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THE STABILITY AND DYNAMICS OF VAGUE LEGAL CONCEPTS AS THE CENTRAL CORE AND PERIPHERY OF SOCIAL REPRESENTATIONS¹

Abstract. In a related project, the social representation of public order among legal professionals has been explored by means of semi-structured interviews (Smejkalová et al. 2022). The participants of this research represent public order, *inter alia*, as a stable safeguard of fundamental social values while recognizing its vagueness and inherent propensity for change. This contradiction between its purpose to provide stability while being subject to social or temporal contexts seems akin to the structural approach to social representations.

The social representations approach (Moscovici 1961, 2001) is an approach used in social psychology, rooted in the idea that social objects or phenomena must be represented by a social group in order to perform any kind of social function. Within this approach, a structural (Abrie 1993) differentiation between a stable, normative central core of a social representation, and flexible periphery has been developed. The contradictions between the stability and dynamics of public order the participants talk about are not dissimilar from the theoretical considerations of the structural approach to social representation. Moreover, Moscovici's (2001) and Wachelke's (2012) framing of social representations especially resonates when applied to public order, pointing towards its role as a system facilitating communication and orientation within a social group.

The present study utilizes the data available from the transcripts of these interviews with a single focus on the themes of dynamics and stability. It aims to discuss these themes across various disciplines, offering links that might have been overlooked. This study further underscores the usefulness of the social representation approach in legal conceptualization, advocating for the necessity of more synthetic approaches merging philosophy, linguistics (semiotics), social psychology, and law to enrich further understanding in this domain.

Keywords: Conceptualization, social representations theory, legal concepts, legal language, core and periphery of concepts, stability and dynamics of concepts, structural approach to social representations.

Introduction

A recent project (Smejkalová et al. 2022) has explored the methods available within the social representations approach (Moscovici 1961, Bauer & Gaskell 1999, Wagner et al. 1999, Jodelet 2007) for analysis of conceptualization in law. Three (more or less vague) legal concepts were chosen and their representations among legal professionals were investigated. One of the concepts that has been chosen is that of ‘public order’. In order to explore the topics that might appear within its representation, a qualitative pilot study among members of legal academia has been conducted. This pilot study involved semi-structured interviews with 13 legal scholars from different fields of expertise.

One of the topics that were raised was that of the dynamics and stability of public order. The participants’ accounts collectively suggested that the representation of public order is both rigid and dynamic, and that it is both built around a shared consensus on certain values, while not being able to pinpoint what exactly these values would be. The participants believed them to be dependent on context and admitted that their own perception of these values might not be the same as the society’s.

This contradiction has its mirror image within the methodological assumptions of the structural approach to social representations, the very approach Smejkalová et al. (2022) have chosen to explore. This approach sees social representations as something that has a central core and periphery, whereas the elements of meaning belonging to the central core are stable and normative, while the elements of meaning belonging to the periphery are flexible and prone to change (Abric 1993). The goal of this paper is to report on this particular dimension of the data gathered in the course of these interviews and discuss the parallels between the respondents’ representations of public order and the structural approach to social representations.

This paper will unfold in the following sections. First, I will introduce the social representations approach as pioneered by social psychologist Serge Moscovici in the 1960s and as elaborated upon by various scholars within the field of social psychology. Since I have done this in detail recently in Smejkalová (2024), I will focus here on what is necessary to discuss the notions of core and periphery that are the central points of this paper.

Second, I will focus specifically on the notions of central core and periphery of social representations and situate them among other approaches to conceptualization that utilize these notions. I will show that these differ-

entiations are not only something belonging to this niche within the field of social psychology; psychology, linguistics, and law make use of them as well.

Next, I will provide the details regarding the pilot study of social representation of public order among legal scholars. However, the aim of this paper is not to report on the full extent of this pilot study; my aim is to focus on the sole issue of the stability and dynamics of the concept of public order as discussed by the respondents of this pilot study in relation to the structural approach to social representations.

Finally, I will discuss the interplay between the structure and purpose of the concept of public order as understood by the participants of said study and the structure and purpose of social representations as introduced by Moscovici (2001) and Abric (1993).

Social representations approach²

The social representations approach, or social representations theory, comes from the field of social psychology. It was first used by Serge Moscovici in the 1960s³ and has since acquired many followers and has been established as a specific approach to studying conceptualization.⁴

This approach bridges the traditional individualistic focus on concepts, such as mental representations (Pinker 2007, Fodor 2003) or attitude theory (Jaspars and Fraser 2003, Flick and Foster 2008, 196), with the social. It is built around focusing on common sense knowledge as something that creates the images and meanings that are necessary for the functioning of any society (Moscovici 2000, 32). Therefore, common sense is something that is necessary for the understanding of any society or social group (Moscovici 1973, Flick and Foster 2008, 196).⁵

Moscovici (1963, 251) explains that a social representation is a result of the construction ‘of a social object by the community for the purpose of behaving and communicating’. The community’s social representations, in turn, create our social world (Flick and Foster 2008, 197, Moscovici and Hewstone 1983). Eventually, we no longer see them as ways we represent objects but we see them as the objects themselves (Flick and Foster 2008, 197, Marková 1996, Smejkalová 2024). Representing is, therefore, necessarily a social process the members of a community keep undertaking by participating in its social life (Moscovici 1973, xiii). Thus, when talking about social representations, we may refer at the same time to the result of the representational process – the social object – as well as the representational process itself.

The representational process, as Moscovici (2000) explains, consists of two social processes, both seeking to make the unfamiliar familiar. First, we need to *anchor* the ambiguous, strange, unfamiliar and disturbing ideas to a familiar context – we reduce them to categories and images that we are already familiar with (Moscovici 2000, 42). This means that we tend to name and categorize objects and phenomena we encounter by conceptual means that we already have available. We confine them by a ‘set of linguistic, spatial and behavioural constraints’ (Moscovici 2000, 43). As Moscovici (2000, 42) explains, ‘[t]o anchor is thus to classify and to name something. Things that are unclassified and unnamed are alien, non-existent and are at the same time threatening.’ Second, we need to link it to the things we already know, see, and touch (Moscovici 2000, 42). In this process, we *objectify*, that is, in Moscovici’s words, ‘...discover the iconic quality of an imprecise idea or being, to reproduce a concept in an image’ (Moscovici 2000, 49). This somehow implies that there must be some kind of an essence of the idea⁶, concept, or any social object, ‘a figurative nucleus’ that we may identify. Wagner et al. (1995) show that it may be an image or even a metaphor that plays an important role in the process of objectification.

The idea that there is a ‘figurative nucleus’ of the social object, i.e. shared meanings and understanding, further implies the existence of a non-nucleus; parts, bits and pieces still belonging and not belonging to the social representation of the object at the same time, ones that not all the members of the social community would share, ones that may allow for a certain flexibility in the use or development of the social object. Such an approach invites a structural explanation.

Abric (1993, 75) explains that social representations are at the same time ‘stable and moving, rigid and flexible’. These contradictory characteristics may be explained structurally, as Abric suggests and as elaborated by the Aix-en-Provence school of social representations. Social representations may thus be understood as having two components: a nucleus – or central core – and a periphery. The central core provides the stability and rigidity while the periphery is moving and flexible (Abric 1993, 75).

The central core of the representation is ‘directly linked and determined by historical, sociological, and ideological conditions (...) It is influenced by the collective memory of the group and the system of norms to which it refers’ (Abric 1993, 75). Therefore, it provides the stability and cohesion of the representation while being somewhat independent of the context in which it is being used (Abric 1994, 28; translated in Wolter 2018, 624). Wachelke (2012, 731) later explains that the core

consists of meanings with high consent within the community; it may be considered to be consensual, shared. It facilitates shared understanding, communication, and, consequently, the homogeneity of a social group (Abric 1993, 75). The core of the representation is stable and, according to Abric (1993, 75), its function is to resist change and provide continuity and consistency for the social group. He explains, '[t]he central system is therefore stable, coherent, consensual (...) historically marked (...) [and] normative' (Abric 1993, 76).

The periphery of the social representation is, on the other hand, functional; it is flexible and prone to environmental and cultural modulations (Wachelke, 2012, 731). The periphery roots the representation in a given space and time: it provides an interface, as Abric (1993, 76) calls it, between the central core and the reality in which the representation is to be used; it functions as a 'bumper' that allows for small transformations in the representation, whereas the core remains stable and the changes occur on the periphery only; and it permits individual modulations to the representation (Abric 1993, 76). It allows for integrating some individual elements into the representation. Individuals – with their own histories, personal experiences, etc. thus participate in the dynamic process of changing a representation (Abric 1993, 77).

The normative nature of the central core elements has been proven empirically. Studies have shown that the normativity and centrality of a social representation's elements are interlinked and cannot be seen as independent of each other (Wachelke 2012, 731). Lheureux, Rateau and Guimelli (2008) further show that when a member of a social group is to decide whether a specimen would fulfil the characteristics of a given representation, they would first refer to its central, priority elements. Yet to be able to evaluate the specimen further, they would need to adjust it to the contextual needs. This is the function of the peripheral elements.

Moreover, the flexible and dynamic periphery allows for gradual transformation of a representation. As Wachelke (2012, 734) explains, a change in a social representation occurs when either a central element would attain peripheral status, or a peripheral one would attain normative features and would become a part of the representation's central core. Furthermore, representations do have a history; they adapt to new environments, which may sometimes take a very long time (Wachelke 2012, 735).

It follows from the above that without its periphery, a social representation would be just an abstract and rigid system, one that would not be adaptable to the actual needs of communicating in everyday life (Wolter 2018, 623).

Core and periphery and links to (legal) theory

As I have pointed out in Smejkalová (2024), to think about concepts in terms of core and periphery is not completely unknown across other disciplines, such as linguistics or semiotics, nor legal theory or legal philosophy. In the following section I will provide a brief overview of these notions in linguistics, prototype theory and philosophy of language. Further, I will introduce the notion of the core and periphery of concepts as already used and elaborated upon within legal theory. This overview is by no means exhaustive. It aims to show that similar notions and ways of understanding conceptualization appear across various disciplines, often without drawing links to each other and presenting themselves as novel or separate.

Language is based on concepts and conceptual structures. Understanding concepts does not equal simply knowing the semantic properties of a sign. A concept – as a socially conditioned mental link between the sign and its referent (Ogden and Richards 1930) – is a complex of meanings influenced by the society, its culture, and social practices. Understanding a language presupposes the knowledge of conceptualization and categorization used in that particular knowledge – and language – system. Language of law is no different. It is a language of concepts that help in expressing legal norms and consequently frame legal knowledge (Bajčić 2011, 98). Understanding the processes of legal conceptualization and legal categorization is necessary to understand a given legal system (Myška and others 2012, 277).

The word (sign) is just a starting point to understand a concept. Temmerman (2000, 224) explains that ‘[w]hat is named by the same term in different texts can be shown to have different referents. More often than not a category [i.e. a *concept*] cannot be clearly delineated. It is like a chunk of knowledge which has a *core* and a structure, but which exists in a process of *continuing reformulation* and is therefore in constant transition [*italics mine*].’ The process of continuing reformulation and consequent constant transition presupposes a space that allows for these changes to occur. Concepts and categories are thus blurred at the edges, fuzzy. As Bajčić (2018, 99) explains, ‘more often than not members of a category exhibit family-resemblance structure and degrees of category membership’.

In linguistics – semiotics, as well as in philosophy or fuzzy logic, we come across an idea whereby concepts have (and according to some of the views always have) blurred boundaries, or “fuzzy edges” (Medin 1989, Laurence and Margolis 1999, 23–24, Gadamer 1971, 24). These approaches seem to convey that while there are elements of meaning of a concept that would

have a higher degree of agreement within a social group, there are ones that would exhibit greater variability across the social group.

This line of thinking manifests itself in the notion that concepts have their core and peripheries. This notion appears in various areas of knowledge that do not always recognize each other.

In linguistics, the differentiations between core and periphery have been recognized in the context of asymmetry of language (e.g. Daneš 1966), in the context of conceptualization in *Wortfeldtheorie* (Ipsen 1924, Trier 1931, Skrebtsova 2014), or as a universal characteristic of language by the Prague Linguistic Circle (Daneš 1966, Vachek 1966).

In philosophy of language, Wittgenstein introduced the idea that categorization and conceptualization are a matter of searching for shared ‘family resemblance’ (Wittgenstein 1968, § 65–71). He explains that concepts and categories do not have any clear boundaries and that individual exempla may be consequently better or worse examples of a category. As Lakoff (1987, 17) later explains, we may understand it in terms of centrality, a notion that was further elaborated upon by prototype theory. This theory was elaborated by Eleanor Rosch and Carolyn Mervis’ (1975, 603) as an empirical investigation of Wittgenstein’s notion of family resemblance. While in prototype theory concepts do not have definitional structure (Laurence and Margolis 1999, 28), Simmonaes (2007) further explains that the core-periphery structure is essential for the understanding of a concept (synonymous with ‘meaning’) in prototype semantics: ‘The farther an object is from the prototype, the less clear is its association with the concept’ (Simmonaes 2007, 123). Thus, a category (or concept) may be comprised of reference objects with different status as to the ‘typicality’ within the category. Some would be considered more of ‘typical specimens’, while some would be more of outliers. Furthermore, categories in prototype semantics have no distinct boundaries; they have ‘fuzzy edges.’ Lastly, as Simmonaes (2007, 123) explains, categories are not *a priori*, but formed based on the situations they are needed in.

Category formation is subject to cognitive economy. Rosch (1978/1999, 189–190) writes that ‘[...] the task of category systems is to provide maximum information with the least cognitive effort. [...] as an organism, what one wishes to gain from one’s categories is a great deal of information about the environment while conserving finite resources as much as possible. [...]’ It follows from the above that people tend to categorize as close to their surrounding environment as possible, suggesting that the categories – or concepts – used in communication are reflections of the perceived reality. Yet, when it comes to abstract vague concepts, it gets complicated.

Naturally, this fuzziness and graduality of meaning have been recognized in law and legal communication. Even though law – and legal language – strives for precision, legal concepts are often indeterminate, vague. The notion of vagueness has both a linguistic and a legal perspective (Bajčić 2018, 97).

In law, the origins of this approach are usually tracked to Philipp Heck. He differentiates between the nucleus of a concept and the periphery of a concept (Heck 1914, 46 and Heck 1932, 52–53). The nucleus (*Begriffskern* or *Vorstellungskern*) consists of phenomena that would fall under the umbrella of a given concept for each member of the language community while the periphery, the halo, the indeterminate part (*Begriffshof* or *Vorstellungshof*) consists of phenomena not everyone would feel would belong under the umbrella of a concept. It is clear that Heck's approach may be understood in terms of categorization.

Similarly, Herbert L. A. Hart distinguishes between the core and the penumbra of a concept when explaining the nature of the open texture of law (Hart 1994, 144).⁷ Law has an open texture because the application of law requires categorization, i.e. subsuming given phenomena under a legal concept, and legal concepts are indeterminate. While they do have a core, a more or less determinate part with a clear agreement on whether or not the examined phenomena would fall within the given concept, or not, the penumbra, the indeterminate part of a concept lacks such a clear agreement (Hart 1994, 126–127).⁸

One may argue that Hart's approach is not that far from Wittgenstein's concept of family resemblance. In Wittgenstein's view, conceptualization and categorization are a matter of looking for shared similarities rather than one defining feature (Wittgenstein 1958, § 65–71). In line with this approach, Zeifert (2022, 421) argues that Hart's idea of open texture is in line with all the fundamental characteristics of prototype theory, as we may clearly see that both are a matter of graded similarity or family resemblance (Bajčić 2018, 99).

These features of conceptualization may be perhaps more visible when it comes to vague legal concepts. Yet legal scholars tend to utilize the classical (or definitional) approach to conceptualization and categorization, making use of the notions of intension and extension. In classical theory, conceptual and linguistic categories are thought to have a definitional structure and are based on componential features of that definition (Bajčić 2018, 99). A phenomenon may fall under a category when it fulfils the necessary and sufficient conditions (intension) of a category. Thus, legal scholars routinely describe vague legal concepts as those that lack boundaries of their exten-

sion (see e.g., Hlouch 2013, 322) as well as those that cannot be sufficiently defined through their intension (Mates 2007). Asgeirsson (2020, 64) even claims that the absence of intensional definition in vague legal concepts is more useful, since judges and other persons using the vague legal concept need to interpret the concept alone, not the – necessarily vague – definition as well. Lacking intensional definition may thus open the door to interpretation based on prototypical features, as Rosch and others after her (such as Dahlgren 1985) show.

The very nature of vague legal concepts is to be stable in word expression but actualized in individual contexts. For vague legal concepts to perform any function within a social group, they need to have a recognizable central core, consensual across the social group. As already mentioned above, consensuality allows social cohesion and communication. However, consensuality does not mean unanimity. Wolter (2018, 624) explains that ‘[i]n most cases, central elements are shared by a large part of the group in most situations, which is not equivalent to being activated every time by all members of the group in all situations.’ These consensual, shared, elements (central cognemes) are then activated within the social group when thinking about an object by ‘many people’ (Wolter 2018, 627–628). These elements are parts of the semantic field of the given concept; they establish the core of the social representation of the given phenomenon.

For legal practitioners, some of these approaches may be known; Hart’s open texture of law and the conceptual structure involved may in some jurisdictions be considered basic knowledge. To what extent this is the case is a matter of their training, education and other professionalization processes involved. Consequently, lawyers’ understanding of any given legal concept would thus be influenced by their professional training and their representation of the object would be a professional one (Chaib et al. 2011). Such a professional representation would then also include the way their knowledge is structured. As public order keeps being mentioned as a textbook example of a vague legal concept, a professional representation of public order would most likely be based on this fact, including the awareness of what a vague legal concept is, what its role in law is, that it is meant to be indeterminate and vague, and that it is meant to be realized and actualized in individual contexts. It would thus seem only natural to say that concepts are both stable and prone to change.

William James (1980) believed that although the world changes, and the agent – perceiving subject – changes, at least some concepts must remain stable because their purpose, their main function is to explain and fixate understanding of our world. On the other hand, others (e.g. Hjørland

2009, 1522, McInnis 1995, 35–36 or Thagard 1992, 15–16), whose thoughts may be traced back to Hegel, point towards the necessity of conceptual change. One may even think about the ‘paradox of the change of the unchangeable.’ Brown explains, or solves, the paradox by pointing out that it is in fact a matter of the replacement of an older concept by a newer one: ‘It is in those cases in which, rather than simply rejecting a concept, we move to a similar concept, that talk of conceptual change is more clearly appropriate’ (Brown 1986, cited by Hjørland 2009, 1522). That Brown formulated this solution to this paradox in 1986, long after it had been ‘solved’ by Moscovici, who postulated the mechanisms of anchoring and objectification as subprocesses of social representations and their relation to conceptual change within social psychology, shows how much the study and understanding of concepts lacks when not approached in a more interdisciplinary manner.

Abric (1993, 75) explains that the tendencies to both stability and flexibility of social representations are mutually complementary and function as an entity. When he says that they are ‘both stable and moving, rigid and flexible’, he points to their innate characteristic (or even a paradox) of meaning.

The contradiction between the stable and movable within one representation that the structural approach encompasses was later further elaborated upon by Marková (2003), who stresses the innateness of the contradiction between stability and change in our everyday lives. In her opinion, our lives and

daily routines are experienced as a tension between stability and change when we alter our habits, form and dissolve relationships [...] Our ability to understand and evaluate events in terms of change and stability is an essential aspect of *commonly shared social knowledge*. [This term] can refer to all kinds of knowing in our everyday life, like common sense, formation and transformation of concepts and social representations, ‘know-how’ skills [...]. (Marková 2003, 4)

Marková’s approach is built on the idea that social knowledge is never static; it is always knowledge in action, one that is a matter of communication. Consequently, all social knowledge is a matter of the dynamics of change and stability (Marková 2003, 4).

As mentioned earlier, the central core, or central system of the representation is the stable one, determined by historical, cultural and ideological conditions (Abric 1993, 75). It provides the necessary basis for communication, allowing for consistency and continuity. However, the rigid normative core of a given representation needs the periphery, a space that allows for

a representation to be ‘rooted in the reality of the moment’ (Abric 1993, 76). The function of this flexible part of social representation is to concretize the central core for a particular use. As also mentioned above, Abric (1993, 76) even calls it ‘the interface between concrete reality and the central system.’ However, there is another function the periphery of a social representation performs: not only it allows for a transformation of a social representation, it permits individual modulations and differences within the representations (Abric 1993, 77). While the central core consists of shared ideas, the periphery engulfs the various individual differences.

Consequently, Chaib and others (2011, 2) explain that social representations are value systems that ‘establish a social order helping people to orient themselves in their social and cultural environment.’ The shared cores as well as the movable peripheries facilitate communication by providing members of social groups with linguistic codes to classify and categorize social phenomena (Chaib and others 2011). The same may be said for social groups formed around a shared profession or professional training, and domain-specific knowledge may, too, be analysed as social representations (Chaib and others 2011, 2).

Lawyers, or legal professionals, are a group formed by a shared profession, professional training, and codes of communication. In Flick and Foster’s (2008, 197) terms they may certainly be considered ‘individuals who share a common project with regards to a representational object’ (Flick and Foster 2008, 197). By approaching lawyers as a social group, we may study these representational objects, i.e. their social representations of chosen vague legal concepts. If the tendency to stability and change is an inherent quality of conceptualization, it should play out in the lawyers’ accounts of these concepts. As lawyers, the participants of such research should be aware that public order is a vague legal concept. Some of its characteristics may be therefore anchored to this issue. Therefore, it might be reasonable to hypothesise that issues, knowledge or information related to this fact would play out in our participants’ representation of public order. If that is the case, how do they approach this fact?

Method

In the project referred to above, Smejkalová et al. (2022) explored the social representations approach and its usefulness in the research of conceptualization in law. One of the concepts that were explored was ‘public order’.⁹ The following report is built on the data collected for this research.

To explore any social representation means to explore the shared meanings of a given community and to what already familiar categories and images it is anchored to (Moscovici 2000, 42). To identify the possible shared meanings of ‘public order’, a qualitative pilot study was conducted. Its full results were reported in Smejkalová et al. (2022).

For the purpose of this study, semi-structured interviews with 13 Czech legal scholars were conducted. It follows from the doctrinal analysis of public order (Smejkalová et al. 2022) that the vague legal concept of public order is multifaceted and may play out differently in different legal fields. To cover these areas, the participants of this study were chosen to span across all the major legal areas traditionally recognized in Czech legal thinking. The interviewed legal scholars came from the following legal fields: legal theory, constitutional law, civil law, commercial law, labour law, criminal law, international law, European law, financial law, administrative law, environmental law, technology law, and legal history. They were 3 women and 10 men, aged between 26 and 48 years.

The semi-structured interview was designed based on the results of previous doctrinal-theoretical investigation reported elsewhere (Štěpáníková and Smejkalová 2022). The interviews were divided into four parts. In the first part, the interview focused on the participants’ individual views and understandings of public order. In the second part, their associations and understandings of the individual constitutive parts of the term, i.e. ‘public’ and ‘order’ were explored. The third part of the interview was aimed at exploring chosen pre-identified links of public order and law and other normative systems, and the final part allowed the participants to assess several model situations in terms of public order. The interviews were conducted in Czech; the translations into English reported here are mine.

To analyse the transcripts of these interviews, the tools of thematic analysis were used to identify the common emerging themes (Braun and Clarke 2006). The themes of the stability and dynamics of public order were pre-identified by the researchers; however, some of the participants raised these themes themselves before any prompt from our side. This paper is not meant to report on the overall findings related to the participants’ representations of public order as this has been done elsewhere (Smejkalová et al. 2022); here I only aim to discuss the ways the participants approached the themes of the stability and dynamics of public order.

I use pseudonyms to protect the participants’ identity.

Interplay between stability and dynamics in the conceptualization of public order

Although the qualitative approach of this study does not allow me to generalize, it is worth noting that 10 out of the 13 participants explicitly raised the topics related to the fact that public order may be considered to be a vague legal concept. As such, themes of vagueness and inherent necessity for change and dynamic approximation of the concept to individual instances of use arose. At the same time, the participants saw public order as something providing the society with a basic sense of stability. The way the participants approached the concept of public order seems to invite direct parallels to the structural approach to social representation as explained above. One of the participants [Cpt. Picard] even chose to describe public order as ‘a shared idea’ on some basic values of a given society, while another [Skywalker] talked about it as a ‘shared semantic field’. While not using this precise wording, the gist of these answers appeared across all the conducted interviews.

The following section reports on the way the interviewees approached the themes of the stability and dynamics of public order. In the discussion that follows, I build the connections between their accounts and the structural approach to social representations.

1. Stability of public order

The images of stability seemed to be intertwined with the purpose of public order. The purpose of this concept seems to be to protect [Pozitivista, Krakovec] and petrify [Klára] the basic values and traditions [Krakovec, Dana] of the society, a set of rules [Šimon, Divadelník] protecting the ideals that keep the society from falling apart. The concept itself then serves as a corrective [Mamka, Austria], something that keeps conflicting values from being applied.

[Pozitivista] believes that public order is a tool to protect the public interest, which he understands as the fundamental values of the society that keep the society from falling apart. He also recognizes that contemporary society lives with a plurality of values and that the concept of public order is there to help glue together the core values. Similarly, [Krakovec] sees the purpose of public order as protecting the order of society, its values, and its traditions; to keep the society functioning. [Klára] perceives it in an even stricter manner as a tool ‘to petrify the values of the society, which impedes the application of conflicting values’.

We may see that when talking about the purpose of public order the participants tend to gravitate towards referring to public order in terms of stability: fundamental values are usually not something that would change often, and the same could be said for ideals or the need for order. Protecting the fundamental values of a society is inherently an activity focused on providing stability and certainty. The very choice of the word ‘fundamental’ implies something deeply ingrained in a society; unmoving, central.

The participants clearly recognize that public order needs to be stable in order to fulfil its purpose in law. They also recognize that the stability of the concept is in fact the issue of the stability of the fundamental values. They believe that for the society to function successfully, these core fundamental values must be stable.

The recognition of the stability of the fundamental values appeared in the participants’ accounts in three different ways.

The first one is seeing stability as *stability in time*. The participants’ accounts were directed at showing that certain values, such as the belief that murder is something wrong and not wanted, *has been here for ages*.

[Divadelník] recognizes that there are standards that have not changed in our societies over time and that the core seems to be rather stable: ‘Murder has been murder for thousands of years... It has been a rule that we’ve had with only slight modifications all the time.’ Similarly, [Mamka] sees the basic values at the core of public order as those that ‘were here a hundred years ago and will be here in a hundred years’.

The second way of representing stability gravitated towards an image of a *calm and peaceful state* within a society. For example [Skywalker] talks about public order as a peaceful state, something that should not be moved. [Cpt. Picard], too, mentions the state of public order as a state of peace, calm.

The third way of speaking of stability was through the (legal) concept of *certainty*. For [Mamka] certainty was one of the very first words that came to her mind when talking about public order. For her, certainty is one of the main purposes of law, as well as public order. [Dana] sees certainty as a goal to strive for when interpreting public order when determining its meaning in the applicatory context. For her, (legal) certainty is a value that has to be taken into account when interpreting this vague legal concept.

[Austria] also recalled the concept of certainty. For him, society and social relationships cannot function without a certain level of certainty and trust: ‘We cannot rely only on law to protect us; we have to have a certain level of trust’, he says. Therefore, the purpose of the concept of public order is to ensure this certainty and trust.

These three approaches paint the picture of stability as an immovability over time, a state of calm and peace, providing the society with a sense of security and certainty. All these accounts seem to be in line with the idea that law is generally a conservative activity. Searching for stability in time implies looking back and tending to do things as they were done before (Schauer 1987, 574). This conservative tendency is mostly visible in the concepts of *stare decisis*, the principle of the protection of legitimate expectations, and the principle of legal certainty that I talk about here. A sense of calm is inherent here: dynamic changes and social uproar would disturb the certainty and, at least in some of the participants' accounts, the core fundamental values that allow the functioning of the society.¹⁰

2. Links to change and dynamics of public order

Even though the participants talk about stability when it comes to the fundamental values of the society or the purpose of the public order, they seem to believe that it is subject to change and development. For example, when [Cpt. Picard] talks about certain stability when it comes to the values that make public order, he does not believe that the concept would be stable. [Martin] even mentions the inherent dynamics of the concept of public order as one of its basic elements because societies are far from stable.

The participants link the change in public order to the changes in the society as a whole, its moral values, religion and other cultural changes; and these changes feed each other. As [Desperado] puts it, public order is a category linked to a given society at a given time: '...as the society changes, the understanding of public order changes as well, and that has an influence on the society.' Similarly [Krakovec] believes that since the society changes and evolves, so does public order: 'Something will still be the same but... I don't know, for example maintaining the security of the functioning of the society, but there might as well be a part in which the changes of the society occur... something that is seen as acceptable or unacceptable.'

As mentioned above, one of public order's purposes is to serve as a corrective for certain types of behaviour. [Artur] explains that saying that something is contrary to public order means for that to be contrary to some requirements as the society sees them at a given time. [Pozitivist] believes that we may clearly observe changes in what kinds of behaviours are seen to be in line with public order, which essentially means that the concept itself undergoes changes. He proceeds to give an example of the acceptability of the notion of a child having two mothers: '...that a child would have two mothers is no longer seen as something being contrary to public order, even

though, like, 20 years ago, that would still have been the case.’ [Pozitivist] also admits there need to be shifts and changes in the concept of public order ‘because there is a development in the value environment [of the society].’

[Austria] described a conceptual change by referring to Marx’s quote, ‘Religion is the opium of the people’: ‘Nowadays, we tend to understand opium as a dangerous substance. In the late 19th century, opium was seen as a pain reliever. When opium was mentioned, you would not imagine a drug addict lying on the ground, but a doctor giving you a calming medication. Just like the meaning of that quote changed completely, I believe that so does the meaning of most concepts.’

[Divadelník] understands this openness of concepts as related to people. In his opinion, public order ‘...has to change because it is something created by people. ...Rules and legal norms are created by people. And that law-making persons must be influenced by something, right? If we look at, say, Nazi Germany, it was also people who did that and they were persuaded; they created rules.’

It seems that the participants formulate a kind of anti-thesis to the former idea that public order is something stable over time: At the same time, public order undergoes changes over time.

While the participants recalled different social and moral customs that might have changed, ([Dana] talks about the pre 19th century custom in – not only – Central Europe for married women to cover their heads, and [Krakovec] recalls the Spanish 1950s bikini ban), given the history of the Czech legal system, many of the participants recalled the differences between now and the pre-1989 totalitarian regime.

The images of dynamics have also reflected that the participants sometimes saw their own answers as being specific to themselves and not shared by the rest of the society. [Austria] explained it in the following manner: ‘We are talking about concepts that are difficult to define. Every one of us understands them differently, because it is an abstract object that we tend to perceive emotionally. ... although we probably agree on the fundamental principles, even though that is emotion-based, too.’

Yet individual modulations in understanding public order should not hinder the usage of the concept in law. [Skywalker] explains the nature of vague legal concepts by pointing out that they have a certain ‘shared semantic field in a society’. This semantic field is then narrowed by the lawmakers by using these concepts in legal norms. Furthermore, he points out, vague legal concepts are adapted to the circumstances of their use.

Clearly, the dynamic dimension of public order is not only diachronic but also synchronic. This synchronic dimension would thus entail not only

the possible individual modulations in understanding public order, but also the adaptability of the concept to the circumstances of their use.

However, even when recognizing these types of change, the participants went back and forth on the persuasion that while the content/meaning of the concept may change, its purpose is quite stable: to provide and protect order in the society.

[Divadelník] talks about how the fundamental social values protected by public order and law would more likely be linked to fundamental moral norms that in his opinion are more stable than the legal ones and not that often prone to change. Moreover, he adds that frequent changes in social values might mean that there actually is no public order to speak of: 'It would just be organized chaos.' We can see here that he – similar to other participants – seems to believe there is a normative and stable core – the values that he sees as rigid and practically unchanging.

Discussion: Social representation of public order is ... a social representation?

The accounts presented above suggest that the participants have a professional understanding of the nature of vague concepts in law, one that includes understanding concepts as open-textured in the linguistic sense.

The participants seem to see a difference between the core values that remain stable over time, such as murder, and those that are prone to societal development. They clearly differentiate between what would count as a core of public order and a (fuzzy) periphery.

The concept of public order seems to be on the one hand the guardian of the fundamental values of a given society, and on the other hand, by being a vague legal concept, not only predisposed to change but also meant to change. On the one hand, it seems non-contradictory: the fundamental values of a society may change. It may be a change of regime, or a change of moral preferences. On the other hand, it embodies the want for stability and (legal) certainty necessary for the society to function properly and the changes should not take place too often or this stability, this certainty, the concept of public order in law would stop making sense.

It seems that central to the participants' representation of public order is an inherent contradiction: while they seem to conceptualize it as something that is prone to change depending on society, and geographical, cultural and temporal settings, it is at the same time a concept whose main purpose is to provide stability.

When looking at the participants' representations of public order, we cannot escape the extent to which they themselves made parallels to the structure of public order not only as a vague legal concept, but also as that of social representations as understood by Abric.

As explained in detail above, Abric sees social representations as showing tendencies to both stability and flexibility, both of which are mutually complementary and function as an entity. Social representations are 'both stable and moving, rigid and flexible' (Abric 1993, 75), encapsulating this contradiction.

The core, the very idea of stability at the core of the participants' understanding of public order is linked to the fundamental values of the society. While they recognized that there may be individual modulations, there needs to be a common denominator, a core of truly shared fundamental values. Above, [Skywalker] called it a 'shared semantic field in a society'. [Pozitivist] even stated that he thinks he would agree on the meaning of public order with the majority of the people, provided they had some experience with the concept: 'I believe that there is some common denominator (...) But there can be significant details where the agreement would not be that high.' These recognitions of differences between individual understanding and the perceived shared ideas of the society are well represented in the participants' accounts where they clearly differentiate between what they believe a shared idea of public order is and what they personally believe it should be.

As explained above, the central core of a social representation consists of shared images and meanings, those with high consent within the community (Wachelke 2012, 731). Where the participants kept referring to the fundamental values of a society, ones that keep the society from falling apart, we can see a clear link to Abric's (1993, 76) explanation of the central core of a social representation, that is 'stable, coherent, consensual (...) historically marked (...) [and] normative'. The stability of public order is thus seen as a necessary prerequisite for it to function in a society, the same as a core of the representation must be stable and capable of resisting change (compare Abric 1993, 75).

Yet, as many authors point out, legal concepts, or the meanings of various legal terms, change over time. They are constructed by juridical practice, judicial decisions, commentaries to individual laws, and other scholarly sources that use a given legal term. Consequently, they acquire meanings that may not have originally been envisioned by the text using these terms or the author who wrote this text, but that have been picked up throughout the individual instances of use (Škop 2013, 72). This would be in line with

Hjørland's belief that the best theory to explain the stability and change of concepts is the so-called Activity theory. According to this approach, 'concepts are stabilized by the standardized practices that they serve within a community' (Hjørland 2009, 1522). Constant use, interpretation and re-interpretation of public order in individual circumstances mould public order to serve the needs it needs to serve in a given (legal) community. As the society and its needs change, so do the meanings of the words and so do the interpretations of texts. That is why there is nothing like an objective and determinate meaning of texts that would last (Škop 2013, 73).

Yet, when it comes to the parallels between the structural approach to social representation and the participants' representations of public order, another dimension comes to light. Wolter (2018) claims that '[e]very structure is by definition an artifice, a theoretical construction, and is not provided by any research subject.' But it seems that the participants base their understanding of the vague legal concept of public order on a clear structure: there is a shared understanding of the notion of fundamental values of a society, one that provides stability to the society. And this seems to be the purpose of this legal concept. However, public order is flexible and prone to change. Not only because of the underlying change that may occur in the fundamental values of the society, but also in the instances of individual use and specific situations where the concept is applied, not to mention subjective understanding of public order.

This very consideration lies at the core of the structural approach to social representations. Public order is a social object represented in individual communities, both with shared understandings as well as individual modulations. At the same time, however, its representation seems to include structural elements that do not come from us, researchers, but they seem to be a part of the professional representation of the legal community the participants belong to.

The professional understanding of public order the participants structured their considerations suggests that it is linked to their basic knowledge of what a vague legal concept is to the extent of allowing us to draw clear parallels between their representation of public order and the explanation of what social representations are. It is intriguing, how fitting the general explanations of what social representations are may be used to explain public order. Let's, for example, imagine the way Moscovici (1973, xiii) explained a social representation as an explanation of public order: Public order is 'system of values, ideas and practices with a twofold function: first to establish an order which will enable individuals to orient themselves in their material and social world and to master it; and secondly to enable communication [...]

by providing a code for social exchange and a code for naming and classifying unambiguously the various aspects of their worlds and their individual and group history'. Furthermore, we may say that public order 'is a collective phenomenon pertaining to a community which is co-constructed by individuals in their daily talk and action' (Wagner and others 1999, 96).

This intriguing overlap in a representation of public order and basic explanations of what social representations are suggest that the social representations approach seems more than well suited to explore conceptualization in law as the members of a legal community are specifically trained to think in these very structures. It also calls for a more synthetic approach when it comes to conceptualization, one that would bring together philosophy, linguistics, semiotics, social representations, and law.

Conclusion

The exploration of the legal scholars' representations of the concept of public order offers intriguing insights. When discussing their views on public order, the participants of the referenced study demonstrated a nuanced understanding related to the fact that public order is a vague legal concept. They see public order as a pivotal yet contradictory concept, serving as the guardian of the fundamental values of a given society while inherently embracing a certain openness, vagueness and flexibility. This contradiction reflects a fundamental tension: the need for stability and legal certainty versus the necessity for social evolution and change. The participants' accounts suggest that their conceptualization might be a professional one (Chaib and others 2011).

Moreover, the participants' representation of public order mirrors the structural approach to social representations (Abric 1993): they emphasise a shared and stable core of fundamental social (and legal) values, while recognizing the processes of their evolution as well as individual variations. They further see that the stability of public order, akin to the core of a social representation, is indispensable for the functioning of the society. At the same time they recognize it as something evolving through legal practice. A follow-up study focusing on the recognition of certain structural and theoretical elements of the concept of public order among legal practitioners is underway.

The present study also underscores the need for true communication across disciplines such as linguistics, semiotics, psychology and legal philosophy: the social representations approach has recognizable links to all these

disciplines. While the social representations approach is not the only one that may be used to analyse legal phenomena, it is one that is well suited in order to enrich our understanding of legal conceptualization within social contexts. Furthermore, it provides a useful and proven methodological paradigm for empirical research, one that has yet to be properly utilized in legal research.

NOTES

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² I have introduced this approach in detail in the legal setting in Smejkalová (2024) and also briefly explained in Smejkalová (2023). This section provides a brief introduction to the approach built on these texts in order to be able to discuss the notions of core and periphery in detail.

³ Moscovici, S. (1961) *La psychanalyse, son image et son public*. Paris: Presses Universitaires de France.

⁴ One example among many is the Papers of Social Representations scholarly journal, specifically focusing on this particular approach in social psychology. Like any approach, this one has also faced critique, see, e.g. Voelklein & Howarth 2005, or Verheggen & Baerveldt 2007.

⁵ Moscovici is not the first or only one that uses the term common sense. This term has been utilized in various variations and meanings by others. See, e.g. Gadamer (1989), Durkheim (1912/1995) or Bourdieu. For a detailed discussion on Bourdieu and common sense see Holton (1997).

⁶ It should be noted that this does not mean that social representations approach would subscribe to the idea of essentialism. On the contrary, it is a matter of social construction.

⁷ The notion of open texture most likely originated with Waismann (1945), who was inspired by Wittgenstein and understood it as potential vagueness in linguistic meaning. However, Waismann's and Hart's notions of open texture should not be confused as they refer to slightly different phenomena. For a detailed analysis see Bix (1991).

⁸ When analysing Hart's and Waismann's concepts of open texture, Bix stresses that the openness Hart talks about should not be understood as arguing in favour of judicial discretion based on language (Bix 1991, 51).

⁹ To avoid misunderstandings, a terminological note is necessary. This study was conducted within the Czech legal environment among Czech speaking legal scholars, and the phenomenon studied was 'veřejný pořádek'. This phenomenon is not a full equivalent of its various counterparts such as 'public policy', 'ordre public', or 'public order' (Smejkalová et al. 2022). The authors have elsewhere chosen to translate this concept as 'public order' (Smejkalová and Štěpáníková 2021). That said, it does not mean that our findings

as discussed below could not be linked to those concepts, but that they need to be used with this lack of full equivalence in mind.

¹⁰ However, not all participants clearly linked the fundamental values of the society to law, as some saw these values as possibly external to law, while others tend to link them to some sort of core of legal values of the society. This part is not, however, reported in this text.

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