](http://www.mcgill.ca/macdonald-symposium)>

57. MacDonald worked on the Québec civil law of hypothecation, UCC Article 9, and UN efforts at a model law of personal property.

58. This includes the very creation of a successful "transsystemic" and "bilingual" program of legal education at McGill University. See also Roderick A Macdonald, "Curricular Development in the 1980s: A Perspective" (1982) 32 J Legal Educ 569, cited in Natasha Bakht & et al, "Counting Outsiders: a Critical Exploration of Outsider Course Enrollment in Canadian Legal Education" 45 OHLJ 667 at 669, n2.

From a legal perspective, Romano's analytical framework is very suitable for helping a lawyer decide the remedy to seek for a client when presented with more than one option, including remedies in common law or equity. The analytical framework would prove useful to the Chief Compliance Officer of an international bank grappling with implementation of novel regulations such as GDPR, inviting them to reflect on their business lines, geographical areas, and clientele. Awareness of the multiplicity of legal orders and types of relevance is also helpful to businesses raising capital, in that it opens facets such as client perception, economic outlook, and scrutiny from regulators when grappling with the choice of a public or private offering, traditional debt or equity, or more novel means such as a coin offering or crowd funding. It also provides a frame of reference for moderators of a U.S.-based social networking platform, for instance, when faced with competing legally sound arguments of allowing all speech based on the U.S. Constitution's unfettered understanding of what constitutes free speech on the one hand, and their duty of care as a privately owned platform to third parties or individuals that are targeted by their users.

Romano's definition of the law and his framework for assessing relationships between legal orders also enhances the reader's ability to rise to new challenges outside of the judicial context. With new realities such as the rise of artificial intelligence and the gig economy, *TLO* would help regulators, actors, and entrepreneurs to distinguish between open and closed systems as well as provide tools to predict interactions between multiple open or closed systems.<sup>59</sup> The great strength of Romano's thesis is the fact that it does not willfully ignore the presence of non-official or "immoral" institutions, nor does it dismiss them as irrelevant. His aim is not to automatically legitimize a state or a "natural" or "divine" legal order.<sup>60</sup> Rather Romano provides tools to identify systems and their (unspoken) rules—or essence—as well as an analytical framework to assess how they interact.

Thanks to Croce's endeavor, Romano's foundational contribution to pluralist and institutionalist legal thought is now available to an English-speaking audience,

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59. Speaking on the topic of artificial intelligence and human job redundancy, Garry Kasparov underlined the importance of distinguishing between open and closed systems, and how artificial intelligence excels in the latter but struggles with the former. See "The Future of Everything Festival: Garry Kasparov on AI Making Us Free" (10 May 2018) at 00:05m, online (podcast): *WSJ's The Future of Everything* <[www.wsj.com/podcasts/wsj-the-future-of-everything/the-future-of-everything-festival-garry-kasparov-on-ai-making-us-free/4190b7f2-97b4-4e81-ac70-b803a0d37ed6](http://www.wsj.com/podcasts/wsj-the-future-of-everything/the-future-of-everything-festival-garry-kasparov-on-ai-making-us-free/4190b7f2-97b4-4e81-ac70-b803a0d37ed6)>.

60. Romano, *supra* note 1 at 96.

putting an end to what Jan Paulsson called a “scandal of intellectual history.”<sup>61</sup> *TLO* is indispensable for law students, legal scholars, judges, and lawyers who seek a general meaning of the law that goes beyond legal disciplines. It is also of great value to anyone looking for an analytical framework that would help identify the laws or rules at play in specific contexts as well as the ways in which they relate to each other.

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61. Jan Paulsson, “Unlawful Laws and the Authority of International Tribunals” (Lalve Lecture delivered at the International Centre for Settlement of Investment Disputes Geneva, 27 May 2009), (2008) 23 *Foreign Investment LJ* 215 at 217.

