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**Master’s Degree in Computer Science**

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**LAW AND DATA**

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# **1. Laws, legal systems and separation of powers**

A **law** is a set of conditions under which the choices of each person can be united with the choices of others under a universal law of freedom.

A **legal order** is a collection of general and specific norms that regulate human behaviour, setting expectations for how individuals ought to act. These norms are guidelines that create an "ought," or a prescribed way of behaving, which can function as commands, permissions, or authorizations. The concept of a norm is inherently tied to the concept of the "ought", a behavioural expectation.

A group of norms forms an **order** if they create a unified system, sharing a common foundation of validity. In the case of **positive law**, the norms within a legal order are established or "posited" through deliberate human actions.

The **legal system** includes *rules*, *procedures* and *institutions* by which activities, both public and private, can be carried out through legitimate means. A legal system is a system for interpreting and enforcing the laws. Plurality of legal systems considering several and different social groups.

Examples of what legal systems can be / where legal systems can be found:

* **STATES** (e.g. Italy, France, USA, India, China, etc.)
* **EUROPEAN UNION** (Legal system encompassing 27 Member States)
* **COUNCIL of EUROPE** (Legal system including 47 Member States)
* **INTERNATIONAL LEGAL ORDER** (Special legal system – independent from States)

Note: European Union is a legal system composed by other 27 legal systems.

Legal systems are organized based on modern theory of **separation of power** where the power is divided into three branches: *legislative* branch is responsible for making laws, *executive* for implementing and enforcing these laws, *judicial* for interpreting them.

This structure ensures that power is not concentrated in one branch, promoting legal certainty (the law should be easily understandable, making clear what an individual can do or not), impartiality, and equality before the law (everyone should be treated equally before the law). Each branch operates independently but interdependently to maintain a balance of power and prevent abuse. Every power should be checked by the other powers, in a way a power cannot overcome other powers, having all the powers balanced.

The system of **checks & balances** limits the power of a single individual/entity/body of government to ensure balanced and harmonious and relationships and co-existence.

There are two branches of law and each legal systems need to manage this separation: **public law** and **private law**. Branches of law is fundamental universally accepted exhaustive, meaning every law belongs to one of those two branches, there is not a third branch.

**Public law** governs the relationship between individuals and the state, ensuring the regulation of public affairs and the protection of individual rights through administrative, constitutional, and criminal law.

**Private law**, on the other hand, manages relationships between private individuals and entities, encompassing areas such as contract law, property law, family law, and tort law.

Privacy law is unique because it fits into both public and private law:

* **Public Law**: privacy law controls how government bodies handle personal information, protecting individuals from government overreach. For example, laws may limit how much data the government can collect on citizens.
* **Private Law**: privacy law also applies to interactions between private individuals or companies. For instance, it regulates how businesses can collect and use customer data or allows someone to sue another for invading their privacy.

Privacy law overlaps with both public and private law because it protects people’s rights both against the government and in private relationships.

There are two primary types of legal systems used by countries worldwide:

* **Civil Law**:
  + Based on *written laws or codes* (like statutes and regulations) that are applied and interpreted by judges.
  + Judges play a limited role in creating law; they focus mainly on applying the existing laws to cases.
  + Legal decisions generally don’t set binding precedents for future cases.
* **Common Law**:
  + Based on *precedents*, or past judicial decisions, alongside written statutes.
  + Judges have a more active role in shaping the law because their decisions can set precedents for future cases.
  + This system relies heavily on the principle of *stare decisis*, which means that courts follow the rulings of previous similar cases to maintain consistency.

Source of law:

* **Hard law** consists of binding legal rules that can be enforced in a court of law. Examples include constitutions, statutes, regulations, and treaties, which impose clear obligations and specify consequences for non-compliance. Hard law provides the legal certainty and authority necessary to govern conduct, protect rights, and ensure accountability within society.
* **Soft law** includes non-binding guidelines, principles, and agreements, such as international declarations or industry codes of conduct. Soft law can be used by a judge to interpret hard law by using non-binding legal guidelines, principles, or standards in legal cases. Many rights and obligations regarding data protection originates from soft law provision.