

LAW AS INTEGRITY: THEOLOGY-SOCIOLOGICAL APPROACH

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Abstract: In this article, once again, the author examines a problem of integrity of law, displays integrity in the context in his theological- sociological theory of law.

Keywords: integrity of law, law as integrity, theology- sociological theory of law.

Features of the modern globalized world determine the need to rethink our understanding of the law. Law is a phenomenon of modern civilization created by the social environment in the frames of the higher laws (divine, cosmic, as stated by a number of scholars). Creator endowed man and society with mind and determined through the commandments and the message the basic principles of public life, interpersonal and group relations, defined moral imperatives. Without entering into the debate, natural rights bestowed by God, belong to the individual as an element of nature, as the bio-social merits, we note that in their basis are the imperatives of the higher laws. There is a moral imperative of a higher intelligence (God), under which a society is doing law - the traditions, customs, morality, normative legal acts.

Law is integral. Manifestations of integrity law are in its origins and meaning. We will try to formulate the basic provisions, that allow to reveal the holistic character of law.

Law is the result of the creative activity of society, law is a social phenomenon, created by society within the frames, which defined by moral laws established by God, Universal Mind. This is the first argument in favor of a vision of law as integrity. Law in general social sense are concrete possibilities of faces of social life that determined by the level of development of society. Thus, law and law restrictions become phenomenon in which the system of limits of person and his responsibilities are corresponding with the responsibilities of state and possibilities of person.

We remind also, that the distinguished representative of Ukrainian school of theory and sociology law B.O. Kistyakivsky, at his time also, stressed the need for dialectical knowledge of the law. The current Constitution Ukraine includes elements of theological comprehension, too. Here we have to deal not just with the sacred text, the basic principles, determinable by preamble of the Constitution of Ukraine as a secular, rather than clerical state. In Preamble it is explained, that Parliament of Ukraine adopts this Constitution aware responsibility before God, his own conscience, past, present and future generations.

*Note that PM Rabinovich, one of the first came to understanding of law, as a social phenomenon into Ukrainian theoretical and legal science seeing in it not only imperatives, but also the possibility of free personal development.

The point of Constitution includes the basic constitutional values, which are that are qualified by scientists and constitutionalists as moral, although the references to God in the point of the Constitution cannot be convinced that it is about values, not only moral, spiritual plan, but also religious characteristics of civil society, which according to various sociological studies, Christian Church unites more than 80% of the population, along with Jews and Muslims all over 90% of Ukrainian citizens are faithful within that or another religion.

Thus, in the Constitution of Ukraine, it is found its own organic combination of categories responsibility of the state, civil society and the individual before God, and also - in front of his own conscience, and past, present and future generations. Legal point of this constitutional provision still need to explore.

The integrity of law derives from its sources. One of the most important sources of law are normative legal act and also normative legal act of higher legal force – law, which is adopted by only legislative organ and at the same time representative power - Parliament. If state law is approved by parliament runs counter to the moral imperative given by the God, this law does not create law, is not legal. This is one of manifestations of integrity of the law: in addition to the law there is “not law” (we do not mean Hegelian understanding of “not law”). Sources of law are moral imperative, and regulations, as well as the customs, rituals, traditions, judicial precedent, which together create the law. M. Kostytsky describes the sources of law as well as the cosmic laws higher than the ethical God's laws, thereby limiting the moral and ethical imperatives of the Creator beyond the maximum of our galaxy, and assuming a plurality of worlds and the Makers.

The integrity of the law is manifested in the integrity of the legal system as a set of all legal phenomena of society: the legal system, legal culture, and legal consciousness. Legal system not only determines the form of government, the political (legal) regime, but describes the features of the modern development of the state which cannot remain isolated in a global world. Under the legal system understand or system of legal norms, or legal norms and legal relations, or construction of law as a legal basis, correlation of law-making and law employment.

As for the place, the role of law and meaning of court decision in development of law, we know Romano-German family of law systems of common law, also religion legal systems and endangered social legal systems. Constitution generates the legal system, determines its place in a legal family.

By combining the national legal systems in continental legal family, general, socialist law and religious legal systems, Rene David has made a significant contribution to the theory integrity of the law, thus showing that there is common in law systems of Great Britain in the identity and uniqueness of the legal system, while not identifying the law of a state phenomenon, since it is not limited to the law to state boundaries, and because, although divided into legal families, is the only one that is holistic.

Private Law and Public Law are the parts of holistic phenomenon. Peculiarity of preliminary approach to the understanding of the law was the Soviet subjective normativizm, forbidding of

privet in law, public law universalism, which were made by governmental ideological frames of understanding of law.

Law as a social phenomenon originated in ancient Rome with a private law and even then considered as the integrity. Perhaps, that is why science of law and law entitled to modern sense emerged in the early second millennium, including from law school University of Bologna - the oldest European university, established in the XI century on territory of modern Italy.

The essence of private law with a public law, as an integral part of common system, opened the famous Roman jurist Ulpian, which refers to the private law, natural law, law of nations and civil law.

According to opinion of Ulpian, interest is on the dividing of law on private law and public law. This statement looks like positive and let's state a thesis of the holistic character of law. In particular, the private interest can easily be transformed into public and vice versa. In specific social and political existence often takes place convergence of public and private interests, revealing the integrity of law. From this perspective, environmental law is unique combination of public and private interest.

In the Ukrainian legal science itself the question of the division of law into public and private is the subject of heated debate and raises serious objections from some scholars. Over the period of twenty years in the independent state was insufficient to form a Ukrainian school in the theory of private law.

Principles that can reveal the essence of private law, its great principles, wrote Ieringa is legal equality of persons, legal autonomy of personal rights, freedom of contract and optionality. The basis of the separation of the law to public and private are put principles of private law defining the legal status of entities, interests embodied in law, the forms of law peculiarities of legal regulation. Our traditional understandings of the law and attempts now to distinguish law on public and private law as the parts of integrity law require of course, individual studies, which will be the basis for entrusted with understanding the place and role of law in the life of civil society and the state and origins of law-making.

Preliminary thoughts on understanding the law are inseparably linked with another of his definition: the law is the result of compromise social elites expressed in party positions and concentrated in the law, often adopted by the legislature. Exactly here is a meaning of contractual law of modern society that rejects the possibility of consideration of the law as a result of the agreement of the people and the state (social contract) materialized in the first place in the constitution of state. Scientific-theoretical works with the problems of separation of power became right bases for their constitutional implementation. Constitutionalization of mentioned principle puts it among the most important foundations (principles) of organization of governmental power.

The Constitution of Ukraine 1996 is not only a political and legal act, but also an important document containing model of Ukrainian independent democratic state of example of XXI century. (art. 11,12,13). With the adoption of the Constitution of Ukraine in 1996, we have been

declared legal state. The Constitution Parliament of Ukraine adopted on behalf of the Ukrainian people - citizens of all nationalities. In its legal value current Constitution is a social contract between the state and civil society, agreement under which the state undertakes to serve the society, recognizes and guarantees human rights.

In passing, we note that among modern foreign scientists today is the dominant the idea that the Constitution is an expression of the general will of the people, which creates or upgrades their own state in order to achieve common goals. Without going into the history of the question, we recall that at the time John Locke viewed the constitution as a social contract rules coexistence of people and power of public authorities.

The Constitution cannot be a state regulatory act, even if it has highest legal force. In this regard, American thinker T. Paine wrote that Constitution is not a document of Government and document of people belonging to the government, and the government without constitution is a government without it.

Contractual origin constitution provides that it is the result of civil peace and social consensus and social solidarity. In this regard, once known French scientist Dugi expressed the view that the Constitution should be the embodiment of the idea of solidarity, which is an universal law of society and any law shall binding not due to the will of the rulers, but because under the right of social solidarity, expresses the formal consensus in the society.

Characteristically, the adoption of the constitution or parliament or in a referendum it contractual nature is not exhausted, because it is about the ability of social elites and power find consensus in terms of the constitution as its use, and in formation of the system of law according to the constitution to general public with the aim of general and common-social consensus and social cohesion of society. The above, of course, does not preclude possibilities of conflict as a political and social nature, but constitution should establish mechanisms for the legal release of these conflicts in order to society itself was set up to acceptable forms of conflicts that do not threaten its conservation violation solidarity in society, leading to neglect the basics constitutional order, etc.

The Constitution forms the legal system determines its place in the legal family. At the same time, as a social contract, the Constitution must simultaneously serve as a higher moral law, the moral imperative of goodness and justice, and therefore the law developing as a holistic basis "around" moral imperative and social treaty adopted on the basis of imperative, as is the social contract.

The law includes state-power command and customary law, traditions and moral standards. Social life is governed by not only legal rules but also by the non-law, that force of habit, fashion, remnants, values of individual and results of legal life. There is one more understanding of integrity of law. As a social phenomenon law is manifested in social relations. Law is "a life" until it is in use by society and created by him. Here it is a legal culture of society. The role of Constitution to "push" inertial public relations to attract attention of society to law, promote social deprivation of anomie older and more "dead" law and legal norms to initiate a new round of lawmaking.

Another approach to the definition of law as integrity is to recognize the importance of state dictates, concentrated in the rule (norm) of law of state will that provides power force, authorized by, guaranteed and provided by the state. The law is integral expression of will of the sovereign. Will provide common importance of legal norms, it is the source of motivation of individual behavior. The result of law here is a functioning of mechanism of legal regulation. Mechanism of legal regulation differs by system and covers a legal matter and a system of organs of state power, local government, and social (public) self regulation. This holistic sociological understanding of the law recognized representatives of the Marxist-Leninist vision of law, always quote-known expression of the "Communist Manifest" Marx and Engels, who threatening fist of the bourgeoisie, as if shouting: your law is the will of your class, will, meaning which is determined by the interests of your class.

Law is also considered by us as a regulator of social relations. By law, the expressed in normative legal act, and especially in the law is state coercion. This understanding of law inseparable from the normative vision of law. Law - one of the social norms along with rules of morality, ethical and aesthetic standards, technical regulations, customs, traditions and rituals. Law shows special rules and regulations of human behavior that characterized by formality and common obligatory. In this case, Constitution is – Social Contract in the basis of which is checked history and used a system of norms by society – regulators of social relations. Society is complete with all its contradictions and versatility, but society needs a holistic integrated regulator of public relations which is capable to match agreements of multicultural, common and personal interests.

The law contains a set of rules, which is based on a hierarchical structure, defines the features of social life, individual behavior and the functioning of the mechanism of state. In this sense law is a system of norms and rules of behavior of integrated system of law. System of law includes branches of law and institutes of law. System - is the law of "life" law. Breaking of system means 'death' of law.

As the system law integrates the branches of law. However, when considering law as a system is a certain arbitrariness of the division of law that includes structural unit. Branch of law combines relatively independent set of rules of law that govern certain areas of public relations. Large branches of law can unite as institutions of law and greater group - sub branches, or body of law governing public relationships of one kind (banking, budget law in the field of finance).

Law Institute - is objectively differentiated within one or more branches of law set of interrelated rules governing small group of public relations one species or aspects of social relations. Institutes law in this context may be either sectoral or cross-sectoral.

The smallest structural element in the system of law is the legal norm – concrete rule of conduct is often installed or authorized and manageable by state. Norm of law can be compared with a molecule of the substance. Molecule - is the smallest component substance which retains the properties of that substance. A water molecule is water, and two hydrogen atoms or oxygen atom are compared with other water properties. Rule of law - is the smallest piece of law that keeps the properties and characteristics of law. Therefore, the construction of the law to simple rules of

behavior somewhat simplifies the very nature of law. However, this is a topic for another conversation.

Law manifests its integrity as the fact that it is a mean of securing power. Formally, this objective is realized through the constitution. Constitution is created and adopted to implement the constituent power of the people, as it was in the Ukraine in 1996, when adoption of the Constitution legally entrenching the Ukrainian state, defined irreversible processes on the independence and strengthening sovereignty. This is a great scientifically making role as codification and creation of the Constitution and constitutional reform.

One of the most important components of the tasks of the constitution as a social contract next to the consolidation of human rights and the definition of guarantees of their implementation should be creating an optimal model of government. Thoughts that today the government may no longer be divided into branches, something premature. Although the separation of powers is a guarantee of not only the rights and freedoms of the people. Division of Power is a guarantee of stability and participation the people in the government. Therefore, the constitution should be enshrined principles of authorities, including the state power. Such, except the principle of distribution of power, called independence of the "branches" of power, government interference a "branch" in the activities of authorities of the other "branches", the inability to re-election by one authority, the functions of another organ power, the principle of equilibrium and balance of powers, the principle of authority authorities in the framework of the power of the people, the principle of the sovereignty of the people, who found reflected in the project developed by the authors of the Constitution of Ukraine.

"Law is primarily a direct presence being ..." - G. Hegel wrote in labor "Philosophy of Law», in other words, the phenomenon and essence, without which it is difficult to imagine modern society. Fashion for G. Hegel not disappeared, but his definition of law as an indispensable element of life understood as simplified.

Law - this is a social phenomenon, heritage spiritual culture of art, so the law cannot be devoid of creative framework through which upset the new socio- economic relations. Ukrainian experience of the 1996 Constitution of Ukraine, which was created by the authors as a model for nation-building, forms a system of law of civil society.

Each of the topics about law and freedom of person - the best argument in favor of such approval looks for certain law and its external manifestations, it is a kind of "Spotlight", which "covers" the law as a phenomenon of social life to a certain point, reveals the complex nature of the law as an integrated political-legal phenomenon only in part, given the fact that the integrity of the law is the law and the terms of its "life".

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