Your Holiness, you wrote that in your letter to me. The conscience is autonomous, you said, and everyone must obey his conscience. I think that's one of the most courageous steps taken by a Pope.
"And I repeat it here. Everyone has his own idea of good and evil and must choose to follow the good and fight evil as he conceives them. That would be enough to make the world a better place."

Dialogue between Francis and La Repubblica's founder, Eugenio Scalfari: "Starting from the Second Vatican Council, open to modern culture". The conversation in the Vatican after the Pope's letter to La Repubblica: "Convert you? Proselytism is solemn nonsense. You have to meet people and listen to them."
la Repubblica. Eugenio Scalfari. 01 Ottobre 2013

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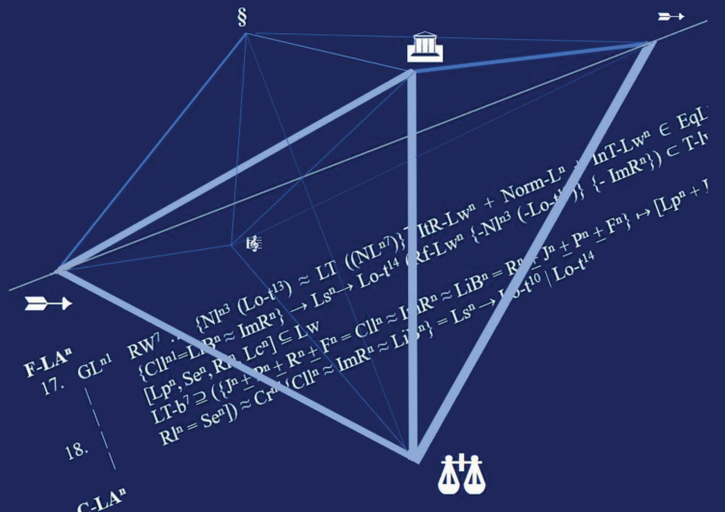

Serhii
S. Pavlov

LAW and COUNTERREVOLUTION

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The Confrontation of the Western Legal Tradition

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The Confrontation of the Western Legal Tradition

Serhii S. Pavlov

Monograph

Kulmbach,
Yurincom Inter
2023

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Author: **Serhii S. Pavlov**

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The book presents the author's understanding of the concept of legal tradition.

In modern academic law there is no clear definition of the concept of legal tradition, but at the same time there are many works that consider and use this phenomenon. Based on the research by Harold Berman – "Law and Revolution. The Formation of the Western Legal Tradition", this book is the attempt to theoretically formulate the concept of legal tradition.

The central theme of the work is one of the supreme values of law – the human right to life. The Right to human life had a different value in law in each historical era. This regularity in different historical types of legal order is explained as a consequence of different points of equilibrium of positive law in the Western legal tradition.

In this regard, on the one hand, the Harold Berman's study is an empirical key for revealing the theoretical construction of the phenomenon of the Western legal tradition. On the other hand, the empirical verification of this concept is taking place in the case law of the European Court of Human Rights.

In the context of this dual empiricism, the work shows that the axiology of right to human life has always been the subject of the equilibrium of positive law.

The book examines the hypothesis that the Western legal tradition has entered a new era of its genesis – the Age of Confrontation. The hallmark of the new era is the confrontation between the doctrinal, normative, and reflective autonomy of law, which have a destructive effect on legal values and values of law. In contrast to Harold Berman's six revolutions of law, the phenomenon of counterrevolution of law is considered by the researcher as a form of dissipative dynamics of positive Law.

Attention is drawn to the fact that, unlike the Age of Formation, renewal and total transformation of positive law are possible in a no-revolutionary way. The proposed hypothesis that the Age of Confrontation of the Western legal tradition come to end in a result of the harmonization of the normative, reflective, and doctrinal autonomy of law.

This monograph may be of interest to specialists in the field of philosophy, sociology, legal theory, and case law of the European Court of Human Rights. Also, the book may be of interest to anyone who has studied the Western legal tradition.

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Dedicated to the 70th anniversary
of the European Convention on Human Rights,
The 40th anniversary of the publication of Harold Berman's book
"Law and Revolution. The Formation
of the Western Legal Tradition" and
The 175th anniversary of the Odesa School of Law.

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Sincerely, the Author

CONTENT

A NEW ERA OF THE WESTERN LEGAL TRADITION

OCTAHEDRON OF THE WESTERN LEGAL TRADITION

CONCLUSIONS

List of Abbreviations

CDDH	– Steering Committee for Human Rights
CH	– Chicago Colloquium
CIS	– Commonwealth of Independent States (also known as SND)
Covid-19	– Coronavirus disease 2019
ECHR	– European Court of Human Rights (also Court)
ECHR	– European Convention on Human Rights (also Convention)
FRG	– Federal Republic of Germany
GDR	– German Democratic Republic
ICC	– International Criminal Court
IIFFMCG	– Independent International Fact-Finding Mission on the Conflict in Georgia
IMF	– International Monetary Fund
NATO	– North Atlantic Treaty Organization
OECD	– Organization for Economic Co-operation and Development
RSFSR	– Russian Soviet Federative Socialist Republic
UN	– United Nations
UNDHR	– Universal Declaration of Human Rights
USSR	– Union of Soviet Socialist Republics
WB	– World Bank

List of words with stable meaning in the author's interpretation (Keywords, Word combinations, Conceptual and Categorical Apparatus)

Law: Natural law, Positive law, Rule of law

Legal genesis: (Evolution of law), Continuity and Renewal of law (Formation, Confrontation, Harmonization and Execution of legal traditions)

Legal tradition: Structured legal experience (Large and small legal tradition), Immanence and Transcendence of legal tradition

Legal culture: Legal values and Values of law (Hierarchy of legal values and values of law)

Legal system: System of law (Rules), Precedent (Legal discretion), Political expectations (Social expectations)

Social forces in law: Justice of law, Rationality of law, Pragmatism of law, Formalism of law (Legal feelings, Logic of law, Legal language)

Equilibrium social forces in law (Equilibrium of Law, Equilibrium of legal tradition, Equilibrium of legal order), Structural couplings

Points of equilibrium of social forces in law: Spirituality of law, Individualism of law, Imperialism of law, Nationalism of law, Collectivism of law, Liberalism of law, Humanism of law (not yet formed)

Legal order, Legality, Legitimacy

Legal reality: Legal facts (Discretion of law), Interaction of law (Institutionalization of law)

Legal environment: Novelties of law

Statics of Law: Principles, Norms, and Institutions of law

Dynamics of law: Conservative and Dissipative dynamics of law

Points of coordinates of autonomous dynamics of law: Legal doctrine (Metatheory of law), Normativity of law, Reflection of law

Transformation of law (Revolutions and Counterrevolutions of law)

Prime cause: Truth (Confrontation and Harmonization of law)

The Epoch of the Formation of Legal traditions

The Era of Confrontation of Legal traditions

Foreword

This section contains a brief narrative of the reasons for which we will attempt to explain why we took it upon ourselves to investigate the Western legal tradition. We'll talk about the research project, that inspired us to do the research, and made it happen.

At the end of the twentieth century, Harold Berman, a professor at Harvard Law School and Emory University School of Law (1918-2007), wrote a book entitled "Law and Revolution: The Formation of the Western Legal Tradition" (1983),[1] and at the beginning of the twenty-first century, has written its continuation was under the title: "Law and Revolution II: the influence of Protestant reforms on the Western legal tradition" (2006).[2] According to many academic communities, as the New York Times writes about this, the works of Harold Berman have changed the idea of the origin of Western law.[3]

A quarter of a century has passed since, but the interest in Western law is still growing, and Harold Berman's research is increasingly attracting attention. Apparently, there are many reasons for this interest.

For the first time, I was attracted by the works of Harold Berman in 2005, when we began to study the legal traditions of Ukraine at the Odesa National Law Academy (Odesa, Ukraine).

And here it is important to recall the events of those times. In 2004, the so-called "Orange Revolution" took place in Ukraine during the presidential elections. That time, the people of Ukraine expressed overall peaceful protest the falsification of the results of presidential elections by the pro-Russian candidate Viktor Yanukovych. This revolution got the name "Orange" after using the party orange colour of the popular afterwards political force of the pro-Ukrainian candidate Viktor Yushchenko.[4]

Despite the political success of the "Orange Revolution", it was of particular importance for Ukrainian law, as it was the first case in the legal experience of the post-Soviet countries when the political and legal conflict was settled by the Supreme Court of Ukraine.[5] The revolution caused a tremendous impact on the

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[1] Harold Joseph Berman, Law, and Revolution. The Formation of the Western Legal Tradition., Harvard University Press, 1983, 657 p.

[2] Harold Joseph Berman, Law, and Revolution, II. The Impact of the Protestant Reformations on the Western Legal Tradition, Harvard University Press. 2006, 544 p. (Further. Harold Berman., 2006, 544 p.).

[3] Harold J. Berman, Who Altered Beliefs About Origins of Western Law, Dies. by Douglas Martin. The New York Times, Nov. 18, 2007., https://www.nytimes.com/2007/11/18/us/18berman.html (Further. Harold Berman., 18, 2007. …).

[4] Zur Anatomie der Orange Revolution in der Ukraine: Wechsel des Elitenregimes oder Triumph des Parlamentarismus? Ingmar Bredies., Ibidem., 2012.

[5] Court decision of the Judicial Chamber in civil cases of the Supreme Court of Ukraine dated 03.12.2004. https://zakon.rada.gov.ua/laws/show/n0090700-04?lang=en#Text

entire legal system of Ukraine, which gave rise to great academic relevance in the study of its legal traditions.

This was the circumstance that motivated me to explore the legal traditions of Ukraine.

Subsequently, over the next five years, I carried out academic research, and in September 2009, the manuscript was presented as a dissertation at the meeting of the Specialized Academic Council of the Odesa National Law Academy. On May 10, 2010, a successful public defense of the thesis took place on the topic: "Legal Traditions of Ukraine"[1]

But the work was not published as a monograph. On February 14, 2010, the Central Election Commission of Ukraine announced the results of the 2009 regular presidential elections.[2] According to these results, the pro-Russian candidate Viktor Yanukovych was elected President of Ukraine. Yes, exactly the candidate against whom the "Orange Revolution" took place and whose victory in 2004 was declared invalid by the Supreme Court of Ukraine.[3]

Such a radical change in the expression of the popular will revealed new properties of the Ukrainian legal genesis. This also gave evidence of the incompleteness of the study of the legal traditions of Ukraine, which began in 2004, because such People's Choice has created a certain civilizational inconsistency between the European and Eurasian course of the state. Five-year research required a radical revision and additional work; this situation did not allow me to make unambiguous conclusions about the value content of the legal traditions of Ukraine.

In 2014, another revolution took place in Ukraine called the "Revolution of Dignity", which, compared to the previous one, was not peaceful, but also directed against the pro-Russian political force led by Viktor Yanukovych. It would seem that this revolution should have drawn a logical line in the right to the genesis of Ukrainian law. But the war broke out in eastern Ukraine. Ukraine temporarily lost control over the part of its territories in Donbas and the Autonomous Republic of Crimea. These circumstances testified to the continuation of the previous and the beginning of new transformations in Ukrainian law. That time, it was still too early to draw any conclusions about the legal traditions of Ukraine. In particular, because in 2014-2015 Ukraine signed

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[1] Serhii Pavlov, Legal traditions of Ukraine., Dissertation abstract of the PhD in Law in specialty 12.00.01 – Theory and History of State and Law; History of Political and Legal Studies. – Odesa National Academy of Law, Odesa, 2010, 17 p., http://dspace.onua.edu.ua/handle/11300/980

[2] Election of the President of Ukraine 2010. Protocol of the Central Election Commission on the results of repeated voting from the elections of the President of Ukraine from 02.07.2010. https://www.cvk.gov.ua/wp-content/uploads/2018/10/protokol_cvk_07022010-1.pdf

[3] Court decision of the Judicial Chamber in civil cases of the Supreme Court of Ukraine dated 03.12.2004. https://zakon.rada.gov.ua/laws/show/n0090700-04?lang=en#Text

so-called the "Minsk agreements",[1] which provided for a new concept of the state and territorial structure of Ukraine.

On February 21, 2022, referring to Ukraine's unwillingness to comply with the Minsk agreements, the Russian Federation recognized the sovereignty of the Donbas Quasi-states that were created in the previously annexed territories of Ukraine.[2] And on February 24, 2022, the Russian Federation made a full-scale military invasion in the territory of Ukraine.[3]

At the time of writing this work, these events have not yet received an unambiguous legal definition. The formation of the legal traditions of Ukraine continues. This process has already shown an obvious pro-European orientation, but it still requires time and new events for the full historical disclosure of the traditions of Ukrainian law. This important period in the history of Ukraine constrains final conclusions but allows us to already determine the common features of the Ukrainian legal genesis at the level of the Western legal tradition.

At the same time, being deeply grateful, I consider it my duty to mention my mentor, under whose leadership the study of the legal traditions of Ukraine was conducted.

This is Professor Yuriy Oborotov (1946-2020) Honoured Lawyer of Ukraine, a Corresponding Member of the National Academy of Legal Sciences of Ukraine, Doctor of Law, and Vice-President for Science of the National University "Odesa Law Academy".

As a graduate of the Odesa School of Law, Professor Yuriy Oborotov fundamentally studied the general theoretical aspects of traditions and innovations in legal development. In 2003, Yuriy Oborotov defended his doctoral dissertation and wrote a monograph on this topic. [4]

The study of legal traditions at the National University "Odesa Law Academy" has its own history and unique legal methodology. In 2022, the Odesa School of Law celebrated its 175th anniversary.[5] Of course, our work does not claim the honourable mission as an example of the legal methodology of this School of law.

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[1] Full text of the Minsk agreement. February 12.2015. Financial Times. https://www.ft.com/content/21b8f98e-b2a5-11e4-b234-00144feab7de

[2] The President of the Russian Federation Decree of President "On the recognition of the Lugansk People's Republic" dated February 21, 2022, No. 72. Official Internet portal of legal information. http://publication.pravo.gov.ru/Document/View/0001202202220001

[3] Russia's war against Ukraine in time layers and spaces of the past. Dialogues with historians. In Two books in the Ukrainian language – Book one / Responsible editor V. Smoliy; National Academy of Sciences of Ukraine. Institute of History of Ukraine. Kyiv, 2022. 802 p.

[4] Yury Oborotov, Traditions and innovations in legal development: theoretic aspects, Abstract of the dissertation of the Doctor of Legal Sciences. Odesa Law Academy. 2003, 38 p.

[5] History of the Odesa National Law Academy edited by Professor Serhii Kivalov, publishing house "Yuridicheskaya Literatura", Odesa, 2002, 340 p.

There is an interesting fact. Professor Yuriy Oborotov headed the Department of Theory of State and Law of the National University "Odesa Law Academy", which was previously headed by a well-known representative of the "Odesa Law School" Professor Alexei Surilov (1928-1999).[1]

Professor Alexei Surilov (1928-1999) was not only the founder of this department. He was also an Honoured worker of Science and Technology of Ukraine, a Doctor of Law, member of the Permanent Court of International Arbitration (Hague, Netherlands). Professor Alexei Surilov was a lecturer at the universities of the cities: Regensburg, Passau, Madrid, Szegedi, Lublin, New York, Chicago, Los Angeles, and others. As is well known, in 1953 Alexei Surilov successfully defended his PhD thesis at Moscow State University.[2]

According to other sources, around the same time in 1950-1960, Professor Harold Berman repeatedly visited Moscow. Harold Berman had an invitation from the USSR Academy of Sciences to conduct studies and taught a course of lectures on the American constitution for students at Moscow State University.[3]

It is possible that Alexei Surilov was among his students.

That is why, under the guidance of my supervisor Professor Yuriy Oborotov, special attention was paid to the research of the works by Harold Berman.

2023 marks the 40th anniversary of the publication of Harold Berman's first book, "Law and Revolution. Formation of the Western Legal Tradition".[4]

Actually, the above was not the reason for my interest in the study of the Western legal tradition. This is a brief story that only explains my moral attitude towards the study of the Western legal tradition.

The practical motives are that the beginning of the first half of the twenty-first century is accompanied by events that significantly affect the world's legal culture, the international legal order, and national legal systems.

We are talking about global environmental degradation, increasing scarcity of natural resources, political instability, military conflicts, trade wars, global population growth and forced migration. We also have in mind the consequences of the pandemic, the risks of possible new epidemics, energy, and food crises.

Additionally, attention is drawn to questions about the growth of global debt and a new military territorial conflict that the Russian Federation started against

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[1] History of the Department of Theory of State and Law of the National University "Odesa Law Academy" https://www.onua.edu.ua/ua/history-ztyu-ukr

[2] In memory of the famous odesian Alexey Surilov. Newspaper "Odesa Life", 02.02.2020., https://odessa-life.od.ua/article/pamjati-vidnogo-odessita-alekseja-surilova

[3] Harold J. Berman, 1918-2007 by Emily Dupraz. Harvard Law Bulletin, Summer 2008, Nov 13, 2007, https://hls.harvard.edu/today/harold-j-berman-expert-in-soviet-law-legal-history-and-law-and-religion-1918-2007/

[4] Harold Joseph Berman, Law and Revolution. The Formation of the Western Legal Tradition., Harvard University Press, 1983, 657 p.

Ukraine in Europe. Under the influence of all these circumstances, the possibility of growing legal, economic, and political global and local instability remains.

In this regard, I see the need to consider the concept of instability in the context of law. There are different opinions on the subject. Namely, the instability in the context of law is also instability of law itself, the inability of law to create relevant models of future desired behaviour; the inability of the law to fully regulate new forms of legal relations in a differentiated manner; the inability of law to effectively negotiate new forms of controversy; the inability of the law to maintain and protect the existing legal order, and so on.

These and other circumstances give rise not only to the loss of faith in law, contribute to the development of a crisis of distrust in law, but also affect the efficiency of the legal validity of law and the state of legality. In this regard, the topic of legal traditions draws attention to itself. First of all, because the concept of stability is often associated with the concept of legal traditions.

But legal traditions have many other interpretations. For example, in the context of legal traditions, questions of the individuality of law and issues of legal comparative studies are also considered.

Harold Berman considers the development of law as the genesis of legality, which is caused by and interconnected with social, political, cultural, economic, and other crises.

Harold Berman's research makes it possible to see that certain type of social crisis was capable of triggering a legal revolution. As a consequence of this revolution, law is being transformed, and the Western legal tradition is developing. As a result, there is a renewal of the society, state, economy and legal culture. New conditions of stability are emerging.

In this regard, Harold Berman's approach remains relevant. For example, following questions remain unanswered. Can modern crises influence the further development of Western legal tradition? Is there a possibility of the formation of a new tradition of European law?

Any of possible answers to this question touch on the fundamental value that every person and humanity has, this is the right to life. It would seem that in the twenty-first century the right to life has received maximum legal guarantees. But at the same time, in reality, we observe that human life depends on the climate, epidemiological situation, quality of food, peace and war, on level of legality and the rule of law, and so on. In this regard, a special place belongs to the issue of efficiency and autonomy of law. After all, the development of the Western legal tradition is the genesis of the development of legal values, the highest place among which is Life.

In 1953, the European Convention on Human Rights entered into force, which turns 70 in 2023. It is one of the fundamental sources of law that consider the right to life as the highest legal value.

In this regard, the study of the right to life in the context of legal traditions has for a long time needed a professional academic institution that simultaneously and comprehensively specializes directly on the phenomenon of life as a philosophical, biological, economic, and legal category.

This academic and research institution is the Faculty of Life Sciences: Food, Nutrition and Health University of Bayreuth. In June 2017, the Bavarian Council of Ministers adopted a decree on location of the seventh faculty at the University of Bayreuth called "Faculty of Life Sciences: Food, Nutrition and Health" with the participation of up to 1,000 students, 150 staff and more than 22 professors on the basis of the city of Kulmbach.

In December 2017, Founding Dean Prof. Stephan Clemens and Managing Director Dr. Matthias Kaiser begun to work in the first office of the faculty in the gatehouse "Alte Spinnerei".

In July 2018, the Bavarian government presents a schedule for the development of the faculty.

In October 2018, the Faculty of Life Sciences: Food, Nutrition and Health" of the University of Bayreuth (Seventh Faculty) moves to an administrative building in Kulmbach.[1]

In 2022, The Head of the Department of Food Law, Faculty of Life Sciences, University of Bayreuth, Professor and Doctor of Law Kai Purnhagen, inspired me to further study the genesis of the Western legal tradition, which was started by Harold Berman. Thanks to Professor Kai Purnhagen, this research was possible.

Volkswagen Stiftung provided special support in the implementation of this project. The Volkswagen Foundation is Germany's largest private, non-profit organization engaged in the promotion and support of academic research.[2]

I express my acknowledgment to the Volkswagen Stiftung and the University of Bayreuth[3] for the favourable conditions that made it possible to prepare this manuscript and conceive its continuation.

The author expresses special gratitude for the help in working with the case law of the European Court of Human Rights to Tatiana Pavlova, a former assistant to the Deputy Chairman of the Economic Court of the Vinnytsia region, a highly qualified specialist with more than ten years of experience in the judicial system of Ukraine.

Thanks for the discussions on the topic of legal traditions I express to colleagues of the Department of Food Law of the University of Bayreuth. Head Professor Kai Purnhagen, Dr. jur. Katja Brzezinski-Hofmann, Dr. Tilman

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[1] Universität Bayreuth in Kulmbach – die Meilensteine Wie alles begann (2017 – 2018) https://www.uni-bayreuth.de/campus-kulmbach#38ad30d3

[2] Volkswagenstiftung. https://www.volkswagenstiftung.de

[3] Universität Bayreuth. https://www.uni-bayreuth.de

Reinhardt, Alexandra Molitorisová, Helena Singer, Alessandro Monaco, Federica Ronchetti, Laura Springer, and Yasmine Ambrogio.

The author is very grateful to Leonid Lazebnyi – Attorney at law, Chief editor of the ActiveLex legal information platform for careful proofreading and editing of the monograph.

I hope that further studies of legal traditions make it possible to bring more clarity to their structure, help to reveal their content, and show the significance of traditions in law.

Introduction. Methodology and Integration approach

In this section of the book, we will consider the methodology for researching the topic of legal traditions. In modern science, there is a lot of research in the field of legal traditions. But at the same time, we do not find unified theoretical approach that would consider the phenomenon of "legal tradition" in the aspect of the theory of law.

H. Patrick Glenn writes "… In studying traditions, legal or extra-legal, there appears to be no initial justification for granting primacy of one over others; equally, there appears to be no initial justification in precluding the particular teaching of any one of them. The western tradition now includes theory on tradition and this theory of one tradition may be useful in the encounter with other traditions. There may well be theory on tradition in other traditions, expressed in different forms of logic. A theory of tradition should therefore not be thought of as a present, or perhaps even future, construction, but rather as a present device, or method, for thinking multiple traditions. It is a method for expanding knowledge and understanding, involving movement from within one tradition to within another, using all of the teaching of both (or all) of the traditions to facilitate this process. Thinking theoretically about tradition means suspending conviction in a given tradition at least to the point of hearing, and learning, from another tradition. It means living, however, briefly, in a "middle ground", described recently as the place in between: in between cultures, peoples, and in between empires and the nonstate world of villages . . . [where] diverse peoples adjust their differences".

It is the process of overcoming separation.".[1]

In this regard, we turned our attention to the study of Harold Berman as representing one of the forms of the logic of traditions in law.

Studying the Western legal tradition, Harold Berman writes that research in this field can be carried out on the basis of the Integrative Theory of Law. In one of his publications "Toward an Integrative Jurisprudence: Politics, Morally, History" Harold Berman draws attention to the fact that the Integrative Theory of Law is a philosophy of law that impoverishes the three classical schools of law: Natural theory of law, Legal positivism, and Historical theory of law, that are the one key to understanding the development of world law.[2]

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[1] Patrick H. Glenn., Legal tradition of the World. Fifth Edition, Oxford University Press, 2007, 401 p., P. 4.

[2] Harold J. Berman., Toward an Integrative Jurisprudence: Politics, Morality, History. California Law Review. Vol. 76, No. 4 (Jul. 1988), P. 779-801, https://www.jstor.org/stable/3480537?seq=22#metadata_info_tab_contents

It is known that in 1964 Jerome Hall, published an article entitled "From Legal Theory to Integrative Jurisprudence" in which he shows the role of integrative jurisprudence, and also substantiates the importance of the formation of an integrative theory of law. About it, he writes the following.

"… "Theory" has many meanings, but all of them include that of generalization, the discovery of "the one among the many." In the philosophy of science, however, "theory" connotes much more than that. It implies a system of generalizations in terms of basic concepts and so interrelated as to contribute to each other's meaning; from such a system of knowledge significant inferences can be drawn in terms of which the relevant field of data is explained".[1]

Further, we can observe that the Integrative Theory of Law is becoming increasingly used in academic law.

For example, in 2016, Marko Novak published a book titled "The Theory of Types of Law: Essays in Psychoanalytic Jurisprudence." In his book, Marko Novak writes, "… The Latin word *integratio* implies gathering, combining, linking into a (n integral) whole. When we deal with integration or integrating, we necessarily imply that there are several (at least two) dimensions or elements that integrate. Moreover, such integral whole cannot be understood without every individual element or dimension integrated into it while at the same time, being part of integration, no individual element can be comprehended alone without their whole. This implies a somewhat pluralist but more importantly also holistic perspective that could be referred to the concept of law too. Thus, an integral theory of law would be a theory which would aim at describing the essence (or nature) of law by referring to its several dimensions which are necessarily integrated into a whole. Law as a whole cannot be properly understood without all of these elements being properly reflected upon. Only such a whole together can constitute a specific theory of law. Such an integral theory of law could include two, three, four, or even more dimensions. As already mentioned, what is important is that such a theory is an attempt at surpassing the deficiencies of the so-called reductionist theories of law (i.e. rigid or exclusive versions of non-positivism (or natural law) and legal positivism)".[2]

In 2018, Romli Atmasasmita published a book titled "Integrative Law Theory, Reconstruction of Development Law Theory and Progressive Law Theory", where the integrative theory of law is considered as a reconstruction of two theories, it is the Theory of the Development of Law by Mochtar Kusumaatmadja with the Theory of Progressive Law by Satjipto Rahardjo. [3]

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[1] Hall, Jerome, "From Legal Theory to Integrative Jurisprudence" (1964). Articles by Maurer Faculty. 1451. https://www.repository.law.indiana.edu/facpub/1451 (Harold J. Berman. California Law Review Vol. 76, No. 4 (Jul. 1988).

[2] Marko Novak, The Type Theory of Law: An Essay in Psychoanalytic Jurisprudence, Springer, 2016, p. 117., P. 2

[3] Romli Atmasasmita, Integrative Law Theory, Reconstruction of Development Law Theory and Progressive Law Theory, Genta Publishing, March 2018, p. 121.

At the same time, in different countries of the world, we can observe a lot of research and publications on the subject of integrative jurisprudence and integrative theory of law.

With the aim of exploring legal traditions, this work also involves the integration of theories and methods. The need for an integration approach is caused by the following reasons:

The first reason. The problem of the empirical basis. As many studies on socio-cultural and legal traditions show, there is a great deal of ambiguity in the interpretation of these phenomena. At the same time, there is a lot of research on the phenomenon of "Western law" in academic law.

We can also observe practical problems in the action, efficiency, consistency, and legitimacy of law. At the same time, many phenomena that are referred to as legal tradition imply quite voluminous and contradictory concepts.

In this regard, our attention has been focused on Harold Berman's research as an empirical basis. Since it was Harold Berman who proposed to consider together such components of the law of genesis as legal tradition and the dynamics of law. The dynamics of law presupposes the search for an equilibrium of social forces in law. And the phenomenon of equilibrium and disequilibrium of law shows its influence on the formation of a system of rules, legal culture, legal discretion, and public policy. Against the background of the existing dynamics of law, the legal system and the legal order are more static, which creates a metaphysical basis for hypotheses about the theoretical structure of the legal tradition.

Also, Harold Berman's research provides empirical justifications for the theoretical structure of the legal tradition. These are the phenomena of revolution and transformation of law, the presence of which allows us to theoretically see the general model of continuity and renewal of law.

As we can observe later, all Harold Berman's research on the formation of the Western legal tradition[1] is based on rich historiographical material, filled with an analysis of the sources of law. Using examples of specific court cases, legislative and political decisions, Harold Berman's research shows the genesis of positive law as one tradition of different legal systems.[2]

But at the same time, Harold Berman's research does not reveal the theory of the legal tradition. For example, in his book "The Nature and Functions of Law", Harold Berman considers law from the perspective of Common Law.[3] These circumstances create additional relevance for the search for the theoretical construction of the Western legal tradition.

The second reason. Interdisciplinary nature of the problem. A study of the Western legal tradition by Harold Berman shows that the phenomenon of the

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[1] Harold Berman (2006), 544 p.

[2] Ibid., 544 p.

[3] Berman, Harold J.; Greiner, William R.; Saliba, Samir N. The Nature and Functions of Law. Thomson Reuters/Foundation Press, 2009, 826 p. (Further. Harold Berman (2009)).

legal tradition is not only a phenomenon of law, but also a mental, linguistic, psychological, social, political, and economic phenomenon.

Consequently, there is a possibility that, based only on theories of law, research may not take into account the properties and features of legal traditions that can be disclosed within the subject of other fields of knowledge.

The third reason. In this regard, there is a third problem, this is the problem of finding a criterion to verify the theory of the legal tradition based on the empirical material of Harold Berman. There is a need for discreteness, accuracy, mass character, finiteness, and effectiveness.

Therefore, following the recommendations of Karl Popper for solving the demarcation problem, we have integrated the method of the cyclic algorithm into this research. We believe that the use of this method has brought structural and logical clarity to the theoretical construction of the legal tradition as a whole and the Western legal tradition particularly.

In this regard, in order to simplify the perception of the material, symbols and abbreviations are used in the work, which conveys the meaning of the phenomena of law, the states of law, the dynamics of law, and so on.

The fourth reason. The problem of finding a cause-and-effect relationship. Looking at the phenomena of "continuity of law" and "renewal of law," we found that Harold Berman draws conclusions similar to Arnold Toynbee's, that the historical situation or natural factors pose a "challenge" problem for society. The further development of society is determined by the choice of a solution option – the "answer". An adequate response not only solves the problem, but also brings society to a new level of development. If the necessary answer is not found, anomalies arise in society, the accumulation of which leads to a "breakdown", and then to decline. [1]

Thus, like Arnold Toynbee, Harold Berman advises moving away from the linear comprehension of the history of law, using a conceptual study of the legal experience of generations.

In this regard, we have chosen the instrumental categories of positive law as the spectrum of consideration. Comparing this we have seen a dialectical interdependence between one group of categories as causes and another group of as consequences. This circumstance necessitated the integration of the method of graphical representation of data into the present study. This method made it possible to present the law, the legal genesis of the Western legal tradition and its theoretical structure in a visual form. As a result, we came to the geometry of the form to simplify the perception of the material.

The fifth reason. Doctrinal interpretation of law. Following the advice of Harold Berman regarding the choice of aspects of the consideration of the phenomenon

[1] Arnold Toynbee. Challenge and Response. University Review, Vol. 1, No. 4 (Spring, 1955), 33-41 p.

of "law" and its constituent elements, we used the classical approaches from the theories of positive and natural law, as well as social and historical theories of law.

Here's Harold Berman's advice, "… We need a jurisprudence that integrates the three traditional schools and goes beyond them. Such an integrative jurisprudence would emphasize that law has to be believed in or it will not work; it involves not only reason and will but also emotion, intuition, and faith. It involves a total social commitment.".[1]

In this regard, we consider the phenomenon of natural and positive law on the basis of the principle of "contraversion", based on Klaus F. Röhl, who writes, "... positive law acquires its significance only against the background of natural law as a countermeasure". [2]

The presence of "the contraversion" of positive and natural law on the one hand, strengthens their complementarity on the other. Many studies of natural law agree that the natural law tradition represents one of the perennials, as well as most respected, positions on legal reasoning and law in the Western world. It is a tradition that goes back to ancient Greece and Rome, particularly to Aristotle and the Stoics, but historically finds its most influential formulation in Thomas Aquinas.[3]

Thus, doctrinal foundations have allowed us to theoretically order legal values with the value's components of the legal tradition, and the instruments of law with the structural components of the legal tradition.

And finally, the sixth reason. These are the paradoxes of sociology and law. In order to preserve the unambiguity and clarity of the position, we took into account the aspect of Jean-Louis Bergel, who writes that, "… The foundations of law cover all its roots, both its very definition and various concepts of law, and the formal sources from which objective law originates, and the general principles that frame the process of development of law: determine its content and guide its evolution".[4]

Our sociological approach in this concern took into account the works: of Max Weber, Shmuel Noah Eisenstadt, Niklas Luhmann, Edward Shils, Anthony Giddens and others.

These are not all the reasons that caused the need to integrate different theories.

The present work also uses an integrated approach in the choice of research methodology. Namely, an Ontological approach is used in the interpretation of law and the legal environment; Phenomenological approach in the definition of

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[1] Harold Joseph Berman, Law, and Revolution. The Formation of the Western Legal Tradition., Harvard University Press, 1983, 657 p., P. 7. (Further. Harold Berman (1983), 657 p.).

[2] Allgemeine Rechtslehre. 3. Auflage. C. Heymanns, Köln [u. a.] 2008, § 34 II, S. 291.

[3] Natural Law Theory, Legal Positivism, and the Normativity of Law. Mehmet Ruhi Demiray, The European Legacy. Toward New Paradigms, Volume 20, 2015, P. 808, Published online: https://www.tandfonline.com/doi/full/10.1080/10848770.2015.1078991.

[4] Jean-Louis Bergel., Theorie generale du droit. Deuxième édition DALLOZ 1989, 342 p.

legal phenomena; Axiological approach in the analysis of the value content of the legal tradition; Synergetic approach in building a logical structure of the legal tradition; Civilizational approach in the study of Western law; Dialectical approach in the consideration of the dynamics of law; Formational approach in considering the economic component of legal traditions; Anthropological approach in the analysis the European Court of Human Rights' case law as a legal experience of the united European legal order.

In the philosophical aspect, we sought that this study would be an integration of different theories and methodological approaches to the interpretation of the Western legal tradition of Harold Berman.

As H. Patrick Glenn writes, "… The western tradition now includes theory on tradition and this theory of one tradition may be useful in the encounter with other traditions. There may well be theory on tradition in other traditions, expressed in different forms of logic".[1]

[1] Patrick H. Glenn, Legal tradition of the World. Fifth Edition, Oxford University Press, 2007, 401 p., P. 4.

THE ORIGINAL POSITION

The first chapter provides a brief overview of Harold Berman's research in the Western legal tradition. The analysis of the study shows that the legal tradition is a dynamic category of law, in the genesis of which revolutions arise and transform law, and the legal tradition preserves and ensures the continuity of law over time.

Harold Berman's research will also show that the Western legal tradition is a tradition of the Positive law. In this regard, attention is drawn to the lack of a unified definition of the concept of "Legal tradition" in modern legal science, which could simultaneously explain the continuity of law in Civilizational, Axiological, Formational, Normative, Anthropological, Synergetic, and Dialectical aspects.

A review of the criticism of the study of the Western legal tradition is also carried out, which will show that Harold Berman metaphorically revealed the ontological nature of the legal tradition, which allows us to formulate the theoretical concept of this phenomenon.

Harold Berman's "Western Legal Tradition" as the theoretical and empirical basis of research

We believe that by declaring the formation of the Western legal tradition, Harold Berman makes a serious challenge to previous studies on the origin of law. We will try to theoretically analyse the work of Harold Berman. Based on the results obtained, we will try to consider the modern genesis of the legal tradition.

But the first, in this section, let's briefly dwell directly on the study of Harold Berman.

A distinctive feature of Harold Berman's research is the consideration of the evolution of law in parallel with the evolution of civilization. On the example of Western civilization, Harold Berman chosen a unique approach to consider the genesis of law, an important feature of which is the thesis of the continuous operation of law in a state of tradition.

In support of this thesis, Harold Berman provided a multi-year study, which shows important features and patterns of evolution of Western law. The main feature is that the law is perceived in the state of legal traditions. These traditions

preserve the connection between modern and past law and influence the formation of future law.

As an introduction to the first book "Law and Revolution. The Formation of the Western Legal Tradition" Harold Berman writes, "… The Western legal tradition evolved from a "revolution" and then, over the course of many centuries, other revolutions periodically interrupted and changed it".[1]

In his two books, Harold Berman[2] examines in detail only the first two revolutions. As Douglas Martin writes on this occasion, the professor planned the third volume of his series "Law and Revolution" and was even going to release the fourth. In an interview with the Fulton County newspaper, he was philosophical about the prospects of the finish. "It depends on God whether He wants to read it or not," he said.[3]

Touching upon the topic of the Western legal tradition, we do not try to fill the gap in the study of the four revolutions of law regarding those, unfortunately, Harold Berman did not have time to write books. Our goal, based on the scientific approach and on the Harold Berman's empirical material, is to reveal the theoretical construction of the Western legal tradition as a phenomenon of law. Further, using this construction, we will try to interpret the modern development of law in times of crisis.

"… In the twentieth century in the Western legal tradition is in a revolutionary crisis greater than any other in its history, one that some believe has brought it virtually to an end. Not all people will want to listen to this story. Many will find the plot unacceptable; they will consider it a fantasy. Some will say that there never was a Western legal tradition. Others will say that the Western legal tradition is alive and well in the late twentieth century. Even among those who will recognize that the story is true, and that it should be taken seriously, there will be wide differences of opinion concerning the meanings of the words Western, legal, tradition, and revolution".[4]

Harold Berman's approach has its own characteristics and distinctive features.

The first is the use of the term "West". This word occurs in the work of Harold Berman first as an adjective name: "Western tradition", "Western civilization". But what is more specifically understood by the word "West" we find out by quoting further Harold Berman:

"… "The West" in this book is a particular historical culture, or civilization, which can be characterized in many different ways, depending on the purposes of the characterization".[5]

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[1] Harold Berman (1983), 657 p., p. 1.

[2] This refers to "Formation of the Western Legal Tradition" and "Formation of the Western Legal Tradition II".

[3] Harold Berman (2007), p. 18.

[4] Harold Berman (1983), 657 p., p. 1.

[5] Ibid., p. 1-2.

Agreeing with different concepts of the "West", Harold Berman adheres to their traditional civilizational understanding, and points out: "… Geographical boundaries help to locate it, but they shift from time to time. The West is, rather, a cultural term, but with a very strong diachronic dimension. It is not, however, simply an idea; it is a community. It implies both a historical structure and a structured history".[1]

"… The term "Western" in the phrase "Western legal tradition", refers to the peoples whose legal tradition stems from these events. In the eleventh and twelfth centuries, these were the peoples of western Europe, from England to Hungary and from Denmark to Sicily; countries such as Russia and Greece, which remained in the Eastern Orthodox church, as well as large parts of Spain, which were Muslim, were excluded at that time. In later times not only were Russia and Greece and all of Spain westernized, but also North and South America and various other parts of the world as well".[2]

"The West" also refers to the historically developing culture of the peoples of Western Europe ... as well as non-European peoples who over time found themselves within the historical development of Western culture, as well as in cases of religious, political, and cultural affinity and interchange.[3]

As we can see, the stated understanding of the "West" covers many countries and is not a geographical feature. This concept has a civilizational and axiological meaning. In different historical eras, the number of countries and the spatial boundaries of the West have changed, but the meaning of this word has not changed. In accordance with the value and civilizational features of the modern typology of law, Western law belongs to an independent type of law.

The Second. The concept of "tradition" refers to the continuity between the past and the future,[4] and the concept of "legal tradition" refers to the system of positive law and legal science.[5]

In the aspect of the modern typology of law, the concept of positive law is also an independent type of law, the distinctive feature of which are the sources of law, principles, methods, form, and content.

The Third. The crises of the legal tradition are considered as turning points in its genesis, which create both dangers and opportunities for law.[6] These turning points, Harold Berman calls legal revolutions.

The uniqueness of Harold Berman's approach also lies in the fact that he was able to recognize and show the significance of the six revolutions of law. From the

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[1] Harold Berman (1983), 657 p., p. 2.

[2] Ibid.

[3] Harold J. Berman, The Western Legal Tradition in a Millennial Perspective: Past and Future, 60 La. L. Rev. (2000), P. 739, Available at: https://digitalcommons.law.lsu.edu/lalrev/vol60/iss3/3 (Further. Harold Berman (2000)).

[4] Ibid.

[5] Ibid.

[6] Ibid.

11th-12th century Gregorian Reformation (1075-1122) to the Russian Revolution (1917), Harold Berman argues that there were six legal revolutions during this period that formed Western law and the Western legal tradition.[1]

In support of this thesis, Harold Berman deciphers each of the six revolutions of law and shows their impact on law. The content of the revolutions demonstrates how each of them transformed the law and maintained the connection between the law within the whole millennium.[2]

Let's take a brief look at Harold Berman's characterization of these revolutions of law.

The First Revolution of Law. The Papal Revolution (Gregorian Reformation of the eleventh and twelfth centuries), based on Christian spirituality, canonical and Roman law, laid the foundations for the emergence of secular law.

The Second Revolution of Law – Luther's Reformation created the independence of law from the church and laid the foundation for positive law.

The Third Revolution of Law. The English Revolution strengthened the autonomy of the law from the state and contributed to the development of the Common Law and the Law of Justice, laid the foundation for constitutionalism.

The Fourth Revolution of Law. The American Revolution – created a normative framework for constitutional law, normatively recognized natural rights, and elevated the status of the Rule of law.

The Fifth Revolution of Law. The French Revolution expanded the content of natural rights, strengthened the concept of the Rule of law, and began the Codification of law.

The Sixth Revolution of Law. The Russian Revolution justified the social class mission of law and strengthened legal positivism. [3]

These are only common features of the revolutions of the Western legal tradition. Further, Harold Berman's research is accompanied by arguments about the continuity of the development of law as a process of its constant complication. Among the striking examples of this reasoning are Harold Berman's metaphors and analogies about the evolution of law.

The first metaphor is the comparison of law with the development of music.

"… From the eleventh and twelfth centuries on, monophonic music, reflected chiefly in the Gregorian chant, was gradually supplanted by polyphonic styles. Two-part, three-part, and eventually four-part music developed. The contrapuntal style exemplified in the thirteenth-century motet evolved into the harmonic style of the fourteenth century "Ars nova", exemplified in the ballade.

Eventually, counterpoint and harmony were combined. The sixteenth century witnessed the development of the great German Protestant chorales, and these, together with Italian and English madrigals and other forms, provided a basis for

[1] Harold Berman (1983), 657 p.

[2] Harold Berman (2006), 544 p.

[3] Harold Berman (1983), 657 p.

opera, which first appeared in Italy at the end of the sixteenth and in the early seventeenth century.

Renaissance music gave way to Baroque, Baroque to Classical, and so on. No good contemporary musician, regardless of how off-beat he may be, can afford not to know this story.

There was a time not long ago when a good lawyer was required, in a similar way, to know the story of the development of legal institutions".[1]

The second metaphor, Harold Berman shows that Western history is like a river whose course has changed repeatedly under the influence of transformational revolutions.[2]

In the third metaphor, the development of law is analogized to the history of Gothic cathedrals that have been rebuilt over the centuries. On this occasion, Harold Berman writes, it is generally accepted that the code of laws contains a built-in mechanism for organic change; and further, that the growth of law, its change in time, have an internal logic, are part of the regularity of changes. Law was thought to evolve by rethinking past rules and decisions to fit the present and the future.[3]

Harold Berman's arguments, studies, and metaphors about the continuity of the genesis of positive law are also confirmed by the research of other scholars.

John M. Kelly, in his book "A Short History of Western Legal Theory", describes the continuity in the development of legal ideas from pre-Roman times to the twentieth century. And, in the plane of law, he connects their evolution with the parallel development of political theory and history.[4]

These and other arguments generate interest in considering the Western legal tradition based on the research of Harold Berman. Among some of the questions that generate such interest is the question: what is the "built-in mechanism for organic changes in the law"?

The answer to this question can apparently be found by understanding the Western legal tradition of Harold Berman as a kind of ontological system with its own logic and syntax of philosophical language.

This method of analysis is proposed by Guido Küng in his book "Ontology and the Logistic Analysis of Language". Considering the ontological nature of phenomena, Guido Küng substantiates the effectiveness of algorithmic language and its logical expression.

Here is what Guido Küng writes, starting his book on the example of the ontology "Tradition".

"… The reason for this misunderstanding and misplaced mutual criticism appears to lie in a peculiar difference in ways of thinking. As will be shown in

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[1] Harold Berman (1983), 657 p., p. 7.

[2] Harold Berman (2007), p. 18.

[3] Harold Berman (2000).

[4] A Short History of Western Legal Theory by John M. Kelly, Oxford University Press, 1985, 488 p.

this book, each side thinks within a different semantical framework. Whereas traditional philosophers distinguish three things: the sign, the objective meaning, and the designatum, most modern logicians make only a two-fold distinction of sign and the reality represented. Those who think in three-level semantics put abstract entities on a special semantical level, viz. as objective meanings, and in consequence they are inclined to overlook that in a two-level semantical system the level of represented reality can include abstract as well as concrete entities: that I the use of a two-level semantical system does not necessarily involve a nominalistic standpoint. Conversely, the users of a two-level semantical system tend to confuse the objective meanings of a three-part system with subjective concepts, and in consequence accuse all holders of such a view of psychologism. However, the distinction between three-level and two-level semantics does not correspond to that between psychologism and anti-psychologism, nor to that between a view accepting abstract entities and a nominalistic view. This is borne out by the fact that both traditional and logistic philosophers attack psychologism and defend similar positions concerning the problem of universals".[1]

Therefore, following the suggestion of Guido Küng, our analysis of Harold Berman's Western legal tradition will use Russell's analysis of connections and facts.

"… Russell found that Leibniz's special interpretation of relations provided the key to understanding his system, and Russell saw the reason for this interpretation in traditional logic, which was limited to statements that had a subjectively predicate structure. … He found it in the logic that had been developed by mathematicians since the middle of the 19th century. As Russell himself reports, his interest in it was aroused in 1900 at the International Congress of Philosophy in Paris, where he became acquainted with the school of G. Peano and was fascinated by the precision of its method: Russell was a mathematician himself but had been disillusioned by the inaccuracy of mathematical arguments. Peano's logic was not restricted to considering the extension of concepts on the subject-predicate model, but was based on monadic and polyadic functions, such as are expressed by "x" is a number', "x" is the successor of "y", and so on. After all, most mathematical sentences deal with relations such as "greater than", "less than", "successor of", and so forth. This was precisely what Russell was looking for. It is therefore not surprising that he was enthusiastic and at once began to elaborate further the theory of polyadic functions, i.e., the logic of relations. (The results of this work are incorporated in The Principles of Mathematics and in Principia Mathematica.)".[2]

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[1] Guido Küng, Ontology and the Logistic Analysis of Language, D. Reidel Publishing Co., 1967, 222 p., p. 12.

[2] Guido Küng (1967), p. 27.

Definition of Law in the Genesis of the Western Legal Tradition

As we can observe, almost all existing studies on the continuity of the development of law correlate with the historical evolution of societies, cultures, states, and civilizations. In each historical time, as well as in different legal culture, society, state, as well as in civilization, each time the concept of "law" acquires a new definition.

That is why, touching on the legal topic, it is important from the very beginning to determine what is meant by the phenomenon of "Law" in the Western legal tradition.

On this occasion, Harold Berman writes that only the first four of the ten major distinguishing features of the Western legal tradition continue to characterize Western law today.

"… 1. Law is still relatively autonomous, in the sense that it remains differentiated from politics and religion as well as from other types of social institutions and other scholarly disciplines.

2. It is still entrusted to the cultivation of professional legal specialists, legislators, judges, lawyers, and legal scholars.

3. Legal training centres still flourish where legal institutions are conceptualized and to a certain extent systematized.

4. Such legal learning still constitutes a meta-law by which the legal institutions and rules are evaluated and explained".[1]

Formulating the concept of "Law", Harold Berman draws attention to the arguments of Karl Marx and Max Weber, "… Law is, as they believed, an instrument of domination, a means of effectuating the will of the lawmaker. But this theory of law, usually identified with the positivist school of jurisprudence, tells only part of the story. Law is also an expression of moral standards as understood by human reason. This view of law, which is associated with natural-law theory, is also partly true.

Finally, law is an outgrowth of custom, a product of the historically rooted values and norms of the community. This third view, identified with the historical school of legal philosophy, can also claim – like each of the other two schools-one-third of the truth".[2]

As we shall see later, Harold Berman takes a pluralistic approach in defining the concept of law.

Modern legal science has many definitions of law, each of which deserves worthy attention. Depending on the spatial, temporal, and thematic location of the point of view on law, the concept of "Law" can be disclosed from

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[1] Harold Berman (1983), 657 p., p. 37.

[2] Ibid., p. 556.

the mechanistic, ontological, anthropological, axiological, hermeneutic, civilizational, formational, ideological, technical, organic, and other aspects.

But the description presented by Harold Berman of the concept of "Law" allows us to fix the content boundaries of this phenomenon in the Western legal tradition.

In defining the concept of "Law", Harold Berman also refers to the definition of Lon L. Fuller "… law as an enterprise for subordinating human behaviour to the management of rules",[1] "… This definition rightly emphasizes the primacy of legal activity over legal rules".[2]

The primacy of activity over rules, in the understanding of legal tradition, testifies that law is not only a normative reflection, but also a normative embodiment of law in real life. As we can see, the researcher focuses on the fact that law is a dynamic category, which in its development stretches in time, spreads in space and in its external and internal action has its own dynamics of functioning.

Harold Berman uses an extended interpretation of the law.

"… Such a broad concept of law is needed in order to compare, within a single framework, the many specific legal systems that have existed in the West during many centuries. It is needed also to explore the interrelationships of these systems with other political, economic, and social institutions, values, and concepts".[3]

Further, Harold Berman interprets the concept of "Law" referring to Lon L. Fuller again.

"… This definition rightly stresses the primacy of legal activity over legal rules. Yet I would go further by adding to the purpose of the enterprise not just the making and applying of rules but also other modes of governance, including the casting of votes, the issuing of orders, the appointment of officials, and the handing down of judgments. Also, the law has purposes other than governance, in the usual sense of that word: it is an enterprise for facilitating voluntary arrangements through the negotiation of transactions, the issuance of documents (for example, credit instruments or documents of title), and the performance of other acts of a legal nature. Law in action consists of people legislating, adjudicating, administering, negotiating, and carrying on other legal activities. It is a living process of allocating rights and duties and thereby resolving conflicts and creating channels of cooperation".[4]

Forming the concept of "Western law", Harold Berman notes the following.

"… The term "legal", like the term Western, has a history. "Law" these days is usually defined as a "body of rules". The rules, in turn, are usually

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[1] Harold Berman (1983), 657 p., p. 4.

[2] Lon L. Fuller, The Morality of Law, 2nd ed. (New Haven, Conn., 1964), p. 106.

[3] Harold Berman (1983), 657 p., p. 5.

[4] Ibid., p. 4-5.

thought to derive from statutes and, where judicial lawmaking is recognized, from court decisions. From this point of view, however, there could be no such thing as "Western law" since there is no Western legislature or court. "…" Such a definition of law is entirely too narrow for any study that embraces the legal systems of all countries of the West in all the various periods of Western history, and which is concerned not only with the law in books but also with law in action. Law in action involves legal institutions and procedures, legal values, and legal concepts and ways of thought, as well as legal rules. It involves what is sometimes called "the legal process", or what in German is called "Rechtsverwirklichung", the "Realizing" of law".[1]

Thus, the law in the Harold Berman's concept of the Western legal tradition can be represented as a set of bijective connections. Namely, the formation of the phenomenon of law occurs on the basis of a set of elements, each of which is associated with elements of another set, and each element of the other set is similarly related to the elements of the first and subsequent sets. This circumstance gives to each element of the phenomenon of law, and the phenomenon itself its own discretion and ability to create structural connections.

Based on this, a hypothesis arises about the discrete structure of the Western legal tradition and the presence of a bijection function between its elements. This dynamic interaction of law in the state of tradition creates a surjective and injective reflection, which, with the help of legal language and its logic, make it possible to recognize the syntax of this dynamic.

Considering the above characteristics of the concept of "law" in the context of the legal tradition, we will try to formulate this phenomenon in the form of an algorithmic model.

Algorithmic model – 1. "Phenomenon "Law" in "Legal tradition"

$$Lw \supseteq (Ls, Lo\text{-}t^{n}) \subseteq LT$$

The $\supseteq$ symbol demonstrates an interaction such as "Superset", $A \supseteq B$ means that each element B is element A.

The $\subseteq$ symbol shows an interaction such as "Subset", $A \subseteq B$ means that each element A is element B.

"Law" is indicated by the symbol – (Lw). Such phenomena as: the "Legal system", which is shown by the symbol (Ls) and the "Legal order", what is shown by the symbol ($Lo\text{-}t^{n}$) – in aggregate and separately is the form and content of the law.

The legal tradition (in the sense of the Great tradition of Law) is indicated by the symbol – (LT). Consequently, the legal system that is shown by the

[1] Harold Berman (1983), 657 p., p. 4.

symbol (Ls) and the Legal order that is shown by the symbol (Lo-t^n) are collectively and individually reflecting of the legal tradition (LT).

Law is a complex discrete dynamical system with many trajectories. The development of modern digital technologies will change the nature of jurisprudence. In this regard, we believe that when studying such phenomena as law, legal system, legal order, legal tradition, one should take into account the achievement of the modern theory of dynamical systems.

The modern theory of dynamical systems consists of many teachings, among its famous representatives are Henri Poincaré,[1] Aleksandr Lyapunov,[2] George David Birkhoff,[3] Stephen Smale,[4] Oleksandr Sharkovsky,[5] Ilya Prigogine[6] and others.

The concept of evolution in the aspect of the phenomenon of "The Time" occupies a central place in the theory of dynamical systems. Therefore, following the advice of Harold Berman on the integrative method of legal theory, we believe that the theory of dynamical systems should contribute to the knowledge of the Western legal tradition as a concept of the action of law in time.

Criticism of Harold Berman's approach

In this section, we will examine whether Harold Berman's hypothesis about the equilibrium of the law that the Western legal tradition creates has previously been criticized.

Harold Berman's research has met with various criticisms, and we know of such criticisms.

In 1984, the year after the publication of Harold Berman's first book "Law and Revolution. The Formation of the Western Legal Tradition" Peter Landau (Professor of Law, The University of Regensburg, West Germany) made the following critiques:

1. "… In Law and Revolution, Harold Berman provides an account of the role of law in the historical development of western Europe during the Middle Ages. The title hints at Berman's central thesis: that the papal revolution in Europe in the eleventh and twelfth centuries set a pattern that recurred in later revolutionary epochs.

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[1] Henri Poincare, Science and Hypothesis, Bloomsbury Publishing, 2017, p. 208.

[2] Collected works of Academician A.M. Lyapunov, Translation Division, Foreign Technology, 1967.

[3] George David Birkhoff, Basic Geometry: Answer Book., American Mathematical Society, 1963, p. 76.

[4] Stephen Smale, The Mathematician Who Broke the Dimension Barrier., Amer Mathematical Society, 2000, p. 306.

[5] Oleksandr Sharkovsky, Briefs in Mathematics, Springer, 2022, p. 117.

[6] Ilya Prigogine, The End of Certainty: Time, Chaos and the New Laws of Nature, Free Press, 1997, p. 240.

Professor Berman sees this revolution, which occurred around the year 1100, as the first in a series of six western revolutions the later ones being the Reformation and the English, American, French, and Russian revolutions. Although Berman does not discuss the similarities of these seemingly very different movements in detail, he advances the view that messianic ideas of justice were driving forces in all".[1]

2. "… As an historical study of medieval legal history from 1100 to 1500, Berman's work is wide ranging, attempting to summarize the developments in canon, roman, feudal, manorial, mercantile, urban, and royal law in nearly all countries of western Europe during that period.

Because Berman is not a specialist in any of these fields, he has relied mainly on secondary sources. Selection in the use of such literature is unavoidable, but Berman's survey has many shortcomings beyond those usually found in this type of work. Berman emphasizes work done in English, and to a much lesser extent German or French, as a basis for his conclusions.

No account is taken of modern Italian or Spanish scholarship. Virtually all of the modern work Berman draws upon is written in English. He takes almost no account of modern German legal history, although important contemporary German scholarship has greatly altered our view of the very questions Berman treats. Thus, there are serious distortions in the picture of European legal history Berman develops".[2]

3. "… Berman's book, however, provides little information about the earlier canon law tradition; the canon law of the 1100's is seen as an almost completely fresh and revolutionary body of legal, texts fulfilling the program of Gregory VII's "Dictatus Papae". This perspective is too one-sided. Berman does not discuss the important older canonical collections that laid the basis for the twelfth-century development. The main link between old and new canon law, Gratian's Decretum is treated as a revolutionary work of legal theory, whereas in fact Gratian relied on elementary distinctions that had been made by Isidore of Seville in late antiquity".[3]

4. "… Roman law and canon law are treated as more or less separate systems. Berman overlooks the important ways in which secular law had been fused with canonical practice from an early date. The whole process of the revival and reception of Roman law will be misunderstood if one conceives of Roman law in the twelfth and thirteenth centuries as an "Ideal law" that had little practical importance".[4]

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[1] Peter Landau, The University of Chicago Law Review, 1984, p. 937. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=4375&context=uclrev (Further. Peter Landau (1984))

[2] Peter Landau (1984).

[3] Ibid.

[4] Ibid.

5. "… Berman uses the historical material to support his legal theory. Although it is difficult to give a summary of Berman's theoretical point of view because the historical narrative often obscures the theoretical argument, as a general matter Berman sees his principal contribution to a social theory of law in his partial opposition to the theories of Karl Marx and Max Weber.

Berman's fundamental difference with Marx's theory lies in his view of law as an independent factor in historical change, even a cause of revolutionary developments.

Berman rejects the view that economic conditions should be taken as the decisive reason for the different role of law in European and non-European societies and denies the analytical value of the Marxist dichotomy between basis and superstructure as well as the Marxist periodization of history that distinguishes between a feudal and a capitalist epoch. He argues that the Middle Ages and the early modern period were neither predominantly feudal nor without strong commercial development, referring to modern research on the commercial revolution in the Middle Ages which he ventures to call an "Industrial revolution".[1]

6. "… Berman criticizes Marx and Weber and rejects a purely ideological or idealistic understanding of the historical development of law. Yet, in the end, it is hard to understand Berman's own theoretical approach".[2]

7. "… Berman's book has the shortcomings of exclusive concentration on the western Middle Ages. It does not give a comprehensive social theory of law. Stressing the objections to Berman's view of legal history and legal theory should not denigrate the major contributions of this work. Berman seems justified in his periodization of legal history".[3]

Also, in 1984, Michael Edward Tigar (Professor of Law, University of Texas School of Law) criticized the findings of the Western Legal Tradition study. Let's consider some remarks:

1. "… This book is excellent legal history, flawed by insufficient attention to the social context in which that history was made. This flaw would be less serious if Professor Berman had, in his final chapter, told us more about why he so enthusiastically embraces the notion that the eleventh and twelfth century Papacy was so important to the development of the legal system under which we now live".[4]

2. "… Berman is right in insisting that studying the common law hardly gives one a proper sense of the rich legal tradition of the civil law, and of

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[1] Peter Landau (1984).

[2] Ibid.

[3] Ibid.

[4] Michael Edward Tigar. HeinOnline – 17 U.C. Davis L. Rev. 1036 1983–1984., P. 1041. https://law.utexas.edu/wp-content/uploads/sites/34/2016/09/7-17UCDavisLRev.pdf (Further. Michael Edward Tigar (1983–1984).

the importance of that tradition to England and the United States. Indeed, he stresses that the common, civil, and even socialist legal systems have a great deal more in common than most people suppose.

He is also right in seeing that nineteenth-century nationalist legal historiography contributed to distorting the understanding of history, and particularly of the multinational character of those rules of contract and property that were central to the legal ideology of the bourgeoisie".[1]

3. "… I think Professor Berman misunderstands the economic history of the period about which he has written and misconceives the nature of capitalist development. Certainly, he misconstrues what Marxists have written about the development of merchant capitalism and the transition to industrial capitalism. The markets created by the merchants and bankers of the eleventh and twelfth centuries were largely local; they began as entry ports for goods from the East, developed further as centres for the exchange of relatively simple manufactures, and were carried on under a variety of sponsors".[2]

4. "… Harold Berman concludes that "in the twentieth century in the Western legal tradition is in a revolutionary crisis greater than any other in its history, one that some believe has brought it virtually to an end". This language echoes the darker portent of the Preface, in which Professor Berman speaks of himself as a kind of "drowning man", before who flashes the entire Western tradition of law and justice, from which he hopes "to find a way out of our present predicament". And then, "Because the age is ending, we are now able to discern its beginnings".

Professor Berman takes up this theme of challenges to the Western legal tradition throughout his first chapter without clearly identifying the sources of danger that he perceives. Then, curiously, he says little if anything else about the matter for the rest of the book".[3]

5. "… But there is enough already here to make some few tentative comments. Professor Berman singles out by name one of his colleagues, Roberto M. Unger, whose work on post-liberal legal thought he finds disturbing because it seems to herald the demise of a "Western tradition of legality which strikes a balance among rule, precedent, policy and equity – all four". If I read him right, Professor Berman reads much of the attack on legal formalism as an attack on legal ideology as such, and fears therefore that legal concepts, torn from their historic and formal context, will come to mean whatever the ruling group wants them to mean.

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[1] Michael Edward Tigar (1983–1984).

[2] Ibid.

[3] Ibid.

Professor Berman states other concerns as well, but this theme of impending demise is both unique to this chapter and written in terms that barely conceal his profound anger and distress".[1]

Ten years after the publication of Harold Berman's first book, in 1993 an article by Richard H. Helmholz (Ruth Wyatt Rosenson Professor of Law, University of Chicago) was published with some criticism of Harold Berman's research. Richard H. Helmholz writes the following.

1. "… Professor Berman's failure to take account of some recent scholarship on the many, many topics touched upon by his book is one. Such criticism may be justified, of course, if major trends in scholarship are omitted or ignored. But the reaction also may result from personal pique, as with complaints that he failed to cite or adequately recognize the contributions of a particular critic. This is all too natural. I may even have felt a twinge or two of it myself. But I do not consider it a valid criticism.

The real issue is whether the book accurately describes the major developments: it passes that test. A second criticism was that Law and Revolution exaggerated.

Some critics suggested that Professor Berman's concentration on the significance of the canon law and the Papal Revolution as the source of the Western legal tradition caused him to downplay other important contributions. For instance, it may have led him to minimize subsequent movements and revolutions in the formation of our constitutional traditions. Similarly, it may have caused him to slight the contribution of the civilians.

While this sort of criticism may be valid, I cannot think it damning".[2]

2. "… Putting so much stress upon the autonomy of the rule of law and upon the dynamic place of religious ideas in law comes close to welcoming it. The integrative jurisprudence used by Professor Berman will seem weak stuff to the Marxist historian. It would not be sensible for a puzzled outsider to the continuing debate about the utility of Marxism for legal historians to pass judgment on this question. I will, however, say that it does seem exceedingly unlikely to me that Professor Berman, an acknowledged expert in Soviet Law, has misunderstood the richness of the Marxist tradition. As a perceptive historian noted, Professor Berman knowingly plants his colours firmly in "the liberal tradition in American legal education".[3]

3. "… Professor Berman's work in legal history has succeeded in two most important goals. The first goal has been to exemplify the vitality of legal history for modern students of the law and to reach out to readers beyond

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[1] Michael Edward Tigar (1983–1984).

[2] R.H. Helmholz, Harold Berman's Accomplishment as a Legal, Historian, University of Chicago Law School Chicago Unbound, HeinOnline – 42 Emory L. J. 496 1993, https://core.ac.uk/download/pdf/234110162.pdf (Further. Dick Helmholz (1993)).

[3] Dick Helmholz (1993).

the confines of professional legal historians within academia. No one can accuse Harold Berman of idle antiquarianism. He is no compiler of medieval laundry lists. “In his hands, the past is connected with the present, although he would be the first to say that one must not look at the past through strictly “presentist” lenses. One of his greatest strengths is his refusal to ask only modern questions of the past.

He does believe, however, that we cannot deal adequately with our present problems unless we take the trouble to understand our past.

The second goal of Law and Revolution has been to state, in an eloquent and forceful way, themes that can (and should) be followed forward with profit. They are themes to be worked out in detail by other legal historians. Although I cannot endorse every single point in the book, there is not the slightest doubt in my mind that overall Professor Berman has hit just the right notes for the subject of comparative legal history. That is, he has emphasized the essential unity of the Western legal tradition, and he has stressed the importance of the canon law within it”.[1]

In 2005, Nicholas Aroney (Senior Lecturer in Law T. C. Beirne School of Law University of Queensland Australia) wrote the following in his publication on Harold Berman’s research.

1. “… Berman’s objective is to tell the story of the Western legal tradition; however, as he is fond of pointing out, tradition is best understood, not as “the dead faith of the living”, but rather as “the living faith of the dead”. A tradition, therefore, is a faith that stretches over generations. Thus, to explain the Western legal tradition it is necessary to explain its motivating faith. To do that fully means that the law and religion thesis must guide the narrative. However, Berman – following Rosenstock-Huessy – treats the law and revolution thesis as primary, thus identifying a succession of national revolutions as the substance and object of his inquiry in Law and Revolution, II”.[2]

2. “… The importance of the nation state in the historical development of the Western legal tradition is undoubtedly clear, but it is to suggest that Berman’s account of the English revolution might have devoted more space to a systematic exposition of Calvinist political theology, ecclesiology, and jurisprudence as a framework for discussing the transformative changes to the English legal system effected during, and as a result of, the English reformation. Berman believes that the Western legal tradition is in crisis and

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[1] Dick Helmholz (1993).

[2] Nicholas Aroney. Law, Revolution and Religion: Harold Berman’s Interpretation of the English Revolution., Journal of Markets & Morality Volume 8, Number 2 (Fall 2005): 355–385. p. 370, https://www.marketsandmorality.com/index.php/mandm/article/viewFile/336/325 (Further. Nicholas Aroney (2005)).

that the first step toward a solution is to recover an understanding of the motivating beliefs that have from time to time inspired that tradition".[1]

Thus, we have considered only some of the opinions of researchers regarding the study of the Western legal tradition. There are many others, each of which deserves due attention.

In his critique, Michael Edward Tigar drew attention to Harold Berman's hypothesis "On the Equilibrium of Law". At the same time, he wrote that, "Western tradition of legality strikes a balance among rule, precedent, policy and equity – all four".

But Harold Berman's hypothesis "On the Equilibrium of Law created by legal tradition" remained without due consideration.

[1] Nicholas Aroney (2005).

THE CONCEPT OF THE WESTERN LEGAL TRADITION

This part of the book examines the ontological nature of the Western legal tradition. Namely, Harold Berman's metaphorical conclusion about legal tradition as a tradition of legality, which creates an equilibrium in positive law.

In order to verify this statement, a review of Harold Berman's arguments about the component composition of the legal tradition, that in their interaction constitute the content of this phenomenon, has been carried out.

At the same time, further an overview of the most significant definitions of the concept of "Legal Tradition" in modern science, which partially confirm the opinion of Harold Berman about the structural content of the phenomenon of Western legal tradition, has been made.

According to the obtained results, a definition of the concept of "Legal Tradition" and "Western Legal Tradition is proposed.

Degree of scientific disclosure of the concept of legal tradition

In modern legal science, it is difficult to find an unambiguous definition of the concept of "Legal tradition". There are many studies of legal traditions, and each presents this phenomenon in its own way. For the most part, legal tradition is considered as a subspecies of cultural tradition, which is very close to the concept of a custom, a ritual, or a rite.

In this regard, it is indeed possible to agree that the legal tradition is one of the types of sociocultural tradition. But still, in the field of law, which is a complex and multi-level system of dialectical, anthropological, synergetic, axiological, and other interdependent meanings, the sociocultural tradition changes its ontological essence and becomes an independent phenomenon in law.

In such a situation, the usual sociocultural definition of the concept of "Tradition" in the field of law does not work. Since it does not explain the dynamics of law, its continuity, and the state of crises. But at the same time, the phenomenon of legal tradition exists, and it is still hidden. Obviously, the cases of

research, of this phenomenon show its doctrinal, academic, and normative (formal) dialectical interconnectedness.

Harold Berman's research does not provide a formal, encyclopaedic, and academic definition of "Legal tradition". Describing many events, sources of law, legal norms in their historical retrospective, Harold Berman shows the key points of the revolutionary genesis of law, which should be deciphered. In its pure theoretical form, the concept of "Legal tradition" is not shown, apparently this is due to the fact that one of the properties of this phenomenon is secrecy. We assume this property of the legal tradition is due to its natural protection in the genesis of law from external interference.

Next, let's consider whether our hypothesis can be confirmed. Is it true that the legal tradition is a hidden phenomenon of law and has any significance in the genesis of law?

Adhering to the classical research approach, first consider the etymology.

As is well known, "Tradition" comes from the Latin word "Trāditiō, Trāducere", which means "… to move through …", "… to transmit …", "… to pass …".[1]

Modern and Classical philosophies develop the etymological concept of "... transmission ..." and "... movement through ...", complementing it with a system of characteristics that are designed to explain certain patterns that are present between the past and present reality of this phenomenon.

Consequently, legal science in the definition of the concept of "Legal tradition" is based on the results of philosophical, sociological, and other studies. Hence, law is one of the peculiar types of sociocultural regulators.

In the twentieth century, the most famous theoretical study of the sociocultural nature of traditions was made by Edward Shils. In his book entitled "Traditions" Edward Shils writes the following.

"… When we speak of tradition, we speak of that which has exemplars or custodians. It is the traditum, that which has been and is being handed down or transmitted. It is something which was created, was performed, or believed in the past, or which is believed to have existed or to have been performed or believed in the past. To be a "Traditum" does not mean that the persons to whom it is made present and who accept it, do so on the grounds of its existence in the past. "Tradita" can become objects of fervent attachment to the quality of pastness which is seen in them; they may be accepted in a manner which takes them for granted as the only reasonable thing to do or believe. The Identity of Transmitted Things.

A particular painting remains the same over the course of its transmission, subject to the processes of deterioration and maintenance of physical substances and the modifications wrought by vandals and illicit improvers; a particular literary or religious text likewise having been definitively established – a very problematic conception remains the same through numerous reprintings. The interpretation

[1] Latin-English Vocabulary II, Hans H. Orberg., Lingva Latina Per Se Illustrate, 1998, 41 p., p. 36.

of the text does not remain the same equally among all the recipients at a given time or among the recipients who succeed each other in time. A rule of conduct explicitly articulated or implied in a pattern of conduct, or a belief about the soul, or a philosophical idea about the common good does not remain identical through its career of transmissions over generations. An artistic style does not remain the same over its transmissions even though each of the paintings or statues in which it has been embodied does remain the same".[1]

"… How long must a pattern go on being transmitted and received for it to be regarded as a tradition in the sense of an enduring entity? This question cannot be answered satisfactorily. Obviously, a belief which is forsaken immediately after its conception and which has no recipients when its inventor or exponent presents or embodies it, is not a tradition. If a belief or practice "catches on" but survives only for a short time, it fails to become a tradition, even though it contains, in nucleus, the patterns of transmission from exponent to recipient which is at the heart of traditionality. It has to last over at least three generations – however long or short these are – to be a tradition.

A way of expressing the duration of a tradition is to speak of it in terms of generations. This is not very precise because generations are themselves of different durations and their boundaries too are vague".[2]

"… Traditionality is compatible with almost any substantive content. All accomplished patterns of the human mind, all patterns of belief or modes of thinking, all achieved patterns of social relationships, all technical practices, and all physical artifacts or natural objects are susceptible to becoming objects in a process of transmission; each is capable of becoming a tradition. "Traditio" was a mode of transferring the ownership of private property in Roman law. Tradition is whatever is persistent or recurrent through transmission, regardless of the substance and institutional setting. It includes orally transmitted beliefs as well as those transmitted in writing. It includes secular as well as sacred beliefs; it includes beliefs which were arrived at by ratiocination and by methodical, theoretically controlled intellectual procedures as well as beliefs which were accepted without intense reflection. It includes beliefs thought to have been divinely revealed as well as interpretations of those beliefs. It includes beliefs formed through experience and beliefs formed by logical deduction".[3]

As seen from Edward Shils' theoretical description, the phenomenon of "Tradition" has a high degree of abstraction and a multidimensional spatial presence. On the one hand, this is a form of subjective worldview, on the other hand, it is a level of objective reality. Also, "Tradition" is a link between the past, present, and future, which contains the experience of previous generations.

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[1] Tradition, Edward Shils, The University of Chicago Press, 1981, p. 334, P. 14. (Further. Edward Shils (1981)).

[2] Edward Shils (1981), p. 15.

[3] Ibid., p. 16.

But what, then, can tradition be conveying in the field of positive law? May be rights, duties, legal responsibilities, legal knowledge, or practice. Obviously, there is no comprehensive answer in each of the options presented. We believe that in the field of law, tradition conveys something else, namely, that which preserves the integrity and stability of the law itself in a temporal perspective.

In this regard, it is important to study the phenomenon of tradition in law in more detail. Namely, how the concept of "legal tradition" is defined in academic law. Let's consider the opinions of well-known experts in this field.

Professor at the University of Kansas School of Law John W. Head in the work "The Great Legal Traditions. Civil law, Common law, and Chinese law in historical and operational perspective", while drawing attention to the importance of rationality in law, writes, "... It is not accurate, nor is it very reasonable, to consider the world as a whole, since any particular legal system is an example of the transition from tradition to rationality. It is necessary that we recognize the importance of tradition as not only a binding force, but also as a basis for the change that legal tradition fosters".[1]

John W. Head referring to the professor of the Law school at Stanford University John Henry Merryman (1969), defines the legal tradition as not a set of legal norms about contracts, but a set of deeply rooted historical facts, nominal attitudes about the role of law in society and the state, about the proper organization and the functioning of the system, as well as how law is created or should be created.[2]

Professor McGill University H. Patrick Glenn, studying the phenomenon of "Tradition in law", noted the following.

"… Tradition perceived as information fields further, important questions as to the nature of the information constitutive of tradition. Is tradition composed only of instructions or rules, such that later action may be guided explicitly by them? Are facts necessarily excluded, since the facts of one era tell us nothing about how to act in the next? It may not be possible, in theory, to decide on the type of information constitutive of tradition. It may depend on the tradition. What are perceived as facts in one tradition may be seen as profoundly symbolic and normative in another. The actors in a given tradition will preserve that which may be of future value, and there may be widely differing views as to what, in a different or later context, may, or should, prove to be of value. This may be the case from tradition to tradition, and it may also be the case within particular traditions".[3]

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[1] Head, John W., Civil law, Common law, and Chinese law in historical and operational perspective / Carolina Academic Press, 1953, 340 p., P. 5. (Further. Head, John W. (1953)).

[2] Head, John W. (1953), p. 5.

[3] H. Patrick Glenn. Legal tradition of the world. Second Edition, Oxford University Press., 2007., p. 401, p. 14. (Further. H. Patrick Glenn (2007)).

"… The pool of information captured by the adherents of a particular tradition thus cannot be entirely controlled by the tradition itself. Different levels of understanding, different means of interpretation of existing sources, different opinions, will all contribute to a variety of statements of current elements of the tradition, in one or other of the means of capture. The variety of information captured will increase as the tradition increases in size, each generation capturing its own understanding of, and adherence to, the tradition. Very large, ancient traditions will thus constitute vast repositories of information. A given tradition emerges as a loose conglomeration of data, organized around a basic theme or themes, and variously described as a bundle, a "toolbox, a language, a playground", a "seedbed", a "ragbag" or a "bran-tub". In the language of modern information theory, a tradition will always include a great deal of noise, not essential for understanding the primary message of the tradition".[1]

Professor at the National University "Odessa Law Academy" Yuriy Oborotov in his study of legal traditions notes the following. "... Traditions in law as a synonym for the absolute, eternal, existing at different times are identical to universals. They manifest themselves in such sources of law as constitutions, codes, precedents, treaties and so on, in legal principles, axioms and presumptions, in legal terminology and, of course, in legal procedure".[2]

The above brief review of studies in the field of legal traditions demonstrates that legal tradition is recognized by legal scholars as a phenomenon of law. At the same time, studies show that legal tradition has a hidden (latent) state, and that legal tradition takes part in the continuity of law by providing the transmission of some legal information.

The search for the concept of legal tradition – the beginning of the analysis

As discussed in the previous subsection, the legal scholars agree that legal tradition is not a rule of conduct, not a source of law, nor a legal custom. Research shows that legal tradition is something more fundamental in its content and something that is present in the deep principles of law. According to the considered definitions, legal tradition does not have clear theoretical boundaries, but this does not mean that this phenomenon does not have its own form and content.

The absence of a theoretical framework does not allow the use of any one of the existing definitions of the legal tradition as a methodological approach to the analysis of the continuity of law. We think that the above-mentioned situation is

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[1] H. Patrick Glenn (2007), p. 15.

[2] Оборотов Ю. Н. Традиции и новации в правовом развитии: Монография / Ю.Н. Оборотов. – Одесса: Юрид. литература, 2001, С. 62.

explained by the ability of legal tradition to be in a state of concealment, which makes difficult to study it.

Here is what Harold Berman writes about this, "… Tradition is more than historical continuity. A tradition is a blend of conscious and unconscious elements. In Octavio Paz's words, "It is a society's visible side institutions, monuments, works, things, but it is especially its submerged, invisible side: beliefs, desires, fears, repressions, dreams".[1]

Harold Berman draws attention to conscious and unconscious elements in the content of legal tradition. At the same time, he demonstrates the presence of legal tradition in the physical material objects of culture and in the internal state of human consciousness and subconsciousness. All these arguments seem to point to the omnipresence of tradition in law.

But as known, the phenomenon of "omnipresence" is more inherent in religious doctrines. But if we assume that in its being all positive law reflects some tradition, then tradition reflects past law. Consequently, tradition in the context of a certain legal subject contains a figurative meaning of this law.

This circumstance compels us to turn to hermeneutics. After all, very often a figurative meaning is found in legal mythology. In this case, a distinction should be made between the legal myth and legal reality, since the legal tradition is a part of the past reality that could be renewed in the future. This implies the conclusion that in a particular fragment of legal reality, tradition can be represented as an allegory.[2]

Solving this problem, we conclude that the answer about it's hidden nature is that legal traditions in their manifestation can be revealed as legal allegories. Hence, the wording "Western legal tradition" is a legal allegory that hides many historical types of law, legal systems, and legal orders of Western civilization. Consequently, law, legal systems and legal orders in their content have other interdependent categories and phenomena, which in a certain context reflect the meaning of legal allegory.

Thus, calling a certain phenomenon of law a legal tradition, we should take into account that the name of the tradition is a legal allegory. Consequently, each name of the legal tradition will hide in its content some specific meaning. But before understanding this meaning, it is first necessary to reveal its internal structure. Having found the internal structure of the legal tradition, we will have

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[1] Harold Berman (1983), 657 p., p. 558.

[2] Allegory (from the Greek ἀλληγορία) "Allegory" is an ancient scientific method of storytelling and abstract representation. According to the Oxford, Cambridge and Collins Dictionaries, an "allegory" is a story, play, painting, and so on, in which each character or event is a symbol representing an idea or quality, such as truth, evil, death, and so on; used in phrases such as political allegory, poetic allegory, and so on. Allegory. Oxford Learner's Dictionaries. https://www.oxfordlearnersdictionaries.com/definition/english/allegory?q=Allegory

Allegory. Cambridge English Dictionary. https://dictionary.cambridge.org/dictionary/english/allegory?q=Allegory

Allegory. Collins. https://www.collinsdictionary.com/dictionary/english/allegory).

methodological and substantive foundations for the theoretical construction of this phenomenon.

But for the theoretical construction of the phenomenon of "Legal tradition" we need an empirical base that considers the genesis of law as a single process for more than one century. Consequently, Harold Berman's research meets these requirements.

The Competitive State of the Internal Legal Environment of the Western Legal Tradition

Let's take a closer look at Harold Berman's direct arguments regarding the existence of competition and confrontations in the internal environment of the law of the Western legal tradition.

Harold Berman argues.

"… Western tradition of legality which strikes a balance among rule, precedent, policy, and equity all four …".[1]

We believe that this Harold Berman's standpoint is an important basis for further analysis.

From this conclusion, we understand that the internal environment of the law is dynamic and competitive. The stability of the internal legal environment, Harold Berman compares with balance. But if we proceed from the opinion that the Western legal tradition balances the law, then it can be assumed that there may be a state in law that will be equal to this balancing function. Then this state can be called the state of equilibrium of law. After all, if there is an equilibrium in law, then there must be an opposite state – disequilibrium. Next, we find confirmation of this hypothesis, here is what Harold Berman writes about this.

"… The attack on any one of these four factors tends to diminish the others. In the name of antiformalism, "public policy" has come dangerously close to meaning the will of those who are currently in control: "social justice" and "substantive rationality" have become identified with pragmatism; "fairness" has lost its historical and philosophical roots and is blown about by every wind of fashionable doctrine".[2]

The above characteristic has the features of a metaphorical model. If we exclude from this metaphor the figurative expression of Harold Berman about the dialectical interaction of the transcendental and the immanent, we find the syntax's dynamics that the legal tradition in law is capable of creating .

The presence of the phenomenon of syntax's dynamics in law is evidenced by the fact of structuring legal meanings with the help of the language of law. And here's what Harold Berman writes about this.

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[1] Harold Berman (1983), 657 p., p. 41.

[2] Ibid., p. 41.

"… The language of law is viewed not only as necessarily complex, ambiguous, and rhetorical (which it is) but also wholly contingent, contemporary, and arbitrary (which it is not). These are harbingers not only of a "postliberal" age but also of a "post Western" age".[1]

Returning to the analysis of the phenomenon of syntax's dynamics of law, attention is drawn to the fact that the components of dialectical interaction listed by Harold Berman, such as: Rules, Precedent, Politics of Society, Justice, Antiformalism, Rationality, Pragmatism, Doctrine are phenomena with different nature, origin and with different functions in law.

But if we are based on Harold Berman's statement about the state of equilibrium in law that the Western legal tradition creates, therefore, each of the above components performs its syntax function in the dynamics of law.

Let's try to consider the possible differences in the nature of these components.

Harold Berman, like Max Weber, use the "Rationalism of Law" as a criterion for classifying the ideal types of evolution of law. According to this criterion, Harold Berman agrees with Max Weber that the ideal types of law have the following classes: charismatic, traditional, formal-rational, and value-rational.[2]

Thus, applying the Max Weber's theory as the theoretical basis for the research of the Western legal tradition, with this action Harold Berman confirms the fact that rationality, charisma, and so on, had the force to determine the ideal type of law.

Here's a quote from Harold Berman, "… If one applies Weber's classification of ideal types of law to the actual legal systems of the West as they emerged in the late eleventh and early twelfth centuries one is struck by the fact that in each of those legal systems all four of his ideal types were combined".[3]

From these considerations it follows that rationality has force in law, since from the degree of its influence in law, Max Weber creates his classification of ideal types of law. In Max Weber's classification, we find that on a level with rationality, justice, pragmatism, and formalism mentioned by Harold Berman also have their impact on law. This pattern gives grounds to assume that rationality, pragmatism, justice, and formalism are social forces in law, from the degree of their presence, different types of law can be distinguished.

In Harold Berman's research, we find that the Western legal tradition had other types of social forces as well. Here is what Harold Berman writes about this.

"… The struggle and tension between rational, scientific, and formalist attitudes, on the one hand, and mystical, poetic, and charismatic attitudes, on the other, help to explain why it took three generations for the new jurisprudence to establish itself and centuries more for it to run its course, and why ultimately it was in turn challenged by subsequent revolutions".[4]

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[1] Harold Berman (1983), 657 p., p. 41.

[2] Harold Berman (1983), 657 p., p. 548.

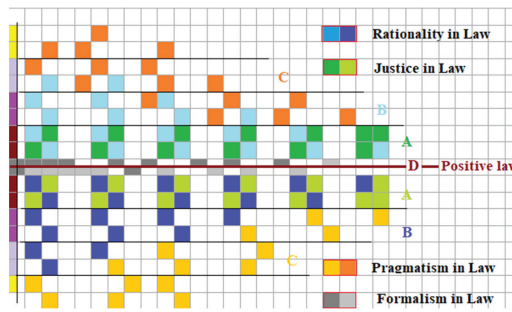
[3] Harold Berman (1983), 657 p., p. 550-551.

[4] Harold Berman (1983), 657 p., p. 196.

As we can observe, these social forces have a different and anti-secrecy nature. But if we consider law in the context of the logic of unite language, we can see that rationalism, justice, formalism, and pragmatism have their own levels and arguments in the structuring of law. From this it follows that the structural arrangement of the arguments of each social force in law is the first level of the equilibrium of law. The first level means that this equilibrium is independently reflected in the Rule, Precedent and Politics of the society, and so on. In more detail it will be discussed in the following subsections of the book.

But if we are talking about a legal tradition, it means that we are considering a phenomenon that reflects the past form of structured law. In this regard, it is more accurate to use the concept of structured legal experience. Arguments in this regard will be provided below.

Using the nominal model as an example, we will consider the probable levels and arguments of social forces in the logic of the language that can structure the law.



Graphic model – 1.1. "The four nominal levels of logic in the content of the Structured legal experience"

The Graphic model – 1.1. shows the four nominal levels of logic that are present in structured legal experience. Each level of logic corresponds to its kind of social force in law and has its opposite.

The letter "A" shows the type of legal language at the level of categories "honest" and "dishonest" (Proportional and Disproportionate), (Justice of law (Social Forces)).

The letter "B" shows the type of legal language at the level of the categories "True" and "Not true" (Reliable and Unreliable), (Rationality of law (Social Forces)).

The letter "C" shows the type of legal language at the level of the categories "Effective" and "Ineffective" (Practical and impractical), (Pragmatism of Law (Social Forces)).

The letter "D" shows the type of legal language at the level of the categories "Grounds" and "Unfounded" (written, material and oral, not material), (Formalism of law (Social Forces)).

Based on the foregoing, we believe that the interaction of these levels of legal language creates knowledge and legal experience, which subsequently gives rise to faith in law, and creates its equilibrium and effectiveness.

Consequently, there is no limit to the number of syllogisms and inferences that can create an equilibrium in law. Hence, the dominance of one or another social force in law depends both on the degree of development of previous legal experience and on the crisis of values for the protection of which this law exists.

As we see from the research of Harold Berman, all these phenomena in the state of legal tradition are structurally interconnected in the creation of a certain type of legal order. Therefore, the "Rules", "Precedent" and "Politics of Society", as well as the system of their equilibrium, are nominally called the structural components of the Western legal tradition.

Social forces, "Rationalism of Law", "Justice of Law", "Formalism of Law" and "Pragmatism of Law" will be called the value components of the Western legal tradition.

This distinction is also based on the following reasoning.

The structural components of the legal tradition are more static than its value components. But the structural components of the legal tradition are constantly looking for equilibrium in values. Receiving this equilibrium, the legal order is formed on the basis of the structural components of the legal tradition.

As a result, the legal tradition transmits a model of this equilibrium in the form of structural components from one law and legal order (The Type of law) to another. Thus, the legal order derives its foundations on the structural components of the legal tradition and reflects its equilibrium of values.

Consequently, we believe that the foregoing proves that each historical type of law corresponds to its own equilibrium of legal tradition. At the same time, the legal tradition in each historical type of law has its own social forces that need such an equilibrium.

But before proceeding to the consideration of the concept of "Equilibrium in law", let us consider in a little more detail the value and structural composition of the Western legal tradition.

Values Components of the Western Legal Tradition

Justice in law.

"Justice in law" as a social force in law we denote with the symbol – J^n.

Let's consider at some of Harold Berman's arguments about "Justice in law". From these arguments, we will see that justice, being a moral, ethical, and philosophical category, is present in law as a social force and as a value of law. From these arguments we will also see that "Justice in law" is a dynamic category in law. In different periods of time, justice changed and improved in law, and itself improved law.

The first group of arguments. "… the Digest must have demonstrated beyond a doubt to the Roman lawyers of Justinian's time the validity of the famous rule of Javolenus, also contained in Title 50.17, "All rules (definitions) in civil law are dangerous, for they are almost always capable of being distorted".[1]

The second group of arguments. "… The twelfth century jurists of western Europe, on the contrary, used the Aristotelian dialectic for the purpose of demonstrating what is true and what is just. … In contrast to the earlier Roman jurists and the earlier Greek philosophers, they supposed that they could prove by reason the universal truth and universal justice of authoritative legal texts".[2]

The third group of arguments. "… The written collections of laws which kings occasionally promulgated, setting forth customs that needed to be better known or more firmly established, were not legislation in the modern sense but were rather exhortations to keep the peace and do justice and desist from crime".[3]

The fourth group of arguments. "… Western universities raised the analysis of law to the level of a science, as that word was understood in the twelfth to fifteenth centuries, by conceptualizing legal institutions and systematizing law as an integrated body of knowledge, so that the validity of legal rules could be demonstrated by their consistency with the system as a whole".[4]

The fifth group of arguments. "… The main justification given by Anselm and by his successors in Western theology was the concept of justice itself. Justice required that every sin (crime) be paid for by temporal suffering; that the suffering, the penalty, be appropriate to the sinful act; and that it vindicate ("avenge") the particular law that was violated".[5]

The sixth group of arguments. "… The Western law of crimes emerged from a belief that justice in and of itself, justice an "sich", requires that a violation of a law be paid for by a penalty, and that the penalty should be appropriate to the violation. The system of various prices to be paid for various violations which exists in all societies was thought to justify itself; it was justice it was the very justice of God. This idea was reflected not only in criminal law but in all branches of the new canon law from the twelfth century on, and it was reflected more and more in the various branches of the new secular legal systems that began to develop contemporaneously. Contracts, it was said, must be kept, and if they were not, a price must be paid for their breach. Torts must be remedied by damages equivalent to the injury. Property rights must be restored by those who had violated them. These and similar principles became so deeply embedded in the consciousness indeed, in the sacred values of Western society that it

[1] Harold Berman (1983), 657 p., p. 138.

[2] Ibid., p. 140.

[3] Ibid., p. 68.

[4] Ibid., p. 162.

[5] Ibid., p. 183.

became hard to imagine a legal order founded on different kinds of principles and values".[1]

The seventh group of arguments. "… The realization of justice has been proclaimed as a messianic ideal of the law itself, originally associated (in the Papal Revolution) with the Last Judgment and the Kingdom of God, then (in the German Revolution) with the Christian conscience, later (in the English Revolution) with public spirit, fairness, and the traditions of the past, still later (in the French and American Revolutions) with public opinion, reason, and the rights of man, and most recently (in the Russian Revolution) with collectivism, planned economy, and social equality. It was the messianic ideal of justice, above all, that found expression in the great revolution".[2]

These Harold Berman's arguments are empirical examples that justice is a social force in law. As we think, the existential role of justice in law is the reproduction of the proportional correspondence between the due and the necessary, the subjective and the objective, the true and the false, namely the ratio of rights and obligations, crime and punishment, equality, and inequality, and so on. Thus, justice forms the natural legitimacy of law.

Rationality in law.

"*Rationality in law*" as a social force in law we denote with the symbol – R^n.

Let's consider some of Harold Berman's arguments about "Rationality in law". From these arguments we will see that rationality, being a logic, a philosophy, an intellect category, is present in law as a social force and as a value of law. From these arguments we will also see that "Rationality in law" is a dynamic category in law. In different periods of time, rationality was changed and improved in law, and itself improved law.

The first group of arguments. "… It was only when the church shifted its emphasis to a transcendent God, who inspires man to imitate him, that ordeals, oath helpers, duels, and trial by champions gave way to a "rational" procedure for finding truth by questioning witnesses".[3]

The second group of arguments. "… the increased reliance on written proofs, on formal rules of measuring evidence, and on confessions in criminal cases all reflected a decline in respect for oaths, which itself, paradoxically, may have reflected the increased emphasis upon rationality in the law".[4]

The third group of arguments. "… Henry II revolutionized the system of law in England primarily by imposing royal jurisdiction, and royal law, upon criminal and civil matters that had previously been under local and feudal jurisdiction and local and feudal law. He succeeded in this endeavour not only by creating a royal judiciary that operated under the control of a royal chancery but also by

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[1] Harold Berman (1983), 657 p., p. 194.

[2] Ibid., p. 21-22.

[3] Ibid., p. 64.

[4] Ibid., p. 253.

providing a more rational type of law and by enlisting community participation in administering it".[1]

The fourth group of arguments. "… Nevertheless, said Weber, the law of England, the leading capitalist country of Europe in the nineteenth century, was not characterized by formal rationality but was instead an example partly of the "traditional" type of law (resting on an established belief in the sanctity of immemorial traditions) and partly of the "charismatic" type (resting on the exemplary character of individual persons, especially judges). Thus, it seems that the distinction among the three ideal types of law, formally rational, traditional, and charismatic, is intended, on the one hand, to clarify essential features of actual legal systems".[2]

The fifth group of arguments. "… Most communities of more than face-to-face size can hardly survive for long, much less interact with one another, without elaborate systems of rules, whether customary or enacted. To say this is not to deny that in the late nineteenth and early twentieth centuries, in many countries of the West, there was an excessive concern with logical consistency in the law, which still exists in some quarters; the reaction against it, however, loses its justification when it becomes an attack on rules per se, and on the Western tradition of legality which strikes a balance among rule, precedent, policy, and equity all four".[3]

The sixth group of arguments. "… The more modern, more rational, more systematized procedure of the canon law of the twelfth century offered a striking contrast to the more primitive, formalistic, and plastic legal institutions that had prevailed in Germanic judicial proceedings in the earlier centuries".[4]

These Harold Berman's arguments are also empirical examples that rationality is a social force in law. As we think, the existential role of Rationality in law is the use of academic knowledge by law. The search for truth is focused on logical and evidential grounds.

Consequently, the formation and realization of law is the result of rational reasoning between the abstract and the real. Based on rationality, law is a multi-layered reflection of actual reality. In law, we can observe the following levels: the level of facts, the level of legal fictions, the level of ideas, the level of definitions, the level of norms, the level of evidence, and so on. Thus, rationalism forms an intellectually grounded legality of law.

Formalism in law.

"Formalism in law" as a social force of law we denote with the symbol – F^n.

Let's consider some of Harold Berman's arguments about "Formalism in law". From these arguments we will see that formalism forms its own reality in law, and

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[1] Harold Berman (1983), 657 p., p. 445-446.

[2] Ibid., p. 548.

[3] Ibid., p. 41.

[4] Ibid., p. 251.

it is a dynamic category of law. In different periods of time, formalism changed and improved in law, and law improved in formalism.

The first group of arguments. "… And this is widely believed to be an accurate description, both by those who are against formalism and by those who are for it. Weber thought it explained the utility of law for the development of capitalism. Such a concept of law is a formidable obstacle to an understanding of the story of the Western legal tradition, which originated in what is usually thought to be the era of feudalism, and which stemmed from the separation of the church from the secular order. The fact that the new system of canon law, created in the late eleventh and twelfth centuries, constituted the first modern Western legal system has been generally overlooked, perhaps just because it does not fit in with the prevailing theories of the nature of law".[1]

The second group of arguments. "… Contempt for law and cynicism about law have been stimulated by the contemporary revolt against what is sometimes called legal formalism, which emphasizes the uniform application of general rules as the central element in legal reasoning and in the idea of justice. According to Roberto M. Unger, with the development of the welfare state, on the one hand, and of the corporate state, on the other, formalism is yielding to an emphasis on public policy both in legal reasoning and in the idea of justice".[2]

The third group of arguments. "… Policy oriented legal reasoning, Unger writes, is characterized by emphasis upon broad standards of fairness and of social responsibility. He connects this shift in "postliberal" Western legal thought with a change in beliefs concerning language. "Language is no longer credited with the fixity of categories and the transparent representation of the world that would make formalism plausible in legal reasoning or in ideas about justice".[3]

The fourth group of arguments. "… formal rationality" or "logical formalism" in the Weberian sense. Yet it gave a basis for integration of the various legal systems into developing "bodies" of law not merely of rules but also of principles and standards as well as procedures and decisions".[4]

"… More generally, Weber's classification of all legal systems into three broad types –Rational, Traditional, and Charismatics suggestive from a philosophical standpoint, but misleading from a historical and sociological standpoint, since Western legal systems, and the Western legal tradition, combine all three types. It may be that such a combination is necessary for an effective integration of law into an organic unity a "body" of law that is conceived to have the capacity for continuous growth".[5]

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[1] Harold Berman (1983), 657 p., p. 11.

[2] Ibid., p. 40.

[3] Ibid., p. 40.

[4] Ibid., p. 562.

[5] Ibid., p. 562.

These Harold Berman's arguments are also empirical examples that formalism is a social force in law. As we think, the existential role of the "Formalism in law" is to create the internal structure and outer shell of law.

Consequently, formalism creates material and procedural forms of law. And through normativism, codification, incorporation, the law receives its fixation and official status. Hence, a person, a property, and other legal categories receive their legal status and legal relationship procedures. Thus, formalism forms the writing, the normative and the procedural legality of law.

Pragmatism in law.

Pragmatism in law as a social force of law we denote with the symbol – P^n.

Let's consider some of Harold Berman's arguments about "Pragmatism in law". From these arguments we will see that pragmatism creates autonomy of law. From these arguments we will also see that "Pragmatism in law" is a dynamic category in law. In different periods of time, pragmatism changed and improved in law, and law improved in pragmatism.

The first group of arguments. "… The third crisis is the crisis of the concept of tradition, especially the tradition of law. The West is losing, or perhaps has already lost, its faith in the fact that its law develops constantly, organically, consistently, through past generations into the future. On the contrary, law is becoming more and more pragmatic and political. No one thinks anymore that the roots of the law are in the moral order of the universe. Moreover, the apocalyptic dream of the West about the salvation of the world through the progress of law, generated by Christian concepts of purgatory and the Last Judgment, a dream that, over the centuries of its existence, gradually assumed a worldly character and at its highest point produced the communist ideal of perfect justice in a classless society – this dream is no longer working".[1]

The second group of arguments. "… Yet it is a feudalism lacking the essential concept of a hierarchy of the sources of law by which a plurality of jurisdictions may be accommodated, and conflicting legal rules may be harmonized. In the absence of new theories that would give order and consistency to the legal structure, a primitive pragmatism is invoked to justify individual rules and decisions".[2]

The third group of arguments. "… Law students in Europe today, who study Roman law as it has been systematized by university professors in the West since the twelfth century, find it hard to believe that the original texts were so intensely casuistic and untheoretical. They are taught to show that implicit in the myriad of narrow rules and undefined general terms was a complex system of abstract concepts. It is this very conceptualism of Roman law that is held up by way of

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[1] Берман Гарольд Джордж, Западная традиция права: эпоха формирования / Пер. с англ. – 2-е изд. – М.: Изд-во МГУ: Издательская группа Инфра-Норма, 1998. – 624 с. С. 13. (Further. Берман Гарольд Джордж (1998)).

[2] Harold Berman (1983), 657 p., p. 38.

contrast to the alleged particularism and pragmatism of English and American law. But that is to view the Roman law of Justinian through the eyes of later European jurists".[1]

These arguments of Harold Berman are also empirical examples that pragmatism is a social force in law. As we think, the existential role of the "Pragmatism in law" is the formation of a system of dependencies of law on the hierarchy of values. In this regard, the law acquires not only an axiological meaning, but also an instrumental one. Hence, each act of law is accompanied by an assessment of its effectiveness and the usefulness of the law. Thus, pragmatism forms the effective legality of law.

Forming conclusions about justice, rationalism, formalism, and pragmatism in law, we consider the volume and doubtfulness of these topics. And also, that these social forces of law may have other definitions.

Structural Components of the Western Legal Tradition

The presenting of Harold Berman's earlier arguments explicitly indicate that the structural components of the Western legal tradition are: "Rules", "Precedent" and "Policy Society".[2] But other arguments of Harold Berman show that legal tradition also contains legal culture as the basis for legal traditions.

Let's consider these Harold Berman's other arguments about legal culture and the arguments of other researchers that point to the structural relationship of legal culture with the Western legal tradition, as well as the role of legal culture in the Equilibrium in law.

"Legal culture".

"*Legal culture*" as a civilizational phenomenon of law we denote with the symbol – Lc^n.

Harold Berman begins his study of the Western legal tradition with a question about culture. This is how he writes about it. "… What is called "the West" in this book is a particular historical culture, or civilization, which can be characterized in many different ways, depending on the purposes of the characterization".[3].

One of my goals, writes Harold Berman: "… It is to uncover the meanings of those words in a narrative context, that is, in their time dimension. From that standpoint, to attempt to define them in advance would be self-defeating. As Friedrich Nietzsche once said, nothing that has a history can be defined. Nevertheless, an author of nonfiction has an obligation to disclose at the outset some of his prejudices. At the same time, it may be useful to attempt, in a

[1] Harold Berman (1983), 657 p., p. 129.

[2] Ibid., p. 41.

[3] Ibid., p. 1.

preliminary way, to dispel some of the misunderstandings as I see them of those who may prejudge the story to be unacceptable".[1]

Before analysing these arguments, let's pay attention to the following. As written earlier, our goal, based on Harold Berman's approach to reveal the theoretical structure of the Western legal tradition as a phenomenon of law. Further, using this construction, we will try to interpret the modern development of law in the context of the Western legal tradition. Therefore, the context of our interpretation includes three components.

The First and major component is the legal nature of consideration. Namely, the consideration of phenomena, events, states, evidence in the aspect of the modern Integrative theory of law. Here we mean that the subject of research and all its elements are analysed considering the formal and dialectical logic, ontological, anthropological, formational, synergetic, and axiological methodological approaches.

The Second component of interpretation is the civilizational nature of the consideration, which focuses mainly on Western culture.

The Third component of our context of interpretation is the construction of legal tradition.

In anthropological theory there is not what could be called close agreement on the definition of the concept of culture. But for present purposes three prominent keynotes of the discussion may be picked out: first, that culture is transmitted, it constitutes a heritage or a social tradition; secondly, that it is learned, it is not a manifestation, in particular content, of man's genetic constitution; and third, that it is shared. Culture, that is, is on the one hand the product of, on the other hand a determinant of, systems of human social interaction.[2]

Exploring European legal culture, Professor Kai Purnhagen writes, European law ... requires us an active role in "the formation of the internal market...". In doing so, we must take into account Europe's rich cultural diversity. ... legal norms are shaped by culture to the same extent as culture is shaped by legal norms. This gives us a strong incentive to engage in the dialectics of both law and culture.[3]

Indeed, there is every reason to agree that the dialectic of law and the dialectic of culture, in the presence of many contradictions, are closely interconnected.

The idea of a logical sequence in the development of culture belongs to Friedrich Hegel. The peculiarity of this idea is that the contradictions of culture are removed in the harmonious unity of its development. We draw such a conclusion

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[1] Harold Berman (1983), 657 p., p. 1.

[2] Talcott Parsons, The social system., Routledge 1991., p. 404. P. 9 (Talcott Parsons (1991)).

[3] Towards a European Legal Culture. Edited by Genevie Helleringer and Kai Purnhagen (ads) C.H. Beck Hart Nomos., Baden-Baden., 2014, 395 p., p. 10-13. (Further. Kai Purnhagen, (2014)).

based on Friedrich Hegel's reasoning about the forms of concrete historical manifestations of the progressive development of the absolute spirit.[1]

Friedrich Nietzsche is considered as one of the first critics of Friedrich Hegel's dialectics of culture.[2] We think that this circumstance explains why Harold Berman quotes Friedrich Nietzsche for reasoning about the inability to disclose the terms associated with culture, tradition, and law.

But these considerations allow us to recognize legal culture as a civilizational phenomenon in the context of the evolution of law and legal tradition. Since, in his works, Harold Berman repeatedly draws attention to the phenomenon of "faith". Here are some of his arguments.

"… Rosenstock-Huessy has shown how the belief in an end time, the end of the world, has influenced the great revolutions of Western history. Each of those revolutions translated the experience of death and regeneration into a different concept of the nation and of the church".[3]

"… More specifically, the belief in the capacity of man to regenerate the world, and the necessity for him to do so in order to fulfil his ultimate destiny, provided a basis both for a conscious attack upon the existing order and for the conscious establishment of a new order".[4]

"… The revolutionary belief in the end of time, the final millennium, helps to account not only for the overthrow of the old law but also for the embodiment of the revolution in a new system of law".[5]

"… Taking this historical perspective, a social theory of law would be concerned with the extent to which the Western legal tradition has always been dependent, even in the heyday of the national state, on belief in the existence of a body of law beyond the law of the highest political authority, once called divine law, then natural law, and recently human rights; and the extent to which this belief, in turn, has always been dependent on the vitality of autonomous legal systems".[6]

"… The belief in the moral equality of all the participants in legal proceedings provided a foundation for a scientific investigation of the state of mind of the accused. In the tract Concerning True and False Penance, the author developed the remarkable theory that a judge who examines a person should put himself in that person's position in order to discern what he knows and to elicit from him, by subtle questioning, that which he may wish to conceal even from himself".[7]

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[1] Phenomenology of Spirit by G. W. F. Hegel, Oxford University Press, 1976, 640 p.

[2] The Birth of Tragedy: Out of the Spirit of Music by Michael Tanner, Friedrich Nietzsche, Penguin Classics, 1993, 160

[3] Harold Berman (1983), 657 p., p. 27.

[4] Ibid., p. 28.

[5] Ibid., p. 28.

[6] Ibid., p. 45.

[7] Ibid., p. 184.

"… The belief in a God of justice who operates a lawful universe, punishing and rewarding according to principles of proportion, mercifully mitigated in exceptional cases, corresponded to the belief in a complex social unity, Christendom, in which the dialectic of interacting realms and polities was regulated by a similar kind of justice based on law and law based on justice, with mercy playing an exceptional role. Moreover, behind the complex dialectical unity in space stood a historical dialectic in time a revolutionary break between ancient and modern and an evolutionary development of the modern. As each man moved through this life into purgatory, and through purgatory to the Last Judgment, reaping the rewards and punishments of his choices between good and evil, so the various communities in which he lived moved through time toward the fulfilment of their respective destinies. And their movement, too, was responsive to law. This, indeed, was the fundamental concept of the Western legal tradition to which the theological metaphors and analogies gave birth the concept of a society that has the power to transform itself in time by the rapid and continuous infusion of divine and natural law into ecclesiastical and secular legal institutions".[1]

The above arguments by Harold Berman demonstrate that the Western legal tradition is also a tradition of the faith in law. Because, as we see from Harold Berman's final quote: "… Moreover, behind the complex dialectical unity in space stood a historical dialectic in time …". "… the dialectic of interacting realms and polities was regulated by a similar kind of justice based-on-law and law based-on justice".[2]

Considering the world legal traditions, H. Patrick Glenn builds his research taking into account such components of legal culture as language, legal style, religion, ethics and mentality.[3]

In this regard, J. C. Smith writes, any attempt to analyse non-Western legal systems in terms of the categories of modern Western law can lead to distortions associated with linguistic differences. Western legal culture is united in its systematic reliance on legal constructions. Such constructs include corporations, contracts, estates, rights, and powers. Not only do these concepts not exist in primitive or traditional legal systems, but they may also be predominantly incapable of being expressed in the language systems that form the basis of such legal cultures.[4]

Legal culture is a complex phenomenon and the creation of a normative or academic definition of it is an unnatural task. The phenomenon of legal culture creates a juridical language, symbols, values, ideals, ethics and legal

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[1] Harold Berman (1983), 657 p., p. 196.

[2] Ibid., p. 196.

[3] H. Patrick Glenn (2007).

[4] J.C. Smith, The Unique Nature of the Concepts of Western Law, 1968, 46-2 Canadian Bar Review 191, https://cbr.cba.org/index.php/cbr/article/view/2662

mentality. Also, the phenomenon of legal culture creates legal experience and legal memory about the forms of past conflicts and forms of peace is more significant, As well as legal experience and legal knowledge about the norms of creation, preservation, redistribution, and consumption of material goods, legal experience and legal feelings about the forms of creation and forms of destruction, stereotypes of forms of social behaviour, collectivism, individualism, dependence, and autonomy. Therefore, legal culture is ideology, doctrine, technology, science, practice, and faiths.

There are many approaches to the definition of the concept of "legal culture". But as the above analysis in the structure of the Western legal tradition shows, legal culture forms the uniqueness, individuality, and emotionality of the law, provides access of the legal tradition to all its other components.

In this regard, legal culture is also the mental environment of law. It is inherent not only in civilization, but also in every individual, society and so on. It is also a form of worldview and social activity, which was formed in line with the process of adaptation of a person, a people to the legal environment.

Legal culture performs the vital functions of self-identification, self-affirmation and self-survival for a person, society, people, state, and law. Legal culture is the existential basis of law because it preserves, modifies, and disseminates legal values and legal ideals. Legal culture forms and preserves legal experience, therefore, it is also the bearer of legal traditions.

Legal culture is the source of the natural equilibrium of law. Therefore, such social forces as: rationalism and irrationalism of law, justice and injustice of law, formalism and bureaucracy of law, pragmatism and fatalism of law are its values or anti-values.

As David Nelken writes, "… The sort of investigations in which the idea of legal culture finds its place are those which set out to explore empirical variation in the way law is conceived and lived rather than to establish universal truths about the nature of law, to map the existence of different concepts of law rather than establish the concept of law. …".[1]

The above analysis was intended to demonstrate a fragment of the non-material dialectical connection of legal culture with the Western legal tradition.

Now we will turn our attention to another connection of legal culture with legal tradition, and for this, we need to return to the above quote by Kai Purnhagen.

Kai Purnhagen examines the dialectical connection between society's expectations and legal culture in terms of their influence on the formation of markets.[2] As is well known, the market is an economic category that denotes the phenomenon of aggregate demand, aggregate supply, price, product, and so on.

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[1] Nelken, D. Using the Concept of Legal Culture. UC Berkeley: Centre for the Study of Law and Society Jurisprudence and Social Policy Program, 2004. Retrieved from https://escholarship.org/uc/item/7dk1j7hm.

[2] Kai Purnhagen (2014), p. 10-13.

In the publication by Joan Violet Robinson in Britannica, we find that A. Cournot defines the market in this way: "… Economists understand by the term Market, not any particular marketplace in which things are bought and sold, but the whole of any region in which buyers and sellers are in such free intercourse with one another that the prices of the same goods tend to equality easily and quickly". And in this publication, Joan Violet Robinson points out that the concept of the market was most systematically worked out in a general equilibrium system developed by the French economist Léon Walras, who was strongly influenced by the theoretical physics of his time.[1]

In this regard, we find that the market as a phenomenon of economics is in a state of search for equilibrium, while law has its equilibrium in the legal order, based on the equilibrium of the legal tradition. Thus, between the equilibrium of law and the equilibrium of the market, a dialectical relationship is possible not only through legal culture, but also through the expectations of society and other components of the legal tradition.

Confirmation of this hypothesis is a small legal tradition of comparative advantage, which was formed in the Western legal tradition. More than two hundred years ago, based on Adam Smith's idea of free trade, David Ricardo showed the benefits of foreign trade. The essence of these benefits is expressed in the idea of abandoning the efficient production of those goods in which the country has an absolute advantage and specialization in even more efficient production, while purchasing goods from other countries, the production of which was refused at a lower cost.[2]

Thus, this example demonstrates a close dialectical connection between the market equilibrium and the equilibrium of Western law.

It is noteworthy that Harold Berman, in one of his publications, also drew attention to the interdependence of these two equilibria.

"… Yet the questions remain: Do these and other examples of customary world law constitute the emergence of a world legal tradition? And if so, what is the relationship of an emerging world legal tradition to the Western legal tradition? These questions are too big to answer fully in a few minutes. We can nevertheless begin an answer by returning to a millennial perspective, in which we may foresee the gradual development of the world economy into a more just world society and eventually the gradual development of the world society into a world community.

The Western legal tradition has already come to play a leading role in the emergence of the body of world economic law. Western businessmen and their lawyers, in participating in cross-cultural economic relations, will often, to be sure,

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[1] Joan Violet Robinson, Market, Britannica, https://www.britannica.com/topic/market

[2] On the Principles of Political Economy and Taxation by David Ricardo, Dover Publications Inc., 2004, 300 p.

accept-indeed, must accept-practices and standards of their partners who come from Islamic, Chinese, Japanese, African, and other cultures.

On the whole, however, the commercial law of sales, the law of business associations, the law of financial transactions, and other branches of economic law, have been more highly developed, more thoroughly and precisely articulated, in the West than in any of the other great, and they have been very largely received in those cultures, at least insofar as cross-border transactions are concerned. Even the Chinese, with a Confucian legal tradition, on the one hand, that distinguishes sharply between law and morals and between legal norms and social rituals, between fa and li, and, on the other hand, a Communist legal tradition that distinguishes sharply between public interests and private interests, are, like the Soviet Russian Communists before them, glad to accept customary Western legal terms in their cross-border economic contracts".[1]

Thus, in this part of the book, we have considered reasons that confirm:

1. Legal culture and legal tradition are interconnected. Legal tradition from the point of view of legal culture is the result (product) of its historical environment. Legal culture from the standpoint of the legal tradition is its civilizational and structural component.

2. The economic phenomenon of the market and the legal phenomenon of law are characterized by a general category of equilibrium. The equilibria of each of these phenomena are interrelated with each other.

3. We have considered only two elements from many others that link the equilibrium of the market and the equilibrium of law, this are the legal culture and the expectations of society.

Politics of society as a structural component of the Western legal tradition.

"Politics of society" as a formational phenomenon of law we denote with the symbol – Se^n.

Let's considering some of the arguments of Harold Berman and others that point to the role of the "Politics of society" as a structural component of the Western legal tradition, as well as its role in the equilibrium of law.

Considering the dialectic of legal culture, Professor Kai Purnhagen writes, European legal culture can only be effective if its regulatory nature meets the expectations of society.[2]

As we think this argument demonstrates the dialectical relationship between legal culture and society's expectations. The complexity of the interaction between which, as Kai Purnhagen writes, lies in the cultural diversity of Europe in dialectical contradiction with a single economic market.[3]

In this regard, the market as an economic phenomenon and economic category, through the legal culture and politics of society, has a formational connection with

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[1] Harold Berman (2000).

[2] Kai Purnhagen (2014), p. 10-13.

[3] Ibid., p. 10-13.

the Western legal tradition. This connection consists in the interdependence of the equilibrium of the Western legal tradition and the market.

Harold Berman's "Politics of Society" and Kai Purnhagen's "Expectations of Society" perform the same formational function in the legal tradition. Consequently, these two notions of "expectations" similarly reflect the same structural component of the Western legal tradition.

For practical reasons, below we use the concepts of "Politics of society" and "Expectations of society" in the one meaning as "Politics of society (Expectations of society)".

The function of "Politics of Society (Expectations of Society)" is being most clearly revealed by the formational approach, the founder of which is Karl Marx.[1]

This is due to the fact that the "Politics of Society (Expectations of Society)" in the structure of the legal tradition possess a complex of volitional properties, among which: the ability to recognize, deny, motivate, accept or reject one or another type of legal order; the expression of the desired measure of equilibrium of law; orientation to changes in the conditions of the legal environment.

Thus, the "Politics of society (Expectations of society)" have a connection with economic, political, and other social forces, it reflects their volitional direction in law.

"Rules" and "Precedent" as Structural Components of the Western Legal Tradition.

"Rules" as a normative phenomenon of law we denote with the symbol – Rl^n. "Precedent" as an anthropological phenomenon of law is designated by us with the symbol – Lp^n.

Let considering some of the arguments that confirm the structural significance of the "Rules" and "Precedent" in the Western legal tradition, as well as their role in the equilibrium of law.

"Rules", writes Hans Kelsen, is an integral part of positive law, a system of sanctioned legal norms.[2]

As Olga Skakun writes, the set of rules is an internal organization of law, it is expressed by the concept of "system of law", as it is characterized by such properties as: objectivity; organic integrity; structural differentiation; structural hierarchy; stability; dynamism.[3] Consequently, the notion of "Rules" in the legal tradition, is identical with the concept of "system of legal norms".

Therefore, "Rules" in the structure of the legal tradition are the normative state (condition) of law, which is characterized by a material, written or digital form,

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[1] Capital: Volume I, by Karl Marx (Autor), Ernest Mandel (Einleitung), Ben Fowkes (Übersetzer), Penguin Classics, 1990, p. 1152.

[2] Kelsen, Hans. Pure Theory of Law. Translation from the Second German Edition by Max Knight. Berkeley: University of California Press, 1967, 356 p., p. 217-218. (Further. Hans Kelsen (1967)).

[3] Скакун Ольга. Теорія держави і права (Енциклопедичний курс), Харків, видавництво Еспада, 2006. 776 с.

and behind its content the level of abstraction, the type of logic, the conceptual and categorical apparatus of law.

The significance of the precedent in the structure of the legal tradition can be seen in the following. As William M. Landes and Richard A. Posner write, legal precedents are the inputs to the production of legal rules, … a rule is a learned experience.[1]

It is known that legal precedent, like the system of law, is an independent source of law. But the structural position of the "Precedent" in the content of the legal tradition is due to the anthropological discretion in law.

This means that in personalize legal cases, a legal precedent forms a legal tradition, and also tries to comply with it in the future (forms a causal sign of positive law). Thus, unlike an abstract rule, a legal precedent is the result of a relationship between law and fact. Hence, the significance of the precedent in the structure of the legal tradition lies in the ability of the tradition to have an individual and factual approbation of law in real legal relations, in actions, in behaviour and in thinking.

Thus, the level of structural components of the Western legal tradition consists of civilizational, formational, normative, and anthropological components of law: "Legal Culture", "Politics of Society (Expectations of Society)", "Rules", and "Precedent". The value level of the legal tradition is the equilibrium of social forces: "Justice of Law", "Rationality of Law", "Formalism of Law", and "Pragmatism of Law". As a result of the interaction of these two levels of the legal tradition, an equilibrium of law arises, on the basis of which the legal order and the equilibrium of legality are formed.

In his study of the legal system, Nicholas Luhmann describes the situation where the "Rule", "Precedent" and "Politics of Society (Expectations of Society)" have lost their equilibrium in law. "… Expectations of Society arise from the rejection of normative behaviour. The legal system cannot control the factors that lead to a dispute, and justice by establishing new rules or new aspects of legal practice, which may be redundant, since it is not the goal of a normative plan".[2]

Thus, the Western legal tradition is able to form a model of legality. Therefore, legality in positive law is the result of the equilibrium of the Western legal tradition.

Theoretical Definition of the Western Legal Tradition

At the end of the twentieth century, an academician of the Polish Academy of Sciences, Professor Jerzy Ryszard Szacki, wrote, "... When I wrote "Utopia

[1] Legal Precedent: A Theoretical and Empirical Analysis by William M. Landes, Richard A. Posner., The Journal of Law & Economics. Vol. 19, No. 2, Conference on the Economics of Politics and Regulation (Aug. 1976), 249-307 p., p. 250, https://www.jstor.org/stable/725166

[2] Niklas Luhmann (2008).

and Tradition", I could not refer to any significant number of works whose authors could fully be aware of the significance, scope, and complexity of this phenomenon. Most of the publications from which I initially tried to build on had, from my point of view, unusually significant flaws.

These flaws were of two kinds. One part of the works on tradition was too ethnographic in nature, the other part was excessively ideologized. In the first, there was a tendency to reduce the problem to the study of certain remnants of yesterday in customs, spiritual stock, material culture, and so on; such a study, of course, makes sense, but, as I believe, it is impossible to limit ourselves to it if we are interested in tradition as a social phenomenon. The authors of the publications, which I called ideologized, were interested not so much in studying tradition as a social phenomenon, but in carrying out selection within it and passing judgment on what is good and what is bad, what to develop and what to abandon, what is progressive and what is reactionary, what to remember and what to forget".[1]

Returning to the question of the theoretical definition of "legal tradition", and hence to the concept of "Western legal tradition", the study of Harold Berman reveals to us the hidden side of this phenomenon.

Here is what Harold Berman writes about the concept of "tradition", "… the Western legal tradition grew in part out of the structure of social and economic interrelationships within and among groups on the ground. Behavioural patterns of interrelationships acquired a normative dimension: usages were transformed into custom. Eventually custom was transformed into law".[2]

According to this approach, the development of tradition is comparable to the genesis of law. This is evidenced by the evolutionary formation of law on the basis of tradition. Harold Berman draws attention to the fact that the primary level of the origin of the Western legal tradition was socio-economic interaction at the lowest level of social groups. Further, this interaction acquired a normative character and was transformed into custom, and custom was transformed into law. As a result, law, and tradition, according to Harold Berman, are the result of the same evolutionary process.

Therefore, the study of the legal tradition in the context of the evolution of law involves taking into account the totality of such characteristics as: the civilizational centre, the revolution of law, the legal order, social forces in law, values, and so on.

As an example, touching upon the issue of the civilizational centre, we need to take into account the significance of the periphery, which is the lowest level. Considering the origins of these processes from the lowest level, in the study of the social organization of tradition, Robert Redfield gives us methodological foundations for the formation of the theoretical concept of "legal tradition" at the modern highest level of development.

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[1] Шацкий Е. Утопия и традиция: Пер. с польск. / Общ. ред. и послесл. В. А. Чаликовой. – М.: Прогресс, 1990. – 456 с., с. 10–11.

[2] Harold Berman (1983), 657 p., p. 556.

Concerning the question of the social organization of tradition, Robert Redfield draws attention to the synchronous interaction between the peasant community and the centre. In his analysis, he shows the significant role this interaction played in the formation of tradition. Here is what Robert Redfield writes about this.

"… In a civilization there is a great tradition of the reflective few, and there is a little tradition of the largely unreflective many. The great tradition is cultivated in schools or temples; the little tradition works itself out and keeps itself going in the lives of the unlettered in their village communities. The tradition of the philosopher, theologian, and literary man is a tradition consciously cultivated and handed down; that of the little people is for the most part taken for granted and not submitted to much scrutiny or considered refinement and improvement".[1]

In turn, the revolution of law breaks the continuity of law and changes the evolution of law. From this circumstance, it follows that the study of legal tradition is at the same time the study of the continuity of law.

Studying the revolutions and transformation of societies, Shmuel Noah Eisenstadt drew attention to the fact that:

"… the development distinctiveness and symbolic differentiation of the centre gave rise to the tendency of the centre to permeate the periphery and to reorganize it according to the autonomous criteria of the centre.

These processes of centre-formation and of reconstruction of collectivises were related to the transformation and construction of Great Traditions as autonomous, distinct, symbolical frameworks. Such construction of centres and of Great Traditions may be evident in the "external" artifacts such as great works of architecture, or in the writing and sanctification of scholarly books and codices.

The structure of the Great Traditions in those societies in which the perception of tension between the transcendental and the mundane order has been institutionalized goes, however, beyond such external manifestations. It has above all been characterized by their symbolic and organizational distinctiveness from the Little Traditions of the periphery.

Such distinctiveness and autonomy could be clearly identified, even in those cases, as among the ancient Israeli tribes, in which the carriers of such centres and Traditions were not organized in distinct, specific frameworks. It becomes organizationally more fully visible in imperial societies such as China, the Byzantine Empire, or in Theravada Buddhist societies. The relations between the Great and Little Traditions were transformed by processes of ideological differentiation. They gave rise to attempts by the carriers of the Great Traditions to permeate the periphery and to pull the Little Traditions into the orbit of the Great ones; as well as to attempts by the carriers of the Little Traditions to dissociate themselves from the Great Traditions, to profane them, and,

[1] The Little Community and Peasant Society and Culture. Robert Redfield, Chicago U.P., 1960., p. 88., p. 70.

paradoxically enough, also to generate a distinct ideology of the Little Traditions and of the periphery".[1]

From the above analysis, it follows that the concept of "Western legal tradition" is comparable to the concept of "Great tradition", the civilizational centre of which, in the allegorical meaning of the word, is the Western type of societies. But earlier, as Harold Berman's research shows, for example, in the period after the First Papal Revolution, the boundaries of the civilizational centre and great tradition coincided with the boundaries of the state, namely, with the boundaries of the Holy Roman Empire of the German nation.

Comparison of the centre of civilization and great tradition with the boundaries of state jurisdiction leads us to the concept of legal order. Indeed, in the context of the evolution of law and the genesis of the legal tradition, the legal order is the spatial-temporal structure that always reflects some static type of dynamics of law and the legal form of society.

In this regard, Shmuel Noah Eisenstadt believes that tradition denotes ways of legitimizing the political order, and general ways of perceiving social and cultural reality, and the principles of the structure of large social and political systems.[2]

According to Ulrich Beck, Anthony Giddens and Scott Lash, our society today can only be seen against the background of the previous form of society. Tradition is the "cement of pre-modern social orders" of which repetition is a key component. In the context of tradition, an orientation toward the past is created, the past influences the present, and the future does not need to be completely remade. Repetition maintains a constant connection between the future and the past (and the past is constantly connected to the future). As a result, a well-defined horizon of action was given in pre-modern societies. Ulrich Beck, Anthony Giddens and Scott Lash compare tradition to memory: tradition is a means of organizing collective memory.[3]

Definition of legal tradition.

Western legal tradition it is a legal allegory of the Great Tradition of Law, which hides a structured legal experience with the formation and transmission of equilibrium in law. The structured legal experience is the experience of creating and maintaining the legitimacy and legality of many past legal orders, which are interconnected by a single genesis of the continuity of positive law.

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[1] S. N. Eisenstadt. Comparative civilizations and multiple modernity. Brill Academic Pub., Part 1, 2003., 465 p., p. 205.

[2] S. Eisenstadt (1979).

[3] Beck, Ulrich. Giddens, Anthony. Lash, Scott. Leben in einer posttraditionalen Gesellschaft. Reflexive Modernisierung. Frankfurt am Main, Suhrkamp. 1996. 314 p. P. 122. (Further. Ulrich Beck, Anthony Giddens, Scott Lash (1996)).

Small Legal Tradition is a legal allegory that contains a structured legal experience of certain subject areas of law and order. Both small and great legal traditions are the mechanism for reflecting on the equilibrium in law in time.

Let's consider the structure of this theoretical concept in a form an algorithmic model.

In this work, the phenomenon of the Great legal tradition is shown by the symbol – LT, the phenomenon of the Small legal tradition is indicated by the symbol LT-b^n. Therefore, the phenomenon of the Western legal tradition is comparable to the symbol – LT.

Algorithmic model – 2. "The phenomenon of "Western legal tradition"

$$LT\ (LT\text{-}b^{n1}) \supseteq (\{J^n \pm F^n \pm P^n \pm R^n = EqL^{n1}\} \mapsto [Rl^n, + Lc^n, + Se^n + Lp^n = EqL^{n2}]) \in Ls^n \rightarrow \rightarrow Lo\text{-}t^n\ ((EqL^{n3}) \subseteq Lw\ (LT\text{-}b^{n2}))$$

Symbol – LT denotes the phenomenon of the "Great Legal Tradition".

Symbol – LT-b^{n1} denotes the phenomenon of "Small Legal Tradition".

The content boundaries of the legal tradition are indicated by symbols: from ⊇ to the symbol of ⊆. Consequently, the symbol ⊇ means that all subsequent symbols are part of the legal tradition, and the symbol ⊆ denotes the completion of this phenomenon.

Symbol (...) denotes the content boundaries of the legal tradition, which includes two semantic blocks. The first semantic block is marked with the symbol {...}, the second semantic block is marked with the symbol […].

Symbol {...} denotes the value content of the legal tradition and is its semantic block, which includes such elements as: J^n – "Justice in law"; F^n – "Formalism in Law"; P^n – "Pragmatism in Law"; R^n – "Rationalism in Law" (also called "Social Forces in Law").

Symbol ± denotes the state of equilibrium of the value components of the legal tradition.

Symbol – EqL^n denotes the equilibrium point of the legal tradition.

Symbol ↦ denotes the mechanism of reflection of the value equilibrium of the legal tradition on the instrumental block of the structural components of this tradition.

Symbol [...] denotes the instrumental block of the structural components of the legal tradition, which consists of: Rl^n – "Rules"; Lc^n – "Legal Culture"; Se^n – "Political expectations (Social expectations)"; Lp^n – "Legal precedent".

Symbol + denotes the autonomous interaction of the structural components of the legal tradition.

Symbol = denotes the state of equilibrium of the structural components of the legal tradition.

Symbol ∈ denotes the coordination of the value and structural equilibrium of the legal tradition and is the third level of its equilibrium.

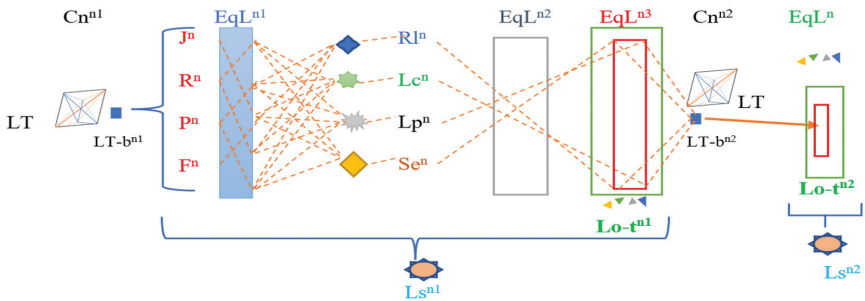
Symbol → denotes the dynamics of law and structural relationships that arise in the following elements of the algorithmic model.

Symbol – Ls^{n} denotes the "Legal System", which is based on the legal tradition.

Symbol – Lo-t^{n} denotes the "Legal order", which arises under the influence of legal tradition or reflects its impact. As a result, the legal order is an external expression of positive law and legal tradition, which are shown in its composition by the symbols Lw and LT-b^{n2}.

Thus, the theoretical concept of the phenomenon of "legal tradition" can be formulated using the algorithmic method. At the same time, the dynamic nature of legal tradition makes it possible to compile a graphical model based on an algorithmic model.

Graphic model – 1. "The phenomenon of "Western legal tradition"



The Graphical model demonstrates that, in accordance with the legal tradition in the context of continuity, positive law passes through three levels of equilibrium: the first level is EqL^{n1} axiological equilibrium of law; the second level is EqL^{n2} instrumental equilibrium of law: the third level is EqL^{n} equilibrium of legality.

According to Ulrich Beck, Anthony Giddens, Scott Lash,[1] and Shmuel Noah Eisenstadt,[2] the legal tradition is a structured legal experience that, according to Edward Shils,[3] was formed after at least three acts of continuity.

Therefore, in a metaphysical state, structured legal experience is a set of different knowledge that has been formed as a result of different types of logic and

[1] Ulrich Beck, Anthony Giddens, Scott Lash (1996).

[2] S. Eisenstadt (1979).

[3] Edward Shils (1981), p. 15.

non-logical perception. At the heart of this experience is the memory of effective models and points of equilibrium of social forces in law.

Each social force in law is characterized by its logic and its perception, interpretation, and fixation of legal reality. As we can observe from the graphical models 1 and 1.1., the legal tradition is a multi-level, complex dynamic phenomenon, each element has an opposite nature. This phenomenon receives its structural disclosure as a result of a dialectical comparison of such states and processes in law as the equilibrium of law and the continuity of law, the legal order and legality.

The presence of an element of dynamics in this characteristic shifts our attention from the metaphysical structured legal experience to the synergistic nature of the legal tradition. Since, from the point of view of the syntax of logical language, the points of equilibrium of law are the points of orderliness of positive law in the legal system, therefore, they can be accompanied by the state of order of this system and correspond to the definition of the concept of legal order.

In this regard, there is a need for a more detailed consideration of the phenomena of the legal system and the legal order in the context of the legal tradition.

Consequently, Harold Berman's research has made it possible to see and compare these elements of the legal tradition. As a result, this theoretical circumstance makes it possible to practically detect violations of continuity in the evolution of equilibria and disequilibrium of positive law.

Also, in the aspect of analysing future forms of law, the phenomenon of the Western legal tradition as a great legal tradition is able to create a general equilibrium of law for legal families and their legal systems. At the same time, each legal families and legal systems are capable of having different types of equilibrium. What gives the prerequisites for the creation of a classification of types of equilibrium of the Western legal tradition. For example, European, American, Eurasian, Australian, Asian type of equilibrium of the Western legal tradition, and so on.

This approach is consistent with the theories of legal comparative studies about the Romano-Germanic and Anglo-American legal families, which unite continental and non-continental legal systems.[1]

Thus, we consider that the phenomenon of the Western legal tradition is a legal allegory of the Great Tradition of Law, which creates a balance and makes the reflection of this equilibrium in law. It can receive its renewal and continuity in new types of legal orders.

[1] David René, Les grands systèmes de droit contemporains. (Droit comparé) Revue française de science politique Année 1965, 574 p., p. 5.

EQUILIBRIUM OF LAW

The first part of this chapter considers the fundamental contradiction that calls for the equilibrium of law, which is the right to life. In the axiological aspect, it will be shown that the Western legal tradition is a tradition of searching for a permanent balance in making human life the legal value.

In the second part of this chapter, the various Harold Berman's conclusions will be considered for the verification of this hypothesis about "the equilibrium in law". This will eventually confirm that the first level of equilibrium in the Western legal tradition is the balance of social forces in law. As a result, it will be shown that this is the value content of the Western legal tradition.

Analysis of other Harold Berman's arguments will show that the second level of equilibrium of law is the level of equilibrium of normative, civilizational, anthropological, and formational phenomena of law.

In the third part of this chapter, we will consider the phenomenon of the third level of equilibrium in law, which is created by the legal tradition. This is the state of the Legality of a Legal order. In this connection, we will review Harold Berman's arguments and conclusions of other researchers regarding the legal system, legal order, and legal environment as objects and subjects that fall into the scope of the action of legal tradition.

Right to Life – the Value of the Law Against the Legal Value in the Disequilibrium of Legal Tradition

Considering the genesis of the Western legal tradition according to Harold Berman, the evolution of positive law is presented as a movement from equilibrium to disequilibrium, from disequilibrium and again to the balance of social forces in law. In legal tradition, this dynamic receives continuity in different historical types of legal order.

Based on this thesis, Harold Berman's entire study focuses on positive law as the genesis of its dynamics. In this regard, Harold Berman writes, "… Law in action involves legal institutions and procedures, legal values, and legal concepts and ways of thought, as well as legal rules. It involves what is sometimes called

"the legal process", or what in German is called "Rechtsverwirklichung", the "realizing" of law".[1]

In this revolutionary genesis, law is shown by Harold Berman as a holistic phenomenon that is broader than the concept of a "corpus of rules". Harold Berman writes, "… I have taken the liberty of defining law in general terms, without reference to the particular legal institutions, values, and concepts that characterize the Western legal tradition. My purpose in doing so has been to answer those who, by defining law too narrowly, namely, as a body of rules, obstruct an understanding of the emergence of the Western legal tradition, of the impact on it of the great revolutions of Western history, and of its present predicament. The concept of law as a particular kind of enterprise, in which rules play only a part, becomes meaningful in the context of the actual historical development of the living law of a given culture".[2]

The stated approach leads us to the understanding of the Western legal tradition as a genesis that covers the development of the law itself in parallel with the development of the historical context of the culture of Western civilization and its societies. In this regard, understanding the integrity of law, which determines its statics and dynamics, institutional and functional interaction, is directly related to its stability.

The stability and integrity of law are always in dialectical interaction with the autonomy and discretion of law. As the revolutionary genesis of the Western legal tradition shows, this dynamic of law is provided by the crisis and confrontation of legal values and the values of law.

Modern jurisprudence distinguishes the concept of "legal value" from the concept of "value of law" and puts different meanings into them. But this academic distinction did not emerge immediately in the Western legal tradition.

Giovanni Reale, in his treatise on Western philosophy, writes the following.

"… Socrates, in a certain sense, makes a revolution in the traditional system of values. True values are not those that are connected with external things (such as: wealth, strength, fame), still less with bodily things (life, physical health, beauty, power), but only the treasures of the soul are the values that together constitute "knowledge". This does not mean that traditional values are instantly devalued, but only that "they no longer have value in themselves". Whether they become valuable or not depends on whether they are used with or without knowledge".[3]

Giovanni Reale explains Socrates' axiology in this way. "... The dialectical method of Socrates is connected with his discovery of the essence of man as a

[1] Harold Berman (1983), p. 4.

[2] Ibid., p. 4.

[3] A History of Ancient Philosophy. I. From the Origins to Socrates. By Giovanni Reale, edited and translated by John R. Catan, State University of New York Press, 1987, p. 456., P. 200. (Further – Giovanni Reale (1987)).

soul, for in a remarkable way a way was found to free the soul from the illusions of knowledge, bringing it to the proper state of understanding the truth.

In terms of its goals, the Socratic method is fundamentally ethical in its nature (education of the soul), and only secondarily is it logical and epistemological. To talk (to be in dialogue) with Socrates meant to hold the "examination of the soul", to sum up life and, as contemporaries have already noted, to pass precisely the "moral exam".[1]

According to Plato, writes Giovanni Reale, "… Anyone who was close to Socrates and entered into conversation with him, no matter what it was about, descended the spiral of discourse and inevitably found himself forced to go forward until he realized how he lived and how he lives now, and what once slipped even a glimpse could not hide from Socrates. It was in this self-report about one's own life, as well as in pointing out the true meaning of life that gives it value, was the specific goal of the Socratic method".[2]

The ancient philosophy of Socrates became the foundation of the legal axiology of Western philosophy. Based on this philosophy, positive law in its formation was further developed, the main criterion for its integrity and stability was the doctrine of "truth" in connection with the doctrine of "justice". As we shall see below, the combination of "justice" with other "social forces of law" defines a different type of "truth in law" that underlies all revolutions and counterrevolutions of law in the Western legal tradition.

John Rawls, in the beginning his book "A Theory of Justice", noted the following, "… Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise, laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust".[3]

Consequently, law, as a form of intellectual thought, is impossible without truth, just as without justice. In addition to other social forces, they represent an instrumental necessity for law. Under their influence, law acquires autonomy, which separates law from other social regulators and makes it a holistic and stable phenomenon.

According to Edmund Husserl, phenomena are entities that underlie reality. They can be both material and ideal. In contrast to the application of the concept of the phenomenon in German classical philosophy, where the phenomenon was considered exclusively as a phenomenon that expresses the essence – noumenon, phenomenology combines these two concepts. Thus, a phenomenon is both a phenomenon and its essence at the same time.[4]

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[1] Giovanni Reale (1987), p. 239.

[2] Ibid., p. 239.

[3] A Theory of Justice, by John Rawls, Harvard University Press. 1999, 538 p., p. 3.

[4] Die phänomenologische Methode: Ausgewählte Texte I von Edmund Husserl, Reclam, Philipp, jun. GmbH, Verlag. p. 298.

The phenomenological nature of legal values, according to Pierre Bourdieu, allows us to consider legal values as the ultimate foundations of legal existence, the framework of the legal space in which all legal practices are concentrated and the axiologisation of legal structures takes place.[1]

Therefore, in the general theoretical sense, the elements of axiological legal structures will be the norms of law, institutions of law, legal definitions, legal principles, legal fictions, legal technique, and so on. In the normative aspect, legal values are the law, the court decision, legal powers, legal obligations, and procedures. In legal reality, legal values are the legal order, legal institutions, legal relations, and so on.

All axiological legal structures in their totality forming the integrity and stability of law as an autonomous social phenomenon, the source of autonomy of which should be considered as the "Truth" – the highest legal value of the Western legal tradition.

Thus, the law, being by its nature a legal value, based on this property, provides in each culture and society the recognition and hierarchy of other values. In each case, it can be assumed that the system and hierarchy of these non-legal values are different and are due to their nature and culture.

In modern jurisprudence, one can find the concept of "values of law", which, in contrast to the concept of "legal values", considers material and immaterial benefits. In this regard, there is a need for a clear distinction between "legal values" and "values of law".

Heinrich Rickert examines this value distinction in detail.

"... The words "nature" and "culture" are far from unambiguous, and in particular the concept of nature can be more accurately defined only through the concept to which it is opposed in this case. We can best avoid the seeming arbitrariness in the use of the word "nature" if we stick to its original meaning at once. The products of nature are that which grows freely from the earth. The products of culture are produced by the field that a person previously ploughed and sowed. Consequently, nature is the totality of everything that arose by itself, was itself born and left to its own growth. The opposite of nature in this sense is culture as something either directly created by man acting in accordance with his evaluated goals, or, if it has already existed before, at least consciously nurtured by him for the sake of the value associated with it.

No matter how broadly we understand this opposition, the essence will remain unchanged: in all cultural phenomena, we will always find the embodiment of some value recognized by man, for the sake of which these phenomena are either created, or, if they already existed before, nurtured by man; and vice versa, everything that has arisen and grown of itself can be considered without any

[1] Bourdieu Pierre. La force du droit. In: Actes de la recherche en sciences sociales. Vol. 64, septembre 1986. De quel droit? p. 3-19; doi : https://doi.org/10.3406/arss.1986.2332

relation to values, and if it really is nothing but nature, then it must be considered in this way.

Cultural objects, therefore, contain values. We shall therefore call them goods (Güter) in order to distinguish them as valuable parts of reality from the values themselves, as such, which are not reality and from which we can abstract here.

The phenomena of nature are conceived not as goods, but out of connection with values, and if, therefore, all value is taken away from the object of culture, then it will also become part of simple nature. By virtue of this either existing or absent reference to values, we can confidently distinguish between two kinds of objects, and for this reason we have the right to do so, that every cultural phenomenon, if we ignore the value inherent in it, must be considered as standing also in connection with nature and, therefore, as constituting a part of nature".[1]

Heinrich Rickert's description makes it clear that the concept of "the values of law" encompasses those necessary parts of reality, namely goods (benefits) that can come from both nature and culture, but outside the law lose their value in law. Among these values of law may be power, freedom, money, property, and so on.

In turn, law is a "legal value" that comes from culture. But for the properties that are covered by the concept of "the value of law", law is Nature. Law is also capable of losing its value when it is not considered in connection with culture.

In this regard, from the formation of the Western legal tradition to the present moment, the constant problem of law, which violates its stability and equilibrium, is the problem of the nature of the value of human life.

The main contradiction is, what is the value of human life? The legal value that comes from nature, or the value of law, which depends on the culture? We believe this is one of the main uncertainties of the Western legal tradition, in which tradition cannot form a stable equilibrium in law.

In the origins of the formation of medicine, and not jurisprudence, we find that the value of human life as a legal value deriving from nature. At the same time, the whole genesis of the Western legal tradition is a dialectic of equilibria for human life to be the highest value of law. We believe the following example will demonstrate the proof of this statement.

Giovanni Reale, describing the basic principle of the philosophy of medicine, pointed out the following.

"… Hippocrates and his disciples did not limit themselves to the fact that medicine was given the status of a theoretical science, but with a brilliance, truly impressive, they defined the ethical charter of the physician, the high standard of moral duty, as his main characteristic.

Against the well-distinguished social background of the behaviour of physicians (from ancient times it was customary that medical knowledge was passed from father to son, the same type of relationship was introduced by Hippocrates between

[1] Die Grenzen der naturwissenschaftlichen Begriffsbildung. Heinrich Rickert, Tubingen Verlag von J.C.B.Mohr (Paul Sibeck), 1913, 644 p., p. 256.

a student and a teacher), the meaning of the oath can be formulated in modern terms quite simply: healer, remember that the patient is not a thing or a means, but a goal, a value in itself. And today, doctors take the Hippocratic oath, which shows how much Western civilization owes to the Greeks".[1]

In general, it sounds like this:

"… I swear by Apollo Healer, by Asclepius, by Hygieia, by Panacea, and by all the gods and goddesses, making them my witnesses, that I will carry out, according to my ability and judgment, this oath, and this indenture.

To hold my teacher in this art equal to my own parents; to make him partner in my livelihood; when he is in need of money to share mine with him; to consider his family as my own brothers, and to teach them this art, if they want to learn it, without fee or indenture; to impart precept, oral instruction, and all other instruction to my own sons, the sons of my teacher, and to indentured pupils who have taken the Healer's oath, but to nobody else.

I will use those dietary regimens which will benefit my patients according to my greatest ability and judgment, and I will do no harm or injustice to them. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course. Similarly, I will not give to a woman a pessary to cause abortion. But I will keep pure and holy both my life and my art. I will not use the knife, not even, verily, on sufferers from stone, but I will give place to such as are craftsmen therein.

Into whatsoever houses I enter, I will enter to help the sick, and I will abstain from all intentional wrong-doing and harm, especially from abusing the bodies of man or woman, bond or free. And whatsoever I shall see or hear in the course of my profession, as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets.

Now if I carry out this oath, and break it not, may I gain for ever reputation among all men for my life and for my art; but if I break it and forswear myself, may the opposite befall me".[2]

The oath as a social and spiritual action is a custom that has signs of law, since it imposes certain duties on the person who proclaims it. In this case, the duties are of an ethical nature. But this example is used to demonstrate that the ethical social order in the field of occupational medicine of the past was the first to consider human life as a legal value. Since, as follows from the example, from the point of view of synergetic, the value of human life is understood as the point of orderliness and orientation of the system.

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[1] Антисери Д. и Реале Дж. Западная философия от истоков до наших дней. Античность и Средневековье (1–2) / В переводе и под редакцией С. А. Мальцевой – «Издательство Пневма», С-Петербург, 2003, 688 с. – С. 76.

[2] Hippocrates of Cos, The Oath, translation by W.H.S. Jones, Loeb Classical Library, 1923, pp. 298–299.

We think that the above is a unique proof that a person and his life is a legal value that depends on nature. But at the level of positive law, the genesis of the Western legal tradition demonstrates a confrontation in the understanding of the true value of human life.

Since the history of the Western legal tradition, there are many cases where human life had no value in law or has had a minimum value in law with many restrictions.

Evidence of this thesis is that human life has always been the subject of anthropological, formational, and civilizational perception at the same time. Almost throughout the genesis of the Western legal tradition, the act of evaluation is accompanied by the discretion of subjectivism and the autonomy of objectivism in interpreting and evaluating what human life is and what is its economic price and what is its legal equivalent of justice, rationality, and pragmatism.

There are many examples of this, the nature of the value of human life is directly demonstrated the international, constitutional, administrative, civil, labour, criminal and other branches of law of each legal system of the Western legal tradition.

In this regard, the equilibrium of the Western legal tradition has always been unstable.

In the second half of the twentieth century, a normative attempt was made to recognize human life as the highest value in the value system of law. This new equilibrium model of the Western legal tradition has brought human life closer to the category of legal values but leaves it dependent on the "Politics of Society", "Legal Culture" and "Precedent" (Reflections of Law).

As structured legal experience shows, this is fraught with a confrontation between the normative and reflective autonomy of law. This confrontation covers the entire Western legal tradition now. The complexity of the situation is also due to the previous counterrevolutions of law, including the "Myth of the Russian Revolution of Law", and legal novelties: environmental problems, epidemiological threats, digital centralization of law, and so on.

In the next chapters of this book, based on Harold Berman's research, we examine the dynamics of the Western legal tradition in terms of the equilibrium of positive law, which determines the value of the "Human right to life".

Social Forces and Equilibrium in Law

Human life and the human right to life are phenomena of an opposite nature. From the standpoint of general perception, human life is a phenomenon of organic origin, while the human right to life is determined by socio-cultural, spiritual, ethical, aesthetic, economic, political, historical and other circumstances.

In each historical epoch, human life and the human right to life had different values in positive law. In the second half of the twentieth century, the

right to life obtained the highest place in the law's hierarchy of values.[1] But at the same time, in the twenty-first century, there are facts of violation of this right. In addition, it has been proven in science that the phenomenon of human life is not only an organic, but also a physical and genetic phenomenon. For example, back in the middle of the twentieth century, Erwin Schrödinger substantiated life as a phenomenon that exists at the level of a microscopic cell and is a polyatomic organism that has its own heredity and is subject to mutation.[2]

In this regard, a natural question arises: is there any consistency in positive law between the legal phenomenon "The human right to life" and the physical phenomenon "Life"?

We believe that in order to find an answer to this question in the field of law, it is necessary to turn to legal traditions.

The previous section of the book hypothesized that the legal tradition is a structured legal experience that creates an equilibrium of social forces in law. If we argue within the framework of the indicated thesis, then it is likely that the answer to the question can be found in the points of equilibrium of law.

But first, it is necessary to make sure whether there are social forces in law. If we find confirmation, then the next question is obvious. What should be understood by the concept of "Social forces of law"?

After reviewing academic works in the field of philosophy and the history of positive law, we found that the phenomenon of "Social forces in law" is found in the texts by many scholars. But the study of Lawrence M. Friedman attracts more attention, as it considers social forces in the context of the legal system, in the content of which the legal axiology, legal order, and legal traditions are synergistically harmonized into positive law.

Lawrence M. Friedman writes, "… to do their job, the law and society scholars have to be able to describe and measure legal systems in operation. They have to figure out lines of influence that flow in two directions: from society into the legal system; and out of the legal system into society. In another words, they have to find out the sources of law, that is how, social forces get translated and transmuted into law; as well as the impact of law, legal behaviour and legal institutions, that is, how these reverberate in the society that gave them birth".[3]

From the quotation, we observe that in the context of the legal category "legal system" Lawrence M. Friedman compares the concept of "Source of Law" with

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[1] Universal Declaration of Human Rights. UN. https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] Erwin Schrödinger, What is life? Cambridge University Press, 1992, p. 184.

[3] Lawrence M. Friedman. Is There a Modern legal Culture? Ratio Juris. Vol. 7 No. 2 July 1994 (117-31) 117-131 p. p. 118. https://law.stanford.edu/wp-content/uploads/2015/06/L.M.Friedman-Jul.1994-72-Ratio-Juris-117-131.pdf (Further. Lawrence M. Friedman., (1994)).

the concept of "Social Force". Also, Lawrence M. Friedman writes, "… the legal system is driven by "social forces" ...".[1]

In his study, Lawrence M. Friedman refers many more times to the phenomenon of social forces in law but does not offer an unambiguous concept for this phenomenon. Other studies in the field of positive law also use this phenomenon, but do not give it a theoretical explanation.

In this regard, attention is drawn to the conclusions of Émile Durkheim in the field of sociology of law. Émile Durkheim writes, "… in all cases the reason behind our actions is a force above us, namely society, and that the ends it instills in us enjoy real moral hegemony. And if this is so, then all the objections that can be raised against the ordinary ideas by which people express their felt submission to a higher force cannot reduce the reality of this fact. ... Therefore, if it can be argued that the erection of the human personality on a pedestal is one of the goals that modern society pursues and should pursue, then all the moral norms arising from this principle are justified by this, no matter what the value of those methods by which they are usually justified. If the arguments with which the crowd is content do not withstand scrutiny, it is enough to state them in another language in order to give them all their meaning".[2]

We think in the above quotation, Émile Durkheim describes one of the acts of social forces in law. So far, there are not enough arguments to conclude what should be understood by this phrase. But then Émile Durkheim more and more accurately describes the semantic boundaries of this phenomenon, "… the official is a social force, but at the same time he is an individual. It follows that he can use the social energy he possesses in the direction suggested by his individual nature, and thus can influence the state of society. This happens to statesmen, and most often to people of genius. The latter, even if they do not occupy a public position, receive from the collective feelings directed at them an authority that is also a social force and can be put to a certain extent at the service of personal ideas. But these facts owe their origin to individual cases and therefore cannot influence the basic features of the social species, which is the only object of science".[3]

From these thoughts of Émile Durkheim, we learn that social force is one of the types of social energy that can influence the state of society. We also see that one of the sources of social force is collective feelings, and hence collective consciousness.

Émile Durkheim goes on to describe the purpose of social force in law.

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[1] The legal system., by Lawrence M. Friedmann, Russell Sage Foundation., 1975, 337 p. p. 167. (Further. Lawrence M. Friedman (1994)).

[2] Дюркгейм Э. Самоубийство: Социологический этюд / Пер, с фр. с сокр.; под ред. В. А. Базарова. – М.: Мысль, 1994. – 399, 214 с., С. 174.

[3] Ibid., С. 106.

"… A thing is a force that can only be generated by another force. Therefore, in order to explain social facts, it is necessary to find the energies capable of producing them. Under such conditions, not only explanations change, but also the process of proving them, or, more precisely, only then do they feel the need to prove them. If sociological phenomena are only systems of objectified ideas, then to explain them is to reconsider these ideas in their logical order, and such an explanation is its own proof".[1]

This conclusion of Émile Durkheim leads us to the understanding that the energy that is the basis of social force is a valid system of beliefs and views about a social fact or about the position of some "thing" in law. It is known that in the sphere of law, social facts or things receive legal status only based on evidentiary beliefs about their true nature.

And here Émile Durkheim providing evidence on this score.

"… It participates in the authority which the latter exercises over consciences, and it is from there that it draws its force. the force, which is immanent in the collective conscience, it necessarily has the same properties and reacts in the same manner, although the latter does not react completely in unison. It repulses every antagonistic force as would the diffuse soul of society, although the latter does not feel this antagonism, or rather, does not feel it so directly. That is, it considers as criminal, actions which shock it without, however, shocking the collective sentiments in the same degree. But it is from these latter that it receives all the power which permits it to create crimes and delicts. Besides, not coming from without or arising from nothing, the following facts, which will be amply developed in the rest of this work, confirm this explanation. The extent of the activity which the governmental organ exercises over the number and the qualification of criminal acts depends on the force it receives. That can be measured either by the extent of the authority which it exercises over citizens, or by the degree of gravity recognized in crimes directed against it".[2]

Émile Durkheim's conclusions support the thesis that evidence-based truth is capable to has force in law. The views or beliefs that are based on such truth are capable of qualifying social facts, things, or social actions, which ultimately create consequences in law. Thus, we find the main property of social force in law, it is the ability to form legal determinism. Consequently, the ontological nature of social force in law is a social fact, a proven truth about fact, a system of views, and legal consequences based on this truth.

In this regard, "Truth" is both an instrumental category and a legal value. Since "True" implies the presence of typicality and uniformity, which corresponds to the category of "Reality". There are many definitions of the concept of "Truth".

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[1] Дюркгейм Э. Социология. Ее предмет, метод, предназначение / Пер. с фр., составление, послесловие и примечания А. Б. Гофмана. – М.: Канон, 1995. – 352 с., С. 134.

[2] The Division of Labor Society, by Emile Durkheim., translated by George Simpson, Glencoe Illinois Press, 1960, 462 p., pp. 84-85.

For example, the Merriam-Webster encyclopaedic dictionary conveys such a scientifically neutral meaning, "... Truth is the property of being in harmony with fact and reality".[1]

Mark D. Walters writes, "… Dworkin says that truth about what is just (or moral or legal) is obtained through a process of reflection that oscillates between consideration of beliefs or convictions about particular examples or paradigm cases of justice (or morality or legality) and a general theoretical structure that shows those beliefs to constitute a unified and justifiable body of convictions, with the expectation that both particular beliefs and general theory will be refined until a satisfactory point of equilibrium is reached".[2]

The foregoing reasoning gives prerequisites for the hypothesis that truth is a system of the origins of law, which, passing into a state of social forces, is capable of forming a legal doctrine.

Yan Thomas's research on the interpretation of the Western legal tradition supports this hypothesis. "… The truth of law is indeed a system of origins. It is based on a series of established processes that culminate in the fiction of a truth imposed by the sentence. This practice of truth, which was drawn up in law and was clearly set out in the ordines of the Roman-canonical tradition from the twelfth century onward, has mistakenly been attributed to a modernity – if not to a postmodernity – to which it owes nothing. The form of truth in law was examined in a particularly enlightening text, published during the debates surrounding the trial of Maurice Papon, the general secretary of the Gironde prefecture during the Vichy government from 1942 to 1944, in which Thomas analysed how the roles of the judge and the historian are fundamentally distinct.

Historical truth and legal truth correspond to two completely different systems. First, because a judge must evaluate, decide, and pronounce a sentence which declares the truth rather than records it, and second, because he imposes the truth of the judgment through a sentence, which can only be invalidated by an appeal, detached from any external reality".[3]

Yan Thomas's interpretation of the truth shows that in the context of the Western legal tradition, the concept of "equilibrium in law" correlates with different types of interpretation of truth. In this regard, we see a causal relationship between the doctrine of truth and its uniform reflection in the "Rule", "Precedent", "Politics of Society (Expectations of Society)" and "Legal Culture".

Thus, the above studies give grounds to formulate an answer to the question about the nature of social force in law. The social force in law is the legal

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[1] Truth. Merriam-Webster, https://www.merriam-webster.com/dictionary/truth

[2] Mark D. Walters, Legal humanism and law-as-integrity, Cambridge Law Journal, 67(2), July 2008, pp. 352-375.

[3] Interpreting the Western Legal Tradition reading the Work of Yan Thomas, Marta Madero, Annales HSS 67, no. 1 (January-March 2012): 103–132. Published online by Cambridge University Press https://doi.org/10.1017/S2398568200000595.

doctrine, which is based on the equilibrium of justice, rationality, pragmatism and formalism. Hence, in the context of the legal tradition, legal doctrine is the result of the equilibrium of social forces in law and an ideological guide for the collective consciousness of society, which justifies the scenario of the dynamics of law. Here are some arguments that support this conclusion.

Raul Narits writes the following, "… The certain order created by the legal dogmatics helps to cast a glance at the inner value system of a legal order. Legal dogmatics has always played the role of a stabilisation agent. The observations settled in legal dogmatics are applicable to regulated areas of different quality. ...It must not be forgotten that legal dogmatics has been and will be born in situations of tension – through arguments and even confrontations. ...However, legal dogmatics cannot be something petrified, and if legal practice ignores a dogma, then it must be motivated, i.e., grounded with valid arguments".[1]

In Harold Berman's study, we find many empirical examples that demonstrate that the first state in which social forces in law manifest themselves is legal dogmatics. Dogmatics forms internally communicative structures of law that can change depending on changes in society and the legal environment.

For example, Harold Berman writes. "… the basic institutions, concepts, and values of Western legal systems have their sources in religious rituals, liturgies, and doctrines of the eleventh and twelfth centuries, reflecting new attitudes toward death, sin, punishment, forgiveness, and salvation, as well as new assumptions concerning the relationship of the divine to the human and of faith to reason".[2]

"… The doctrine of the atonement added other dimensions to the ideas of tribute and vindication. On the one hand, the sinner who broke the law was, indeed, considered to be not only a sinner but also a criminal, a lawbreaker, and hence liable not only to repent but also to pay a price for the violation of the law; but on the other hand, the lawbreaker, the criminal, was also a sinner, whose guilt consisted not only in the fact that he broke the law but also, and more significantly, in the fact that he voluntarily chose to do evil. Thus, there was a strong emphasis on the moral (or rather, the immoral) quality of his act, that is, his sinful state of mind when he committed it".[3]

"… Yet after Gratian, canon law, unlike English royal law, was also a university discipline; professors took the rules and principles and theories of the cases into the classroom and collected, analysed, and harmonized them in their treatises. And so, subsystems of law did emerge, though without the high degree of autonomy and doctrinal consistency that developed later".[4]

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[1] Raul Narits, Principles of Law, and Legal Dogmatics as Methods Used by Constitutional Courts, Juridica international XII/2007, 16-22, p. 20., https://www.juridicainternational.eu/public/pdf/ji_2007_XII_15.pdf

[2] Harold Berman (1983), p. 165.

[3] Ibid., p. 183.

[4] Ibid., p. 226.

"… The doctrine of "casreserves" ("reserved cases") was developed as a device to remove various crimes from the traditional local and feudal jurisdictions to that of the counts. By the late thirteenth century, the counts, on the advice of their professional jurists, were using arguments from Roman law to further their aims. However, their centralizing ambitions were eventually frustrated by corporate political entities of another type, which had their own law, a law granted by the counts namely, the Flemish cities".[1]

"… The theology of the Orthodox Church ... has never entered into alliance with philosophy in any attempt at a doctrinal system; despite all its richness, the religious thought of the East has never had a scholasticism. If it does contain certain elements of Christian gnosis ... the speculation is always dominated by the central idea of union with God and never acquires the character of a system".[2]

These empirical examples demonstrate that, having received their penetration into the law, social forces form internal communicative structures and obtain the form of a dogma (doctrine) of law. In this regard, as we see from the Harold Berman's examples, that penetrating into the realm of law, certain social dynamics (ideas, theories, beliefs, beliefs, and so on) acquire force after transformation into a doctrine. Consequently, each social force has its own target orientation, being a doctrine of law, each of them substantiates its truth in law.

In this concern Bernd Rüthers's conclusions deserve our attention. "… Dogmatics must explain current law with rational persuasion power and in the light of generally accepted fundamental values (beliefs on values). It is the intrinsic system of legal order that has evolved over different stages of development, is non-compendious and often controversially transcribed".[3]

It follows that in the context of legal doctrine, in their combination, social forces form different kinds of the equilibrium of law. For example, as we can observe from Harold Berman's research, different historical types of legal orders have been dominated by different forms of equilibrium of law as doctrinal foundations. It is important to take into account that each historical type of legal doctrine has a different degree of intellectual and emotional perception of reality through law.

But if the legal doctrine (legal dogma) is the result of an equilibrium of justice, rationality, pragmatism, and formalism, then how does science separately consider each type of social force in law? We find the answer to this question in the following studies.

The structural components of Harold Berman's legal tradition are harmonized according to the form of equilibrium of the social forces of law. From the study of Harold Berman, we can observe that the social forces of the modern positive

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[1] Harold Berman (1983), p. 514.

[2] Ibid., p. 594.

[3] B. Rüthers. Die neuen Herren – Rechtsdogmatik und Rechtspolitik unter dem Einfl uss des Judge-made laws. – Zeitschrift für Rechtsphilosophie 2005/1, p. 2.

law of the Western legal tradition are: "Rationalism in Law", "Justice in Law", "Formalism in Law", and "Pragmatism in Law".

Here is what Harold Berman writes about this. "… The systematization and rationalization of law were necessary in order to maintain the complex equilibrium of plural competing legal systems. Finally, the right order of things introduced by the Papal Revolution signified the kind of systematization and rationalization of law that would permit reconciliation of conflicting authorities on the basis of synthesizing principles: wherever possible, the contradictions were to be resolved without destruction of the elements they comprised".[1]

Harold Berman's hypothesis is supported by other studies of legal traditions. For example, in describing the evolution of the civil tradition of law, John Henry Merryman and Rogelio Perez-Perdomo write about rationalism as the dominant intellectual force in law.[2]

At the same time, in the philosophy of law we can observe the existence of different directions, which substantiate the role of other social forces in law. For example, Hans Kelsen defended the direction of formal normativism, insisting on the idea that the foundations of the rationality of law enforcement are reduced to existing regulations.[3]

Further, for example, American legal realism, began with Oliver Wendell Holmes. He defended the idea that the main form of rationality is judicial discretion, which focuses its attention first on the individual, and then on life accidents and normative prescriptions.[4]

Starting the study of the "Legal Traditions of the World", H. Patrick Glenn draws attention to the importance of rationality and justice in law already in the first pages of his book. On this occasion, the professor promises attention to Karl Popper's research "The Rational Theory of Tradition" (1969) and others.[5]

In different historical times and different cultures, "rationalism", "pragmatism", "justice" and "formalism" had their own measure of presence not only in law, or in philosophy, but also in all social spheres.

H. Patrick Glenn with reference to Alasdair MacIntyre "Whose Justice? With Rationality?" (1988), where the professor describes the development of various forms of logic and ways of thinking. It is pointed out that earlier Western rationality was the rationality of Aristotle, Augustinians, Scots, and liberals.[6]

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[1] Harold Berman. (1983), p. 118.

[2] John Henry Merryman and Rogelio Perez-Perdomo. The Civil Law Tradition. Stanford University Press, Third Edition, 2007 by the Board of Trustees of the Leland Stanford Junior University. 173 p., p. 17.

[3] Hans Kelsen, (1967).

[4] Oliver Wendell Holmes, Jr, The Common Law, Boston: Little, Brown and Company, 1881., 444 p.

[5] H. Patrick Glenn, Legal tradition of the World. Sustainable diversity in law. Fifth edition, Oxford University Press, 2014, 423 p. p. 1. (Further. H. Patrick Glenn (2014)).

[6] H. Patrick Glenn (2014), p. 4.

Thus, studying the legal traditions of the world, H. Patrick Glenn was guided by the criterion of the rationality of law as the social force of law and the property of legal traditions. The professor compiled the content of his book, taking into account the different degrees of manifestation of a particular measure in the law of different civilizations and cultures.

William James writes, that the pragmatic method does not mean any specific results, it represents an attitude towards objects. It is this attitude that pushes us to turn our attention away from different theories, categories, imaginary principles, it forces us to look towards the final consequences, namely results, and facts.[1]

Vereen M. Bell's linking of "formalism" and "philosophy" stems from a meditation by W.B. Yeats. In Bell's reading, formalism is not simply a philosophy of art, but a philosophy of life as directed by art – existential at its source and unpredictably political in its applications.[2]

Ernest J. Weinrib writes, "… Formalism postulates that law is intelligible as an internally coherent phenomenon. The implications of the formalist claim extend to every aspect of reflection about law. In effects one's view of the nature of legal justification, the limits of the judicial role and judicial competence, the meaning of legal mistake, the relevance of instrumentalism, the relation of law and society, the viability of contemporary legal scholarship, and the place of law among the intellectual disciplines. The scope and importance of these issues attest to the inescapably fundamental nature of the formalist claim".[3]

Also, representatives of academic schools of sociology write about rationalism, pragmatism of law, and other social forces: Max Weber, Hans-Georg Gadamer, Jürgen Habermas, and others. For example, Max Weber writes about three types of legitimacy: traditional, charismatic, and rational legitimacy.[4]

The above arguments answer the question that each social force in law has its own logic in relation to a social fact, each social force has its own idea of the sufficiency of evidence, has its own interpretation and generates different consequences in law. Consequently, justice, rationalism, pragmatism, and formalism each form their own determinism of law.

As a result, this should mean that each of these social forces in law has "Its own self-consciousness". Confirmation of this conclusion is found in the study by Charles Wright Mills "Sociological Imagination".

Charles Wright Mills writes, "… The symbols that justify some authorities are separated from the actual persons or strata that exercise the authority. The "Ideas"

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[1] Essays in Pragmatism by William James., Hafner Publishing Company, 1948, 200 p. p. 141.

[2] Vereen M. Bell, Yeats and the Logic of Formalism (Volume 1) University of Missouri Press, 2006, p. 201.

[3] Ernest J. Weinribt, Legal Formalism: On the Immanent Rationality of Law. The Yale Law Journal Volume 93. Number 6. 1988, p. 951.

[4] Max Weber. On Law in Economy and Society/Ed. By Max Rheinstein. Cambridge, Mass., 1966, 363 p.

not the strata or the persons using the ideas, are then thought to rule. In order to lend continuity to the sequence of these symbols, they are presented as in some way connected with one another. The symbols are thus seen as "self-determining" To make more plausible this curious notion, the symbols are often "personalized" or given "self-consciousness". They may then be conceived of as The Concepts of History or as a sequence of "philosophers" whose thinking determines institutional dynamics".[1]

On the other hand, in accordance with its type of equilibrium, this state of social forces presupposes the formation of order in law. Systematicity in law is due to the interaction of social forces. Therefore, the loss of equilibrium is capable of violating the systemic nature of law. In this regard, the resumption of the equilibrium of social forces in law is one of the types of dynamics in the legal system.

Harold Berman writes, "… The systematization and rationalization of law were necessary in order to maintain the complex equilibrium of plural competing legal systems".[2]

From the conclusions of Harold Berman, we observe that the dynamics of law are caused by the determinism of formalism and rationalism in the legal system. In this regard, one more question remains unanswered: how is the dynamics of social forces formed at the level of the legal system?

Attention should be also drawn to the theory of social systems by Niklas Luhmann.

The central concept around which the theory of social systems as developed by the later Niklas Luhmann is built is the concept of autopoiesis, originally developed by the two Chilean biologists Humberto Maturana and Francisco Varela. Autopoiesis (Greek: autos = self, poiein = to produce) means self-(re)production. Autopoietic systems thus are systems that reproduce themselves from within themselves, as for example a plant reproduces its own cells with its own cells. Luhmann argued that the basic idea of autopoiesis applied not only to biological but also to a large number of non-biological systems. He thus appropriated the originally biological concept, modified it, and applied it to the social domain. In a similar way as biological systems social systems were thus conceptualised as systems that reproduced their own elements based on its own elements.[3]

Richard Nobles and David Schiff, while analyzing the Niklas Luhmann study, write, "… The function of law, as a system for the stabilization of normative expectations, allows it to operate as an "immune system". Cognitive expectations involve learning from disappointment. Normative expectations are premised on not learning. This allows the legal system to couple structurally with other systems by offering relatively stable structures. Luhmann insists that this reference to

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[1] Charles Wright Mills, The Sociological imagination., with a new afterword by Todd Gitlin, Oxford University Press, 2000, 255 p. p. 38.

[2] Harold Berman (1983), p. 118.

[3] David Seidl. Luhmann's theory of autopoietic social systems. Ludwig-Maximilians-Universität München Munich School of Management, 2004 p. 2.

immune systems is not a metaphor. The legal system reacts to the conflicts that it identifies through its norms by producing generalized solutions: rules. Rules represent structures, which will process other conflicts (they have a surplus value). They are also time-binding, in that they support expectations about what, in future, will be coded legal/illegal. As such, law does not have to provide a "point to point" defense to every potential conflict. This serves to reduce the systemic "risk" operating within contemporary society. Law has general responses to (and will stabilize expectations relating to) conflicts that have not yet occurred".[1]

The analysis of the Niklas Luhmann study demonstrates that the stabilization of the legal system is the result of the interaction of normative expectations, rules, and legal discretion. This thesis of Niklas Luhmann is consistent with Harold Berman's hypothesis about equilibrium, which is created by the Western legal tradition. Harold Berman writes that societal politics, rules, and precedent are objects of equilibrium in law.

Niklas Luhmann also writes about "…time-binding…", which is comparable to the process of continuity of law and the movement of legal tradition. In this regard, the concept of "Stabilization" and "Equilibrium" has a common semantic meaning, since in both states the legal system can be equally structurally combined with other social systems. Finally, Niklas Luhmann writes about the directions of dynamics according to which the stabilization of law is formed. According to Niklas Luhmann, normative expectations are the beginning of the process of finding an equilibrium of law.

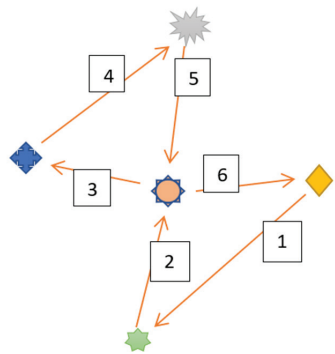
Based on the works by Harold Berman, Émile Durkheim, Max Weber, Charles Wright Mills, Niklas Luhmann, and others, using the graphical method, let's formulate the nominal dynamics of social forces in law.

Graphic model – 2. "Movement of social forces in law"

Figure 1 shows how social forces emanate from "Politics of Society (Expectations of society)" to "Legal culture".

Getting consistency with the "Legal Culture", figure 2 shows the influence of social forces on the "Legal system".

Figure 3 shows the creation by the legal system of legal norms ("Rules"), which in the process of implementation receive legal discretion ("Precedent"), which is shown by figure 4.



[1] Law as a social system, by Niklas Luhmann. Oxford Socio-Legal Studies, translated by Klaus Ziegert, edited by Fatima Kastner, edited by Richard Nobles, 2008, 512 p. p. 48. (Further. Niklas Luhmann (2008)).

Figures 5 and 6 show the feedback of the communicative relationship of law to society. This point has the potential to be presented as a legal doctrine.

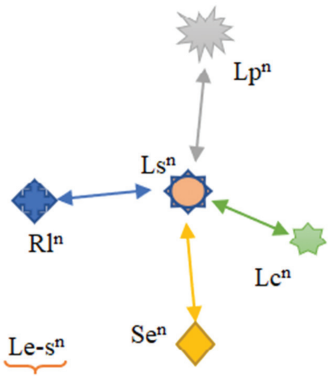
Thus, the Graphic Model – 2 dismantles nominal communicativeness in law, where subsequently the movement of social forces may arise an equilibrium in law.

Graphic model – 3. "Origin the Equilibrium in the law"

In the centre is the "Legal system" (Ls^n), it is in the centre of the equilibrium between the "Rule" (Rl^n), the "Precedent" (Lp^n), the "Political expectations (Social expectations)" (Se^n) and the "Legal culture" (Lc^n).

The arrows on Graphical Model-3 show the emergence of structural connections in the law.

The white background symbolizes the phenomenon of the external legal environment ($Le\text{-}s^n$).



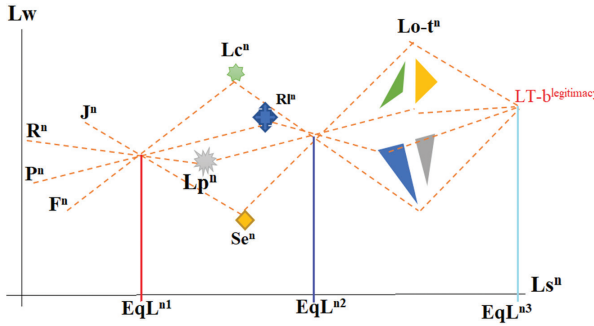
Graphic Model – 3 "Origin the Equilibrium in the law" demonstrates a situation in which the formation of a legal tradition is possible.

But Harold Berman's research demonstrates another peculiarity – the legal tradition is realized at the Third level of the equilibrium of law, namely, in the state of a legal order. This category has instrumental significance in Harold Berman's study and is very common.

We find similar approaches in works by Niklas Luhmann and in Lawrence M. Friedman. The legal order gets its static nature as a result of three equilibria of law. This static, according to Harold Berman's legal tradition, is a legal order that receives equilibrium in a state of legality. Harold Berman writes: "... The Western legal tradition is a tradition of legality that finds an equilibrium…".[1]

Thus, each historical epoch and each historical type of legal order (statics) corresponds to its own set or degree of development of social forces in law and corresponds to its own level of their equilibrium in law (dynamics).

[1] Harold Berman (1983), p. 41.



Graphic model – 4.
"Three levels of the equilibrium of law"

The first level of equilibrium of law (EqL^{n1}) according to Lawrence M. Friedman, Merryman, Rogelio Perez-Perdomo, Harold Berman, H. Patrick Glenn and others arises between "Justice of law" (J^{n}), "Rationalism of law" (R^{n}), "Formalism of law" (F^{n}), and "Pragmatism of law" (P^{n}).

The point of the first level of the equilibrium of law (EqL^{n1}) according to Karl Popper, Bernd Rüthers and others is the formation of a legal doctrine (Dogma of law), (The point of orderliness of the dynamics of law).

The second level of equilibrium of law (EqL^{n2}) according to Lawrence M. Friedman, Harold Berman, and others arises between the "Rule" (Rl^{n}), the "Precedent" (Lp^{n}), the "Politics of society" (Se^{n}) and the "Legal culture" (Lc^{n}).

The point of the second level of equilibrium of law (EqL^{n2}) according to Max Weber, Harold Berman and others is the formation of the legal tradition (LT-b^{n}), (The point of orderliness of the dynamics of law).

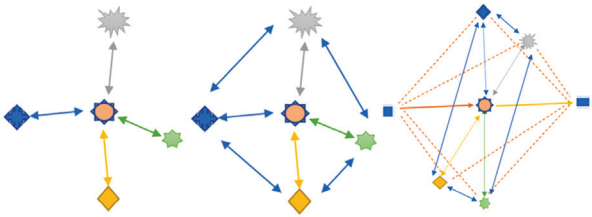
The third level of the equilibrium of law (EqL^{n3}) according to Lawrence M. Friedman, Merryman, and others arises in the legal environment based on the Legal order (Lo-t^{n}).

According to Harold Berman and Shmuel N. Eisenstadt, the point of the third level of the equilibrium of law is the legitimacy of the legal order (Lo-t^{n}), (The point of orderliness of the dynamics of law).

The legal system (Ls^{n}) is shown as a horizontal coordinate line, which symbolizes the degree of complexity of this phenomenon in the temporal plane.

The Law (Lw) is shown as a vertical coordinate line, which also symbolizes the degree of complication of this phenomenon in the time plane.

Taking into account the fact that in the Algorithmic model – 3. "Measures of equilibrium of legal tradition" legal tradition and legal order are shown as phenomena that have been formed. Let's consider the completion of this dynamic of law with the example of Graphic model – 5. "Formation of legal tradition and legal order".



Phase-1, Phase-2, Phase-3.

Graphic model – 5.
"Formation of legal tradition and legal order"

Graphical Model – 5 shows how the emergence of equilibrium in law generates equilibrium in the Legal order (Lo-t^n) and forms a Legal tradition (LT-b^1).

Further, this model of equilibrium is transmitted over time, preserving the tradition of a certain type of legal order LT-b^1 (Lo-t^n).

At the centre of this nominal equilibrium is the legal system (Ls^n), which, in accordance with the processes of communicativeness, contributes to the emergence of measures of equilibrium between social forces in law {Jn ± Rn ± Fn ± Pn}.

As a result, in law and in the legal system there are structural couplings between the "Rule" (Rl^n), "Precedent" (Lp^n), "Political expectations (Social expectations)" (Se^n) and "Legal culture" (Lc^n).

As we can see, in the indicated nominal interaction, a type of legal order (Lo-t^n) is formed, which corresponds to the equilibrium of the legal tradition LT-b^1.

The example of Phase – 3 is showing, that the structural equilibrium was formed between the "Rule" (Rl^n), "Precedent" (Lp^n), "Political expectations (Social expectations)" (Se^n) and "Legal culture" (Lc^n).

In this regard, the following question of Niklas Luhmann deserves attention, "… If law offers an immune system, can it continue to do so within a global society? Global society is not here the assimilation of cultures, or the equalization of access to resources, but the functional differentiation of society at a global level. This is seen most clearly with the economic system, which has a system of credits and payments that transcends nation-states. Science too acknowledges no national boundaries. The political system is less developed, and continues to operate predominantly through and between nation-states, although regional structures are beginning to evolve. In this context, can the legal system evolve to continue to offer a productive resource through structural coupling to these other globally differentiated systems? "If there are ever to be

legal concepts which are socially adequate, they will have to be found through a testing and re-testing of solutions to establish potential eigenvalues of the legal system in modern society".[1]

One of these concepts, we think, is the concept of the value of the right to life. The nature of the phenomenon of the "human right to life" is determined by the legal doctrine of each legal system or group of legal systems, in which the equilibrium of social forces autonomously evaluates this right and creates a determinism common to many legal systems in cases of violation of this right.

The history of positive law has many examples, which support the present conclusion. Here is one of Harold Berman's empirical examples, "… the scientific observation that the Decalogue prohibits killing but that other passages in the Bible indicate that killing may be justified when committed in selfdefense or excused when committed accidentally, is itself a statement of an applicable legal principle, namely, that killing is prima facie illegal (according to the Bible) but that it may be justified or excused in particular circumstances. The fact that the observation itself is, or may become, the law – part of the very thing that is being observed – distinguishes legal science from natural science. Indeed, that is probably one of the reasons why in the twentieth century the phrases "legal science" and "science of law" have almost disappeared from English and American usage, although in French, German, Italian, Russian, and other languages these phrases continue to be widely used. In those languages the word for science carries a broader connotation and one can distinguish more easily between law and metalaw, law as it is practiced and law as it is conceived – between Recht and Rechtswissenschaft, droit and la science du droit".[2]

The value of this example lies not only in the fact that it considers academic law as a doctrinal ideology that determines the dynamics of positive law, but also in the fact that it demonstrates that biblical and modern positive law determines the consequences common to many legal systems caused by the violation of the human right to life.

Taking into account the nature of social forces in the context of the example of Harold Berman, it follows that the considered legal determination is the result of the correlation of measures in the equilibrium of social forces in law. Where the measures of rationality, justice, pragmatism and formalism are criteria for the correlation of the consequences of the facts of the murder with the reasons that caused this murder (intentional or accidental) and the creation of new consequences for the law.

Friedrich Hegel defines the concept of "Measures" as follows. "... A measure is a qualitatively determined quantity ...". And the output of quantitative changes

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[1] Niklas Luhmann (2008), p. 49.

[2] Harold Berman (1983), p. 121.

beyond the limit of this qualitative certainty is characterized as a violation of the measure, as a result of which a new measure is established as the unity of a new quality and the quantity corresponding to it. This process, "which alternately turns out to be only a change in quantity, then a transition of quantity into quality" …".[1]

Based on the interpretation of Friedrich Hegel and on the empirical example of Harold Berman, consider the following equilibrium in law, "… killing may be justified when committed in selfdefense or excused when committed accidentally, is itself a statement of an applicable legal principle, namely, that killing is prima facie illegal (according to the Bible) but that it may be justified or excused in particular circumstances…".[2]

Algorithmic model – 3. "Measures of equilibrium of legal tradition"

Algorithmic model – 3.1. "Equilibrium in the Rule"

$$Ls^n = \frac{Rl^n}{J^n \pm R^n \pm P^n \pm F^n}$$

Algorithmic model – 3.1. shows a nominal equilibrium, where in some Legal system (Ls^n) the "Rule" (Rl^n) is based on this balance of social forces. For example, "Justice of law" (J^n), "Rationalism of law" (R^n), "Pragmatism of law" (P^n) "Pragmatism in law" and (P^n) "Formalism of law" (F^n) are balanced in that murder can be justified if committed in self-defense or forgiven if it is committed inadvertently.

Formula $x = \frac{y}{a>b<c>d}$ denotes the function of the interaction of social forces with the structural component of the legal tradition and the institutional component of positive law (Interaction Point Matching Function in the Countermeasure Environment. Symbols ">", "<" denote opposition of social forces in legal environment).

Symbol "$\pm$" denotes the first nominal equilibrium of social forces in law. The totality of the arguments of all social forces that are directed for the possibility of justification or forgiveness are equal to the zero of objection.

Symbol "=" also further in the text, as well as the Symbol – EqL^n, denote "Equilibrium of law", which corresponds to the dynamics of the impact of the legal tradition. In this case, the symbol "=" shows that the equilibrium of social forces in the Rule is present in the Legal system.

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[1] Georg Wilhelm Friedrich Hegel: Encyclopedia of the Philosophical Sciences. Part I: Science of Logic, Cambridge University Press, 28 Oct. 2010, 380 p., p. 258-263.

[2] Harold Berman (1983), p. 121.

Algorithmic model – 3.2. "Equilibrium in the Precedent"

$$Ls^n = \frac{Lp^n}{J^n \pm R^n \pm P^n \pm F^n}$$

Algorithmic model – 3.2. shows a nominal equilibrium, where in some Legal system (Ls^n) the "Precedent" (Lp^n) is based on this balance of social forces. For example, "Justice of law" (J^n), "Rationalism of law" (R^n), "Pragmatism of law" (P^n) "Pragmatism in law" and (P^n) "Formalism of law" (F^n) are balanced in that murder can be justified if committed in self-defense or forgiven if it is committed inadvertently.

Algorithmic model – 3.3. "Equilibrium in the Legal culture"

$$LT\text{-}b^1 = \frac{Lc^n}{J^n \pm R^n \pm P^n \pm F^n}$$

Algorithmic model – 3.3. shows a nominal equilibrium, where in some Legal system (Ls^n) the "Legal culture" (Lc^n) is based on this balance of social forces. For example, "Justice of law" (J^n), "Rationalism of law" (R^n), "Pragmatism of law" (P^n) "Pragmatism in law" and (P^n) "Formalism of law" (F^n) are balanced in that murder can be justified if committed in self-defense or forgiven if it is committed inadvertently.

Algorithmic model – 3.4. "Equilibrium in the Political expectations (Social expectations)"

$$Ls^n = \frac{Se^n}{J^n \pm R^n \pm P^n \pm F^n}$$

Algorithmic model – 3.4. shows a nominal equilibrium, where in some Legal system (Ls^n) the "Politics of society (Expectations of society)" (Se^n) is based on this balance of social forces. For example, "Justice of law" (J^n), "Rationalism of law" (R^n), "Pragmatism of law" (P^n) "Pragmatism in law" and (P^n) "Formalism of law" (F^n) are balanced in that murder can be justified if committed in self-defense or forgiven if it is committed inadvertently.

These algorithmic models (3.1., 3.2., 3.3., 3.4.) demonstrate the equality of all arguments of social forces in law ("$\pm$"). The value of one person's right to life

is secured by the equal values of another person. Among the relevant values of another person, law contrasts: life, freedom, property, and other.

The analysis of the legal tradition as a mechanism for arranging the law leads us to the fact that in the context of the example of Ilya Prigogine's "About the Pendulum",[1] in its synergy, the legal tradition is the force that returns positive law to a state of rest. According to Ilya Prigogine, it follows that the unstable state of law depends on legal fluctuation. Any accidental deviation from the equilibrium of law can cause disorder in law.

Consequently, the hypothesis of the revolutionary genesis of the Western legal tradition by Harold Berman gets confirmation in the theory of dynamical systems. Since, taking into account the nature of instability described by Ilya Prigogine,[2] the determinism of legal order and legal disorder can define positive law as a Conservative dynamical of a legal system.

The Legal System in the Mechanism of Legal Equilibria

In the previous sections, it was considered that the legal tradition is some state of equilibrium in the law, which was formed in the past legal order and is reflected in the present legal order. But the legal order, as Max Weber writes, arises based on legal coercion.[3] In the studies of Harold Berman, we see that the mechanisms of legal coercion are comparable to different types of legal systems and can be related to the equilibrium in the law.

This is one of the circumstances that arouses interest in considering the legal system in the context of the phenomenon of legal tradition. In the modern sense, the legal system is not only a mechanism of coercion, but also a sovereign jurisdiction, a constitutional system for exercising the official and public power of the state.

The "Legal system" as a phenomenon of law is denoted by the symbol – Ls^n.

The concept of the legal system has been sufficiently studied in modern academic law.

In 1934-1960, Professor Hans Kelsen, in his book "Pure Legal Theory" (published twice in the indicated years), first substantiated the simultaneous normative and institutional state of law in a static and dynamic aspect.

On this occasion, Hans Kelsen writes, "... A system of norms, the basis and content of which are derived from a single norm, presupposed as the main one, is a static normative system. … The normative system that presents itself as a legal order is essentially dynamic. A legal norm is valid not because it has a definite

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[1] Ilya Prigogine, The philosophy of instability. Futures Volume 21, Issue 4, August 1989, pp. 396-400. (August 1989)

[2] Ilya Prigogine (August 1989), pp. 396-400.

[3] Max Weber. Economy and Society. Bedminster Press, Volume 1, 1968, 1469 p.

content, that is, not because its content can be deduced logically from the content of the presupposed basic norm, but because it is created in a certain (ultimately provided by the basic norm) way".[1]

In 1961, the well-known representative of analytical jurisprudence, Professor Herbert Lionel Adolphus Hart, for the first time in his book "The Concept of Law", used the concept of "legal system" in the meaning that is used by jurisprudence to this day.

Formulating the concept of a "Legal system", H. L. A. Hart writes, "… The legal system of a modern state is characterized by a certain kind of supremacy within its territory and independence. English law, French law, and the law of any modern country regulates the conduct of populations inhabiting territories with fairly well-defined geographical limits. Within the territory of each country there may be many different persons or bodies of persons giving general orders backed by threats and receiving habitual obedience. But we should distinguish some of these persons or bodies (e.g., the LCC or a minister exercising what we term powers of delegated legislation) as subordinate lawmakers in contrast to the Queen in Parliament who is supreme. We care express this relationship in the simple terminology of habits by saying that whereas the Queen in Parliament in making laws obeys no one habitually, the subordinate lawmakers keep within limits statutorily prescribed and so may be said in making law to be agents of the Queen in Parliament. If they did not do so we should not have one system of law in England but a plurality of systems; whereas in fact just because the Queen in Parliament is supreme in relation to all within the territory in this sense and the other bodies are not, we have in England a single system in which we can distinguish a hierarchy of supreme and subordinate elements".[2]

A little later, in 1965, a well-known representative of legal comparative studies, Professor René David in his book "The Main Legal Systems of Modernity" demonstrated the diversity of legal systems on the legal map of the world.

Comparing legal systems, René David writes, "... One legal system can be religious in nature, and no legislator can change the rules of such law. In other countries, the laws are only a model, which it is considered natural to break if custom requires it. Elsewhere, a judicial decision is given a meaning that goes beyond the scope of this process. The use of general principles and formulas can also serve in some legal systems to correct in one direction or another the formal rule of the law in force. All this must be known in relation to the legal systems that are supposed to be studied on a comparative basis".[3]

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[1] Hans Kelsen (1967).

[2] The Concept of law, by H. L. A. Hart. Clarendon press Oxford. Second Edition., 1961, 315 p., pp. 24-25.

[3] René David. Les grands systèmes de droit contemporains. (Droit comparé). Revue française de science politique Année 1965, 574 p. p. 5.

In 1975, Lawrence M. Friedman published the book "The Legal System", which at that time summarized all scholar achievements in the field of the "Legal System", namely the ideas of John H. Merryman, Marc Galanter, Philip Selznick, Gregory Massell, Richard Schwartz, Marc Galanter and many others.

The value of Lawrence M. Friedman's approach lies not only in the theoretical substantiation of the concept of "legal system", but also in the fact that he was able to demonstrate the enormous potential of legal systems for evolution, social and legal changes.[1]

The above definitions of the legal system show the voluminous and multifunctional content of this phenomenon. The legal system, being an attribute of the state, is at the same time a complex form and mechanism for organizing law in society, as well as territorial and subject jurisdiction, which has mechanisms to differentiate constitutional, state, political and local authorities.

The above characteristic of the study of the phenomenon of the Legal system leads us to the understanding of the legal system as a Conservative dynamic system. Let's briefly consider additional arguments that confirm this thesis.

The legal system fixes and regulates the social system and the legal order, establishes legal statuses, legal conditions, legal procedures, and legal regimes, and implements rulemaking and justice. All these processes take place within the jurisdiction and national sovereignty of the legal system.

The legal system performs its conservative functions based on such levels of internal dynamics.

The communicative level of the legal system ensures the interconnection of all levels of the legal system, including the methods of coordination, subordination, the imperative method, and so on.

The institutional level is a set of all institutions, bodies, and organizations operating in the legal system that are endowed with a certain type of competence and specialization in the implementation of law.

The ideological level of the legal system is based on the fundamental legal values and values of law, that meet the needs of the Political expectations (Social expectations) and "Legal culture".

Normative level of the legal system. This is the level of the system of law and the system of legislation, which, with the help of a centralized and differentiated regulatory system, declares a certain type of legality of the legal order.

The administrative level of the legal system is focused on the actual regulation of legal relations, the physical creation and maintenance of legal order.[2]

This way, the legal system creates and implements the dynamics of law. In these dynamics, the following basic dynamic states can be distinguished: Normative state, Institutional state, Actual state, and Reflective state of law.

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[1] Lawrence M. Friedmann (1975), p. 269.

[2] Ibid.

Based on the idea of equilibrium in law, in this context in the legal system, it can be observed that each of the dynamic states of positive law has the potential for autonomy and discretion. Taken together, these properties make the legal system autonomous, and positive law holistic and stable.

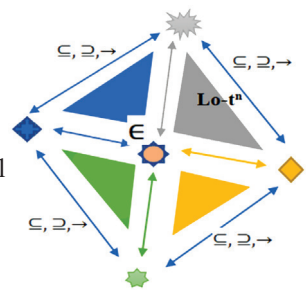
Harold Berman's study of the Western legal tradition demonstrates the different dynamics of the positive law of past legal systems. Here is what Harold Berman writes about this.

"… Relatively autonomous and rational systems of law were needed by the various secular authorities as well, in order to enable them to legitimate and effectuate their newly developing central controls and to maintain themselves in the new competition of polities. The need for legal systems was not merely a practical political one. It was also a moral and intellectual one. Law came to be seen as the very essence of faith".[1]

It follows from the foregoing that the legal system is a mechanism that creates and implements the conservative dynamics of law. While the legal tradition is one of the equilibrium models of this dynamics of law. In this regard, the Legal order cannot be perceived as a static state of positive law, to a greater extent it is an effect that generates a static and a new dynamic state of law.

The conservatism of dynamics and the internal equilibrium of the legal system enhances its external universality when interacting with other social systems. But according to Niklas Luhmann, Structural couplings are not a direct correspondence between law and economics. On the contrary, the law provides structures that can be used by other systems of society, while these systems created cases, by doing so they further stimulated (Irritations) the legal system, provoking further evolution. And what irritates the legal system is not determined by the importance or significance of the dispute in the system in which the dispute arises. Irritations arise where the legal system articulates that there are problems, and solutions are constructs within the reach of the law.[2]

Graphic model – 7.
"The equilibrium correspondence in the Legal system"



The graphical model demonstrates the ideal type of equilibrium of law in the Legal system and the Legal order – Lo-t^n.
The structural couplings of the legal system ideally reflect the equilibrium of law and harmoniously distribute the legality in the legal order.

[1] Harold Berman (1983), p. 521.

[2] Niklas Luhmann (2008), pp. 29-30.

But as many historical examples testify, the correlation of legal equilibrium with the equilibria of other types of social systems very rarely has an ideal combination. In this regard, the mechanism of the equilibrium of law often goes beyond the boundaries of the legal system. As a result, the legal system becomes the executor of a certain type of equilibrium, which does not always guarantee the autonomy of positive law.

In the context of the above, Niklas Luhmann's observation can be understood in such a way, that the universalism of the legal system is not able to provide permanent stable structural couplings of the legal system with all other systems. "Irritations" of the legal system can distress its equilibrium, which is based on the legal tradition. Losing the equilibrium of the legal tradition, the conservative dynamics of law are transformed into dissipative dynamics. Consequently, under the influence of dissipative dynamics, a new type of legal order could be arising.

On this occasion we find the following arguments of Harold Berman.

"… Neither anthropological theories of stratification nor sociological theories of economic determinism or of types of political domination can explain these distinctive features of the Western legal tradition. They do help to explain the need or desire for some kind of legal order, but not the need or desire for the distinctive kind of legal order, with its distinctive dynamics, that emerged in the West".[1]

"… The royal legal order that existed in the Norman kingdom of Sicily in the early thirteenth century was quite different from the legal order that existed in the German parts of the empire".[2]

"… In each kingdom or principality, royal law and canon law complemented each other in such a way that they may be said to have constituted integral parts of a single legal order".[3]

The above conclusions of Harold Berman provide preliminary grounds for considering the legal tradition as a state (a condition) of continuity of measures of equilibrium in law.

The difficulty of researching such an equilibrium in law is due to the fact that the Western legal tradition covers not one legal system, but many. And so, Harold Berman writes the following, "… the systematization and rationalization of law were necessary in order to maintain the complex equilibrium of plural competing legal systems. Finally, the right order of things introduced by the Papal Revolution signified the kind of systematization and rationalization of law that would permit reconciliation of conflicting authorities on the basis of synthesizing principles: wherever possible, the contradictions were to be resolved without destruction of the elements they comprised".[4]

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[1] Harold Berman (1983), p. 554.

[2] Ibid., p. 502.

[3] Ibid., p. 516.

[4] Ibid., p. 118.

In this case, the legal system may be subject to a disequilibrium state. In such a situation, the legal system from a conservative system can become dissipative.

Further, taking into account the study of Ilya Prigogine,[1] it can be understood that a dissipative legal system that directly fluctuates can collapse or receive feedback. At this tipping point (at the bifurcation point), it is fundamentally impossible to predict in which direction further development will take place: whether the state of the system will become chaotic or whether it will move to a new, more differentiated, and higher level of legal order.

Legal Order as a Result of the Influence by the Legal Tradition and as the Subject of its Continuity

Considering in more detail the nature of the "Legal order" (Lo-t^{n}) in the context of the legal tradition. The legal order is a legal concept of the official public order of society and the state, which is based on the law. In a narrower sense, the Legal order is the actual fulfilment by the society of the normative prescriptions of law. In a broad sense, the legal order is a kind of socio-cultural order, which is associated with the concepts of "Historical order", "Political order", "Public order", "Objective order" and so on.

Modern science has many explanations for this phenomenon, let's dwell on some classical and modern studies that consider its ontology.

Our analysis proceeds from the fact that the legal order is not an independent phenomenon in the understanding of Immanuel Kant's "Thing-in-itself".[2] We consider it as a certain state of another phenomenon, which in our case is a Society, a State, or their totality.

But before moving on to the level of the legal order of the society or state, one should pay attention to the study of Thomas Hobbes, who found the reasons for the emergence and existence of this specific state of society in human nature.

"… Seeing there are no signs nor fruit of religion but in man only, there is no cause to doubt but that the seed of religion is also only in man; and consistent in some peculiar quality, or at least in some eminent degree thereof, not to be found in other living creatures.

And first, it is peculiar to the nature of man to be inquisitive into the causes of the events they see, some more, some less, but all men so much as to be curious in the search of the causes of their own good and evil fortune.

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[1] Order out of chaos: man's new dialogue with nature by Prigogine, I. (Ilya), Stengers Isabelle, Nouvelle alliance, Toronto, N.Y.: Bantam Books, 1984, p. 556.

[2] Immanuel Kant, Prolegomena to Any Future Metaphysics. Cambridge University Press, 2004, p. 223., § 52.

Secondly, upon the sight of anything that hath a beginning, to think also it had a cause which determined the same to begin then when it did, rather than sooner or later.

Thirdly, whereas there is no other felicity of beasts but the enjoying of their quotidian food, ease, and lusts; as having little or no foresight of the time to come for want of observation and memory of the order, consequence, and dependence of the things they see; man observed how one event hath been produced by another, and remembered in them antecedence and consequence; and when he cannot assure himself of the true causes of things (for the causes of good and evil fortune for the most part are invisible), he supposes causes of them, either such as his own fancy suggested, or trusted to the authority of other men such as he thinks to be his friends and wiser than himself.

The two first make anxiety. For being assured that there be causes of all things that have arrived hitherto, or shall arrive hereafter, it is impossible for a man, who continually endeavoured to secure himself against the evil he fears, and procure the good he desired, not to be in a perpetual solicitude of the time to come; so that every man, especially those that are over-provident, are in an estate like to that of Prometheus. For as Prometheus (which, interpreted, is the prudent man) was bound to the hill Caucasus, a place of large prospect, where an eagle, feeding on his liver, devoured in the day as much as was repaired in the night: so that man, which looks too far before him in the care of future time, hath his heart all the day long gnawed on by fear of death, poverty, or other calamity; and has no repose, nor pause of his anxiety, but in sleep."[1]

The nature of the origin of order in society, described by Thomas Hobbes in the example of religion, may have similar features with law. After all, the problem of the secrecy of the future is a direct task of the law itself. This figurative comparison boils down to the fact that the entire written form of law is at the same time an explicit project and instruction for translating human relations into a future reality.

Further, the conclusions of Auguste Comte deserve consideration. Moving on from human nature, Auguste Comte draws attention to the institution of the family in society. The formation of order in the family, according to Auguste Comte, occurs due to two circumstances. "… The sociological theory of the family is reducible to the investigation of two orders of relations, viz., the subordination of the sexes, which institutes the family, and that of ages, which maintains it".[2]

This example illustrates two natural legal traditions that, according to Harold Berman's "The Equilibrium of law", shape the legal order in the family. According

[1] Leviathan or the Matter, Forme, & Power of a Common-wealth Ecclesiasticall and Civill, by Thomas Hobbes of Malmesbury, London, printed for Andrew Crooke, at the Green Dragon in St. Pauls Churchyard 1651, 445 p. pp. 66–67.

[2] Auguste Comte, The Positive Philosophy. Introduction by Frederic Harrison., In Three Volumes, Vol. II., Batoche Books Kitchener, 2000, 273 p. p. 236. (Further. Auguste Comte (2000)).

to Ulrich Beck, Anthony Giddens, Scott Lash, "On Structured Experience", the structured experience of this legal order is the subject of further succession (continuity) by new families that will arise on the basis of the first family.

We believe this continuity is due to the fact that, as follows from the opinion of Thomas Hobbes, the first and subsequent types of legal orders are capable of creating stability of the present and predictability of the future. At the same time, this circumstance realizes human's natural need for justice and pragmatism of this natural law.

Completing his conclusion, Auguste Comte demonstrates that the indicated tradition in different legal orders of the institution of the Family was modified in time and space, therefore this process could be accompanied by different models of the equilibrium of social forces in law.

"… When the positive philosophy shall have established the subordination of the sexes, and in that, the principle of marriage and of the family, it will talkie its stand on an exact knowledge of human nature, followed by an appreciation of social development as a whole, and of the general phase which it now presents; and in doing this it will extinguish the fancies by which the institution is at present discredited and betrayed. No doubt Marriage, like every other human concern, undergoes modifications as human development proceeds. Modern marriage, as constituted by Catholicism, is radically different, in various respects, from Roman marriage, as that differed from the Greek, and both, in a much greater degree, from the Egyptian or Oriental, even after the establishment of monogamy. It is undisputed that these modifications have not come to any end".[1]

Max Weber, whose research Harold Berman refers to, considers the phenomenon of legal order in the aspect of two approaches. Here is what Max Weber writes about this.

When it comes to "law", "legal order", "legal norm", it is necessary to pay special attention to the difference between legal and sociological approaches. The first asks: what, in the ideal sense, is considered a law? That is, what does a legal norm "mean", or, to put the question differently, what normative meaning should be logically correctly deduced from the linguistic structure that acts as a legal norm.

The second approach (sociological), on the contrary, involves finding out what actually happens in the community, where there is a possibility that the individuals participating in the community action, especially those who can effectively influence this action, subjectively perceive and practically use certain orders as significant, that is, orient their behaviour towards them.

This also determines the fundamental relationship between law and economy. The juridical approach, or rather the approach peculiar to legal dogmatics, has the task of revealing the correct meaning of judgments embodying the order that should serve as a rule of conduct for a certain circle of people, i.e., to establish the facts to which these judgments apply, and indicate how this is done.

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[1] Auguste Comte (2000), p. 236.

At the same time, without doubting the empirical significance of these judgments, this approach seeks to link them in accordance with their logically correct meaning in such a way that all together they constitute a logically consistent system. It is the legal order in the legal sense of the word.

Social economics, on the other hand, is concerned with actual actions, driven by the need to take into account the actual state of affairs in the economy, in their real context. The distribution of the actual rights to dispose of goods and services, which has arisen due to mutually acceptable compromise, and also the way in which they are actually distributed by virtue of these rights based on mutual agreement, and in accordance with its implied meaning, we call the economic order.

Obviously, both approaches solve completely different problems, and their objects may not touch each other at all; the ideal order of legal theory is not directly related to the cosmos of actual economic action, since they exist in different planes: one – in the plane of the ideally obligatory, the other – in the plane of what really happens. If, despite this, the economic and legal orders are now in exceptionally close relations, then this just means that the latter is understood not in a legal, but in a sociological sense, i.e., as empirically significant.

At the same time, the meaning of the phrase "Legal order" changes completely. It no longer means the cosmos logically, "correctly", derived norms, but a set of factual foundations that determine real human action. This point requires a more thorough explanation".[1]

In the context of the concept of legal tradition, Max Weber's analysis shows the relationship of the equilibrium of law with other types of equilibrium, among which there is economic equilibrium, political equilibrium, and cultural equilibrium.

Here is what Harold Berman writes about this, "… The term Legal system is used here to mean something narrower and more specific than law in general, or what may be called a "Legal order." There was a legal order in every society of the West prior to the eleventh and twelfth centuries, in the sense that there were legally constituted authorities that applied law. Indeed, at no time in their history did the peoples of Western Europe lack a legal order".[2]

"… Each of the peoples of Europe had its own rather complex legal order. But none had a legal system, in the sense of a consciously articulated and systematized structure of legal institutions clearly differentiated from other social institutions and cultivated by a corps of persons specially trained for that task".[3]

Harold Berman's research demonstrates that each historical type of legal order formed its own structured experience and adopted structural experience from the previous legal order, then improved it, which ultimately contributed to the complication of positive law.

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[1] Max Weber. Economy and Society. Bedminster Press, Volume 1, 1968, 1469 p.

[2] Harold Berman (1983), p. 61.

[3] Ibid., p. 76.

This characteristic indicates the following important features of the genesis of the legal order. This is why the legal order is comparable to the concepts of objective order, historical order, and dogmatic order. Moving from the institution of the Family to the level of the institution of the State, we observe that the legal order is the state that is able to restrain the force of coercion and establish boundaries for conflicts, provide for a hierarchical status and a regime for the movement of material, non-material values, and so on.

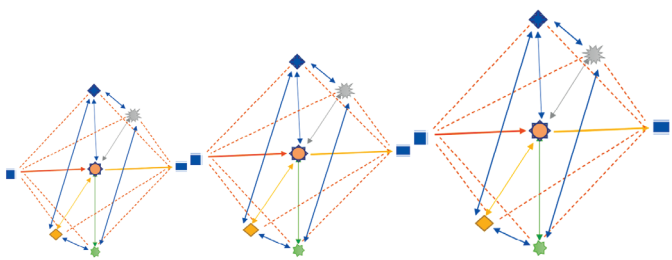
In this regard, the objectivity, historicity, and dogmatism of the legal order is realized in the sources of law, as a symbolic system. Among them, the constitution of the state or fundamental international conventions is considered to be those that have the highest legal validity. As Harold Berman's concept of the revolutionary genesis of law shows, the supreme legal validity of these sources of law is also the result of the Western legal tradition.

Talcott Parsons writes, "… stability of a symbol system, a stability which must extend between individuals and over time, could probably not be maintained unless it functioned in a communication process in the interaction of a plurality of actors. It is such a shared symbolic system which functions in interaction which will here be called a cultural tradition.

And finally, each individual actor is subject to the exigencies of interaction in a social system. This last consideration is peculiarly important to the problem of culture because of the shared aspect of a cultural tradition. Such a tradition must be "borne" by one or more concrete social systems and can only be said to "function" when it is part of their actual action systems".[1]

Based on the foregoing, with the help of a graphical model, let's consider the movement of the legal tradition from one type of legal order to the second and third types of legal order.

Graphic model – 8.
"Transmission of Legal Tradition"



Phase 1.1., Phase 1.2., Phase 1.3.

This graphical model shows that the Legal tradition, while maintaining the Equilibrium of law, ensures not only its continuity, but also its integrity and stability.

[1] Talcott Parsons (1991), p. 10.

In Graphic Model 8, we see the dynamics of changes in the nominal equilibrium of the legal order and positive law, which in its semantic boundaries corresponds to the concept of the Great Legal Tradition.

The Phases indicated by numbers: 1.1., 1.2., 1.3, nominally demonstrate different historical stages of the renewal of the legal system and the renewal of a Great legal tradition. These updates are accompanied by the emergence of a new historical type of legal order.

These Graphic models demonstrate that the legal tradition brings its equilibrium not only to the legal order but also to the socio-economic order. As a common result of this influence, we believe that in the context of tradition, each type of order reflects a system of agreed truths of law.

According to Edward Shils, the generation is the subject of the transmission of sociocultural tradition. "… It has to last over at least three generations – however long or short these are – to be a tradition. A way of expressing the duration of a tradition is to speak of it in terms of generations. This is not very precise because generations are themselves of different durations and their boundaries too are vague".[1]

We can agree with this conclusion since generations are also the object of influence of the socio-cultural tradition, therefore, each generation can transmit and receive this tradition.

In contrast to the socio-cultural tradition, the subject of the transmission of legal tradition is the legal order. Since the equilibrium of law, which reflects the order in law, creates legitimate grounds for the next legal order. We believe this is the ability of the legal tradition to legitimize the new legal order.

Shmuel Noah Eisenstadt believes that tradition denotes the ways of legitimizing the political order, and the general ways of perceiving social and cultural reality, and the principles of the organization of large social and political systems.[2]

Following these conclusions, the legal order, or a certain fragment of it is the result of the impact of the legal tradition. As mentioned above, the legal tradition shapes the equilibrium of legality in the legal order. In accordance with this property, the legal tradition differs from sociocultural traditions.

The above arguments in the context of legal tradition demonstrate two properties of the legal order, this is a static property that reflects the equilibrium of law and a dynamic property as a subject of transmission of legal tradition. In this regard, the acceptance of the legal tradition by the legal order is its static property. Hence, in this case, legality has dynamics.

As Harold Berman further writes, "… Each of the great revolutions created a new law, each of them remade the existing legal order".[3]

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[1] Edward Shils (1981), p. 15.

[2] S. Eisenstadt (1979).

[3] Гарольд Джордж Берман (1998), с. 9.

An analysis of Harold Berman's research demonstrates that the phenomenon of the legal order is dependent on the revolutions of the Western legal tradition since the revolutions violated the continuity of law and destroyed its equilibrium.

Here are some important thoughts from Ulrich Beck, Anthony Giddens, and Scott Lash on tradition, "… Tradition is the "cement of an ancient social orders", the key component of which is transmission. Tradition is a method of organizing collective memory".[1]

In the previous section of the book, the theoretical concept of the "Western legal tradition" is considered, from which it follows that the legal tradition is a structured legal memory, which, by its equilibrium, affects the environment and creates a type of order.

"Legal environment" as a phenomenon of law is denoted by the symbol – Le-s^{n}.

The concept of "Legal environment" is considered by us as the external environment of law. This legal phenomenon covers a different range of events and actions that correlate (coordinate) or do not correlate (contradict) the legal order. Consequently, legal environment is a much larger phenomenon than the phenomenon of the legal order.

Unlike the legal order, the legal environment is a spontaneous formation, which consists of legal novelties. "Legal novelty" reflects the new conditions of the legal environment, which are opposed to the legal tradition and the legal order based on it. In this regard, using the terminology of the theory of dynamical systems, the phenomenon of legal novelties is able to create fluctuations in positive law, which can be understood as general or particular cases of deviation from the traditional equilibrium in law.

"Legal novelty" as a phenomenon of law is denoted by the symbol – NL ^{n}.

In the context of the legal tradition, legal novelty can arise in each of its structural components. At the same time, the force and movement of social forces in law can also create legal novelties. In this regard, legal novelties are the events in the dynamics of law that violate its equilibrium.

Returning to the Harold Berman's study, here is what the professor writes about the role of the legal environment in the dynamics of the law of the Western legal tradition, "… that no single cause has been operative, but that in general the environment and the economy have been decisive in producing a "hierarchical arrangement of the members and classes of society which (in turn) provides the actual integration in states".[2]

As demonstrated by the evolution of the Western legal tradition, each new legal order reflects the equilibrium or confrontation between law and the environment.

Thus, legal novelty is a phenomenon of law in the context of legal tradition. It is capable of distressing or renewing its equilibrium. Consequently, the

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[1] Ulrich Beck, Anthony Giddens, Scott Lash (1996).

[2] Harold Berman (1983), p. 552.

consideration of legal novelties is equivalent to the study of possible options for changes in the legal environment. Since, as a rule, changes in the legal order are caused by changes in the legal environment. Hence, the historical movement of the evolutionary epochs of law is comparable to the change in legal traditions under the influence of novelties. One of these epochs Harold Berman calls the era of the Formation of the Western legal tradition.

Legality – the Third Level of Equilibrium of the Western Legal Tradition

Harold Berman begins his first book on the Western legal tradition with the words, "… I have had to view the Western tradition of law and legality, of order and justice, in a very long historical perspective, from its beginnings, in order to find a way out of our present predicament".[1]

Probably, this approach is due to the fact that the Western legal tradition is a tradition of the equilibrium of social forces in the rules, precedents, legal culture and in the politics of society (public expectations) of most legal systems. In turn, each of these systems is an institutional mechanism for the conservative dynamics of law, which contributes to the structuring of positive law in the form of a legal order. Hence the historical typology characterizes each type of legal order with its own balance of legality. The Western legal tradition, according to Harold Berman, is the legal tradition of legality.[2]

At the end of his book, Harold Berman writes the following, "… The concept of the organic growth of law was associated with a principle of legality. It was taken for granted that kings ruled by law. "The land shall be built by law" so begins the first Scandinavian law book. At the same time, rule by law was supported in theory, though by no means always in practice, by a widespread belief in the rule of law".[3]

In Harold Berman's study, "Legality" is considered in the context of the phenomenon of the Western legal tradition as a principle of law, as a legal regime and as a criterion for the integrity of the legal order. Modern jurisprudence also sees a different nature in the concept of "legality".

Following the above, the subject of "Legality" does not have an unambiguous definition in law. In this regard, Scott Shapiro writes in the book "Legality", "… Unfortunately, the term "legality" has its own ambiguities. Sometimes, it refers to the property of being legal or lawful. Thus, we might ask about the legality of making a U-turn in the middle of the street. Other times, "legality" refers to a value or set of values, in particular, those values associated with the Rule of Law.

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[1] Harold Berman (1983), Preface.

[2] Ibid., p. 41.

[3] Ibid., p. 536.

The principles of legality, for example, require that laws be clear, prospective, promulgated, etc".[1]

In their publication on the nature of law, Marmor Andrei and Alexander Sarch describe the genesis of the phenomenon of "Legality" as follows, "… In the course of the last few centuries, two main rival philosophical traditions have emerged about the nature of legality. The older one, dating back to late mediaeval Christian scholarship, is called the natural law tradition. Since the early 19th century, natural law theories have been fiercely challenged by the legal positivism tradition promulgated by such scholars as Jeremy Bentham and John Austin. The philosophical origins of legal positivism are much earlier, though, probably in the political philosophy of Thomas Hobbes.[2]

As follows from the foregoing, in the field of law, the main discussions about the nature of legality develop between representatives of positivism and legal naturalism. Therefore, Brian H. Bix writes the following, "… A key moment in modern natural law theory is the exchange between H. L. A. Hart (1907–1992) and Lon Fuller (1902–1978) in the Harvard Law Review in 1958. Hart located the boundary between legal positivism and natural law theory at the conceptual separation of law and morality that is, that the question of whether something (either a rule or a whole system) was "law" was conceptually separate from its moral merit. A number of writers most prominently, Lon Fuller and Ronald Dworkin have been willing to take on legal positivism on its own terms: arguing that one cannot conceptually separate law and morality".[3]

While acknowledging the close relationship between law and morality, Harold Berman takes into account the divergences in discussions about legality. In this regard, his study integrates the theory of natural law, positive law, and the historical theory of law,[4] in which the Western legal tradition is the tradition of positive law and the tradition of legal science.[5]

In this, integrating the theories of positivism and naturalism regarding the explanation of legality, it is important to take into account the foundations of law that historical theory finds in different types of societies, namely, what degree of morality (humanity) is present in general civilizational law?

Interesting point of view expresses Lon L. Fuller, "… A social norm is legal it its neglect or infraction is regularly met, in threat or in fact, by the application

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[1] Scott J. Shapiro, Legality. Cambridge, MA: Belknap Press of Harvard University Press, 2011. 472 p. p. 404.

[2] Marmor Andrei and Alexander Sarch, The Nature of Law. The Stanford Encyclopedia of Philosophy (Fall 2019 Edition), Edward N. Zalta (ed.), https://plato.stanford.edu/archives/fall2019/entries/lawphil-nature/ (Further. Marmor Andrei and Alexander Sarch (2019)).

[3] The Oxford Handbook of Jurisprudence and Philosophy of Law, edited by Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro, Oxford University Press, 2002, 1064 p. pp. 5-6. (Further. Jurisprudence and Philosophy of Law, (2002)).

[4] Harold J. Berman. California Law Review Vol. 76, No. 4 (Jul. 1988).

[5] Harold Berman (2000), p. 739.

of physical force by an individual or group possessing the socially recognized privilege of so acting.

The notion that its authorization to use physical force can serve to identify law and to distinguish it from other social phenomena is a very common one in modern writings. In my opinion it has done great harm to clarity of thought about the functions performed by law. It will be well to ask how this identification came about.

In the first place, given the facts of human nature, it is perfectly obvious that a system of legal rules may lose its efficacy if it permits itself to be challenged by lawless violence. Sometimes violence can only be restrained by violence. Hence it is quite predictable that there must normally be in society some mechanism ready to apply force in support of law in case it is needed.

But this in no sense justifies treating the use or potential use of force as the identifying characteristic of law. Modern science depends heavily upon the use of measuring and testing apparatus; without such apparatus it could not have achieved what it has.

But no one would conclude on this account that science should be defined as the use of apparatus for measuring and testing. So, it is with law. What law must foreseeably do to achieve its aims is something quite different froth law itself.

There is another factor tending toward an identification of law with force. It is precisely when the legal system itself takes up weapons of violence that we impose on it the most stringent requirements of due process. In civilized nations it is in criminal cases that we are most exigent in the demand for guarantees that the law remain faithful to itself. Thus, that branch of law most closely identified with force is also that which we associate most closely with formality, ritual, and solemn due process. This identification has a particular relevance to primitive society, where the first steps toward a legal order are likely to be directed toward preventing or healing outbreaks of private violence".[1]

The method proposed by Lon L. Fuller allows us to analyse the genesis of one of the equilibria of the Western legal tradition. It is a balance of law in the field of legality of the use of physical force by the legal system to deprive a person of the right to life.

Here is an empirical example from the Harold Berman's study, which we put on the basis of our search. "… The scientific observation that the Decalogue prohibits killing but that other passages in the Bible indicate that killing may be justified when committed in self-defense or excused when committed accidentally, is itself a statement of an applicable legal principle, namely, that killing is prima facie illegal (according to the Bible) but that it may be justified or excused in particular circumstances".[2]

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[1] Lon L. Fuller. The Morality of Law. Yale University Press, 1969, 215 p. pp. 108-109.

[2] Harold Berman (1983), p. 121.

In this example, we see the historical beginnings of the equilibrium of the Western legal tradition, where the moral consensus of social forces in law formed the first point of equilibrium of law. This point of equilibrium determines not only the legality but also the legitimacy of the use of physical force. Taken together, legality and legitimacy are embodied in the legal validity of law.

Spirituality of law (S^n) is the first point of equilibrium of the Western legal tradition, which arose after the First Revolution of Law. Morality balanced rationalism and justice in law, and as a result, positive law was focused on Christian spirituality $\{R^n \pm J^n = S^1\}$.

This equilibrium in law had its further continuity, changed not only the content and arrangement of social forces in law, but also the point of equilibrium of law. After a long genesis, this legal tradition is present in almost all modern legal orders and not only the Western legal tradition.

As we can observe from Harold Berman's research, the development of legality in the Western legal tradition had a close relationship with the development of legal validity.

John O. Tyler, Jr. referring to Harold Berman writes, "… Legal validity governs the enforceability of law, and the standard of legal validity enhances or restricts the ability of the political ruler to enforce his will through legal coercion. Western law adopts three competing standards of legal validity. Each standard emphasizes a different dimension of law, and each has its own school of jurisprudence.

Legal positivism emphasizes law's political dimension. Legal positivism recognizes political rulers as the only source of valid law and adopts the will of the political ruler as its validity standard. Leading legal positivists include Jeremy Bentham, John Austin, and H.L.A. Hart.

Natural law theory emphasizes law's moral dimension. Natural law theory recognizes universal moral principles as the primary source of valid law. These moral principles provide a standard of legal validity that imposes moral limits on the ruler's coercive powers. Leading natural law theorists include Aristotle, Cicero, Justinian, and Thomas Aquinas.

The historicist school emphasizes law's historical dimension. The historicist school recognizes legal custom as the primary source of valid law. Legal custom provides a standard of legal validity that imposes customary limits on the political ruler's coercive powers. Leading historicists include Sir Edward Coke, John Selden, Sir Matthew Hale, and Sir William Blackstone".[1]

We think that the classification of legal validity proposed by John O. Tyler, Jr contributes to the systematization of approaches to the interpretation of the ambiguous nature of the legality of the Western legal tradition. Further discussions on this subject contributed to the division of positivism into exclusive and inclusive positivism of law. Those who work in the classical natural law tradition suspect that the disputes between exclusive and inclusive legal positivists are the

[1] John O. Tyler, Jr., Legal Validity the Internet Encyclopedia of Philosophy (IEP).

fruitless demarcation disputes, little more than a squabble about the word "Law" or "Legal system".[1]

At the level of criteria of legal validity, the difference between inclusive legal positivism and some forms of natural law theory is one of modality: inclusive legal positivists argue that moral criteria can but need not be part of the test for whether a norm is legally valid, while some natural law theorists would argue that moral criteria are always and necessarily part of the test for legal validity. At the level of theory, inclusive legal positivists advocate a morally neutral description or conceptual analysis of law, while natural law theorists argue that law is best understood teleologically, within the context of a larger moral analysis. While the differences between inclusive legal positivism and some modern, law-focused versions of natural law theory might seem slight, they are differences of theoretical significance.[2]

Marmor Andrei and Alexander Sarch write, "… The main controversy between these two traditions concerns the conditions of legal validity. Basically, legal positivism asserts, and natural law denies, that the conditions of legal validity are purely a matter of social facts. In contrast to positivism, natural law claims that the conditions of legal validity are not exhausted by social facts; the moral content of the putative norms also bears on their legal validity. As the famous dictum, commonly attributed to Saint Augustine, has it: lex iniusta non est lex (unjust law is not law). (Augustine, De Libero Arbitrio, I, 5; see also Aquinas, Summa Theologica, I-II, Q. 96, Art. 4.)".[3]

Taking into account the above arguments, it can be concluded that the legal validity of positive law was based on the legality and legitimacy of its social norms, which expressed the moral consensus of social forces in law and formed an equilibrium that balanced the conditions for the use of physical force to preserve or deprive a human the right to life.

Here is one more example of the moral consensus of social forces in law. Harold Berman writes, "… Feudal law shared with the new canon law of the late eleventh and twelfth centuries many of the basic qualities of legality that marked the Western legal tradition in its formative era. It was an autonomous legal system in the distinctive Western sense, characterized, on the one hand, by a conscious integration of legal values, legal institutions, and legal concepts and rules and, on the other hand, by a conscious tendency and capacity to develop in time, to grow over generations and centuries. The new feudal legal system was also characterized by a strong emphasis on the generality and objectivity of rights and obligations, on the autonomy of persons as holders of rights and obligations, on reciprocity of rights and obligations among persons of unequal social and economic status, and on wide participation of holders of rights and obligations in the proceedings in

[1] Jurisprudence and Philosophy of Law (2002), p. 7.

[2] Ibid., p. 218.

[3] Marmor Andrei and Alexander Sarch (2019).

which such rights and obligations were declared. In these respects, too, feudal law resembled canon law".[1]

In the context of Lon L. Fuller, Harold Berman's example of the moral consensus of social forces in law can be understood as follows. "… Curiously, one of the most obvious seeming demands of legality that a rule passed today should govern what happens tomorrow, not what happened yesterday turns out to present some of the most difficult problems of the whole internal morality of law. The laws should be made known to those affected by them and that they should be capable of being obeyed".[2]

Consequently, at the level of different legal doctrines and historical types of legal orders of the Western legal tradition, one can observe how the trajectory of equilibrium in positive law has changed.

Studies by Ernest J. Weinrib and Jules L. Coleman consider arguments, including, for example, formalism, justice, and rationality in contact with morality affect the formation of "legitimacy" and "legality". From the point of view of the hypothesis of the equilibrium of law that the Western legal tradition creates, this dynamic can be explained by changes in the sequence of dominance of social forces in law, which contributes to the formation of different points of equilibrium.

Ernest J. Weinrib writes, "… Juristic activity includes reflection on its own self-understandings and aspirations. This internal standpoint cannot be ignored: Only by reference to it is legal philosophy assured of having made contact with its subject matter. Nothing is more senseless than to attempt to understand law from a vantage point entirely extrinsic to it. "Formalism takes the internal standpoint to its extreme and makes it decisive for the understanding of juridical relationships. It thereby offers the most uncompromising construal of the law's inner intelligibility. Formalism can accordingly be summed up as proffering the possibility of an "immanent moral rationality. The first feature, that law has a distinctive rationality, expresses the formalist conception of law negatively through a contrast with political justification. The second, the immanent operation of legal rationality, characterizes law's distinctiveness affirmatively through the claim that the content of law is elaborated from within. The third asserts the moral dimension of this rationality, ascribing normative force to its application".[3]

Here are some arguments by Jules L. Coleman. "… A theory of justice would be implausible on its face if its extension included morally undesirable social, political, or economic arrangements. The property of moral legitimacy is an essential, or a central feature of our concept of justice, and an argument to the effect that an analysis of justice picks out some morally illegitimate social arrangement is a strong argument for the inadequacy of that analysis. By contrast,

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[1] Harold Berman (1983), p. 314.

[2] Lon L. Fuller, The Morality of Law. Yale University Press, 1969, 215 p., pp. 44, 54.

[3] Ernest J. Weinrib, Legal Formalism: On the Immanent Rationality of Law. The Yale Law Journal Volume 93. Number 6. 1988. pp. 949, 953, 954.

laws and perhaps even legal systems can be morally illegitimate, and more often than we would care to believe, probably are. None the less, we seem inclined to acknowledge that there is something commendable about legal governance as such.

An argument for normative jurisprudence begins with this weak commendation feature of the predicate law. If law is a predicate of weak commendation, then one could argue that the best explanation of how it is that law plays this role in our normative discourse is that law has a moral property adequate to warrant "law's" linguistic role".[1]

From the above arguments, a conclusion and a hypothesis are formulated. Conclusion, realizing the theory of natural law, as category of morality shows its practical application. This is the connection of law with the society and individual, since law, having its equilibrium, without a moral connection with a person, it cannot have instrumental value.

Hypothesis. Legality and legitimacy as properties of law, in addition to legal validity, can denote different points of equilibrium of social forces in the Western legal tradition.

Consequently, these circumstances make it clear why, from a historical perspective, human life, and the right of the individual to own, use and dispose of it have different degrees of value in positive law. In each historical case, the Western legal tradition has been the source of legality and legitimacy that determined the validity of positive law, even when human life was of the least value.

The above reasoning points to fluctuations in the equilibrium of the Western legal tradition, which, in the aspect of legal humanism on the use of physical force in depriving a person of the right to life, may have some explanations.

In the online edition of the Max Planck Institute, Douglas J. Osler writes, "… The general term "humanism" has two distinct meanings. In its modern usage humanism refers vaguely to a philosophy which lays emphasis on the material welfare of mankind in this world and is thus often contrasted to the religious outlook. In its second meaning humanism refers specifically to the study of antiquity in the period of the Renaissance. Legal humanism is used exclusively in the latter context and refers to a particular direction in the study of Roman law".[2]

In another publication, Douglas J. Osler draws attention to the following, "… The sphere of the law inevitably intersects with that of humanism. Humanism, a recognition of the dignity of man and a concern for his moral and physical welfare, naturally turns its attention to the law, to crime and punishment. An association test for the word humane would very often result in the response: "the humane treatment of prisoners". The abolition of cruel and unusual punishments,

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[1] Jurisprudence and Philosophy of Law (2002) p. 10.

[2] Douglas J. Osler, Legal Humanism. Max Planck Institute., https://www.lhlt.mpg.de/research-project/legal-humanism?c=1830297

the amelioration of prison conditions, an emphasis on rehabilitation rather than retribution towards the individual designated as criminal: this is the programme of the legal humanist. Humanism – the humanist conscience – common humanity – human rights – the humane treatment of prisoners: the line of connection is direct.

The lawyer is professionally integrated in the process of social control and the enforcement of norms. It is not then just a matter of private conscience, but of personal involvement in the stand against the use of torture, imprisonment without trial, the holding of political prisoners, and the whole spectrum of human rights. First and foremost, then, we would expect the legal humanist to continue the long standing but still far from victorious struggle against the most fundamental denial of human dignity of all, namely the death penalty".[1]

As can be seen from Harold Berman's research, one of the main humanistic problems of the Western legal tradition is the problem of the value of human life. In this aspect, the genesis of the Western legal tradition is the conservative dynamics of law, in which the legal value of human life and the human right to life is expressed by different points of the equilibrium of law.

As follows from the Harold Berman's study, of each point of equilibrium of the Western legal tradition assumed its own set and sequence of social forces in law. Based on this, in the history of the Western legal tradition, one can observe different types of legal orders, the legality and legitimacy of which differently legally assessed human life and the human right to life.

In this regard, formulating the substantive boundaries of each of the possible points of equilibrium of the Western legal tradition, we focus on the classification of the six revolutions of Harold Berman and on the periodization of the historical development of humanism in law. In the genesis of the Western legal tradition, the following points of its equilibrium can be observed.

Individualism of law (Id^n) is the second point of equilibrium of the Western legal tradition, emerged after the Second Revolution of law, morality balanced justice, rationalism with the remnants of spirituality in law, as a result, positive law was oriented towards individualism $\{J^n \pm R^n = Id^n (S^2)\}$.

Regarding individualism as a form of compromise between rationality and justice, Albert Schatz writes the following, "... Far from accepting Hegel's well-known proposition, "what is reasonable is valid; and what is really is reasonable", individualists are not far from recognizing that in the social sphere things are real as they are unreasonable, that "the unreasonable", as Gabriel Tarde says, "is the basis of the necessary". Things exist because they exist because they respond, during evolution, of which they are the end, *not* to ideal concepts, but to needs. Abruptly break the tradition, because our mind does not understand it, *it does not* always mean promoting progress; it often means proving that the rational (rationnel) is opposed to the prudent (raisonnable), and not recognizing

[1] Douglas J. Osler, Images of legal humanism. Les Presses de l'Université de Montréal, Volume 9, 2001.

that the spontaneous organization of society has its causes, unknown to reason. Individualism as a philosophical doctrine is correctly defined by the formula, which states that its "starting point is the psychology of the individual, and the goal is the protection of the individual".[1]

Imperialism of law (ImR^n) is the third point of equilibrium of the Western legal tradition, which arose after the Third Revolution of law, morality balanced pragmatism, rationality, justice, and formalism in law $\{F^n \pm J^n \pm Rn \pm P^n = ImR^n\}$. *Algorithmic model – 3.5. "Balance point of the Western legal tradition".*

The phenomenon of imperialism has been deeply studied by legal scholars, but at the same time let's pay attention to it's characteristic by Joseph Schumpeter. "… The imperialism of a warrior nation, a people's imperialism, appears in history when a people have acquired a warlike disposition and a corresponding social organization before it has had an opportunity to be absorbed in the peaceful exploitation of its definitive area of settlement. Peoples who were so absorbed, such as the ancient Egyptians, the Chinese, or the Slavs, never of themselves develop imperialist tendencies, though they may be induced to do so by mercenary and generally alien armies. Peoples who were not preoccupied in this fashion – who were formed into a warlike pattern by their environment before they settled permanently, while they were still in a primitive stage of tribal or even clan organization – remain natural-born imperialists until centuries of peaceful work wear down that warlike disposition and undermine the corresponding social organization".[2]

Liberalism of Law (LiB^n) is the fourth point of equilibrium of the Western legal tradition, which emerged after the Fourth Revolution of law, morality balanced rationalism, justice, pragmatism, and formalism in law $\{F^n \pm P^n \pm J^n \pm R^n = LiB^n\}$. *Algorithmic model – 3.5. "Balance point of the Western legal tradition".*

Just like other doctrines, liberalism has a well-developed basis and history. For example, Leonard Trelawny Hobhouse draws attention to the following aspects of liberalism. "… Liberal theory replied in effect that the rights man rested on the law of Nature, and those of government on human institution. The oldest "institution" in this view was the individual, and the primordial society the natural grouping of human beings under the influence of family affection, and for the sake of mutual aid. Political society was a more artificial arrangement, a convention arrived at for the specific purpose of securing a better order and maintaining the common safety. …

The nineteenth century might be called the age of Liberalism, yet its close saw the fortunes of that great movement brought to their lowest ebb. Whether at

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[1] Шац, Альбер (1879–1940) Индивидуализм экономический и социальный: истоки, эволюция, современные формы / А. Шац ; пер. с франц. В. П. Гайдамака и А. В. Матешук. – Москва ; Челябинск : Социум, 2021. – 703 с., с. 541, 550.

[2] Joseph Schumpeter, Imperialism, and social classes. Introduction by Bert Hoselitz, translated by Heinz Norden., Meridian Books, 1955, p. 182, p. 27.

home or abroad those who represented Liberal ideas had suffered crushing defeats. But this was the least considerable of the causes for anxiety. If Liberals had been defeated, something much worse seemed about to befall Liberalism. Its faith in itself was waxing cold. It seemed to have done its work. It had the air of a creed that is becoming fossilized as an extinct form, a fossil that occupied, moreover, an awkward position between two very active and energetically moving grindstones – the upper grindstone of plutocratic imperialism, and the nether grindstone of social democracy".[1]

Nationalism of law (Nl^n) is the fifth point of equilibrium of the Western legal tradition, which arose after the Fifth Revolution of law, morality balanced justice, pragmatism, rationalism, and formalism in law $\{F^n \pm R^n \pm P^n \pm J^n = Nl^n\}$. *Algorithmic model – 3.5. "Balance point of the Western legal tradition".*

Ernest Gellner writes, "… Nationalism is a theory of political legitimacy, which requires that ethnic boundaries should not cut across political ones, and, in particular, that ethnic boundaries within a given state – a contingency already formally excluded by the principle in its general formulation – should not separate the power holders from the rest, nationalism has often not been so sweetly reasonable, nor so rationally symmetrical. It may be that, as Immanuel Kant believed, partiality, the tendency to make exceptions on one's own behalf or one's own case, is the central human weakness from which all others flow; and that it infects national sentiment as it does all else, engendering what the Italians under – Mussolini called the "sacro egoism" of nationalism. It may also be that the political effectiveness of national sentiment would be much impaired if nationalists had as fine a sensibility to the wrongs committed by their nation as they have to those committed against it".[2]

Collectivism of law (Cll^n) is the sixth point of equilibrium of the Western legal tradition, which emerged after the Sixth Revolution of law, morality balanced formalism, rationalism, pragmatism, and justice in law $\{J^n \pm Pn^n \pm R^n \pm F^n = Cll^n\}$. *Algorithmic model – 3.5. "Balance point of the Western legal tradition".*

The classification of equilibrium points of the Western legal tradition proposed above is based on Geert Hofstede's theory of cultural dimensions.[3] Following this theory, unlike other points of equilibrium of law, Collectivism forms such a balance in law: a great distance between man and power; the difference between people is normal and encouraged; people who do not have power must depend on people who have power; people hold the same view of the world regardless of education; hierarchy in an organization means an objective difference between higher and lower; centralized management; a large difference in income between managers and subordinates; privileges and symbols emphasize the high status

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[1] Leonard Trelawny, Liberalism. FQ Books, 6 July 2010, 92 p. pp. 24, 91.

[2] Ernest Gellner, Nations, and Nationalism. Bleckwell Publishers, 1983, 150 p., pp. 1, 2.

[3] Culture's Consequences: Comparing Values, Behaviors, Institutions and Organizations Across Nations by Dr. Geert Hofstede, SAGE Publications Inc., 2003, 620 p.

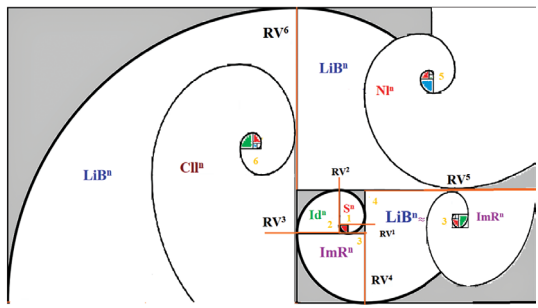
of managers, which is considered fair; parents teach children unconditional obedience; it is assumed that the initiative in the classroom belongs to the parent; intellectual property is considered to be in the public domain; the legislature (normativity of law) and the judiciary (reflection of law) are numb to autonomy; social duty is higher than the value of human life. These same characteristics constitute the value content of the collectivist doctrine of law.

Thus, each of the points of equilibrium of the Western legal tradition forms its own type of legality and legitimacy, therefore, it is possible to distinguish different types of positive law: spiritual positive law, individualistic positive law, imperialist positive law, liberal positive law, nationalist positive law, collectivist positive law, etc.

The completion of the process of formation or the process of continuity of the legal tradition is the formation of a legal order corresponding to the equilibrium of this legal tradition. Thus, the idea of the origin of positive law indicates the completion of the formation of the equilibrium of legality. Let's consider this process on a graphical model.

Graphic model – 6. "The Sequence of Equilibria of the Western legal tradition"

The Fibonacci model,[1] shows the sequence of development of the equilibrium of the Western legal tradition



In the center of the spiral, the numbers show six points of equilibrium of the Western legal tradition. The model demonstrates that the equilibrium point of liberalism of law is the basis of continuity and has a direct connection with the first point of equilibrium of law.

The use of the Fibonacci spiral allows us to demonstrate that after each revolution of law (RV^n), the positive law of the Western legal tradition not only expanded and became more complex, preserving the continuity of previous equilibriums, but formed new points of equilibrium. The presence of several points of equilibrium in one legal tradition indicates a genesis, which has a different type of legality and legitimacy of law.

[1] Jeffrey R. Chasnov, Fibonacci Numbers and the Golden Ratio. The Hong Kong University of Science and Technology, 2002, p. 87.

A NEW ERA OF THE WESTERN LEGAL TRADITION

Based on the previous Harold Berman's theoretical results and empirical research, further will be considered that his first book title "The Formation of the Western Legal Tradition", corresponds to the notion of the historical era of "The Formation". Consequently, it will be found that Harold Berman's Sixth revolution of law has more counterrevolutionary implications for the Western legal tradition.

Secondly, attention will be drawn to the fact that, in contradiction to Harold Berman's concept of the revolutionary development of the Western legal tradition, which is fraught with the transformation of law and the formation of a new type of legal order, in the middle of the twentieth century a new type of legal order was formed without the Seventh revolution of law in the world.

Taking into account the theory of group interactions, it will also be established that the Western legal tradition is characterized by a new type of interactions legal systems based on different national legal traditions within one legal order of the Western legal tradition.

These and other signs created the basis for the hypothesis about the end of the era of "The Formation of the Western legal tradition" and the beginning of the era of "The Confrontation of the Western legal tradition".

In order to test the above hypothesis, in a subsection of this chapter, the conclusions of various studies are considered, a graphical and algorithmic model of the legal genesis of the Western legal tradition is compiled.

The Myth of the Sixth Revolution of Law

In the development of the Western legal tradition, Harold Berman identified six revolutions of law.

First. The Papal Revolution of 1059-1122.

Second. German Revolution – Lutheran reform in Germany in 1517-1555.

Third. English Revolution of 1640-1689.

Fourth. The American Revolution of 1776.

Fifth. The French Revolution of 1889.

Sixth. The Russian Revolution of 1917.

Harold Berman has examined in detail only the first two revolutions of law, the other four were reviewed in a brief overview. But this review is sufficient for the hypothesis that these six revolutions of law represent an independent period of the genesis of the Western legal tradition.

This is only a hypothesis; its verification will be carried out further. Now, let's turn our attention to the characterization of the Sixth Revolution of Law by Harold Berman, here is what Professor Berman writes about this, "… The two generations since the outbreak of the Russian Revolution have witnessed – not only in the Soviet Union but throughout the West – a substantial break with the individualism of the traditional law, a break with its emphasis on private property and freedom of contract, its limitations on liability for harm caused by entrepreneurial activity, its strong moral attitude toward crime, and many of its other basic postulates. Conversely, they have witnessed a turn toward collectivism in the law, toward an emphasis on state and social property, regulation of contractual freedom in the interest of society, expansion of liability for harm caused by entrepreneurial activity, a utilitarian rather than a moral attitude toward crime, and many other new basic postulates.

These radical changes constitute a severe challenge to traditional Western legal institutions, procedures, values, concepts, rules, and ways of thought. They threaten the objectivity of law since they make the state an invisible party to most legal proceedings between individuals or corporate entities – the same state that enacted the applicable law and appointed the court. This invisible pressure is increased in Communist countries by virtue of strong central controls not only over economic life, but also over political, cultural, and ideological life; and in non-Communist countries, too, such central controls in the noneconomic sphere have increased, although they have usually been more in the hands of large bureaucratic organizations than of the state as such. To the extent that the present crisis is comparable to revolutionary crises that have struck the Western legal tradition in the past, the resources of that whole tradition may be summoned to overcome it, as those resources have been summoned to overcome previous revolutionary crises. However, the present crisis goes deeper. It is a crisis not only of individualism as it has developed since the eighteenth century, or of liberalism as it has developed since the seventeenth century, or of secularism as it has developed since the sixteenth century; it is a crisis also of the whole tradition as it has existed since the late eleventh century. Only four – the first four – of the ten basic characteristics of the Western legal tradition remain as basic characteristics of law in the West".[1]

In our opinion, the above characterization, as well as other Harold Berman's conclusions, to a greater extent demonstrate the anti-revolutionary significance of the Russian Revolution for the Western legal tradition. We base this conclusion on the following.

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[1] Harold Berman (1983), p. 37.

First. The ideas of the Russian Revolution were rejected spirituality as a social force in law and its role in the formation of the Western legal tradition, while the Western legal tradition was formed on the basis of the Papal Revolution, where for the first time the equilibrium of law and legal order was based on the ideals of Christian spirituality.[1]

Second. The ideas of the Russian Revolution excluded the institution of private property from the law. At the same time, private property is one of the fundamental legal traditions of the Western legal tradition, the origins of which date back to Roman law.[2]

Third is the institution of contract. Socialist normative regulation and judicial practice considered the institution of contract as an element of the formal reflection of factual relations. In most cases, the treaty was not a mechanism for the formation of a pragmatic and a rational system of balancing legal obligations.[3]

Fourth. The ideas of the Russian Revolution excluded the role and competition of social forces in the equilibrium of law, except for one social force – communist ideology. As a result, in the Soviet legal space, the continuity of the Western legal tradition was carried out not in terms of value, but in terms of structural content. Legality as the third level of equilibrium in the Western legal tradition in the Soviet legal system obtained imperative dominance over natural law.[4]

Fifth. The imperative dominance of socialist legality in positive law testified to the loss of its natural autonomy by law. There was not the Rule of law.[5]

Sixth. The Russian Revolution proclaimed the legal personality of only one working class (the proletariat) and had the goal of gaining world domination. For example, this dynamic of law was based on the internationalist communist slogan of Karl Marx: "… Proletarier aller Länder, vereinigt Euch! …" ("… Proletarians of all countries, unite…").[6]

Seventh. Socialist positive law used the Communist Revolution (Russian Revolution) as the basis for creating a break in the continuity of the Western legal tradition. Socialist law denied its origin and continuity from Russian monarchical law.

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[1] Decree on land of the congress of Soviet of Workers' and Soldiers' Deputies (adopted at a meeting on October 26 at 2 am) Decree of the Second All-Russian Congress of Soviets on Land, https://ru.wikisource.org/wiki/%D0%94%D0%B5%D0%BA%D1%80%D0%B5%D1%82_%D0%BE_%D0%B7%D0%B5%D0%BC%D0%BB%D0%B5

[2] The Civil Code of the RSFSR, IV session of the All-Russian Central Executive Committee of the RSFSR of the IX convocation on October 31, 1922, https://docs.cntd.ru/document/901808921

[3] Халфина Р.О. Значение и сущность договора в советском социалистическом гражданском праве. Изд-во Академии наук СССР, 1954, с. 237.

[4] Constitution of the union of Soviet Socialist Republics, approved by the Extraordinary VIII Congress of Soviets of the USSR on December 5, 1936, http://www.hist.msu.ru/ER/Etext/cnst1936.htm

[5] Constitution of the union of Soviet Socialist Republics, approved at the extraordinary seventh session of the Supreme Soviet of the USSR of the ninth convocation on October 7, 1977. https://www.hist.msu.ru/ER/Etext/cnst1977.htm#i

[6] The Communist Manifesto by Karl Marx, Friedrich Engels, International Publishers Co, 2014, p. 48.

As evidence, Andris Plotnieks writes the following about this, "… In the first Soviet years, "the legal consciousness of the working classes" was declared one of the sources of law. …".[1] This source of law was normatively recognized by paragraph 5 of the Decree on the Court of November 24, 1917.[2]

Summing up the above characterization in the context of the fundamental human right to life, it can be seen that the legal status and value of this right did not depend on the autonomy of law. The human right to life was determined by the "collectivist" point of equilibrium of law.

The name "Collectivist" is used in this work nominatively and in the context of the subordination of positive law to authoritarian political doctrine. In this case, it is the communist (socialist) Marxist-Leninist doctrine and other.

It follows that Harold Berman's conclusions about the Russian Communist Revolution of 1917 as the Sixth Revolution of the Western legal tradition have the opposite meaning. Instead of developing equilibrium and strengthening the autonomy of law, this legal transformation created the prerequisites for the disequilibrium of the Western legal tradition.

It is known from various historical sources that before and during the "Russian revolution" in 1917, the Provisional Government was formed, which, according to the positive law is still in force, was considered as the assignee of monarchical power. On this occasion, Anton Denikin writes: "At the beginning of the revolution, the Provisional Government undoubtedly enjoyed wide recognition by all sensible sections of the population. The entire senior command staff, all the officers, many military units, the bourgeoisie, and democratic elements, not confused by militant socialism, were on the side of the government ...".[3] Historical sources indicate that Provisional Government's positive law was oriented towards the Liberal point of the equilibrium of the Western legal tradition. In this context, it should be noted that the Provisional Government of 1917 did not finish to form own legal system. As a result, a socialist legal system was formed.

After 1991, the Russian Federation, according to the constitution of December 12, 1993,[4] proclaimed a state, which was also focused on the Liberal point of the equilibrium of the Western legal tradition. In this regard, state attributes, ideological, and historical prerequisites indicate that modern Russian Federation aspires to be the legal successor of the Provisional Government avoiding the imperialist point of equilibrium in positive law. But other facts demonstrate a confrontation of this state in the positive law terms. On the one hand, the state claims its rights as the exclusive successor of the Soviet Union, in the positive

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[1] Плотниекс А.А. Развитие взглядов на сущность советского права (1917–1936 гг.) // Советское государство и право, 1980. № 1. С. 116–121.

[2] Собрание узаконений и распоряжений рабочего и крестьянского правительства РСФСР. 1917. № 4. Ст. 50.

[3] Антон Деникин, Очерки русской смуты. М.: "Мысль", 1991. 212 с.

[4] Конституция Российской Федерации. // "Российская газета" от 25.12.1993 № 237.

law of which the collectivist point of equilibrium dominated, on the other hand, this state justifies the legality of its aggressive actions by the imperialist point of equilibrium in its positive law.

Taken together, these circumstances indicate a counterrevolution of the law of the Western legal tradition, so this confrontation was reflected at the level of the international legal order.

One of the striking examples of the continuity of the mentioned counterrevolution of the Western legal tradition in the twenty-first century is the inconsistency of the international Doctrine of continuity in 1991. On the other hand, this conclusion is debatable, but the following arguments deserve our attention.

The violation of this doctrine was justified by Ilias Klapas in his publication "Continuity and Immunity in International Law".[1] The researcher put forward a hypothesis about whether something that has already ceased to exist can exist.

Let us consider some of the key arguments of Ilias Klapas in the context of the possible continuity of the equilibrium of law between legal systems, one of which has ceased to exist. This example was chosen for the following reasons.

First reason. Justification by Harold Berman of the Russian revolution as the last transformation of the Western legal tradition.

The second reason. Recognition of the fact that the Russian revolution may have affected the equilibrium of law in the Western legal tradition.

Third reason. Confrontation of values in the legal status of the Human right to life.

Fourth reason. Continuity of mentioned confrontation in the twenty-first century.

Ilias Klapas presented reasons for the lack of continuity in the Russian Federation to be the solo-successor state of the Union of Soviet Socialist Republics (USSR).

"… The traditional doctrine has always considered the dismemberment of the state and the emergence of new states as one of the cases of the cessation of the existence of the state. Practice, after all, was not so unambiguous. Legal technique may take the path of recognizing continuity in some cases and denying it in others. …

… Proponents of the concept of continuity refer not only to legal norms, but also to geopolitical and economic circumstances in order to argue their position. (Further Ilias Klapas quotes one of the sources) ... "The legal personality of the Union passed to Russia as to that state – a member of the Commonwealth of Independent States (CIS, also known as SND), which, due to political, economic and legal circumstances, can actually bear the obligations of the former Union" ... (end of a quote by Ilias Klapas, then we quote the scholar's opinion) ...

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[1] Илиас К. Правопреемство и континуитет в международном праве. // Московский журнал международного права. 1992; (4): 22–35, https://doi.org/10.24833/0869-0049-1992-4-22-35 (Further. К. Илиас (1992.)).

… But Russia's unilateral assumption of responsibility for the external debts of the former USSR does not mean in itself that Russia is maintaining continuity. Thus, the acceptance by the Federal Republic of Germany of responsibility for the external pre-war debts of the German state did not entail the recognition of the Federal Republic of Germany as a state identical to the German Empire of the nineteenth century. Moreover, the mentioned unilateral act of Russia cannot have international legal consequences when there are protests from other CIS states. …

… Continuity is the continuation of the exercise of all the rights and obligations of the predecessor State. And can one of the states – from the former Soviet republics – bear all these obligations? Such a question arises in relation to the Soviet-American agreement on the destruction and prohibition of the production of chemical weapons. … Today, after the division of the USSR, only joint efforts can ensure the implementation of these and other treaties signed by the USSR, which are so important for the entire international community. …

… The attempts made so far to overcome the issues arising in connection with the collapse of the USSR show that the solution of such complex problems unilaterally, guided not by legal criteria, but by political considerations, is fraught with the danger of conflicts and arbitrariness. …

… Considering all the new states on the territory of the USSR as its legal successors, having the same international legal status and sharing equally the responsibility for fulfilling the obligations of the USSR, on the contrary, encourages the search for solutions by concerted actions. This is very important not only in the interests of the successor states of the USSR, but also for the entire international community. Members of the international community of states are interested in the fulfilment of all obligations assumed by the USSR in relation to its entire territory, and not just some part, for the purpose of the stability of international law, the strengthening of international peace and the development of international cooperation".[1]

Thus, Ilias Klapas justifies that, according to the Doctrine of Continuity, the Russian Federation cannot be the sole successor state of the USSR and take the place of the USSR in the UN and in the UN Security Council.

As a test for these arguments, let's briefly consider the content of regulations and decisions taken by the USSR and the CIS.

Article 13 of the Constitution of the USSR (in force at the time of the creation of the UN) approved by the Extraordinary VIII Congress of Soviets of the USSR of December 05, 1936 (with subsequent amendments and additions) and Article 70 of the Constitution of the USSR (in force at the time of the cessation of the existence of the USSR), adopted at the extraordinary seventh session of the Supreme Council USSR of the ninth convocation on October 07, 1977 (with

[1] К. Илиас (1992).

amendments and additions to the wording until December 26, 1990), provide that: "... the Soviet Union is a single state, and all republics have an equal status".[1], [2]

The first paragraph of the Agreement on the Establishment of the Commonwealth of Independent States (CIS) of December 8, 1991, reads: "... We, the Republic of Belarus, the Russian Federation (RSFSR), Ukraine, as the founding states of the USSR, who signed the Union Treaty of 1922, hereinafter referred to as the High Contracting Parties, state that the USSR as a subject of international law and a geopolitical reality ceases to exist".[3]

At the same time, on December 21, 1991, the Council of the Heads of State of the CIS adopted a decision in which it indicated: "... The Commonwealth states support Russia in continuing the membership of the USSR in the UN, including permanent membership in the Security Council, and other international organizations".[4]

As we see further, the decision of the Council of the Heads of State of the CIS dated 12.21.1991 is based on only one article – this is article 12 of the Agreement on the establishment of the CIS dated 12.08.1991.

Article 12 of the Agreement on the establishment of the CIS of 08.12.1991 reads, "... The High Contracting Parties guarantee the fulfilment of international obligations arising for them from treaties and agreements of the former USSR".[5]

Thus, the Decision of the Council of the Heads of State of the CIS dated 12.21.1991 has no factual and legal grounds.

The absence of factual grounds lies in the fact that the Commonwealth states could not decide on the continuation of the USSR membership, since at the time of such a decision on December 21, 1991, the USSR as a state and a subject of international law no longer existed, and the CIS states were no longer republics of the USSR, they were independent member states of the CIS. (The principle of retroactive effect of the law in time was not applied).

The lack of normative grounds lies in the fact that Article 12 of the Agreement on the Establishment of the CIS of 08.12.1991 does not regulate the issues of succession to the USSR. This article literally follows a declaration on legal guarantees for the fulfilment by the CIS states of the obligations of the former USSR.

Regarding the succession of the USSR, each CIS state independently resolved these issues with its own laws. For example, on September 12, 1991, the

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[1] Конституция (Основной закон) Союза Советских Социалистических Республик. Издание ЦИК СССР М.: Кремль 1990. – 42 с.

[2] Конституция (Основной закон) Союза Советских Социалистических Республик. Издание ЦИК СССР М.: Кремль 1937. – 34 с.

[3] Соглашение о создании Содружества Независимых Государств от 08.12.1991, https://cis.minsk.by/page/176

[4] Решение Совета глав государств Содружества независимых государств от 21.12.1991. ЕРПА СНД. http://www.cis.minsk.by/reestrv2/doc/5#text

[5] Соглашение о создании Содружества Независимых Государств от 08.12.1991, https://cis.minsk.by/page/176

Parliament of Ukraine adopted the Law of Ukraine "On the succession of Ukraine" No. 1543, Article 6 of which provides, "... Ukraine confirms its obligations under international treaties concluded by the RSFSR to declare Ukraine's independence. …". Article 7 of the same Law proclaims that "... Ukraine is the legal successor of the rights and obligations under the international treaties of the USSR that do not contradict the Constitution of Ukraine and the interests of the republic".[1]

In contrast to this normativity, the newly formed national legal system was perceived by the Western legal tradition as the successor of all-Union jurisdiction at the level of the international legal system of the UN. Subsequently, there is an imbalance in the international legal order, when one of the national jurisdictions continues the legal tradition of the legal system, which was ceased back in 1991. On the other hand, in the context of the legal tradition, it can be assumed that in 1991 the all-Union USSR legal system did not cease to exist. In this case, the opposition of these types of balance of law exacerbates the confrontation of the Western legal tradition, especially within the spatial boundaries of the pan-European legal order.

Consequently, the further continuity of the disequilibrium of law from one legal order to another has signs of the "Counterrevolution of the Western legal tradition".

In this regard, using the terminology of the theory of dynamical systems, the phenomenon of counterrevolution of the legal tradition is comparable to the phenomenon of systemic fluctuation in the conservative dynamics of law. This phenomenon suggests the emergence of an additional type of positive law. This type of positive law bases its nature and legitimacy on the Western legal tradition, but at the same time "duplicates" its equilibrium, creating a counterbalance in law. There is a different distribution of social forces in law, a doctrine, normativity, and reflection of law are being formed, which introduce confrontation into the autonomy of law.

Throughout the twentieth century, this counterrevolution brought an imbalance into the Western legal tradition and continues to disturb that imbalance today.

Here is what Harold Berman writes about this, "… The breakdown of the Western legal tradition springs only in part from the socialist revolutions that were inaugurated in Russia in October 1917 and that have gradually spread throughout the West (and throughout other parts of the world as well), albeit often in relatively mild forms. It springs only in part from massive state intervention in the economy of the nation (the welfare state), and only in part from the massive bureaucratization of social and economic life through huge centralized corporate entities (the corporate state). It springs much more from the crisis of Western civilization itself, commencing in 1914 with the outbreak of World War I. This

[1] On Legal Succession of Ukraine: Law of Ukraine. Verkhovna Rada of Ukraine, https://zakon.rada.gov.ua/laws/show/1543-12?lang=en#Text

was more than an economic and technological revolution, more even than a political revolution".[1]

Continuity, Renewal, and Transformation of Law in the Western Legal Tradition

In this subsection, we will consider the main theoretical aspects of the continuity, renewal, and transformation of law in the Western legal tradition. Based on Harold Berman's research, we will try to compile an algorithmic model of the continuity, renewal, and transformation of the law of the Western legal tradition.

Continuity of law (Cn^n).

As Harold Berman's research demonstrates, the Western legal tradition is an independent genesis of the continuity of law. The Continuity of law in accordance with the Western legal tradition is the evolution of different types of equilibrium of law.

The conceptual basis of this evolution of law according to Harold Berman is as follows, "... Since the eleventh and twelfth centuries, the history of the West has been characterized by alternating periods of renewal and continuity. ... during periods of evolution ... The spark of the apocalypse smolders, from time to time flashing new revolutions. So, there is a certain dialectical interaction between the great revolutions of the past…".[2]

According to Harold Berman, the dialectical interaction between revolutions indicates that one revolution arises as a consequence of another revolution. Namely, the consequences of one revolution form the causes for another revolution of law. If we assume that this phenomenon takes place, then we see that the development of law is the evolution of different models of the equilibrium of law. Each legal order that is based on the legal tradition uses its own model of equilibrium in law.

Consequently, the change of equilibrium models in law presupposes the Renewal of law (RW^n), and the preservation of equilibrium models in law means the Continuity of law (Cn^n).

On this matter, Neno Nenovsky writes that the continuity and renewal of law are characteristic of the natural law genesis, which has two sides of the same process – the process of formation and development of the national legal system. And also, in addition to national legal systems, these processes are associated with the general historical movement of law as a social phenomenon (legal progress, the growth of legal culture, regressive phenomena in law), which is in connection with legal culture.[3]

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[1] Harold Berman (1983), pp. 39-40.

[2] Берман Гарольд Джордж (1998), с. 9.

[3] Нено Неновски, Преемственность в праве. М.: Юрид. лит., 1977. С. 32.

This analysis confirms the hypothesis of continuity and renewal of law as processes that ensure the preservation, transmission, and renewal of different models of equilibrium in law. Since the loss of the law of its equilibrium causes contradiction aimed at the formation of a new model of the equilibrium of law. According to Harold Berman, this seems to be the main dialectical interdependence between the revolutions of law.

In this regard, let consider in more detail the conclusions of Harold Berman about the dialectical relationship between the great revolutions of law.

"… Since the eleventh and twelfth centuries, the history of the West has been characterized by alternating periods of renewal and continuity. Turbulent upheavals are replaced by periods of peaceful development, when the changes born of the revolution are built into the existing tradition and at the same time transform it. However, even in periods of evolution, the spark of the apocalypse smolders under the covers, from time to time flashing with new revolutions. So, there is a certain dialectical interaction between the great revolutions of the past: the revolution in Germany in the sixteenth century, which was Lutheran and princely; the revolution in England in seventeenth century, which was puritanical and parliamentary; the revolutions in France and America in the eighteenth century, which were deistic and democratic; the revolution in Russia of the XX century, which was atheistic and socialist".[1]

From this analysis, we see that the revolutions of law are followed by the restoration of equilibrium in law (... periods of harmonization of law...), and the new models of the equilibrium of law that have emerged are based on the legal tradition of the previous balances of law (... The changes born of the revolution are built into the existing tradition...).

The final and external manifestation of each model of equilibrium in law is the legal order and legal system formed on its basis.

In this regard, using the example of an algorithmic model, let's consider the continuity of law between different historical types of legal orders based on the legal tradition.

Algorithmic model – 4. "Continuity of law"

$$Cn^{n} \supseteq Lo\text{-}t^{1} (LT\text{-}b^{n}) \smile Lo\text{-}t^{2} \smile Lo\text{-}t^{3} \smile Lo\text{-}t^{4}$$

Symbol – Cn^{n} denotes "Continuity of law".

Symbol $\supseteq$ denotes the composition of the elements that make up the continuity of law. This is a Legal tradition ($LT\text{-}b^{n}$) and the Legal order ($Lo\text{-}t^{n}$).

Symbol ($\smile$) denotes the process of Continuity of law. According to legal tradition $LT\text{-}b^{n}$ the Continuity of Law moves from one legal order ($Lo\text{-}t^{1}$) to another legal order ($Lo\text{-}t^{2}$) and so on.

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[1] Берман Гарольд Джордж (1998), с. 9.

As Harold Berman's research shows, the loss of equilibrium in law indicates a discrepancy between the legal tradition and the new state of the legal environment. This is due to the fact that phenomena are formed in the legal environment that are capable of creating their own dependencies opposite to the equilibrium of law outside the positive law.

"Legal novelties" can reflect a certain state of the legal environment, which was not previously balanced by law, Harold Berman writes about this, "… Without a perspective of such duration it is impossible to understand either the periodic cataclysms of Western history or the great traditions that have succeeded those cataclysms and have served as bulwarks against their recurrence. Renewal is followed by continuity and growth, revolution by evolution".[1]

Consequently, Harold Berman refers to the phenomenon of legal novelties social, political, economic, cultural, and other contradictions that the existing equilibrium of law is no longer able to maintain, stabilize and be settled.

Thus, we can assume that legal novelties oppose themselves to legal traditions. This means that under the influence of legal innovations, the law may lose its autonomy, recognition, authority, and legitimacy.

As Harold Berman's research shows, under the influence of legal novelties that become total, law can lose its equilibrium, which can serve as a prerequisite for the beginning of a legal revolution.

The phenomenon of the "Revolution of law" is indicated by the symbol – RV^n.

Harold Berman defines the concept of "Revolution of Law" in the Western legal tradition as follows. "... Each of the great revolutions created a new law, each of them altered the existing legal order".[2]

In this regard, using the terminology of the theory of dynamical systems, the phenomenon of the revolution of law is comparable to the phenomenon of bifurcation of the conservative dynamics of law. Harold Berman's research shows that revolutions of law have an overall positive significance for the Western legal tradition. In this regard, Harold Berman, referring to other studies, writes that the revolutionary transformations of law were accompanied by the development of societies, scientific discoveries, technological achievements, economic growth, etc.

For example, Harold Berman, referring to Eugen Rosenstock-Huessy about the definition of "revolution", writes the following: "… The term revolution, as applied to the great revolutions of European history, has four main characteristics which, taken together, distinguish it from reform or evolution, on the one hand, and from mere rebellions, coups d'état, and counterrevolutions and dictatorships, on the other.

These are its totality, that is, its character as a total transformation in which political, religious, economic, legal, cultural, linguistic, artistic, philosophical, and other basic categories of social change are interlocked; its rapidity, that is,

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[1] Harold Berman (1983), p. 527.

[2] Берман Гарольд Джордж (1998), с. 9.

the speed or suddenness with which drastic changes take place from day to day, year to year, decade to decade as the revolution runs its course; its violence, which takes the form not only of class struggle and civil war but also of foreign wars of expansion; and its duration over two or three generations, during which the underlying principles of the revolution are reconfirmed and re-established in the face of necessary compromises with its initial utopianism, until the grandchildren of the founding fathers themselves acknowledge devotion to their grandparents' cause. Then evolution can take place at its own pace, without fear of either counterrevolution from the right or the radicalism of a new left".[1]

Harold Berman names the classical criteria of revolutions in law, each of which was accompanied by civil wars, class struggle, and apocalyptic visions of the coming era; characterized by fundamental changes in the national political and legal system and in the system of beliefs and values.[2]

"… each of the six revolutions produced a new or greatly revised system of law, in the context of what was conceived as a total social transformation. Indeed, the extent to which its purpose was eventually embodied in new law marks the success of the revolution".[3]

"… The Western legal tradition was formed in the context of a total revolution, which was fought to establish "the right order of things", or "right order in the world".[4]

The above examples demonstrate that as a result of fluctuations, the conservative dynamics of legal systems became dissipative, and a bifurcation arose, which renewed the previous equilibrium of social forces, and continued the continuity of positive law in the form of new types of legal orders.

Harold Berman calls these total changes caused by bifurcations of law – transformations of law. The phenomenon of the "Transformation of law" is indicated by the symbol ($T\text{-}lw^n$).

Harold Berman characterizes the phenomenon of a total transformation of law this way,

"… the totality of the transformation distinguishes a revolution from reform, and just as the rapidity and violence distinguish it from evolution, so the transgenerational character of the great revolutions of Western history distinguishes them from mere rebellions, coups d'état, and shifts in policy, as well as from counterrevolutions and military dictatorships".[5]

This characteristic shows that the transformation of law is accompanied not only by a change in the equilibrium in law, but also by a change in all the value and structural components of a large legal tradition.

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[1] Harold Berman (1983), pp. 99–100.

[2] Harold Berman (2009).

[3] Harold Berman (1983), p. 20.

[4] Ibid., p. 116.

[5] Ibid., p. 106.

The Right to Life in the Revolutions of the Western Legal Tradition

Harold Berman writes, "… there is a tension between the ideals and realities, between the dynamic qualities and the stability, between the transcendence and the immanence of the Western legal tradition. This tension has periodically led to the violent overthrow of legal systems by revolution. Nevertheless, the legal tradition, which is something bigger than any of the legal systems that comprise it, survived and, indeed, was renewed by such revolutions".[1]

Further, we consider the genesis of the Western legal tradition as the genesis of the development of the equilibrium of law, which demonstrates the formation of autonomy in the Rule of law. We believe that the result of this development should be the elevation of human life to the top of legal values.

Consequently, the dynamic core of the dialectical interaction between the revolutions of law is the struggle of social forces in law for the dominance of certain legal values over the value of the human right to life.

Let's consider the evolution of the Western legal tradition using the algorithmic model as an example. This algorithmic model based on the dialectical interaction between the revolutions of law, each of which have transformed and renewed the Western legal tradition. Subsequently, the Western legal tradition ensured the continuity of different types of equilibrium of law, where all differently assessed the right to life in positive law.

To compile the algorithmic model, we used the components of the Western legal tradition discussed above. The concepts of legal system and legal order are used in a general theoretical context and do not imply any legal system. This model focuses on the methodology of the continuity of the equilibrium of law in the context of the Western legal tradition, so this model is not a model of the normative or historical accuracy of events.

As a dialectical dynamic of law, let us consider the evolution of different types of equilibrium of law as the evolution of legal orders in which the right to life in legal discretion moved from anti-value to legal value.

The empirical material on which the model is based on Harold Berman's study.

Algorithmic model – 5.1.
"The Transformation of the Western Legal Tradition (Papal Revolution of Law)"

5. RV^{1} $RW^{1}...\rightarrow Lo\text{-}t^{1} \approx Le\text{-}s^{n}\,(NL^{n1})\urcorner RV^{1} \subset T\text{-}lw^{n}\,\{+S^{1}\}\,[+Rl^{n}] \subseteq Lw$
6. | $LT\text{-}b^{1} \supseteq (\{R^{n} \pm J^{n} = S^{1}\} \mapsto [Rl^{n} + LcT^{n} = Rl^{n}]) \in S^{1} + Rl^{n} \subseteq Ls^{n} \rightarrow Lo\text{-}t^{2} \leftrightarrow Le\text{-}s^{n}\,(NL^{n2})$

Symbol RV^{1} denotes the First revolution of law, the "Papal revolution of law".

[1] Harold Berman (1983), p. 10.

Row 5. indicate the content of the First revolution of law (RV^1).

Symbol RW^1 denotes the "Renewal of law", which occurred as a result of the First revolution of law.

In the content of the "Renewal of law" (RW^1) it is shown that there is a confrontation (≈) between the "Legal order" ($Lo\text{-}t^l$) and the "Legal environment" ($Le\text{-}s^n$). The reason for this confrontation is the emergence of Legal novelty (NL^{n1}). As a result, the Equilibrium in law is totally disturbed (¯).

Symbol $T\text{-}lw^n$ denotes the Transformation of law, which is accompanied by the emergence of the new point of the equilibrium of law – "Spirituality of law" (S^1) and the emergence of a structural component of the legal tradition – the "Canonical rules" (Rl^n).

Row 6. indicates the content of the Western Legal Tradition.

Symbol $LT\text{-}b^1$ denotes the Small legal tradition, which was formed after the "First revolution of law" (RV^1). This legal tradition is the tradition of the relation of positive law to human life.

Symbol ⊇ denotes the internal content of the "Legal tradition" ($LT\text{-}b^1$).

The content of the value components of the "Legal tradition" ($LT\text{-}b^1$) is indicated by the symbol {…}. The content shows the nominal equilibrium in law, the equilibrium point of which is the "Spirituality of law" (S^1).

Symbol ↦ denotes the reflection of the "Equilibrium of law" in the structural components of the "Legal tradition" ($LT\text{-}b^1$).

Symbol […] denotes the boundaries of the structural components of the "Legal tradition" ($LT\text{-}b^1$).

In the content of the structural components of the "Legal tradition" ([…]), there is a systemic interdependence (+) between the "Canonical Rules" (Rl^n) and the "Legal customs" (LcT^n).

As a result of this systemic dependence, the measures of equilibrium of law (=) receive own reflection in the "Canonical rules" (Rl^n).

Symbol ∈ denotes the harmonization of truth between "Spirituality of law" (S^1) and "Canonical rules" (Rl^n), which are systemically dependent (+) in positive law.

Symbol ⊆ denotes the "Legal order" ($Lo\text{-}t^2$), which is based on "Legal tradition" ($LT\text{-}b^1$).

Symbol ↔ denotes, that the "Legal environment" ($Le\text{-}s^n$) interacts with the "Legal order" ($Lo\text{-}t^2$).

Thus, the Algorithmic Model-5.1 demonstrates the transformation of law that was caused by the First Revolution of the Western legal tradition in the field of the legal status of human life in positive law.

Harold Berman's research shows that before the emergence of the First revolution of law, the Western legal tradition provided an equilibrium of law between "Justice in law" (J^n) and "Legal custom" (LcT^n).

On this matter Professor Berman writes, "… the bulk of law was derived from custom, which was viewed in the light of equity (defined as reason and conscience). It is necessary to recognize that custom and equity are as much law as statutes and decisions if the story of the Western legal tradition is to be followed and accepted".

Further, Harold Berman writes that throughout the history of the Western legal tradition, "Justice" (J^n) has been preserved and developed in the equilibrium of Western law. Also, the First Revolution of Law formed the equilibrium of law, taking into account the "Spirituality of law" (S^1), which was a point of equilibrium in canon law.

These changes strengthened the reception of Roman law and the role of the written law "Rules" (Rl^n).

On this matter, Harold Berman writes the following, "… The Papal revolution, which began in 1075 with the dictates of Pope Gregory VII and culminated in 1122 with the Concordat of Worms, was carried out in the name of the so-called freedom of the Church. It was a revolution against the subordination of the clergy to emperors, kings, and feudal barons, for the establishment of the Roman Church as an independent, corporate political and legal entity under the auspices of the papacy".[1]

"… The more modern, more rational, more systematized procedure of the canon law of the twelfth century offered a striking contrast to the more primitive, formalistic, and plastic legal institutions that had prevailed in Germanic judicial proceedings in the earlier centuries".[2]

Algorithmic model – 5.2.
"The Transformation of the Western Legal Tradition (Lutheran Revolution of Law)"

7. RV^2 RW^2... $Lo\text{-}t^2 \approx Le\text{-}s^n$ $(NL^{n2})\neg RV^2 \subset T\text{-}lw^n$ $\{+ Id^n, -S^2\}$ $[+Lc^n] \subseteq Lw$
8. | $LT\text{-}b^2 \supseteq (\{J^n \pm R^n = Id^n (S^2)\} \mapsto [Rl^n + Lc^n = Rl^n]) \in Id^n - S^2 + Rl^n \subseteq Ls^n \rightarrow Lo\text{-}t^3 \leftrightarrow | \leftrightarrow Le\text{-}s^n (NL^{n3})$

Symbol RV^2 denotes the Second Revolution of Law "The Lutheran revolution of law".

Row 7. indicates the content of the Second revolution of law (RV^2).

Symbol RW^2 denotes the "Renewal of law", which occurred as a result of the Second revolution of law.

In the content of the "Renewal of law" (RW^2) it is shown that there is a confrontation ($\approx$) between the "Legal order" ($Lo\text{-}t^2$) and the Legal environment ($Le\text{-}s^n$). The reason for this confrontation is the emergence of "Legal novelty" (NL^{n2}). As a result, the Equilibrium in law is totally disturbed ($\neg$).

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[1] Берман Гарольд Джордж (1998), с. 9.

[2] Ibid., с. 9.

Symbol T-lw^{n} denotes the Transformation of law, which is accompanied by the renewal social force in law – "Spirituality of law" (S^{2}).

In the Western legal tradition, a new point of equilibrium of law is being formed – "Individualism of law" (Id^{n}).

"Legal cultures" (Lc^{n}) in the content of the Western legal tradition acquires civilizational significance.

Row 8. indicates the content of the Western legal tradition, that was formed after the "Second revolution of law" (RV^{2}).

Symbol LT-b^{2} denotes the Small legal tradition, which received a renewal after the "Second revolution of law" (RV^{2}). This legal tradition is the tradition of the relation of positive law to human life.

Symbol ⊇ denotes the internal content of the "Legal tradition" (LT-b^{2}).

The content of the value components of the "Legal tradition" (LT-b^{2}) is indicated by the symbol {…}. The content shows the nominal equilibrium in law, in which "Individualism of law" (Id^{n}) dominates over the renewed "Spirituality of law" (S^{2}).

The equilibrium point of the Western legal tradition is "Individualism of law" (Id^{n}).

Symbol ↦ denotes reflection of the "Equilibrium of law" in the structural components of the "Legal tradition" (LT-b^{2}).

Symbol […] denotes the boundaries of the structural components of the "Legal tradition" (LT-b^{2}).

In the content of the structural components of the "Legal tradition" ([…]), there is a systemic interdependence (+) between the "Rules" (Rl^{n}) and the "Legal cultural" (Lc^{n}).

As a result of this systemic dependence, the measures of equilibrium of law (=) obtain own reflection in the "Rules" (Rl^{n}).

Symbol ∈ denotes the harmonization of truth between "Individualism of law" (Id^{n}), "Spirituality of law" (S^{2}), "Justice of law" (J^{n}) and "Rules" (Rl^{n}), that are systemically dependent (+) in positive law.

Symbol ⊆ denotes that "Legal order" (Lo-t^{3}), is based on "Legal tradition" (LT-b^{2}).

Symbol ↔ denotes, that the "Legal environment" (Le-s^{n}) interacts with the "Legal order" (Lo-t^{3}).

Thus, the Algorithmic Model-5.2 demonstrates the transformation of law that was caused by the Second revolution of the Western legal tradition in the field of the legal status of human life in positive law.

Regarding the renewal of social force, "Spirituality of law" (S^{2}) Harold Berman writes, "... The Lutheran reformation was a renewal not only of faith, but also of the world: the world of spiritual life and the world of law … ".[1]

[1] Harold Berman (1983), p. 29.

This period has many characteristics. One of them is that the right to life is differentiated and begins to be justified by secular dogmatics. On this matter, Harold Berman writes, "… The key to the renewal of law in the West from the sixteenth century on was the Lutheran concept of the power of the individual, by God's grace, to change nature and to create new social relations through the exercise of his will. The Lutheran concept of the individual will become central to the development of the modern law of property and contract …".[1]

Algorithmic model – 5.3.
"The Transformation of the Western Legal Tradition
(English Revolution of Law)"

9. $RV^3\ RW^3 ... Ls^n \rightarrow Lo\text{-}t^3 \approx Le\text{-}s^n\ (NL^{n3}) \neg RV^3 \subset T\text{-}lw^n\ \{+ P^n \rightarrow Id^n \rightarrow ImR^n, -S^2\}\ [+Lp^n] \subseteq Lw$

10. | $LT\text{-}b^3 \supseteq (\{J^n \pm R^n \pm P^n = ImR^n\} \mapsto [Lp^n + Lc^n + Rl^n = Lp^n]) \in ImR^n + Lp^n \subseteq Ls^n \rightarrow Lo\text{-}t^4 \leftrightarrow Le\text{-}s^n\ (NL^{n4})$

Symbol RV^3 denotes the Third revolution of law "The English revolution of law".

Row 9. indicates the content of the "Third revolution of law" (RV^3).

Symbol RW^3 denotes the "Renewal of law", which occurred as a result of the "Third revolution of law".

In the content of the "Renewal of law" (RW^3) it is shown that there is a confrontation ($\approx$) between the "Legal order" ($Lo\text{-}t^3$) and the "Legal environment" ($Le\text{-}s^n$). The reason for this confrontation is the emergence of Legal novelty (NL^{n3}). As a result, the Equilibrium in law is totally disturbed ($\neg$).

Symbol $T\text{-}lw^n$ denotes the Transformation of law, which is accompanied by the formation of a new social force in law – "Pragmatism of Law" (P^n).

"Spirituality of Law" (S^2) does not affect the equilibrium of law.

"Individualism of Law" (Id^n) transforms into the "Imperialism of law" (ImR^n).

In the Western legal tradition, a new point of equilibrium of law is being formed – "Imperialism of law" (ImR^n).

We also observe the formation of a "Legal precedent" in the structure of the "Legal tradition" (Lp^n).

Row 10. indicates the content of the Western legal tradition, that was formed after the "Third revolution of law" (RV^3).

Symbol $LT\text{-}b^3$ denotes the Small legal tradition, which received a renewal after the "Third revolution of law" (RV^3). This legal tradition is the tradition of the relation of positive law to human life.

Symbol $\supseteq$ denotes the internal content of the "Legal tradition" ($LT\text{-}b^3$).

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[1] Harold Berman (1983), pp. 29-30.

The content of the value components of the "Legal tradition" (LT-b^3) is indicated by the symbol {…}. The equilibrium point of the Western legal tradition is "Imperialism of law" (ImR^n).

Symbol ↦ denotes reflection of the "Equilibrium of law" in the structural components of the "Legal tradition" (LT-b^3).

Symbol […] denotes the boundaries of the structural components of the "Legal tradition" (LT-b^3).

In the content of the structural components of the "Legal tradition" ([…]), there is a systemic interdependence (+) between the "Rules" (Rl^n), the "Legal cultural" (Lc^n), "Pragmatism of law" (P^n) and "Precedent" (Lp^n).

As a result of this systemic dependence, the measures of equilibrium of law (=) receive their own reflection in the "Precedent" (Lp^n).

Symbol ∈ denotes the harmonization of truth between "Imperialism of law" (ImR^n), "Justice of law" (J^n) and "Rules" (Rl^n), which are systemically dependent (+) in positive law.

Symbol ⊆ denotes the "Legal order" (Lo-t^4), which is based on "Legal tradition" (LT-b^3).

Symbol ↔ denotes, that the "Legal environment" (Le-s^n) interacts with the "Legal order" (Lo-t^4).

Thus, the Algorithmic Model – 5.3 demonstrates the transformation of law that was caused by the Third Revolution of the Western legal tradition in the field of the legal status of human life in positive law.

As we can observe from Harold Berman's research, the attempts to use the "Precedent" (Lp^n) in law were present after the First Revolution of law, but the Third revolution of law formed the "Precedent" (Lp^n) as an independent source of law.

Regarding this, Harold Berman writes, "… Like the English Revolution of the seventeenth century, the Papal Revolution pretended to be not a revolution but a restoration. Gregory VII, like Cromwell, claimed that he was not innovating, but restoring ancient freedoms that had been abrogated in the immediately preceding centuries.

As the English Puritans and their successors found precedents in the common law of the thirteenth and fourteenth centuries, largely passing over the century or more of Tudor Stuart absolutism, so the Gregorian reformers found precedents in the patristic writings of the early centuries of the church, largely passing over the Carolingian and post Carolingian era in the West. The ideological emphasis was on tradition, but the tradition could only be established by suppressing the immediate past and returning to an earlier one".[1]

Harold Berman has been writing about the presence of the Imperial Law since the First Revolution of Law, but as we have seen since the study of J. A. Hobson,

[1] Harold Berman (1983), p. 112.

it occupies a special place in law centralism in the colonial world order,[1] which gives prerequisites to consider "Imperialism" (ImR^n) as an independent point of equilibrium of the law of the Western legal tradition.

Algorithmic model – 5.4.
"The Transformation of the Western Legal Tradition
(American Revolution of Law)"

11. RV^4 $RW^4...Ls^n \rightarrow Lo\text{-}t^4 \approx Le\text{-}s^n (NL^{n4}) \neg RV^4 \subset T\text{-}lw^n \{LiB^n\} [+Se^n] \subseteq Lw$
12. | $LT\text{-}b^4 \supseteq (\{P^n \pm J^n \pm R^n = LiB^n \approx ImR^n = P^n \pm R^n \pm J^n\} \mapsto [Lp^n + Se^n + Lc^n + Rl^n = Lc^n]) Cr^{n1}$
| $\{LiB^n \approx ImR^n\} \approx Ls^n \rightarrow Lo\text{-}t^5 \mid Lo\text{-}t^6$

Symbol RV^4 denotes the Fourth Revolution of Law, the "American revolution of law".

Row 11. Indicate the content of the Fourth revolution of law (RV^4).

The Symbol – RW^4 denotes the "Renewal of law", which occurred as a result the Fourth revolution of law (RV^4).

In the content of the "Renewal of law" (RW^4) it is shown that there is a confrontation ($\approx$) between the "Legal order" ($Lo\text{-}t^4$) and the "Legal environment" ($Le\text{-}s^n$). The reason for this confrontation is the emergence of "Legal novelty" (NL^{n4}). As a result, the Equilibrium in law is totally disturbed ($\neg$).

Symbol $T\text{-}lw^n$ denotes the Transformation of law, which is accompanied by the formation of the new point of the equilibrium of law – "Liberalism of law" (LiB^n). The "Individualism of law" (Id^n) and "Imperialism of law" (ImR^n) influence the emergence "Liberalism of law" (LiB^n).

"Liberalism of law" (LiB^n) and "Imperialism of law" (ImR^n) give rise to a disequilibrium that can be seen as the First Counterrevolution of the Western legal tradition (Cr^{n1}).

There are two opposite types of law and order: $Lo\text{-}t^{n5} \mid Lo\text{-}t^{n6}$.

We observe the formation of "Political expectations (Social expectations)" (Se^n) in the structure of the legal tradition.

Row 12. indicates the content of the Western legal tradition, that was formed after the "Forth revolution of law" (RV^4).

Symbol $LT\text{-}b^4$ denotes the Small legal tradition, which received a renewal after the "Fourth revolution of law" (RV^4). This legal tradition is the tradition of the relation of positive law to human life.

Symbol $\supseteq$ denotes the internal content of the "Legal tradition" ($LT\text{-}b^4$).

The content of the value components of the "Legal tradition" ($LT\text{-}b^4$) is indicated by the symbol {…}. The equilibrium points of the Western legal tradition. The Western legal tradition consists of the "Imperialism of law" (ImR^n)

[1] Imperialism, by J.A. Hobson. New York James Pott, 1902, p. 412.

and the "Liberalism of law" (LiB^n), which create a counter-equilibrium in positive law (CoN-Lw) (also the "Confrontation of law").

Symbol ↦ denotes reflection of the "Counter-equilibrium law" in the structural components of the "Legal tradition" ($LT\text{-}b^4$).

Symbol […] denotes the boundaries of the structural components of the "Legal tradition" ($LT\text{-}b^4$).

In the content of the structural components of the "Legal tradition" ([…]), there is not a systemic interdependence (+) between the "Rules" (Rl^n), the "Legal cultural" (Lc^n), "Precedent" (Lp^n) and "Political expectations (Social expectations)" (Se^n).

As a result of this systemic dependence, the measures of equilibrium of law (=) are reflected in the "Legal culture" (Lc^n).

Symbol ≈ denotes the confrontation of the Truth of Law between the "Imperialism of law" (ImR^n) and the "Liberalism of law" (LiB^n), which are systemically dependent (+) in positive law.

Symbol ⊆ denotes that "Legal order" ($Lo\text{-}t^5$) and "Legal order" ($Lo\text{-}t^6$) are based on "Legal tradition" ($LT\text{-}b^4$).

Symbol ↔ denotes the "Legal environment" ($Le\text{-}s^n$) interacts with "Legal order" ($Lo\text{-}t^5$) and "Legal order" ($Lo\text{-}t^6$).

Thus, the Algorithmic Model-5.4 demonstrates the transformation of law that was caused by the Fourth Revolution of the Western legal tradition in the field of the legal status of human life in positive law.

Here is one of the characteristics of the confrontation between "Liberalism of law" (LiB^n) and "Imperialism of law" (ImR^n), about which Harold Berman writes, "… The Modern Age, in contrast, came to be viewed as an era of "individualism" or of "capitalism", depending on whether social values or economic values were considered primary. The social theorists sought to analyse these successive types of social order and to explain how and why they had come into being. They used an historical and comparative method in order to create a universal science of social evolution".[1]

The "Human right to life" acquires autonomy in normativity and in the reflection of law. The right to life is normatively proclaimed and exalted, which is consistent with the legal culture, policies, and expectations of society.

At the same time, the Western legal tradition still retains racial discrimination in the value of the right to life. Harold Berman writes about this, "… if one were to try to explain the crisis of race relations in the United States of America in the second half of the twentieth century, one could not omit the Declaration of Independence of 1776, the resolution of the slavery question in the United States Constitution of 1789, and the Civil War. Surely the American Revolution set in

[1] Harold Berman (1983), p. 540.

motion forces that resulted in the emancipation of the slaves and ultimately in the struggle for civil rights".[1]

Algorithmic model – 5.5.
"The Transformation of the Western Legal Tradition (French Revolution of Law)"

13. RV^5 $RW^5...Ls^n \rightarrow Lo\text{-}t^5 \mid Lo\text{-}t^6 \approx Le\text{-}s^n\ (NL^{n5})\urcorner RV^5 \subset T\text{-}lw^n\ \{+F^n, Nl^n\} \subseteq Lw$
14. | $LT\text{-}b^5 \supseteq (\{P^n \pm J^n \pm R^n = LiB^n \approx ImR^n = P^n \pm R^n \pm J^n, \approx Nl^n = J^n \pm P^n \pm$
| $\pm R^n \pm F^n\} \mapsto [Rl^n + Lc^n + Se^n + Lp^n = Rl^n]) LiB^n \approx ImR^n \approx Nl^n + Rl^n \subseteq$
| $\subseteq Cr^{n2}\{LiB^n \approx ImR^n \approx Nl^n\} \approx Ls^n \rightarrow \mid Lo\text{-}t^7 \mid Lo\text{-}t^8 \mid Lo\text{-}t^9$

Symbol RV^5 denotes the Fifth revolution of Law, the "French revolution of law".

Row 13. indicates the content of the Fifth Revolution of Law (RV^5).

Symbol RW^5 denotes the "Renewal of law", which occurred as a result the Fifth revolution of law (RV^5).

In the content of the "Renewal of law" (RW^5) it is shown that there is a confrontation ($\approx$) between "Legal order" ($Lo\text{-}t^5 \mid Lo\text{-}t^6$) and "Legal environment" ($Le\text{-}s^n$). The reason for this confrontation is the emergence of "Legal novelty" (NL^{n5}). As a result, the Equilibrium in law is totally disturbed ($\urcorner$).

Symbol $T\text{-}lw^n$ denotes the Transformation of law, which is accompanied by the formation of the new point of the equilibrium of law – "Nationalism of law" (Nl^n) and the emergence of a new social force in law – "Formalism of law" (F^n). The "Liberalism of law" (LiB^n) and "Imperialism of Law" (ImR^n) influence the emergence "Nationalism of law" (Nl^n).

"Nationalism of law" (Nl^n), "Liberalism of law" (LiB^n) and "Imperialism of law" (ImR^n) give rise to a disequilibrium that can be seen as the Second Counterrevolution of the Western legal tradition (Cr^{n2}).

There are three opposite types of law and order: $Lo\text{-}t^7 \mid Lo\text{-}t^8 \mid Lo\text{-}t^9$.

In the structure of the legal tradition, all components are updated.

Row 14. indicates the content of the Western legal tradition, that was formed after the "Fifth revolution of law" (RV^5).

Symbol $LT\text{-}b^5$ denotes the Small legal tradition, which received a renewal after the "Fifth revolution of law" (RV^4). This legal tradition is the tradition of the relation of positive law to human life.

Symbol $\supseteq$ denotes the internal content of the "Legal tradition" ($LT\text{-}b^5$).

The content of the value components of the "Legal tradition" ($LT\text{-}b^5$) is indicated by the symbol {…}. The equilibrium points of the Western legal tradition. The Western legal tradition consists of "Nationalism of law" (Nl^n), "Imperialism of law" (ImR^n) and "Liberalism of law" (LiB^n), which create

[1] Harold Berman (1983), p. 32.

a counter-equilibrium in positive law (CoN-Lw) (also the "Confrontation of law").

Symbol ↦ denotes the reflection of the "Counter-equilibrium law" in the structural components of the "Legal tradition" (LT-b^5).

Symbol […] denotes the boundaries of the structural components of the "Legal tradition" (LT-b^5). In the content of the structural components of the "Legal tradition" ([…]), there is not a systemic interdependence (+) between the "Rules" (Rl^n), the "Legal cultural" (Lc^n), "Precedent" (Lp^n) and "Political expectations (Social expectations)" (Se^n).

As a result of this systemic dependence, the measures of equilibrium of law (=) are reflected in the "Rules" (Rl^n).

Symbol ≈ denotes the confrontation of the Truth of law between the "Nationalism of law" (Nl^n), the "Imperialism of law" (ImR^n) and the "Liberalism of law" (LiB^n), which are systemically dependent (+) in positive law.

Symbol ⊆ denotes that "Legal order" (Lo-t^7), "Legal order" (Lo-t^8) and "Legal order" (Lo-t^9) are based on "Legal tradition" (LT-b^5).

Symbol ↔ denotes, the "Legal environment" (Le-s^n) interacts with "Legal order" (Lo-t^7), "Legal order" (Lo-t^8), and "Legal order" (Lo-t^9).

Thus, the Algorithmic Model-5.5 demonstrates the transformation of law that was caused by the Fifth revolution of the Western legal tradition in the field of the legal status of human life in positive law.

After the French revolution, it can be observed that the "Right to life" has a different interpretation between the scope of value and non-value of the law. This circumstance can be observed in the autonomy of positive law. After all, the five revolutions of the Western legal tradition formed the normative and reflective autonomy of positive law.

But at the same time, in the Western legal tradition, there is a confrontation in the equilibrium of law. The value-unbalanced discretion of law gives rise to such points of disequilibrium as: bureaucracy, corruption, and populism in positive law. The confrontation of the Western legal tradition is further strengthened by the development of nationalism in law.

On the consequences of the dominance of "Nationalism" (Nl^n) in the equilibrium of law, Harold Berman writes the following, "… It is only when the different legal regimes of all these communities local, regional, national, ethnic, professional, political, intellectual, spiritual, and others are swallowed up in the law of the nation-state that "history" becomes tyrannical.

This is, in fact, the greatest danger inherent in contemporary nationalism".[1]

"… Individualism, rationalism, nationalism the Triune Deity of Democracy found legal expression in the exaltation of the role of the legislature and consequent reduction (except in the United States) of the law creating role of the

[1] Harold Berman (1983), p. 117.

judiciary; in the freeing of individual actions from public controls, especially in the economic sphere; in the demand for codification of criminal and civil law; in the effort to make predictable the legal consequences of individual actions, again especially in the economic sphere".[1]

Algorithmic model – 5.6.
"The Transformation of the Western Legal Tradition
(Russian Revolution of Law)"

15. RV^{6} $RW^{6}...Ls^{n} \rightarrow Lo\text{-}t^{7} \mid Lo\text{-}t^{8} \mid Lo\text{-}t^{9} \approx Le\text{-}s^{n}\ (NL^{n6})^{\neg}$ $RV^{6} \subset T\text{-}lw^{n}\ \{+\ Cll^{n}\} \subseteq Lw$
16. | $LT\text{-}b^{6} \supseteq (\{J^{n} \pm Pn^{n} \pm R^{n} \pm F^{n} = Cll^{n} \approx, F^{n} \pm P^{n} \pm J^{n} \pm R^{n} = LiB^{n} \approx ImR^{n} = P^{n} \pm R^{n} \pm J^{n} \pm F^{n}, \approx$
| $\approx Nl^{n} = J^{n} \pm P^{n} \pm R^{n} \pm F^{n}\} \mapsto [Lp^{n} + Lc^{n} + Rl^{n} = Se^{n}])\ Cr^{n3}\{Cll^{n} \approx LiB^{n} \approx ImR^{n} \approx Nl^{n}\} \subseteq$
| $\subseteq Ls^{n} \rightarrow Lo\text{-}t^{10} \mid Lo\text{-}t^{11} \mid Lo\text{-}t^{12} \mid Lo\text{-}t^{13}$

Symbol RV^{6} denotes the Sixth revolution of law, the "Russian revolution of law".

Row 15. indicates the content of the Sixth Revolution of Law (RV^{6}).

Symbol RW^{6} denotes the "Renewal of law", which occurred as a result the Sixth revolution of law (RV^{6}).

In the content of the "Renewal of law" (RW^{6}) it is shown that there is a confrontation ($\approx$) between the "Legal order" ($Lo\text{-}t^{7} \mid Lo\text{-}t^{8} \mid Lo\text{-}t^{9}$) and "Legal environment" ($Le\text{-}s^{n}$). The reason for this confrontation is the emergence of "Legal novelty" (NL^{n6}). As a result, the Equilibrium in law is totally disturbed ($\neg$).

Symbol $T\text{-}lw^{n}$ denotes the Transformation of law, which is accompanied by the formation of the new point of the equilibrium of law – "Collectivism of law" (Cll^{n}).

"Liberalism of law" (LiB^{n}) "Imperialism of Law" (ImR^{n}) and "Nationalism of law" (Nl^{n}) influence the emergence "Collectivism of law" (Cll^{n}).

"Collectivism of law" (Cll^{n}), "Nationalism of law" (Nl^{n}), "Liberalism of Law" (LiB^{n}) and "Imperialism of Law" (ImR^{n}) give rise to a disequilibrium that can be seen as the Third Counterrevolution of the Western legal tradition (Cr^{n3}).

There are three opposite types of law and order: $Lo\text{-}t^{10} \mid Lo\text{-}t^{11} \mid Lo\text{-}t^{12} \mid Lo\text{-}t^{13}$.

Row 16. indicates the content of the Western legal tradition, that was formed after the "Sixth revolution of law" (RV^{6}).

Symbol $LT\text{-}b^{6}$ denotes the Small legal tradition, which received a renewal after the "Sixth revolution of law" (RV^{6}). This legal tradition is the tradition of the relation of positive law to human life.

Symbol $\supseteq$ denotes the internal content of "Legal tradition" ($LT\text{-}b^{6}$).

The content of the value components of "Legal tradition" ($LT\text{-}b^{6}$) is indicated by the symbol {…}. The equilibrium points of the Western legal tradition. The

[1] Harold Berman (1983), p. 32.

Western legal tradition consists of "Collectivism of law" (Cll^n), "Nationalism of law" (Nl^n), "Imperialism of Law" (ImR^n) and "Liberalism of law" (LiB^n), which create a counter-equilibrium in positive law (CoN-Lw) (also the "Confrontation of law").

Symbol ↦ denotes the reflection of "Counter-equilibrium law" in the structural components of "Legal tradition" (LT-b^6).

Symbol […] denotes the boundaries of the structural components of "Legal tradition" (LT-b^6). In the content of the structural components of the "Legal tradition" ([…]), there is not a systemic interdependence (+) between "Rules" (Rl^n), "Legal cultural" (Lc^n), "Precedent" (Lp^n) and "Political expectations (Social expectations)" (Se^n).

As a result of this systemic dependence, the measures of equilibrium of law (=) are reflected in the "Political expectations (Social expectations)" (Se^n).

Symbol ≈ denotes the confrontation of the Truth of Law between "Collectivism of law" (Cll^n), "Nationalism of law" (Nl^n), "Imperialism of law" (ImR^n) and "Liberalism of law" (LiB^n), which are systemically dependent (+) in positive law.

Symbol ⊆ denotes that "Legal order" (Lo-t^{10}), "Legal order" (Lo-t^{11}), "Legal order" (Lo-t^{12}) and "Legal order" (Lo-t^{13}) are based on "Legal tradition" (LT-b^6).

Symbol ↔ denotes, that "Legal environment" (Le-s^n) interacts with "Legal order" (Lo-t^{10}), "Legal order" (Lo-t^{11}), "Legal order" (Lo-t^{12}) and "Legal order" (Lo-t^{13}).

Thus, the Algorithmic Model – 5.6 demonstrates the transformation of law that was caused by the Sixth Revolution of the Western legal tradition in the field of the legal status of human life in positive law.

The algorithmic model demonstrates that according to Harold Berman, the Sixth revolution of law differs from previous legal revolutions and reinforces counter-revolutionary transformations in the Western legal tradition to a greater extent.

On this matter, Harold Berman writes, "… The nations of Europe, which originated in their interaction with one another in the context of Western Christendom, became more and more detached from one another in the nineteenth century. With World War I, they broke apart violently and destroyed the common bonds that had previously held them together, however loosely.

And in the late twentieth century we still suffer from the nationalist historiography that originated in the nineteenth century and that supported the disintegration of a common Western legal heritage".[1]

Thus, theoretically, in the aftermath of the six revolutions in positive law, one can observe thirteen types of legal order, four of them based on three counterrevolutions in the equilibrium of the Western legal tradition, each of which regarded the legal status of the human right to life in a different way.

[1] Harold Berman (1983), p. 17.

At the beginning of the twentieth century, the confrontation of the Western legal tradition became a prerequisite for the formation of socialist, nationalist, democratic and colonial legal systems.[1]

Consequently, during the formation of the Western legal tradition, the human right to life was gradually recognized as a value of law, which influenced the configuration of social forces in the equilibrium of positive law.

In the Algorithmic model, colour notation means the following:

The blue colour shows the dynamics of the harmonization of social forces in the balance of the Western legal tradition.

The purple colour shows all types of legal orders that have arisen in the Western legal tradition.

The green colour shows the counter-revolution of the Western legal tradition.

From the foregoing, it can be assumed that of the thirteen types of legal order, six types arose as a result of the confrontation of the Western legal tradition. The red colour nominatively shows these six types of legal order. Consequently, these six types of legal order create a counter-revolution of the Western legal tradition.

Regarding all these transformations of law that arose as a result of the six revolutions of the Western legal tradition, Harold Berman writes the following, "… The Western legal tradition grew in part out of the structure of social and economic interrelationships within and among groups on the ground. Behavioural patterns of interrelationships acquired a normative dimension: usages were transformed into custom. Eventually custom was transformed into law.

The last of these transformations from custom into law is accounted for partly by the emergence of centralized political authorities when a conscious restructuring at the top was needed to control and direct the slowly changing structure in the middle and at the bottom. Law, then, is custom transformed, and not merely the will or reason of the lawmaker.

Law spreads upward from the bottom and not only downward from the top".[2]

This circumstance explains why the Western legal tradition did not have a single and an ideal equilibrium in law. Accordingly, the legal status of human life has a different position in the hierarchy of values of law.

The transformation of law that was caused by the legal revolution, in addition to changing the law, the legal order and the legal system, changed not only the equilibrium of the legal tradition, but also the components of its structure.

Harold Berman metaphorically describes the era of the formation of the Western legal tradition and its dialectical interaction.

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[1] David (René) – Les grands systèmes de droit contemporains. (Droit comparé) Revue française de science politique Année 1965, 574 p.

[2] Harold Berman (1983), p. 556.

Algorithmic model – 5.
"Continuity of the Western legal tradition (Theoretical model of continuity, renewal, and transformation of law as a result of six revolutions of the Western legal tradition)"

1. Lw
2. | F-LA^{n1}
3. | | Cn^{1}
4. | | | LT
5. | | | | **RV^{1}** | RW^{1}...→ Lo-t^{1} ≈ Le-s^{n} (NL^{n1})¬RV^{1} ⊂ T-lw^{n} {+S^{1}} [+Rl^{n}] ⊆ Lw
6. | | | | | LT-b^{1} ⊇ ({R^{n} ± J^{n} = S^{1}} ↦ [Rl^{n} + LcT^{n} = Rl^{n}]) ∈ S^{1} + Rl^{n} ⊆ Ls^{n} → Lo-t^{2} ↔ Le-s^{n} (NL ^{n2}
7. | | | | **RV^{2}** | RW^{2}... Lo-t^{2} ≈ Le-s^{n} (NL^{n2})¬RV^{2} ⊂ T-lw^{n} {+ Id^{n}, -S^{2}} [+ Lc^{n}] ⊆ Lw
8. | | | | | LT-b^{2} ⊇ ({J^{n} ± R^{n} = Id^{n} (S^{2})} ↦ [Rl^{n} + Lc^{n} = Rl^{n}]) ∈ Id^{n} -S^{2} + Rl^{n} ⊆ Ls^{n} →Lo-t^{3}↔ |↔ Le-s^{n} (NL ^{n3})
9. | | | | **RV^{3}** | RW^{3}...Ls^{n} → Lo-t^{3} ≈ Le-s^{n} (NL^{n3})¬ RV^{3} ⊂ T-lw^{n} {+ P^{n} → Id^{n} → ImR^{n}, -S^{2}} [+ Lp^{n}] ⊆ Lw
10. | | | | | LT-b^{3} ⊇ ({J^{n} ± R^{n} ± P^{n} = ImR^{n}} ↦ [Lp^{n} +Lc^{n} + Rl^{n} = Lp^{n}]) ∈ ImR^{n} + Lp^{n} ⊆ Ls^{n} → Lo-t^{4} ↔ Le-s^{n} (NL^{n4})
11. | | | | **RV^{4}** | RW^{4}...Ls^{n} → Lo-t^{4} ≈ Le-s^{n} (NL^{n4})¬RV^{4} ⊂ T-lw^{n} {LiB^{n}} [+Se^{n}] ⊆ Lw
12. | | | | | LT-b^{4} ⊇ ({P^{n} ± J^{n} ± R^{n} = LiB^{n} ≈ ImR^{n} = P^{n} ± R^{n} ± J^{n}} ↦ [Lp^{n} +Se^{n} +Lc^{n} +Rl^{n}= Lc^{n}]) Cr^{n1} {LiB^{n} ≈ ImR^{n}} ≈ Ls^{n} → Lo-t^{5} | Lo-t6
13. | | | | **RV^{5}** | RW^{5}...Ls^{n} → Lo-t^{5} | Lo-t^{6} ≈ Le-s^{n} (NL^{n5})¬RV^{5} ⊂ T-lw^{n} {+ F^{n}, Nl^{n}} ⊆ Lw
14. | | | | | LT-b^{5} ⊇ ({P^{n} ± J^{n} ± R^{n} = LiB^{n} ≈ ImR^{n} = P^{n} ± R^{n} ± J^{n}, ≈ Nl^{n} = J^{n} ± P^{n} ± R^{n} ± F^{n}} ↦ [Rl^{n} + Lc^{n} +Se^{n} + Lp^{n}= Rl^{n}]) LiB^{n} ≈ ImR^{n} ≈ Nl^{n} + Rl^{n} ⊆ Cr^{n2} {LiB^{n} ≈ ImR^{n} ≈ Nl^{n}} ≈ Ls^{n} → | Lo-t^{7} | Lo-t^{8} | Lo-t^{9}
15. | | | | **RV^{6}** | RW^{6}...Ls^{n} → Lo-t^{7} | Lo-t^{8} | Lo-t^{9} ≈ Le-s^{n} (NL^{n6})¬ RV^{6} ⊂ T-lw^{n} {+ Cll^{n}} ⊆ Lw
16. | | | | | LT-b^{6} ⊇ ({J^{n} ± Pn^{n} ± R^{n} ± F^{n} = Cll^{n} ≈, F^{n} ± P^{n} ± J^{n} ± R^{n} = LiB^{n} ≈ ImR^{n} = P^{n} ± R^{n} ± J^{n} ± F^{n}, ≈ Nl^{n} = J^{n} ± P^{n} ± R^{n} ± F^{n}} ↦ [Lp^{n} + Lc^{n}+ Rl^{n} = Se^{n}]) Cr^{n3} {Cll^{n} ≈ LiB^{n} ≈ ImR^{n} ≈ Nl^{n}} ⊆ Ls^{n}→ Lo-t^{10} | Lo-t^{11} | Lo-t^{12} | ^{Lo}-t13

"… The medieval age of feudalism was contrasted with the modern age of capitalism. Capitalism was associated with individualism and Protestantism, as feudalism was associated with traditionalism and Catholicism".[1]

"… each age has its own magic, reflecting its particular concept of ultimate reality".[2]

"… The revolution should be considered not from the point of view of "Chronos", but from the point of view of "Kairos", it comes when its time comes".[3]

In trying to understand the metaphorism of Harold Berman's conclusions, let's turn to encyclopaedic sources. "Chronos" (ancient Greek "Χρόνος" – time) is a personification of time that is observed in pre-Socratic philosophy and later literature.

The source we have found explains that this phenomenon seems to operate in the Orphic theogony, giving rise to Ether, Chaos, and Erebus.[4]

Another source explains that "Kairosr" from the ancient Greek Καιρός "auspicious moment" is the ancient Greek god of a happy moment, good luck, a favourable combination of circumstances. Kairos draws a person's attention to the auspicious moment when you need to act in order to achieve success.[5]

Thus, Harold Berman's metaphorical approach apparently aims to figuratively demonstrate that the revolution in law is a spontaneous phenomenon in the genesis of law.

In support of this conclusion, we find the following Harold Berman's argument, "… The idea that in the twentieth century, the Western legal tradition is experiencing a crisis, the equal of which has not yet been, cannot be scientifically proven. It's an intuitive feeling. I can only testify that I feel that the man of the West is in the midst of an unprecedented crisis of legal values and legal thought".[6]

In order to avoid a radical transformation of the law, Harold Berman advises the following, "… A radical transformation of a legal system is, however, a paradoxical thing, since one of the fundamental purposes of law is to provide stability and continuity. Moreover, law in all societies derives its authority from something outside itself, and if a legal system undergoes rapid change, then questions are inevitably raised concerning the legitimacy of the sources of its authority. In law, largescale sudden change revolutionary change is, indeed, "unnatural". When it happens, something must be done to prevent it from happening again. The new law must be firmly established; it must be protected

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[1] Harold Berman (1983), p. 42.

[2] Ibid., p. 59.

[3] Harold Berman (2009).

[4] Early Orphism by Robert Parker. Book The Greek World Edition. Routlege, 1995, 28 p.

[5] Pausanias, Description of Greece. Translated by Jones, W. H. S. and Omerod, H. A. Loeb Classical Library Volumes. Cambridge, MA, Harvard University Press; London, William Heinemann Ltd., 1918.

[6] Берман Гарольд Джордж (1998), с. 12.

against the danger of another discontinuity. Further changes must be confined to incremental changes".[1]

Completion of the Formation of the Western Legal Tradition

As mentioned above, the Western legal tradition is a tradition of positive law as well as a tradition of academic law.[2] According to Harold Berman, this legal tradition is formed from the Gregorian Reformation of the 11th-12th centuries (1075-1122) to the Russian revolution (1917). This period, which consists of six legal revolutions, is called by Harold Berman in two of his books: "The Formation of the Western legal tradition".[3],[4]

But already in the publication of 2000, Harold Berman puts forward a hypothesis about the beginning of the formation of a new World legal tradition.[5] In support of his hypothesis, Harold Berman draws attention to the crisis of the Western legal tradition in the twentieth century, with which it enters the new millennium. On this matter, Professor Berman writes that the multicultural East and West, North and South are beginning to form a new world tradition of law.[6]

Calling the crisis of the twentieth century a sign of the beginning of a new historical era in the Western legal tradition, Harold Berman does not reveal the evolutionary nature of this era. The foregoing suggests that the genesis of the Western legal tradition needs additional consideration.

If we are based on Harold Berman's opinion about completion of the formation of the Western legal tradition together with the completion of the Russian revolution (1917). It should be assumed that the Sixth Revolution of law finally formed the Western legal tradition. But this hypothesis is contradicted by the facts of the long-term disequilibrium of the international and national legal orders during two world wars. After two world wars, we are witnessing the formation of an international legal system and an international legal order with a renewed system of the equilibrium of law.

In this regard, there are prerequisites to believe that the era of the formation of the Western legal tradition has moved into a new state.

In the aspect of the Western legal tradition, Harold Berman examines these changes with reference to Percy E. Corbett, Wilfred Jenks, and Philip C. Jessup, "… In the twentieth century, for the first time in the history of the human race, virtually all the peoples of the world have been brought into more or less continual relations

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[1] Harold Berman (1983), p. 16.

[2] Harold Berman (2000).

[3] Harold Berman (1983), p. 657.

[4] Harold Berman (2006), p. 544.

[5] Harold Berman (2000).

[6] Ibid.

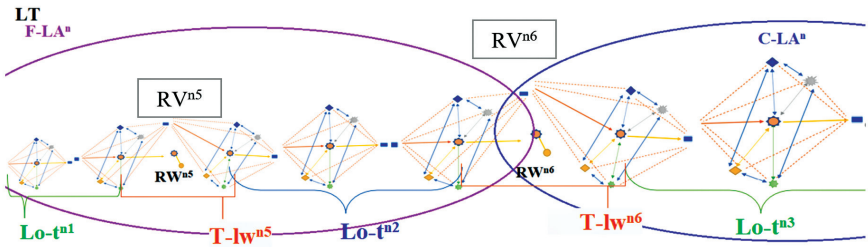
with each other. We speak without hesitation of a world economy, world technology, worldwide communications, world organizations, world science, world literature, world scholarship, world travel, world sports. We speak almost as confidently of an emerging world society, despite the forces of ethnic and territorial disintegration that threaten it. We have also begun to speak of world law".[1]

These arguments point to the formation of a new system of equilibrium of law. In contrast to the pre-Sixth Revolution period of law, which Harold Berman calls "Formations". Now we can observe that the new system of the equilibrium of law extends the operation of the Western legal tradition to many national legal systems.

But special attention should be dedicated to the previously atypical circumstance of the legal genesis of the Western legal tradition – this is a non-revolutionary transformation of law.

Let's consider this previously atypical circumstance of the legal genesis of the Western legal tradition on the Graphical Model – 9.

Graphic model – 9.
"Historical Epochs of the Western Legal Tradition"



Graphic model – 9 demonstrates that after the Sixth revolution of law (RV^{6}), a Transformation of law (T-lw^{n6}) took place, and a new type of Legal order arose (Lo-t^{n3}).

The fact of the formation of a new type of Legal order (Lo-t^{n3}) indicates the completion of the Transformation of law (T-lw^{n6}).

But our attention is attracted by an atypical circumstance, a total Renewal of law (RW^{n7}) and Transformation of law (T-lw^{n7}), which took place without a Revolution of law (RV^{7}). Without a revolution of law arose officially and totally a new law.

Here is how Harold Berman writes about it, "… Each of the great revolutions created a new law, each of them reworked the existing legal order ... There is a certain dialectical interaction between the great revolutions of the past. …".[2]

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[1] Harold Berman (2000).

[2] Берман Гарольд Джордж (1998), с. 9.

Indeed, experts in international law will point out that these changes are the result of a separate historical evolution. But in this analysis, we try to consider the genesis of different types of equilibrium of the Western legal tradition, which developed the dynamics of positive law in terms of the value of the subjective right to life.

Therefore, another circumstance points to the atypical nature of revolutionary development. There was no gap in the continuity of the Western legal tradition; not only the equilibrium of law changed totally, but the composition of the value components of the Western legal tradition also changed.

The Sixth Revolution of law (RV^6), according to Harold Berman, formed more than one model of the Equilibrium of law. We can observe local legal systems and their legal orders with the equilibrium of "Nationalism of law" (Nl^n), or "Liberalism of law" (LiB^n), as well as the global legal order had an equilibrium in the side of "Imperialism of law" (ImR^n).

The incompatibility of these models of the balance of law and legal order has deformed the third level of the general equilibrium of the Western legal tradition – Legality. Which has been used by some legal systems to disturb the equilibrium of Western law more deeply.

The lack of equilibrium of law in the global world legal order, which was accompanied by the Second World War, led to numerous violations of the right to life and to actions against humanity.

In the context of the Western legal tradition, the end of the Second World War is accompanied by the formation of a new global model of the equilibrium of law with the dominance of "Liberalism of law" (LiB^n).

The Universal Declaration of Human Rights was ratified on 10 December 1948,[1] On June 26, 1945, the UN Charter was signed, which entered into force on October 24, 1945,[2] On May 1, 1974, the UN adopted the Declaration on the Establishment of a New International Economic Order by resolution 3201 (S-VI),[3] and so on.

On the other hand, these circumstances were the result of another phenomenon, the regularities of the existence of which are observed in the genesis of the Western legal tradition. It is the ability of Western law to be an autonomous phenomenon. Namely, to have doctrinal, normative, and reflective autonomy in its dynamics at the same time.

Operating in this autonomous dynamic, in the second half of the twentieth century, national legal systems created a new model of the equilibrium of world law.

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[1] Universal Declaration of Human Rights, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] United Nations Charter, https://www.un.org/en/about-us/un-charter/full-text

[3] Declaration on the Establishment of a New International Economic Order. UN. General Assembly (6th special sess.: 1974), https://digitallibrary.un.org/record/218450

This model of equilibrium of law is oriented towards the dominance of "Liberalism of law" (LiB^n) in interaction with "Collectivism of law" (Cll^n) and the gradual weakening of "Imperialism of law" (ImR^n).

But something else is also important. The transition to a new model of equilibrium was carried out by immediate normativity and reflection of law. Instead of the Seventh spontaneous revolution of law, the impetus for the total renewal of the Western legal tradition was the facts of crimes against humanity and peace.

In this regard, using the terminology of the theory of dynamical systems, this circumstance caused a total bifurcation in the dissipative dynamics of the legal systems of the Western legal tradition existing at that time. Thus, it is possible to distinguish three key circumstances that replaced the Seventh Revolution of Law.

The first circumstance.

At the international level, there was a contractual consolidation of a new model of equilibrium in law, namely the formation of the "Normativity of law" (Norm-L^n). For example, the Universal Declaration of Human Rights[1] guaranteed the legal status of natural human rights, among which the right to life became the highest value in law.

The second circumstance.

In accordance with the new normative model of the equilibrium of law, international institutions have been created ("Institutionalization of law" – InT-Lw^n). In this aspect, it means that the institutionalization of law (Interaction of law – ItR-Lw^n) is a process and a result of the interaction of national legal systems by the creating an international supranational legal system.

The third circumstance.

This is the fact of practical implementation and a new model of equilibrium in the Reflection of law – crimes against humanity and peace have received judicial condemnation in a new type of equilibrium.

Subsequently, one of the models of the equilibrium of law "Nationalism of law" (Nl^n) was condemned, and as a result, it ceased its tradition in Western law. In this regard, the Western legal tradition has produced a casual reflection of law. Namely, judicial discretion in law eliminated one of the models of equilibrium of the Western legal tradition. This legal dynamic demonstrated a new feature of the Western legal tradition to renew the law, which was the act of international condemnation of crimes against peace and humanity.

The concept of "Reflection" was first used by John Locke.[2] In the context of the legal tradition, under this concept we consider the process of procedural discretion, which is accompanied by the resumption in the present tense of past

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[1] Universal Declaration of Human Rights, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights

[2] John Locke. An Essay Concerning Human Understanding Illustrated by Peter H. Nidditch, Oxford University Press, U.S.A. 1998., p. 776.

factual circumstances in order to apply the law that will have effect in the future tense. ("Reflection of law" – Rf-Lw^{n}).

Thus, in the second half of the twentieth century, the renewal of the Western legal tradition (RW^{n7}) took place without the Seventh Revolution of law (RV^{7}). Taken together, "Interaction of Law" (ItR-Lw^{n}), "Institutionalization of law" (InT-Lw^{n}) and "Reflection of law" (Rf-Lw^{n}) produced a total harmonization of national legal systems with a new model of equilibrium of the Western legal tradition.

This circumstance also indicates that the Western legal tradition was formed and moved into a new historical era. Where the human right to life is guaranteed by the normative, reflective, and doctrinal autonomy of law.

Acting within the framework of Harold Berman's the conceptual-categorical apparatus, we will call this phenomenon "The First Harmonization of the Western Legal Tradition", which we will denote by the symbol – GL^{n}. Let us compile an algorithmic model of the First Harmonization of the Western legal tradition.

Algorithmic model – 6.
"The First Harmonization of the Western legal tradition"

F-LA^{n}

17. GL^{n1} RW^{7} … {Nl^{n3} (Lo-t^{13}) ≈ LT ((NL^{n7})} ¬ItR-Lw^{n} + Norm-L^{n} + InT-Lw^{n} ∈ EqL^{n}
| {Cll^{n1} = LiB^{n} ≈ ImR^{n}} → Ls^{n} → Lo-t^{14} (Rf-Lw^{n} {-Nl^{n3} (-Lo-t^{13})} {- ImR^{n}}) ⊂
| ⊂ T-lw^{n} [Lp^{n}, Se^{n}, Rl^{n}, Lc^{n}] ⊆ Lw
18. | LT-b^{7} ⊇ ({J^{n} ± P^{n} ± R^{n} ± F^{n} = Cll^{n} ≈ ImR^{n} ≈ LiB^{n} = R^{n} ± J^{n} ± P^{n} ± F^{n}} ↦ [Lp^{n} + Lc^{n}+
| + Rl^{n} = Se^{n}]) ≈ Cr^{n4}{Cll^{n} ≈ ImR^{n} ≈ LiB^{n}} = Ls^{n} → Lo-t^{10} | Lo-t^{14}

C-LA^{n}

Symbol F-LA^{n} denotes "The Era of the Formation of the Western Legal Tradition".

Symbol GL^{n1} denotes "The First Harmonization of the Western legal tradition".

Row 17. indicates the content of the First Harmonization of the Western legal tradition (GL^{n1}).

Symbol RW^{7} denotes "Renewal of law", which occurred as a result of "First Harmonization of law" (GL^{n1}).

In the content of the "Renewal of law" (RW^{7}) it is shown that there is a confrontation (≈) between "Nationalism of law" (Nl^{n}) and Western legal tradition (LT). The reason for this confrontation is the emergence of "Legal novelty" (NL^{n7}). This legal novelty is a crime against humanity and peace. As a result, the Equilibrium in law is totally disturbed (¬).

The normative, reflective, and doctrinal autonomy of law existing in the Western legal tradition caused the interaction of national legal systems (ItR-Lw^{n}) in the formation of a new legal order. As a result, a new model of the "Equilibrium

of law" was formed. On the basis of this interaction, the Institutionalization of law (InT-Lw^{n}) took place in the Western legal tradition.

"Reflection of law" (Rf-Lw^{n}) through international justice deprived "Nationalism in law" (Nl^{n}) of continuity in the Western legal tradition, which produced a further transformation of law and the renewal of the structural components of this legal tradition [Lp^{n}, Se^{n}, Rl^{n}, Lc^{n}].

"Imperialism in law" (ImR^{n}) lost its legality and legitimacy but continued to exist at the first and second levels of equilibrium of the Western legal tradition as part of the opposite points of "Collectivism of law" and "Liberalism of law" (Cll^{n} ≈ LiB^{n}).

Row 18. Symbol – LT-b^{7} denotes the Small legal tradition, which received a renewal after the "First harmonization of law" (GL^{n1}). This legal tradition is the tradition of the relation of positive law to human life.

Symbol ⊇ denotes the internal content of the "Legal tradition" (LT-b^{7}).

In the value composition of the legal tradition, there is a confrontation between two forms of equilibrium of law: "Collectivism of law" and "Liberalism of law" (Cll^{n} ≈ LiB^{n}), which becomes a prerequisite for the emergence of the "Fourth counterrevolution of Law" (Cr^{n4}) and the formation of two opposing types of legal orders (Lo-t^{10} | Lo-t^{14}) in the one legal tradition.

Consequently, in the Western legal tradition have emerged two types of equilibrium of law with similar structural components [Lp^{n}, Se^{n}, Rl^{n}, Lc^{n}].

In one type of equilibrium of law, dominated by the "Liberalism of law" (LiB^{n}), the human right to life is guaranteed by the normative, reflective and doctrine autonomy of law.

In another type of equilibrium of law, dominated by "Collectivism of law" (Cll^{n}), the human right to life is guaranteed only by the normativity of law, the autonomy of law is absent or partially present in legal reflection or in legal doctrine.

Symbol C-LA^{n} denotes "The Age of Confrontation of the Western Legal Tradition."

Thus, the Algorithmic Model-6 demonstrates the transformation of law that was caused by the First Harmonization of the Western legal tradition in the field of the legal status of human life in international positive law.

Thus, it is possible to formulate a general theoretical conclusion regarding the main difference between the historical epochs of the Western legal tradition. In contrast to the era of "Formation" and the revolutions of law, the era of "Confrontation" is able to renew and harmonize the Western legal tradition through its autonomous reflection of law (Rf-Lw^{n}).

The Era of Confrontation of the Western Legal Tradition

In one of his publications of the two thousandth year, considering the further genesis of law after the Russian Revolution, Harold Berman makes predictions about the crisis of the Western legal tradition and about the prospects for the formation of a new world legal tradition.[1]

Describing the future threats of a crisis in the Western legal tradition, Harold Berman writes the following, "… we are in the midst of an unprecedented crisis of legal values and of legal thought, in which our entire legal tradition is being challenged – not only the so-called liberal concepts of the past few hundred years, but the very structure of Western legality, which dates from the eleventh and twelfth centuries. …".[2]

Before agreeing with Harold Berman's predictions or expressing an objection. First, it is necessary to deal with the question of how to understand the phenomenon of the crisis of the Western legal tradition in the context of the equilibrium of law that this tradition can create.

The concept of "Crisis" is quite popular. It is used often and in different fields of science and practice. For example, in various public encyclopaedias, the etymology of the word "crisis" comes from the Latin word. In turn, this word was borrowed from the Greek "κρίσις krisis", which means "discrimination", "decision".[3]

Other sources report that the Greek word "κρίνω (krinō)" is a verb that means "to distinguish", "to choose", "to decide".[4] But there is still a pluralism of opinions in understanding what a crisis is. There is an opinion that the word crisis as a definition was first used in psychology or medicine. Later, this concept began to be used in other areas. But the consensus is that the concept of crisis can mean contradictions, deficits, defects, instability, or deviations from a state that is perceived as normal.

Among legal scholars, there is no coherent and unified opinion in the interpretation of the phenomenon of crisis. At the same time, there are many studies of the crises of law and the crisis in law.

For example, David Nelken, in his 1982 publication, with reference to other scholars, describes the crisis that exists in the form of law, as well as another crisis, the crisis of legitimation.[5] Andrej Zwitter, in his 2012 publication, citing

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[1] Harold Berman (2000).

[2] Harold Berman (1983), p. 33.

[3] Crisis. Oxford English Dictionary, 2023 Oxford University Press, https://www.oed.com/view/Entry/44539

[4] Henry George Liddell, Robert Scott, Henry Stuart Jones, A Greek–English Lexicon. Oxford. Clarendon Press. 1940.

[5] Is There a Crisis in Law and Legal Ideology? By David Nelken, Journal of Law and Society, Vol. 9, No. 2 (Winter, 1982), pp. 177-189, https://www.jstor.org/stable/1410174?seq=1

other scholars, describes the rule of law in times of crisis.[1] Laura Henderson, in her 2014 publication, also citing other scholars, describes the crisis as a catalyst for legal change.[2]

Returning to the concept of the crisis of the Western legal tradition, we directly find the publication of William Chester Jordan with exactly the same title: "The Crisis of the Western Legal Tradition."[3] And we also find a publication by Philip Blosser entitled, "The Western Legal Tradition, Its Contemporary Crisis, and Pauline Diagnosis".[4]

In these publications, William Chester, Jordan, and Philip Blosser recognize the importance of Harold Berman's study of the processes of the formation of the Western legal tradition. Scholars express some criticism and show the significance of the crisis of the Western legal tradition for existing law. There are many other studies and publications on the Western legal tradition and the crisis of law. Such studies are present in almost every country, there are a lot of them, and each study deserves due attention.

Taking into account the foregoing, a hypothesis is formed that crisis of the Western legal tradition is a concept that denotes a certain imbalance in law, which is reflected in other social systems or, on the contrary, social, economic or other disequilibrium violates the equilibrium of law.

Based on the research of Harold Berman, we observe that the disequilibrium in law that is based on the legal tradition can be caused as a result of confrontation within the legal tradition. As a rule, these confrontations of law are caused by novelties in the legal environment at the level of the legal order, which is based on this legal tradition.

Also, the confrontation of the Western legal tradition is observed at the level of national legal systems that interact within the same legal order, which is based on the legal tradition. Consequently, confrontations within legal systems and their legal orders are possible.

As a result, there is doubt whether the legal tradition is able to independently maintain the equilibrium of law. Indeed, in modern law there are changes in the dynamics of social forces, which subsequently affects the balance of the legal tradition itself. It can be noted that the measures previously used by the legal

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[1] Andrej Zwitter, The Rule of Law in Times of Crisis: A Legal Theory on the State of Emergency in the Liberal Democracy. Archives for Philosophy of Law, and Social Philosophy, 2012, Vol. 98, No. 1 (2012), pp. 95-111.

[2] Laura M. Henderson, Crisis Discourse: A Catalyst for Legal Change? (2014). Queen Mary Law Journal, Spring 2014 (5), 1-13, https://ssrn.com/abstract=3446257

[3] William C. Jordan, The Crisis of the Western Legal Tradition, 83 MICH. L. REV. 670 (1985), https://repository.law.umich.edu/mlr/vol83/iss4/3

[4] Philip Blosser, The Western Legal Tradition, Its Contemporary Crisis, and Pauline Diagnosis, https://www.academia.edu/16878559/The_Western_Legal_Tradition_Its_Contemporary_Crisis_and_Pauline_Diagnosis

tradition are unable to balance the new contradictions of social forces in law. The legal tradition loses its ability to renew and continuity.

Let's briefly consider the main novelties (The Fluctuations in law) of the modern legal environment, which can cause confrontation of law and destroy its equilibrium.

The first is the novelties of the physical environment. A precedent in the history of mankind is a triple ecological crisis: pollution of the natural environment,[1] rising greenhouse gases,[2] and biodiversity loss.[3] As a result, global warming is occurring in the world,[4] increasing the number of natural disasters,[5] growing the threat of heat waves[6],[7], drought,[8] increasing the scarcity of water and other natural resources,[9] occur floods,[10], earthquake,[11] fires,[12] increases the number, intensity and strength of hurricanes.[13] and so on.

The above-mentioned physical and environmental innovations are reflected in economic and social innovations, among which the more acute are the global energy crisis[14] and the crisis of food availability,[15] which symmetrically threatens

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[1] Plastics are piling up in soil across the world warns UN environment agency, https://news.un.org/en/story/2022/10/1129597

[2] New UN report urges Europe to step-up action over triple environmental crisis, https://news.un.org/en/story/2022/10/1129277

[3] Climate change impacts 'heading into uncharted territory', warns UN chief, https://news.un.org/en/story/2022/09/1126511

[4] Iconic World Heritage glaciers to disappear by 2050, warns UNESCO, https://news.un.org/en/story/2022/11/1130157

[5] Millions at risk in flood-hit Nigeria; relief chief highlights hunger in Burkina Faso, https://news.un.org/en/story/2022/10/1129787

[6] Heatwaves to impact almost every child on earth by 2050: UNICEF report, https://news.un.org/en/story/2022/10/1129852

[7] UN relief chief appeals for concerted action to tackle deadly heatwave threat, https://news.un.org/en/story/2022/10/1129407

[8] WMO: Greater Horn of Africa drought forecast to continue for fifth year, https://news.un.org/en/story/2022/08/1125552

[9] 'Game changer' ideas on water and sustainability, centre-stage ahead of major water conference, https://news.un.org/en/story/2022/10/1129832

[10] Millions at risk in flood-hit Nigeria; relief chief highlights hunger in Burkina Faso, https://news.un.org/en/story/2022/10/1129787

[11] Chad: Unprecedented flooding affects more than 340,000 people, https://news.un.org/en/story/2022/08/1125562

[12] Wildfire and floods don't need to turn into disasters: UN risk report, https://news.un.org/en/story/2022/08/1125692

[13] Climate Change: Hurricanes and cyclones bring misery to millions, as Ian makes landfall in the US, https://news.un.org/en/story/2022/09/1128221

[14] Energy crisis: UN Global Crisis Response Group urges support to most vulnerable and transition to renewables, https://unctad.org/news/energy-crisis-un-global-crisis-response-group-urges-support-most-vulnerable-and-transition

[15] Join forces to prevent 'food availability crisis' urges FAO chief, https://news.un.org/en/story/2022/09/1128191

food[1] and energy security.[2]

The Second. There are prerequisites for legal, domestic, and foreign policy disagreements, including: the crisis of democracy,[3] the restriction of civil liberties, territorial claims, and the risk of losing the status of supremacy by law,[4] the threat of violence against women and children,[5] and so on.

The Covid-19 epidemic has had an independent impact on the legal and socio-economic order of the Western legal tradition, reaching the scale of a pandemic. The Covid-19 pandemic is more than a health crisis; it is an economic crisis, a humanitarian crisis, a security crisis, and a human rights crisis. This crisis has exposed serious instability and inequality within and between countries.[6]

According to the estimates of many analytical agencies, including the Organization for Economic Co-operation and Development (OECD), international trade declined sharply in 2020. But it recovered sharply in 2021, as the total volume of trade flows began to significantly exceed the pre-pandemic level. The impact of the pandemic on trade in specific goods and services has been very diverse, which has put a strain on certain sectors and supply chains. The changes in trade patterns caused by the Covid-19 pandemic in one year were of the same magnitude as the changes normally observed over a period of 4 to 5 years. Subsequently, at the end of 2021, significant imbalances between trading partners and products persisted, and not all losses were recovered from earlier sharp downturns.[7]

In the wake of the spread of Covid-19, an unprecedented number of national and international regulatory measures have been adopted simultaneously in international trade law. At the same time, the pandemic had a negative impact on other sectors of the global economy and national economies in general. Among those, an increase in government spending and in global debt.

According to some analysts, such as the World Bank, there is an opinion that the reasons for the growth of global debt were laid down long before Covid-19. Between 2011 and 2019, public debt in a sample of 65 developing countries increased by an average of 18 percent of Gross Domestic Product, and in some cases much more. International Monetary Fund experts believe that in 2020 we

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[1] Horn of Africa faces most 'catastrophic' food insecurity in decades, warns WHO, https://news.un.org/en/story/2022/08/1123812

[2] Water, Food and Energy, https://www.unwater.org/water-facts/water-food-and-energy

[3] Crisis and fragility of democracy in the world, https://www.ohchr.org/en/statements-and-speeches/2022/08/crisis-and-fragility-democracy-world

[4] UN chief raises alarm over 'backsliding' of democracy worldwide, https://news.un.org/en/story/2022/09/1126671

[5] Climate change heightens threats of violence against women and girls, https://news.un.org/en/story/2022/10/1129242

[6] UN Response to COVID-19, https://www.un.org/en/coronavirus/UN-response

[7] International trade during the COVID-19 pandemic: Big shifts and uncertainty, https://www.oecd.org/coronavirus/policy-responses/international-trade-during-the-covid-19-pandemic-big-shifts-and-uncertainty-d1131663/

saw the biggest annual spike in debt since World War II: global debt rose to $226 trillion as the world was hit by a global health crisis and a deep recession.[1]

The above characteristic of the legal environment makes it possible to classify legal novelties into types, namely legal novelties of political, social, economic, climatic, epidemiological, and other origin. Consequently, each class of legal novelties can create, causing, changing the dynamics of social forces in law.

Hence, each legal novelties, which, according to the theory of dynamical systems, are the fluctuations of law, demonstrate that the former conservative dynamics of legal systems have been transformed into dissipative dynamics, which have an impact on the equilibrium of the Western legal tradition.

From the point of view of the phenomenon of "The equilibrium of law in the Western legal tradition", these changes mean contradictions in the normative, reflective, and doctrinal autonomy of law. These contradictions can disrupt the points of orderliness of positive law, which is fraught with confrontations on the level of the group dynamics of legal systems.

In this regard, it is necessary to consider the phenomenon of group dynamics of legal systems within the framework of a unit equilibrium of law.

The phenomenon of group dynamics has been sufficiently studied in the sociology by Gustave Le Bon, William McDougall, Jacob L. Moreno, and others, but at the level of legal systems it has not been sufficiently studied.

The formation of group dynamics according to Bruce Tuckman, this is the first stage when members try to structure arbitrary norms and their behaviour, there is dependence, hostility, and leadership.[2]

Taking into account that the phenomenon of group dynamics has its own phases of dynamics, we can notice that the period of the formation of the legal tradition considered by Harold Berman is comparable to the stage of formation of group interaction described by Bruce Tuckman. We find this relationship at the level of legal systems without united centralized legal order and with the undeveloped property of autonomy of law.

Let's turn our attention to how Harold Berman characterizes this dynamic of legal systems at the stage of the formation of the Western legal tradition. "… Each of the various types of secular law gradually began to be perceived as a legal system, that is, an integral and organically developing body of legal institutions and concepts. However, in comparison with canon law, the new secular legal systems were much less directly related to the major political and intellectual events and movements of the era, but they were much more directly related to broad social and economic changes".[3]

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[1] Global Debt Reaches a Record $226 Trillion, https://www.imf.org/en/Blogs/Articles/2021/12/15/blog-global-debt-reaches-a-record-226-trillion

[2] Bruce W. Tuckman, "Developmental Sequence in Small Groups", Group Facilitation. A Research and Applications Journal. (Spring 2001). 63 (6): 71-72.

[3] Harold Berman (1983), p. 274.

Thus, the era of the Formation of the Western legal tradition assumed the formation of national legal systems in accordance with the united model of value balance and an unite type of autonomy of positive law, but with different types of national legal orders.

After the period of the Formation of group dynamics, according to Bruce Tuckman, there follows a period of Confrontation of the dynamics of group interaction.

Bruce Tuckman describes this period as an intra-group conflict between dependence and counter dependents. At this stage, there is the hostility, group expansion, emergence of polarities, resistance, struggle for dominance, self-change, or self-denial. It is also noteworthy in this theory that, according to Bruce Tuckman, after the stage of confrontation of group interaction, the next stages will be rationing and fulfilment.[1]

In this regard, using the terminology of the theory of dynamical systems, the confrontation of legal systems can be exacerbated by the different nature and types of dissipative dynamics of their positive law.

Hence, we can observe the phenomenon of confrontation of legal systems in the aspects of a unite system of equilibrium of the legal order centralized by tradition. Namely, the autonomy of normativity, reflection, and doctrine of the positive law of one national legal system may not be consistent with the autonomy or lack of autonomy of the positive law of another national legal system. This confrontation can be especially clearly seen on the example of different values of human life in law.

As a result, Bruce Tuckman finishing his study with optimistic conclusions that the confrontation phase of group interaction is followed by the fulfilment phase.

Thus, at the beginning of the third decade of the twenty-first century, the global environmental problem, the shortage of natural resources, the uneven differentiation of the world into developed countries and countries that are developing, high growth rates of world population and national debt, as well as the Covid-19 pandemic, the international military conflict of the Russian Federations on the territory of Ukraine and so on, contribute to the violation of the unite equilibrium of the Western legal tradition in terms of the unity of the normative, reflective and doctrinal autonomy of law. The first feature of this confrontation in the Western legal tradition is the confrontation of the Rule of law in the field of the human right to life.

[1] *Bruce Tuckman (2001).*

OCTAHEDRON OF THE WESTERN LEGAL TRADITION

In one of his books, Harold Berman, describing the features of Western law in the era of modern crisis, pointed out that of the previous ten features, modern Western law only four retained.

In this regard, based on the trial practice of the European Court of Human Rights the nature and continuity of the equilibrium of law within the framework of the European conventional legal order will be considered.

As a result, main directions of confrontation of the Western legal tradition within which European law retains its continuity with the Western legal tradition also are to be considered.

Within the boundaries of this interdependence, considering four Harold Berman's features, two more main features of Western law were found, which form eight directions of social forces, twelve structural couplings and six balance points of the Western legal tradition.

This equilibrium in the geometric plane forms the figure of the "Octahedron of the Western legal tradition".

Discretion of the Western Legal Tradition

Harold Berman compared the current crisis of Western law to all the revolutionary crises that have shaken the Western legal tradition in the past.[1]

The crisis of the Western tradition of law is not just a crisis of the philosophy of law, but also a crisis of law itself, writes Harold Berman.[2]

In this regard, Harold Berman identified only the first four of the ten major features that characterize and preserve Western law today.

"… 1. Law is still relatively autonomous, in the sense that it remains differentiated from politics and religion as well as from other types of social institutions and other scholarly disciplines.

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[1] Bruce Tuckman (2001).

[2] Harold Berman (1983), p. 37.

2. It is still entrusted to the cultivation of professional legal specialists, legislators, judges, lawyers, and legal scholars.

3. Legal training centres still flourish where legal institutions are conceptualized and to a certain extent systematized.

4. Such legal learning still constitutes a meta-law by which the legal institutions and rules are evaluated and explained".[1]

Then Harold Berman writes, "… All of the other six characteristics attributed to the Western legal tradition have been severely weakened in the latter part of the twentieth century, especially in the United States.

5. Law in the twentieth century, both in theory and in practice, has been treated less and less as a coherent whole, a body, corpus juris, and more and more as a hodgepodge, a fragmented mass of ad hoc decisions and conflicting rules, united only by common "Techniques". The old metalaw has broken down and been replaced by a kind of cynicism. Nineteenth-century categorizations by fields of law are increasingly viewed as obsolete. Still older structural elements of the law – such as, in England and America, the forms of action by which the common law was once integrated and which Maitland in 1906 said still "rule us from the grave" – are almost wholly forgotten. The sixteenth-century division of all law into public law and private law has had to yield to what Roscoe Pound in the mid – 1930s called "the new feudalism". Yet it is a feudalism lacking the essential concept of a hierarchy of the sources of law by which a plurality of jurisdictions may be accommodated, and conflicting legal rules may be harmonized. In the absence of new theories that would give order and consistency to the legal structure, a primitive pragmatism is invoked to justify individual rules and decisions.

6. The belief in the growth of law, its ongoing character over generations and centuries, has also been substantially weakened. The notion is widely held that the apparent development of law – its apparent growth through reinterpretation of the past, whether the past is represented by precedent or by codification – is only ideological. The law is presented as having no history of its own, and the history which it proclaims to present is treated as, at best, chronology, and at worst, mere illusion.

7. The changes which have taken place in law in the past, as well as the changes which are taking place in the present, are viewed not as responses to the internal logic of legal growth, and not as resolutions of the tensions between legal science and legal practice, but rather as responses to the pressure of outside forces.

8. The view that law transcends politics – the view that at any given moment, or at least in its historical development, law is distinct from the state – seems to have yielded increasingly to the view that law is at all times basically an instrument of the state, that is, a means of effectuating the will of those who exercise political authority.

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[1] Harold Berman (1983), p. 39.

9. The source of the supremacy of law in the plurality of legal jurisdictions and legal systems within the same legal order is threatened in the twentieth century by the tendency within each country to swallow up all the diverse jurisdictions and systems in a single central program of legislation and administrative regulation. The churches have long since ceased to constitute an effective legal counterweight to the secular authorities. The custom of mercantile and other autonomous communities or trades within the economic and social order has been overridden by legislative and administrative controls. International law has enlarged its theoretical claim to override national law, but in practice national law has either expressly incorporated international law or else has rendered it ineffectual as a recourse for individual citizens. In federal systems such as that of the United States, the opportunity to escape from one set of courts to another has radically diminished. Blackstone's concept of two centuries ago that we live under a considerable number of different legal systems has hardly any counterpart in contemporary legal thought.

10. The belief that the Western legal tradition transcends revolution, that it precedes and survives the great total upheavals that have periodically engulfed the nations of the West, is challenged by the opposing belief that the law is wholly subordinate to revolution. The overthrow of one set of political institutions and its replacement by other leads to a wholly new law. Even if the old forms are kept, they are filled, it is said, with new content, they serve new purposes, and they are not to be identified with the past".[1]

From the above stated Harold Berman's opinion, it follows that in the context of the crisis of the Western legal tradition, six features of Western law lose their meaning, therefore, the loss of some of its features by Western law may indicate a change in law and its dynamics.

In this regard, the Professor Berman's conclusions are consistent with the hypothesis that the Western legal tradition has changed its transcendence, the renewal and transformation of law can occur not as a result of revolutions, but in accordance with the autonomous reflection of law.

Harold Berman gives a name only to the first three of the four mentioned features of Western law, these are: "The autonomy of Western law", "Professionalism of Western law", and "Scientific nature of Western law".

The last fourth feature of Western law remained without a name.

But Harold Berman writes, "… Such legal learning continues to constitute the meta-law by which legal institutions and rules are evaluated and explained …".[2]

Taking into account this formulation, we think that the "Metatheory of law" is the fourth feature of Western law.

In this regard, Talcott Parsons' opinion on the "metatheory" deserves attention. "… My use of the term "Metatheory", the analysis of which is, as I understand it,

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[1] Harold Berman (1983), p. 37.

[2] Ibid., p. 37-39.

methodology in the German, and not in the American sense of the word. The term that I have found most appropriate to characterize this level of conceptualization is the term "The System of coordinates".[1]

Thus, in Harold Berman's and Talcott Parson's literal understanding of the metatheory of law, one can assume that Western law has its own higher theory, which determines the coordinates of the entire Western legal tradition.

But in this case, one should agree with Harold Berman that four features of Western law are not capable of fully reflecting the Western legal tradition. Since in their totality they do not explain the phenomenon of the equilibrium of law and the phenomenon of the legal order based on the legal tradition.

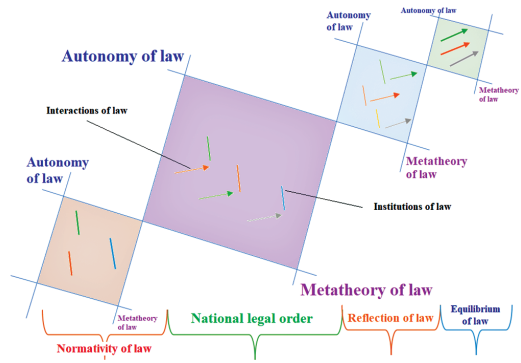
We think that this circumstance introduces ambiguity into the potential of the Western legal tradition and does not contribute to its recovery from the crisis.

In the previous section, the hypothesis was considered that the Western legal tradition ended the era of "Formation", and the thesis that in the new era, the Western legal tradition retains its transcendence not in a revolutionary way, but in a harmonized dynamic, was also put forward. This dynamic of law consists of "Normativity of law" (Norm-L^n), "Interaction of national legal systems" (ItR-Lw^n), "Institutionalization of law" (InT-Lw^n) and "Reflection of law" (Rf-Lw^n).

Further, we verify this thesis in the aspect of the "Coordinate systems of the Western legal tradition" on the example of the modern model of legal order based on the equilibrium of law, the reflection (Rf-Lw^n) of which is carried out by the European Convention on Human Rights.[2]

Graphic model –10. "The System of coordinates of the Western legal tradition in dynamics"

The Graphical model demonstrates four nominal states of positive law in dynamics: "Normativity of law", "National legal order (Legal reality)", "Reflection of law" and "Equilibrium of law".



[1] Harold Berman., (1983), p. 37-39.

[2] Talcott Parsons, On theory and metatheory. Humboldt journal of social relations. 1979/80. Fall/ Winter. Vol. 7., 1. p. 5-16.

Since positive law is considered in dynamics, many of its static features do not manifest themselves in a dynamic state. This also implies the observation that different states of the dynamics of positive law are accompanied by different features of law.

For example, consider the phenomenon of "National legal order" as one of the states of the dynamics of law, which is at the present time. This state corresponds with the phenomenon of "Legal reality". In these dynamics, we observe the dimension of legal reality, where the normative prescription receives the actual implementation in the autonomous and spontaneous discretion of each participant in legal relations.

In this state, among Harold Berman's the "four features", we observe only two features of positive law: "Autonomy of Western law" and "Metatheory of law". In this case, they demonstrate that "National legal order" (Legal reality) is a substantive level of law, in which the mentioned features are the points of coordinates.

At the level of "National legal order" we find that "Professionalism of Western law" is the content element of this substantive level. This generalized phenomenon reproduces the dynamics of law with the help of "Interaction of legal institutions". But in the next state of the dynamics of law – "Reflections of law", "Professionalism of Western law" is not a content element but is an independent substantive level of dynamics.

Returning to the level of "National legal order", we observe that the "Reflection of law" is the coordinate point of this state of dynamics. Which further at its level, in the future tense, reflects the past state of the "National legal order" (Therefore, there is a shift in legal reality).

As a result, the dynamics of law carries out the "Reflection of law" in relation to the previous state of dynamics through the procedural discretion of law. By this substantive level, we mean the operation of procedural law.

An example of this reflection would be a process and an act of justice (discretion of law). According to its reflective nature, this state of the dynamics of law is able to resume in the present tense the past states of the dynamics of law.

In this regard, the rules of law are not only the fourth point of coordinate of positive law at the level of "National legal order". But it is also an independent and always past substantive level of the dynamics of law – the "Normativity of law". Consequently, the normativity of law is different models of the equilibrium of law fixed in the past for the future tense. Therefore, the level of "Normativity of law" has other features.

Thus, the Graphical model "The system of coordinates of the Western legal tradition in dynamics" demonstrates that Western law in dynamics has not four features, as Harold Berman writes, but six. At each substantive level of the dynamics of law, there is an interchange of these features.

According to the graphical model, four features are points of coordinates of positive law ("Autonomy of Western law", "Metatheory of law", "Reflection of law", "Normativity of law") in dynamics.

The fifth feature according to Harold Berman is the "Professionalism of Western Law", which is present at all levels of the dynamics of law, but in different forms: legal definitions, legal fictions, institutions of law, interaction of law, legal compositions, regulations, judicial decisions, and so on.

The sixth feature of Western law according to Harold Berman is the "Scientific nature of Western law" which is comparable to the concept of the doctrine of Western law (Dogma). In this graphical example, all four conditional states of the dynamics of positive law "Normativity of law", "National legal order", "Reflection of law" and "Equilibrium of law" are the result, the content, and the form of the doctrine of law.

In the subsection of this book entitled "Social forces and the Equilibrium of law", it was stated that "... at the basis of the internal communicative structures of law there is a dogma (doctrine) of law. In this regard, as we see from the examples of Harold Berman, each doctrine of law substantiated its truth in law, and hence its form of equilibrium and its point of equilibrium".

Consequently, the confirmation that the "Scientific nature of Western law" is capable of being a common feature for the entire dynamics of positive law is the discrete nature of the Western legal tradition, which, without the ability to transcendence and focus on the empiricism of law, cannot provide this property of the dynamics of law.

We find confirmation of this hypothesis in the features of the Western legal tradition pointed out by Harold Berman.

"… 1. A relatively sharp distinction is made between legal institutions (including legal processes such as legislation and adjudication as well as the legal rules and concepts that are generated in those processes and other types of institutions. Although law remains strongly influenced by religion, politics, morality, and custom, it is nevertheless distinguishable from them analytically. …

2. Connected with the sharpness of this distinction is the fact that the administration of legal institutions, in the Western legal tradition, is entrusted to a special corps of people, who engage in legal activities on a professional basis as a more or less full-time occupation.

3. The legal professionals, whether typically called lawyers, as in England and America, or jurists, as in most other Western countries, are specially trained in a discrete body of higher learning identified as legal learning, with its own professional literature and its own professional schools or other places of training.

4. The body of legal learning in which the legal specialists are trained stands in a complex, dialectical relationship to the legal institutions, since on the one hand the learning describes those institutions but on the other hand the legal institutions, which would otherwise be disparate and unorganized, become conceptualized and systematized, and thus transformed, by what is said about them in learned treatises

and articles and in the classroom. In other words, the law includes not only legal institutions, legal commands, legal decisions, and the like, but also what legal scholars (including, on occasion, lawmakers, judges, and other officials talking or writing like legal scholars) say about those legal institutions, commands, and decisions. The law contains within itself a legal science, a metalaw, by which it can be both analysed and evaluated.

5. In the Western legal tradition law is conceived to be a coherent whole, an integrated system, a "body", and this body is conceived to be developing in time, over generations and centuries. The concept of law as corpus juris might be thought to be implicit in every legal tradition in which law is viewed as distinct from morality and from custom; ….

6. The concept of a body or system of law depended for its vitality on the belief in the ongoing character of law, its capacity for growth over generations and centuries a belief which is uniquely Western. The body of law only survives because it contains a built-in mechanism for organic change.

7. The growth of law is thought to have an internal logic; changes are not only adaptations of the old to the new but are also part of a pattern of changes. The process of development is subject to certain regularities and, at least in hindsight, reflects an inner necessity. It is presupposed in the Western legal tradition that changes do not occur at random but proceed by reinterpretation of the past to meet present and future needs. The law is not merely ongoing; it has a history. It tells a story.

8. The historicity of law is linked with the concept of its supremacy over the political authorities. The developing body of law, both at any given moment and in the long run, is conceived by some although not by all, and not necessarily even by most to be binding upon the state itself. Although it remained for the American Revolution to contribute the word "constitutionalism", nevertheless, since the twelfth century in all countries of the West, even under absolute monarchies, it has been widely said and often accepted that in some important respects law transcends politics. The monarch, it is argued, may make law, but he may not make it arbitrarily, and until he has remade it lawfully, he is bound by it.

9. Perhaps the most distinctive characteristic of the Western legal tradition is the coexistence and competition within the same community of diverse jurisdictions and diverse legal systems. It is this plurality of jurisdictions and legal systems that makes the supremacy of law both necessary and possible.

10. There is a tension between the ideals and realities, between the dynamic qualities and the stability, between the transcendence and the immanence of the Western legal tradition. This tension has periodically led to the violent overthrow of legal systems by revolution. Nevertheless, the legal tradition, which is something bigger than any of the legal systems that comprise it, survived and, indeed, was renewed by such revolutions".[1]

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[1] Harold Berman (1983), pp. 7-10.

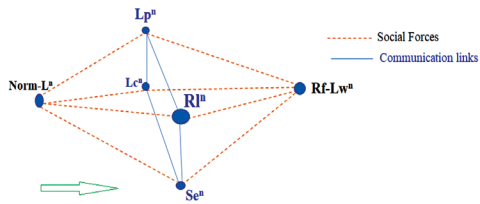
In this regard, the following conclusion can be formulated.

With an ideal equilibrium of social forces in the dynamics of positive law, the Western legal tradition, on the one hand, is transcendental, and on the other hand, discrete. As our study shows, modern discreteness has replaced the past immanence of the Western legal tradition, which has reduced the role of legal revolutions.

Consequently, the tension between ideas and reality, between dynamic qualities and stability, between transcendence and discretion, manifests itself in two states of the dynamics of the legal tradition: conservative and dissipative dynamics of law. These two states with the above-mentioned coordinates form the shape of the Western legal tradition, which corresponds to the geometric figure "Octahedron".

Graphic model –11.
"Octahedron of the Western legal tradition"

The Graphic model shows the ideal balance of social forces in law and the mirror transcendence and discreteness corresponding to this equilibrium, which the Western legal tradition can create in dynamics.



The Graphic model demonstrates six points of equilibrium of the Western legal tradition: Norm-L^n – Normative autonomy of law; Rl^n – Rules; Lc^n – Legal culture; Lp^n – Precedent; Se^n – Political expectations (Social expectations); Rf-Lw^n – Reflective autonomy of law. In addition to the fact that these are the points of equilibrium of the Western legal tradition, at the same time they are the coordinates of its dynamics.

The "Green Arrow" indicated on the left demonstrates the direction of the dynamics of Western law towards the equilibrium that the legal tradition creates. In accordance with this direction, the movement of social forces from the "Normative autonomy of law" (Norm-L^n) to the "Reflective autonomy of law" (Rf-Lw^n) is being formed.

As shown in the graphical model, social forces in the legal tradition have different states.

The first state is based on the "Normative autonomy of law" (Norm-L^n), aimed to Rl^n – Rules, Lc^n – Legal culture, Lp^n – Precedent, and to Se^n – Political expectations (Social expectations). Hence, the interaction Rules (Rl^n) and "Normative autonomy of law" (Norm-L^n) are the interaction of substantive and procedural law.

The second state of social forces in the legal tradition is formed in the communicative relations of positive law between: Rl^n – Rules, Lc^n – Legal culture, Lp^n – Precedent, Se^n – Political expectations (Social expectations). This state is the legal order or the actual legal reality of law.

The third state is the result of the equilibrium that the legal tradition creates with the help of the "Reflective autonomy of law" (Rf-Lw^n).

Thus, in its ideal state, the Western legal tradition consists of eight lines of social forces and twelve structural couplings. Consequently, it is a natural mechanism for the continuity of the equilibrium of positive law, which affects the formation of the legal order and its reflection in a specific factual situation.

The comparison of the ideal equilibrium of the Western legal tradition with the geometric figure "Octahedron" is intended to demonstrate that the main role in the evolution of law belongs to the natural processes in the dynamics of legal systems, where the Right to life as the highest value is both a stabilizing and a destabilizing factor.

The transcendence of the Western legal tradition is due to the stratification of legal reality. This reductionist standpoint that despite the fact that the legal tradition is an empirical carrier of structured legal experience in the form of the legal order, the causality of law always gives rise to contradictions beyond the boundaries of previous experience (beyond the boundaries of the legal order), which requires constant (continuous) discretion of law. Thus, the empirical carrier is the legal order as the legal embodiment of the model of the equilibrium of law.

In order to verify this theoretical system and Harold Berman's hypothesis about the equilibrium that the Western legal tradition creates in positive law, we will further consider the equilibrium of law, which arises on the basis of the "Normative autonomy of law" (Norm-L^n) of the European Convention on Human Rights and the "Reflective autonomy of law" (Rf-Lw^n) of the European Court of Human Rights in relation to the realization of the Right to life.

Rule of Law in the Context of Legal Tradition

Is it possible to consider the Western legal tradition as a legal tradition of autonomy of law?

Such a question arises on the basis of studies of the Western legal tradition. Justifying the nature of the autonomy of Western law, Harold Berman writes, "…. In the West, though of course not only in the West, but law is also considered to have a character of its own, a certain relative autonomy".[1]

But what should be understood by the concept of "the Autonomy of law"?

[1] Harold Berman (1983), p., P. 8.

The answer to this is logically conditioned. The Autonomy of law is its independence, but this is not enough, and it does not explain why law can be autonomous.

In the previous section, based on Harold Berman's research, we considered that the autotomy of law is a feature of Western law and the point of the coordinate of its dynamics. But about the autonomy of law, Harold Berman also writes the following, "… in the Roman Empire the autonomy of legal thought had been maintained by practitioners, especially praetors and professional legal advisers, in western Europe that autonomy was maintained by the universities".[1]

In addition to the historical aspect, this Harold Berman's conclusion is confirmed further. In the previous subsection of the book, an analysis of the dynamics of Western law showed that the sixth feature of this dynamics is the doctrine of law (legal dogma). Harold Berman sees universities as a source of autonomy for Western law, since academic institutions are able to form and theoretically substantiate different ideas of the truth of law, from spiritual, patriarchal to market, liberal doctrines, and so on.

Having searched the grounds for autonomy, the modern legal doctrine substantiates the principle of "Rule of law" and "Legal state". In modern legal thought, the prevailing view, which we tend to support, is that the "Rule of law" and the "Legal state" are different legal doctrines. But at the same time, each of them has been the subject of research, discussion, and interpretation for more than a millennium of the genesis of legal science in the Western legal tradition.

We find the idea of the "Rule of law" in Aristotle when he writes, "… And it is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws".[2]

According to the Stanford Encyclopaedia of Philosophy, "… The Rule of Law has been an important ideal in our political tradition for millennia, and it is impossible to grasp and evaluate modern understandings of it without fathoming that historical heritage. The heritage of argument about the Rule of Law begins with Aristotle (c. 350 BC); it proceeds with medieval theorists like Sir John Fortescue (1471), who sought to distinguish lawful from despotic forms of kingship; it goes on through the early modern period in the work of John Locke (1689), James Harrington (1656), and (oddly enough) Niccolò Machiavelli (1517); in the European Enlightenment in the writings of Montesquieu (1748) and others; in American constitutionalism in The Federalist Papers and (and even more forcefully) in the writings of the Federalists' opponents; and, in the modern era, in Britain in the writings of A. V. Dicey (1885), F.A. Hayek (1944, 1960, and 1973), Michael Oakeshott (1983), Joseph Raz (1977), and John Finnis (1980),

[1] Harold Berman (1983), p. 163.

[2] The Politics by Aristotle. Penguin Classics, 1981, p. 512. (Chapter 16).

and in America in the writings of Lon Fuller (1964), Ronald Dworkin (1985), and John Rawls (1971). The heritage of this idea is so much a part of its modern application".[1]

Comparing the historical chronology of events, the genesis of scientific ideas in line with the development of positive law, the question arises, on which points of equilibrium of the Western legal tradition the ideas of the "Rule of Law" and "Legal state" are based?

In the middle of the twentieth century, by the end of the era of the "Formation of the Western legal tradition", the role of the "Rule of Law" increased. Jeremy M. Farrall in one of his publications describes this process in detail, "… Since the end of the Cold War, the Security Council has increasingly emphasized the significance of the rule of law as a phenomenon that facilitates efforts to rebuild societies emerging from conflict. The rule of law's formal pedigree in the Security Council's practice is confirmed by a number of developments, including the establishment of a Security Council agenda item dedicated to the rule of law, the now routine inclusion in multidimensional peacekeeping mandates of the task of strengthening the rule of law, and the adoption of six presidential statements emphasizing the importance of promoting the rule of law. This section describes how the rule of law has entered the Security Council's consciousness and evolved through its subsequent practice".[2]

From other sources we learn, after the Second World War, two distinct and parallel processes were observed. The UN and its agencies undertook measures to create favourable conditions for the study and dissemination at the international level of ideas related to the concept of "Rule of law" – an active process of global implementation of the idea of the rule of law began.

After 1945, in many countries of continental Europe, foreign language equivalents of the German concept "Rechtsstaat" (with which the image of the "result of pan-European development" began to be associated) were actively used, the equivalents of which were: "Etat de droit", "Law state", "Stato di diritto", "Estado de derecho".[3]

In this regard, Jeremy M. Farrall writes about this process, "… The relevance of the rule of law to the Security Council was not always apparent. The term "Rule of law" is nowhere to be found in the UN Charter, despite the protestations of some countries at the 1945 San Francisco conference, where the text of the Charter itself was negotiated, that the principles of justice and the rule of law should guide the actions of the Security Council. While the rule of law has been

[1] The Rule of Law. Stanford Encyclopaedia of Philosophy., https://plato.stanford.edu/entries/rule-of-law/

[2] Jeremy M. Farrall. Rule of Accountability or Rule of Law? Regulating the UN Security Council's Accountability Deficits., Journal of Conflict & Security Law, Oxford University Press 2014, pp. 391-392., https://www.jstor.org/stable/pdf/26291294.pdf (Further. Jeremy M. Farrall (2014)).

[3] Monhaupt Heinz. L'Etat de droit en Allemagne: histoire, notion, fonction. L'Etat de droit / sous la direction de Michel Troper Caen, France, 1993. p. 75.

evoked in Council deliberations right from the Council's very first meeting on 17 January 1946, the term did not feature explicitly in a Council resolution until 1961. That first appearance on the formal Security Council stage was brief and fleeting, however, as the rule of law did not reappear in the Council's lexicon for another three decades".[1]

On the other hand, we observe that the development of the doctrine of the "Rule of law" was accompanied by an academic discussion.

On September 8-16, 1957, the Chicago Colloquium discussed the legal systems of four countries: Great Britain, the United States (with a common law system), and France, Germany (with a continental law system). Despite this choice, the participants of the colloquium did not exclude the law of other Western countries from the subject of discussion, as evidenced by the discussion of reports on the legal systems of Italy and the Scandinavian countries. The exchange of thoughts on the characteristics of the legal systems that existed in the USSR and in the socialist countries of Eastern Europe was planned to be held in Warsaw in September 1958. The first difficulty that arose before the participants of the Chicago colloquium was the linguistic problem of translating the concept "Rule of law" into other European languages, which has been the main feature of the English system of law since the time when A. V. Dicey defined it at the end of the 19th century.[2]

Albert Dicey described this phenomenon as follows, "… We can argue that the Constitution is pervaded by the Rule of Law on the grounds that the general principles of the constitution (for example, with regard "the right to personal liberty" or "the right to public meeting") in our country are the result of court decisions that determine the rights of individuals brought before the court in specific cases …".[3]

The French participants in the colloquium, even among themselves, did not agree on which French-language term could more accurately convey the meaning of what was covered by the English-language phrase "Rule of law". Because of the sufficient correspondence, in their opinion, the French jurists proposed such French-language expressions as "Le principe de la legalite" (The legality), "La suprematie de la regle de droit" (The Supreme of legal norm), "regne de droit" (The Power of law), "Le regne souverain de la loi" (The Supreme power of law). German lawyers almost unanimously believed that the German-language correspondence of the phrase "Rule of Law" is the term "Rechtsstaat". It was agreed, however, that the proposed foreign language terms could not be clearly interchangeable, that any of the proposed translations was not perfect, and that each of them "concerned a separate aspect of the legal system".[4]

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[1] Jeremy M. Farrall (2014), p. 392.

[2] Hamson C.J. General Report (Les Colloques de Chicago, 8–16 Septembre 1957). Annales de la Faculté de Droit d'Istanbul. 1959. Vol. 9 (12). P. 4. (Further. C. Hamson (1957)).

[3] A.V. Dicey Introduction to the Study of the Law of the Constitution. 10th ed., 1959. p. 195.

[4] C. Hamson (1957).

In order to clarify in the framework of the comparative analysis the essence of what was covered by the English phrase "Rule of law", it was decided to apply another method, which was based on the following:

a) the determination of the objectives of a particular system of law and their hierarchy, as well as the search and analysis of similar and different for these purposes,

b) the identifying of the ways in which a particular legal system seeks to achieve its objectives, and especially the status and activities of the institutions, whose application enables a particular legal system to achieve them; refers to the functions of specific institutions of a given legal system, which make it possible to identify analogies, similarities and differences between institutions operating in different systems,

c) the clarification of the usefulness and necessity of certain institutions, the degree of their compliance with the goals they serve in a particular system of law.

Such an approach, as its representatives believed, contributed to the identification of the highest value that comparative legal analysis could give to its practical level. It was this approach that "best enabled the lawyer to make suggestions for the improvement of his own system of law, with due regard to his capabilities in the light of the information on its functioning that the lawyer received from the study of other systems.[1]

Regarding the concept of "Rule of law", Jeremy M. Farrall, citing other authors, writes, "… In its most general, abstract form, the notion of the rule of law seems to be a self-evidently good and uncontroversial idea. ... Yet, while the general idea of the rule of law attracts widespread support, once the concept is placed under the microscope it becomes a notoriously slippery idea to distil and define. Jeremy Waldron constructively describes it as "an essentially contested concept", but other scholars are considerably less kind, condemning the rule of law for being "opaque", "impossible" and "meaningless". Even theorists who vigorously advocate the virtues of the rule of law begrudgingly acknowledge that the term is "remarkably elusive" and susceptible to "promiscuous use".[2]

Throughout the 20th century, especially the second half of it, one could observe that the concept of "Rechtsstaat" was interpreted in different ways. Gianmaria Ajani proposed the following classification:

The first approach. As an equivalent to the concept of "constitutional state" since the constitutions enshrined formal guarantees of human rights and freedoms.

The second approach. As the equivalent of "a state that recognizes the idea and system of administrative justice".

The third approach. In the formalistic understanding of Hans Kelsen, where the concepts of "legislation of the state" and "the state as a legal phenomenon"

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[1] Georgiev D. The Collapse of Totalitarian Regimes in Eastern Europe and the International Rule of law. The Rule of law after Communism: Problems and Prospects in East-Central Europe. Darmouth, 1999. p. 330.

[2] Jeremy M. Farrall (2014), pp. 393-394.

coincide with the concept of "law" in such a way that in this sense every state is legal.

The fourth approach. As a synonym for the concept of "Rule of law".

The fifth approach. As a concept that provides a basis for all the activities of state bodies on the basis of the principle of the Rule of law.[1]

At the same time, French legal science is forming its own approach to the interpretation of this phenomenon. For the first time, the term "Etat de droit" was introduced in 1907 by a lawyer, a professor at the University of Léon Duguit.[2]

Along with the formation of the doctrine of "Etat de droit" on the conceptual basis of the German doctrine "Rechtsstaat", French scholars participated in the collective search for the essence and meaning of the English-language expression "Rule of Law". Trying to translate literally the English-language phrase "Rule of law", French scholars proposed to use two possible meanings of the word "Rule", taking into account the fact that the concepts of "Power", "Domination", "Government" corresponded to the French word "Règne", and such a legal category as "Norm" or "Rule" corresponded to the expression "La règle". As a result, the proposal of the French authors boiled down to the fact that the phrase "Rule of law" could be translated both as "Règne de droit" (the Rule of law) and as "Suprématie de la règle de droit" (supremacy of the Rule of law).[3]

According to some researchers, the decisive difference between the continental and English theories of law is that the English theory denies the idea of law as a "closed system", "organized from above", which represents a "consistent and logical body of rules", that is, it denies exactly the idea that is the core of the continental concept.[4]

Despite the difficulties of translating the "Rule of law" into the languages of continental Europe, in the second half of the twentieth century there were fewer people in the legal community who considered it a purely Anglo-Saxon concept, and more who believed that if it was applied as a shorthand expression in relation to the "corpus of principles and ideals" that are known and recognized within the framework of various legal systems, then only harm from this is "linguistic accuracy".[5]

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[1] Gianmaria Ajani. The Rise and Fall of the Law-Based State in the Experience of Russian Legal Scholarship // Towards the "Rule of law" in Russia? Political and legal reform in the transition period (Revised papers from a conference held at Lehigh University in May 30–June 1, 1991), 1992, p. 5.

[2] L. Duguit Manuel de droit constitutionnel: théorie générale de l'état – organisation politique. Paris, 1907. pp. 238, 662.

[3] M. Letourneur et R. Drago, La Regle de Droit en France. Annales de la faculte de droit d'Istanbul. 1959. T. 9. № 12, p. 189.

[4] T. Fleiner, Common Law, and Continental Law: Two Legal Systems. The Federalism Institute at Fribourg University (Switzerland). 2005, http://www.thomasfleiner.ch/files/ categories/IntensivkursII/ Legalsystems.pdf

[5] D. Thompson, The Rule of law – Anglo-Saxon or WorldWide? Journal of the International Commission of Jurists, 1964. Vol. 5 (2), p. 303.

One reason that the rule of law is so difficult to pin down, citing other authors, writes Jeremy M. Farrall, is that it is highly contextual to the extent that an understanding of the rule of law developed in one politico-legal context may not be directly relevant, helpful, or applicable in another. In any event, the vigorous scholarly contestation over the interpretation and usefulness of the rule of law has not prevented the UN from developing a working definition of the concept.[1]

In his August 2004 report on the rule of law and transitional justice in conflict and post-conflict societies, Secretary-General Kofi Annan described the rule of law as follows, "… principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency".[2]

Thus, the modern doctrine of the "Rule of law" considers law as a phenomenon autonomous from culture, religion, economics, politics, and the state. Based on the Harold Berman's idea "On the Equilibrium of law", which is created by the Western legal tradition, we believe that the point of this equilibrium ensures the autonomy of law, on the basis of which law is able to justify its supremacy.

In this regard, the Rule of law is autonomous when the legal tradition balances:

- the social forces (value components: rationalism, justice, pragmatism, formalism),
- the normative, anthropological, formational, and civilizational components of the legal tradition (Rules, Precedent, Political expectations (Social expectations) and Legal culture),
- the legal order (national or international) bases its legality and legitimacy on the two previous levels of equilibrium of law.

Thus, the hypothesis "On the equilibrium of law" is intended to demonstrate that law is a multi-level system of compromises. This system presupposes a natural correlation of justice with rationality, efficiency with objectivity and vice versa. In this regard, returning to the Graphic model –10. "The System of coordinates of the Western legal tradition in dynamics" we see that the autonomy of law (which is identical to the concept of the Rule of law) is present at every level of such dynamics.

The normativity of law in dynamics, which we consider as a structural component of the legal tradition in the form of "Rules", is the first level at which the model of the equilibrium of law is fixed in statics.

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[1] Jeremy M. Farrall (2014), p. 394.

[2] Ibid., p. 394.

The second in the symmetric, but third in the asymmetric sequence, the substantive level of the dynamics of law is the "Legal order", which bases its legality on the normativity of law and the reflection of law.

Thus, the Reflection of law is the second asymmetric and the third symmetrical substantive level of the dynamics of law, since, based on normativity (Rules), the Reflection of law forms the second level of the Equilibrium of law, taking into account the Precedent (Legal discretion), the Political expectations (Social expectations) and Legal culture. Therefore, in this context, the Legality as a property of the Legal order coincides with the properties of the Rule of law.

From the foregoing, it follows that the Rule of law in the Western legal tradition is the result of a multi-level interaction of law, and in each individual case it is a combination of three levels of the equilibrium of law.

But in this case, how should the Rule of law in the Western legal tradition be viewed if there are several opposing points of equilibrium are present in its composition? We mean that at the level of legality and legitimacy there are "Collectivism of law" and "Liberalism of law" ($Cll^n \approx LiB^n$), and also at other levels of equilibrium are elements of "Imperialism in Law" (ImR^n).

We believe that the answer to this question can be found at the level of the international legal order, in which the dynamics of positive law is ensured by normativity and reflection of law. As an empirical example, we propose to consider the realization of the highest value of the law – the human right to life.

The international legal order consists of several levels, the global one is based on the General Declaration of Human Rights[1] and regional levels. Let us turn our attention to the European regional level of the international legal order, which is also based on the European Convention on Human Rights (hereinafter Convention). [2]

The Normativity of law of the European legal order in the field of the legal status of the human right to life is based on Article 2 of the Convention and is ensured by the Reflexivity of law of the European Court of Human Rights. From the foregoing, the approach follows, that in the context of the equilibrium of legality of the Western legal tradition, the Rule of law should first be considered to ensure the human right to life at the level of normative, and then reflective dynamics of law.

The statics of the normative dynamics of law are provided by Article 2 of the Convention.

Article 2, paragraph 1, of the Convention provides, "… 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

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[1] General Declaration of Human Rights, adopted and proclaimed by UN General Assembly Resolution 217A(III) of December 10, 1948.

[2] European Convention on Human Rights.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than necessary:

a) in defence of any person from unlawful violence.

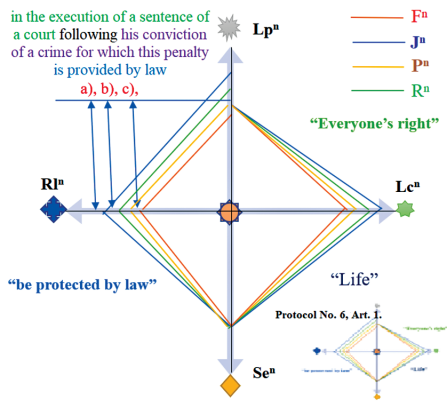
b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained.

c) in action lawfully taken for the purpose of quelling a riot or insurrection".[1]

Let's consider the system of these normative dependencies using the example of a graphical model.

Graphic model – 12.
"Normative coordinates of the Equilibrium of law "The Right to life"

The Graph shows the asymmetric aspect of the equilibrium of legal order. In the centre is a legal system. The left side of the Graph is focused on the Rules (Rl^n), which consists of two planes. The right side of the Graph is focused on Legal culture (Lc^n), and also consists of two planes. Each of the four planes in asymmetry demonstrates the equilibrium of social forces in law.



The division of the Graph into right and left sides is due to the hypothesis of the third level of equilibrium of law in the Western legal tradition, according to which the legality of the legal order encompasses the two planes of the left side of the Graphic, the legitimacy of the legal order encompasses the two planes of the right side of the Graphic. Taken together, legality and legitimacy are embodied in the legal validity of law.

The basis of legality on the left side is the Rules (Rl^n), and the basis of legitimacy on the right side is shown by the Legal culture (Lc^n). This is due to the fact that Precedent (Reflection of law – Rf-Lw^n) (Lp^n) and Political expectations (Social expectations) (Se^n) have legal discretion. The first element of discretion is shown at the top, the second element at the bottom of the Graph.

[1] European Convention on Human Rights.

In contrast to this asymmetry of the statistical equilibrium of law, which corresponds to the phenomenon of Normativity of law (Norm-L^n), the symmetric aspect is able to demonstrate the degree of compliance of the Reflection of law (Rf-Lw^n) with its normativity in dynamics.

Let's go back to our asymmetric model. The capacity of these elements (Lp^n) and (Se^n) to legal discretion is shown in the form of points of concentration of social forces in law. Social forces in law are shown by four hyperbolic lines. Each of these lines symbolizes Justice (J^n), Rationalism (R^n), Pragmatism (P^n) or the Formalism (F^n) of law. Each plane of the Graph demonstrates a different static of social forces in law, which together form the equilibrium of the legal tradition.

Based on the foregoing, in the aggregate, each individual configuration of the placement of points of concentration of social forces on the horizontal and vertical lines of the Graph denotes a different point of equilibrium of the Western legal tradition. As discussed earlier, the equilibrium points of the Western legal tradition can be Imperialism of law (ImR^n), Nationalism of law (Nl^n), Collectivism of law (Cll^n) and others. As follows from Harold Berman's study, each point of equilibrium of the Western legal tradition assumed its own set and sequence of social forces in law. Based on this, in the history of the Western legal tradition, one can observe different types of legal orders, the legality and legitimacy of which differently legally assessed human life and the human right to life.

In the aspect of the static asymmetry of social forces in law, taking into account the normative formulation of Article 2 of the Convention as the starting point of the analysis, we believe that the designated type of law of the Western legal tradition is balanced by Liberalism of law (LiB^n).

Here are the reasons that lead us to this hypothesis.

The first sentence of paragraph 1 of Article 2 of the Convention establishes an equilibrium according to which the human right to life is the exclusive jurisdiction of positive law. Consequently, positive law is the supreme system that protects and establishes the conditions by virtue of which a person can be deprived of this right.

As we can see on the Graphical Model, the Rules proclaim an unambiguous understanding of life as the highest value of law. This is evidenced by the uniform distribution of justice, rationality, pragmatism, and formalism from normativity to the reflection of law.

At the same time, normativity (Rules) allows cases for the existence of which human life ceases to be a value in law. This circumstance is in dialectical connection with the Precedent, Legal culture and Politics of society (Expectations of society), as it creates grounds for legal discretion.

Legal discretion without violating the equilibrium of law and under certain circumstances has the freedom to choose one of the social forces to regulate and protect the highest value of law.

From the point of view of legal axiology, the graphical model also demonstrates that equilibrium in law is the interaction between legal values and values of law.

"… Everyone's right …" is the value of law, which is justified by social forces: justice, rationalism, pragmatism of law and formalism of law.

"… Life …" is the highest value in law, which is also justified by social forces: justice, rationalism, pragmatism, and formalism of law.

"… be protected by law…" is a legal value that provides a model of legal dynamics for the interaction between formalism, justice, rationalism, and pragmatism in law.

"… in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law …" is also a legal value that provides a model of legal dynamics for the interaction between formalism, justice, rationalism, and pragmatism in law.

Article 1 of Protocol 6 of the Convention provides, "… The death penalty shall be abolished. No one shall be condemned to such penalty or executed".[1]

Article 2 of Protocol 6 of the Convention provides, "… A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions. The State shall communicate to the Secretary General of the Council of Europe the relevant provisions of that law".[2]

The Protocol 13 of the Convention provides, "… The member States of the Council of Europe, signatory hereto, convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings; Wishing to strengthen the protection of the right to life guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4 November 1950; Noting that Protocol No. 6 to the Convention, concerning the Abolition of the Death Penalty, signed at Strasbourg on 28 April 1983, does not exclude the death penalty in respect of acts committed in time of war or of imminent threat of war".[3]

Thus, Liberalism of law (LiB^n) as the equilibrium point of the Western legal tradition in the field of the human right to life can be presented as an algorithmic model.

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[1] European Convention on Human Rights.

[2] Ibid.

[3] Ibid.

Algorithmic model – 7.
"The Right to life in the Equilibrium of law"

$$\begin{array}{l} \mathrm{LiB^n} \mid \\ \quad \mid \qquad\qquad (\{F^{n\|} \pm Pn^n \pm R^n \pm J^n = Life\} = EqL^{n2} \\ \quad \mid \quad \text{Norm-}L^{n\,(Art.2)} \supseteq \dfrac{\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad\qquad}{[Se^n + Lc^n + Rl^{n\|} = Right] = EqL^{n1})} \mapsto) \subseteq (F^n + Rl^n \parallel a), b), c)) \mapsto \\ \quad \mid \\ \quad \mid \qquad \mapsto \text{Norm-}L^{n\,(Protocol\ 6)} \parallel \text{Norm-}L^{n\,(Protocol\ 13)} = EqL^{n3} \in \text{Lo-}t^n \mapsto \text{Rf-Lw}\ (Lp^n) \end{array}$$

From this algorithmic model, it can be seen that the "Rules" (Rl^n) imperatively create a model of equilibrium, in which the right to life is the highest value of law.

But at the same time, this equilibrium of law allows for the deprivation a life of the value of law. Consequently, the legal tradition of depriving a person of the right to life is an order of coherence between autonomous normativity and autonomous reflectivity in the criteria of justice, rationality, pragmatism, and formalism in it. This imperative model provides for exceptions, following to which the equilibrium of law will not be disturbed in cases of deprivation of the right to life.

The Convention provides for two states of legal order in which this equilibrium of law operates, these are the peace and the martial law (The "Wartime"). As we can see from the text of the Convention, the violation of the right to life contrary to the law is prohibited both in peace and in wartime.

But comparing autonomous normativity and autonomous reflectivity in the case law of the European Court of Human Rights, one can observe cases when the discretion of law forms new models of equilibrium in law, where the right to life is not a static supreme value of law. (Hereinafter referred to as "the Court").

This dynamic trend is observed in the Court's legal reflection of the of both peaceful and military legal orders. For example, the Court, reflecting on this norm in the case of Vo v France, did not find grounds for justice and rationality to extend the right to life to an unborn child, stating that "it is undesirable and even impossible in the circumstances to answer in the abstract the question whether an unborn child is a person for the purposes of Article 2 of the Convention".[1]

In another case, the Court presented such arguments, "… The right to life extends only to human beings, not to animals, or to "legal persons" such as corporations. In Evans v United Kingdom, the court ruled that the question of whether the right to life extends to a human embryo fell within a state's margin of appreciation. [2] In Vo v France, the court declined to extend the right to life to

[1] Vo v. France", https://hudoc.echr.coe.int/fre?i=002-4246

[2] Douwe Korff, Douwe. "The Right to Life: A Guide to the Implementation of Article 2 of the European Convention on Human Rights". Human Rights Handbook., November 2006, No. 8. Council of Europe. p. 10.

an unborn child, while stating that "it is neither desirable, nor even possible as matters stand, to answer in the abstract the question whether the unborn child is a person for the purposes of Article 2 of the Convention".[1]

From the foregoing, it follows that not every violation of the right can be a violation of the equilibrium of law. In this context, the violation of legal order and the imbalance of law are different phenomena and categories. A violation of the equilibrium of law presupposes a change in the dynamics of law, whereas a violation of a right disturbs the legal order but does not change the overall dynamics of positive law.

Thus, acting autonomously in this dynamic, the Reflection of law is able, by its discretion, to change the position of the right to life in the hierarchy of values of law.

Can the Reflection of law ($Rf\text{-}Lw^{n}$) deviate from the Liberalism of law (LiBn), taking as a basis other points of equilibrium of the Western legal tradition?

Is this the property of the Rule of law of the Western legal tradition?

Let us further analyse the reflectivity of law on the example of military and peaceful types of legal orders.

Confrontation of Legal Tradition in the Dynamics of Legal Systems

In the previous chapters of this work, it was considered that the Western legal tradition is a tradition of the legality and legitimacy of the legal order, which in every legal system provides an equilibrium in the positive law. In each legal order, the equilibrium leaves behind a structured memory of a previously acceptable balance of social forces, which receives further continuity in new types of legal orders. From here, this continuity becomes the legal tradition of the legality of legal orders.

According to Harold Berman, during the Formation Age, the Western legal tradition was renewed in a revolutionary way. The inability of positive law to autonomously renewal was the reason for the dialectical interaction that caused the revolutions of law. This spontaneous revolutionary genesis has formed several opposite points in the equilibrium of the Western legal tradition, which gives rise to a confrontation of legal orders within this tradition.

After the Second World War, in the middle of the twentieth century, the formation of a new era of the Western legal tradition took place. This circumstance is indicated by a set of signs. National legal systems established united international legal order, and international normative and institutional systems of law were formed. The new world legal order was formed with the dominance of legal liberalism in the equilibrium of positive law. Based on the Western legal

[1] Evans v. The United Kingdom, https://hudoc.echr.coe.int/rus?i=001-80046

tradition, existed a legal reflection to the condemnation of international crimes against life and humanity, which restores the equilibrium in law.

In contrast to the era of the Formation of the Western legal tradition in the new era, positive law receives normative, reflective, and doctrinal autonomy. Harmonious discretion of law creates the preconditions for non-revolutionary renewal and integral continuity of law.

But, on the other hand, there is an increasing inconsistency between the normative, institutional, and reflective autonomy of law within the one equilibrium of law and the unite type of legal order.

In some cases, this inconsistency receives continuity and renewal, which creates a counterrevolutionary type of dialectical interaction of the Western legal tradition.

These counterrevolutions generate and intensify the confrontation of national legal systems in in united legal order, which manifests itself in the differentiation of the legal discretion of national, regional, and international law.

In this regard, the group interaction of legal systems, which is accompanied by uncoordinated autonomy and contradictory discretion in the continuity of the equilibrium of law, is an image of a new era of the Western legal tradition – the era of Confrontation.

In the previous chapter of this work, it was mentioned that Bruce Tuckman in the theory of group interaction, described confrontation as an independent phase of such interaction.

Also, in the previous section of this book, the normative autonomy of law was also considered in shaping the equilibrium of the Right to life (Article 2 of the European Convention on Human Rights).

In this section of the work, we will consider one example of the confrontation of the Western legal tradition in relation to the equilibrium of law in the field of the right to life in military legal order.

The preamble of the European Convention on Human Rights provides, "… The Government's signatory hereto, being members of the Council of Europe, affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention".[1]

The subject of our further consideration is the Equilibrium of law, which was formed by the European Court of Human Rights as a result of the Reflection of Law on the events during the Active phase of hostilities from August 8 to August 12, 2008, in the city of Tskhinvali and its environs, the surrounding area in South Ossetia and in some regions of Georgia.

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[1] European Convention on Human Rights.

The legal uniqueness of this example lies in the fact that this is the first intergovernmental case of the European Court of Human Rights, which formulated not only the boundaries of reflection of law, but also the boundaries of the equilibrium of law in cases of violation of the right to life in the united European legal order.

In this regard, the European Court of Human Rights writes (paragraph 13), "… The present case marks the first time since the decision in Banković and Others (cited above, concerning the NATO bombing of the Radio-Television Serbia headquarters in Belgrade) that the Court has been required to examine the question of jurisdiction in relation to military operations (armed attacks, bombing, shelling) in the context of an international armed conflict, the existence of which is not disputed by the parties".[1]

The further is a map of the location of the event.

Figure 1. Georgia

Sources: Map created by CRS. Map information generated using data from the National Geospatial Intelligence Agency (2018), DeLorme (2018), Department of State (2017), and Esri (2017).

Attention to this subject is due to the relevance of the issue of the legal value of life in the context of the military aggression of the Russian Federation against Ukraine, as well as Russia's withdrawal from the European Convention on Human Rights.[2]

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[1] Georgia v. Russian Federation (II) (no. 38263/08) European Court of Human Rights of 21 January 2021. https://hudoc.echr.coe.int/eng?i=001-224629 https://hudoc.echr.coe.int/eng#_Toc61345644 (Further. Georgia v. Russian Federation (II) (no. 38263/08).

[2] Russia ceases to be party to the European Convention on Human Rights. https://www.coe.int/en/web/portal/-/russia-ceases-to-be-party-to-the-european-convention-on-human-rights

The empirical basis is the judgment of the European Court of Human Rights "Georgia v. Russian Federation" (II) (no. 38263/08) of 21 January 2021 (as amended by the Court of 29 January 2021).[1]

The circumstances of the case Georgia v. Russian Federation (II) (no. 38263/08) (paragraphs 32 and 33), "… In its report of September 2009 the Independent International Fact-Finding Mission on the Conflict in Georgia (2) (IIFFMCG – hereafter "the EU Fact-Finding Mission"), established by a decision of 2 December 2008 of the Council of the European Union, described the armed conflict in the following terms (p. 5):

"On the night of 7 to 8 August 2008, after an extended period of ever-mounting tensions and incidents, heavy fighting erupted in and around the town of Tskhinvali in South Ossetia. The fighting, which soon extended to other parts of Georgia, lasted for five days. In many places throughout the country it caused serious destruction, reaching levels of utter devastation in a number of towns and villages. Human losses were substantial. At the end, the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed, and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives, not to mention those who were wounded, who went missing, or the far more than 100 000 civilians who fled their homes. Around 35,000 still have not been able to return to their homes. The fighting did not end the political conflict nor were any of the issues that lay beneath it resolved. Tensions still continue. The political situation after the end of fighting turned out to be no easier and, in some respects, even more difficult than before."

The EU Fact-Finding Mission also summarised the course of the events in question as follows (pp. 10-11), "… On the night of 7 to 8 August 2008, a sustained Georgian artillery attack struck the town of Tskhinvali. Other movements of the Georgian armed forces targeting Tskhinvali and the surrounding areas were under way, and soon the fighting involved Russian, South Ossetian and Abkhaz military units and armed elements. It did not take long, however, before the Georgian advance into South Ossetia was stopped. In a countermovement, Russian armed forces, covered by air strikes and by elements of its Black Sea fleet, penetrated deep into Georgia, cutting across the country's main east-west road, reaching the port of Poti, and stopping short of Georgia's capital city, Tbilisi. The confrontation developed into a combined inter-state and intra-state conflict, opposing Georgian and Russian forces at one level of confrontation as well as South Ossetians together with Abkhaz fighters and the Georgians at another. Such a combination of conflicts going on at different levels is particularly prone to violations of International Humanitarian Law and Human Rights Law. This is indeed what happened, and many of these instances were due to the action of

[1] Georgia v. Russian Federation (II).

irregular armed groups on the South Ossetian side that would not or could not be adequately controlled by regular Russian armed forces. Then another theatre of hostility opened on the western flank, where Abkhaz forces supported by Russian forces took the upper Kodori Valley, meeting with little Georgian resistance. After five days of fighting, a ceasefire agreement was negotiated on 12 August 2008 between Russian President Dmitry Medvedev, Georgian President Mikheil Saakashvili and French President Nicolas Sarkozy, the latter acting on behalf of the European Union. An implementation agreement followed on 8 September 2008, again largely due to the persistent efforts of the French President".[1]

Concerning the active phase of hostilities, the European Court of Human Rights has taken the following decision (paragraph 144), "… the events which occurred during the active phase of the hostilities (8-12 August 2008) did not fall within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention. Accordingly, this part of the application must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention".[2]

Based on the foregoing, we consider the legal reflection of the European Court of Human Rights in the context of the Western legal tradition of legality, which ensures equilibrium in law.

We think that during the active phase of hostilities, the equilibrium of law ensures the normativity by articles 1, 2, 15 of the European Convention on Human Rights and additional protocols.

Article 15 of the Convention provides, "… 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate, and the provisions of the Convention are again being fully executed".[3]

It follows that the united European legal order, according to the Convention,[4] is a set of autonomous national jurisdictions, which in their group interaction are focused on the preservation and continuity of the equilibrium of law that provides by the European type of Western legal tradition.

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[1] Georgia v. Russian Federation (II).

[2] Ibid.

[3] European Convention on Human Rights.

[4] Ibid.

Regarding the equilibrium of law, which ensures the legal status of human life, such social forces in law as justice, rationality, formalism, and pragmatism are balanced by the agreed recognition that human life is protected by law and each country in it's own jurisdiction guarantees this right to each person.

In the previous section, we examined the normative regulation and legal guarantees of the Convention regarding the right to life. Paragraph 2 of Article 15 of the Convention provides that the deprivation of the right to life is permitted as a result of lawful acts of war (as well as under Article 3, Article 4, and Article 7). Thus, in the military legal order, the equilibrium of law is ensured by lawful military action (Article 15 paragraph 2 of the European Convention on Human Rights). This is what the Court should establish.

The European type of Western legal tradition imposes on the European Court of Human Rights an institutional obligation to exercise an autonomous reflection of the law.

Article 32 of the Convention provides, "… The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47. In the event of dispute as to whether the Court has jurisdiction, the Court shall decide".[1]

Thus, in each individual case, the autonomous reflection of the law of the European Court of Human Rights should ensure the preservation and continuity of the united equilibrium of law, which is based on the European type of Western legal tradition.

The present case was submitted to the European Court of Human Rights in accordance with Article 33 of the Convention as an inter-State case. As follows from the motivation of the Court, the Court recognized the facts of deprivation of life within the limits of the conventional legal order as having taken place.

On this occasion, the Court pointed out, quote (paragraph 141), "… having regard in particular to the large number of alleged victims".[2]

The reports of the IIFFMCG, which the Court found admissible evidence, also testified to the large number of casualties (paragraphs 32 and 33), "… the Georgian side claimed losses of 170 servicemen, 14 policemen and 228 civilians killed, and 1 747 persons wounded. The Russian side claimed losses of 67 servicemen killed and 283 wounded. The South Ossetians spoke of 365 persons killed, which probably included both servicemen and civilians. Altogether about 850 persons lost their lives …".[3]

But in contrast to the facts of human casualties and in contradiction with Article 15 § 2 of the Convention "On the Duty to Establish the lawful acts of war", the Court applied Article 35 §§ 3 (a) and 4 of the Convention, which provides,

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[1] European Convention on Human Rights.

[2] Georgia v. Russian Federation (II).

[3] Ibid.

"… the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application …".[1]

Such normative grounds for denying access to justice give reason to believe that a large number of victims during the active phase of hostilities, according to the Judicial Reflection of Law, is compatible with the provisions of this Convention, the Additional Protocols and the unite European conventional legal order.

This compatibility, according to the judgment, is conditioned by the following argument of the Court, quoted (paragraph 141 of the Decision), "… the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date".[2]

Therefore, based on the position of the Court, it can be understood that the category of "jurisdiction", the understanding of which is established by case law, is a measure in the equilibrium of the European type of the Western legal tradition, where justice, rationality, pragmatism, and formalism do not consider human life as a value of law during the active phase military operations.

In this regard, the phenomenon of "Extraterritorial jurisdiction" is equivalent to the concept of "Extraterritorial equilibrium of law". Since the Western legal tradition is the tradition of European legal systems.

The European Court of Human Rights has named the following framework for the "Extraterritorial equilibrium of Law" (paragraphs 114 and 115 of the Decision), under which one legal system becomes responsible for the preservation and deprivation of human life. "… However, the Court's case-law on the concept of extraterritorial jurisdiction has evolved since that decision, in that the Court has indicated, inter alia, that the rights under the Convention could be "divided and tailored" and has introduced a nuance into the concept of the Contracting States' "legal space" (see Al-Skeini and Others, cited above, §§ 137 and 142). In addition, it has established a number of criteria for the exercise of extraterritorial jurisdiction by a State, which must remain exceptional (see Al-Skeini and Others, cited above, §§ 130-42; Güzelyurtlu and Others v. Cyprus and Turkey (GC), no. 36925/07, §§ 178-90, 29 January 2019; and M.N. and Others v. Belgium (dec.) (GC), no. 3599/18, §§ 96-109, 5 May 2020).

The two main criteria established by the Court in this regard are that of "effective control" by the State over an area (spatial concept of jurisdiction) and that of "State agent authority and control" over individuals (personal concept of jurisdiction) (see Al-Skeini and Others, cited above, §§ 133-40)".[3]

Consider the Court's model of this equilibrium of law.

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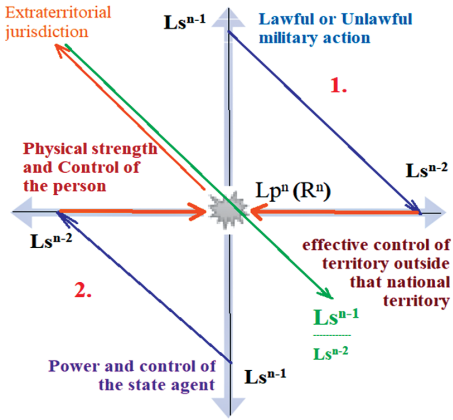
[1] European Convention on Human Rights.

[2] Georgia v. Russian Federation (II).

[3] Ibid.

Graphic model – 13. "Exterritorial equilibrium of law"

On the basis of the Court's arguments in this case, the graphical model demonstrates that the extraterritorial responsibility of the Legal system Ls^{n-1} for the deprivation of a person's right to life in the territory of the Legal system Ls^{n-2} arises in cases where there are such two conditions from case law.



In the centre of the graph is the Precedent (Lp^n), in which the rationality of law dominates (R^n), other social forces are made dependent on this model. In its motivation, the Court is oriented towards the legal values that are its case-law.

The first condition of the case-law is shown by number 1.

The further is the Court's arguments on this condition.

The "Effective control" of a State over territory, according to the Court, is as follows (paragraph 116), "… The Court has reiterated the principles governing the application of this first criterion, for example in Catan and Others (cited above, §§ 106-07), and also in Chiragov and Others v. Armenia (GC), no. 13216/05, § 168, ECHR 2015) and Mozer v. the Republic of Moldova and Russia (GC), no. 11138/10, § 98, 23 February 2016):

"One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (see Loizidou v. Turkey (preliminary objections), 23 March 1995, § 62, Series A no. 310; Cyprus v. Turkey (GC), no. 25781/94, § 76, ECHR 2001-IV; Banković and Others, cited above, § 70; Ilaşcu and Others, cited above, §§ 314-16; Loizidou (merits), cited above, § 52; and Al-Skeini and Others, cited above, § 138).

It is a question of fact whether a Contracting State exercises effective control over an area outside its own territory. In determining whether effective control exists, the Court will primarily have reference to the strength of the State's military presence in the area (see Loizidou (merits), cited above, §§ 16 and 56,

and Ilaşcu and Others, cited above, § 387). Other indicators may also be relevant, such as the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region (see Ilaşcu and Others, cited above, §§ 388-94, and Al-Skeini and Others, cited above, § 139)".[1]

In the presented arguments, we find that the Court has extended the provision of Article 15 § 2 of the Convention, instead of the wording which provides that the deprivation of the right to life is allowed in cases of loss of life as a result of lawful acts of war, "unlawful acts of war" has also been added.

On the Graphic Model – 13, number 2 indicates the second condition of case-law.

Further consider the arguments of the Court on this condition. "State agent authority and control" according to the Court is as follows (paragraph 117), "… The Court has reiterated the principles governing the application of this second criterion, for example in Hassan (cited above, § 74) and Jaloud (cited above, § 139): "In addition, the Court's case-law demonstrates that, in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad.

For example, in Öcalan (cited above, § 91), the Court held that "directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the "jurisdiction" of that State for the purposes of Article 1 of the Convention, even though in this instance Turkey exercised its authority outside its territory". In Issa and Others (cited above), the Court indicated that, had it been established that Turkish soldiers had taken the applicants' relatives into custody in Northern Iraq, taken them to a nearby cave and executed them, the deceased would have been within Turkish jurisdiction by virtue of the soldiers' authority and control over them.

In Al-Saadoon and Mufdhi v. the United Kingdom (dec.), no. 61498/08, §§ 86-89, 30 June 2009), the Court held that two Iraqi nationals detained in British-controlled military prisons in Iraq fell within the jurisdiction of the United Kingdom, since the United Kingdom exercised total and exclusive control over the prisons and the individuals detained in them.

Finally, in Medvedyev and Others v. France (GC), no. 3394/03, § 67, ECHR 2010), the Court held that the applicants were within French jurisdiction by virtue of the exercise by French agents of full and exclusive control over a ship and its crew from the time of its interception in international waters.

The Court does not consider that jurisdiction in the above cases arose solely from the control exercised by the Contracting State over the buildings, aircraft,

[1] Georgia v. Russian Federation (II).

or ship in which the individuals were held. What is decisive in such cases is the exercise of physical power and control over the person in question".[1]

Further in its judgment, the Court writes (paragraph 129), "… "Jurisdiction" under Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions attributable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see Catan and Others, cited above, § 103, and the case-law cited therein; Güzelyurtlu and Others, cited above, § 178; and M.N. and Others v. Belgium, cited above, § 97)".[2]

Thus, we have considered the framework of the "Extraterritorial equilibrium of Law", under which one legal system becomes responsible for the preservation and deprivation of human life outside its territorial space.

In the present case, regarding the active phase of hostilities, the European Court of Human Rights found no grounds for applying the above-mentioned model of equilibrium of law. Therefore, the court pointed out the following (paragraphs 136-138).

"… The Court sees no reason to decide otherwise in the present case. The obligation which Article 1 imposes on the Contracting States to secure to everyone within their jurisdiction the rights and freedoms guaranteed by the Convention is, as indicated above, closely linked to the notion of "control", whether it be "State agent authority and control" over individuals or "effective control" by a State over a territory.

In this connection, the Court attaches decisive weight to the fact that the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only means that there is no "effective control" over an area as indicated above (see paragraph 126), but also excludes any form of "State agent authority and control" over individuals.

The Court therefore considers that the conditions it has applied in its case-law to determine whether there was an exercise of extraterritorial jurisdiction by a State have not been met in respect of the military operations that it is required to examine in the instant case during the active phase of hostilities in the context of an international armed conflict".[3]

Taking into account the above conclusions of the Court, it should be understood that the possibility of applying the "Extraterritorial equilibrium of Law" to lawful or unlawful military actions, resulted in the deprivation of human lives, is excluded, since the period of the active phase of hostilities (August 8-12, 2008) is characterized by the following: 1) real armed confrontation; 2) hostilities between the armed forces; 3) conditions of chaos.

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[1] Georgia v. Russian Federation (II).

[2] Ibid.

[3] Ibid.

Thus, in the Court's view, these three circumstances have become an obstacle to the further development of case-law.

As it follows from further reasons why the Court is unable to develop its case-law, the Court has given the following reasons (paragraph 141), "… having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date".[1]

But on the other side of judicial practice, it can be observed that the "Complexity of the case" is a criterion that is used to assess the validity of a lengthy judicial review. In most cases, this criterion classifies cases into actually complex, legally, and procedurally complex.

For example, the Council of Europe systematizes the Court's case-law on the "Complex Case" criterion in this way.

The factual complexity of a case is caused by various circumstances: number and particular nature of the charges – Arap Yalgin and others v. Turkey (No. 33370/96), §27; the presence of foreign citizens, if the case materials need to be translated; difficulties associated with calling and transporting foreign participants to carry out investigative, judicial and procedural action – Petr Korolev v. Russia (No. 38112/04), § 60; highly sensitive nature of the offences charged, relating to national security – Dobbertin v. France (No. 13089/87), §42; advanced age and health condition of the accused – Konashevskaya and Others v. Russia (No. 3009/07), § 54; the need for expert opinions – Ilowiecki v. Poland (No. 27504/95), §87 Billi v. Italy (No. 15118/89), §19; Scopelliti v. Italy (No. 15511/89), §23; Francesco Lombardo v. Italy (No. 11519/85), §22; labour intensity of the examinations – Sutyagin v. Russia (No. 30024/02), § 152; Salikova v. Russia (No. 25270/06), § 55; complexity of the examinations – Scopelliti v. Italy (No. 15511/89), §23; difficult issues of proof-taking – Allenet de Ribemont v. France (No. 15175/89), §§48-50; need to record and verify different versions of events – Vladimir Romanov v. Russia (No. 41461/02), § 86; time limitation of investigated events – Kolchinayev v. Russia (No. 28961/03), § 20; facts of legal importance that took place a long time ago and which need to be established – Sablon v. Belgium (No. 36445/97), § 94; number and nature of investigative actions conducted in the case – Alekhin v. Russia (No.10638/08), § 163; large number of evidence – Humen v. Poland (Grand Chamber), (No. 26614/95), § 63; difficult questions of evidence – Allenet de Ribemont v. France (No. 15175/89), §§48-50; need to establish the whereabouts of witnesses – König v. Germany (No. 6232/73), § 102.

1 Georgia v. Russian Federation (II).

The legal complexity of a case can be caused by the following circumstances: in criminal cases, certain categories of crimes are to be clarified and are subject to complex regulations, in terms of their structure and content, in the area of finance and foreign economic, customs and several other activities; the need to interpret an international agreement – Beaumartin v. France (No. 15287/89), § 33; application of a recent and unclear statute – Pretto and others v. Italy (No. 7984/77), §32; questions of jurisdiction – De Moor v. Belgium (No. 16997/90), §§16, 19-20, 22, 27 & 67; Allenet de Ribemont v. France (No. 15175/89), §§15-20 and 48-50; interpretation of an international treaty – Beaumartin v. France (No. 15287/89), § 33; the existence of gaps and collisions in the law of substance and procedure.

Procedural complexity may be due to the following: the number of parties – H. v. the United Kingdom (merits), (No. 9580/81), §72; Manieri v Italy (No. 12053/86), and Cardarelli v. Italy (No. 12148/86), §18 and §17; Respectively – Billi v. Italy, (No. 15118/89), §19; the number of defendants and witnesses – Bejer v. Poland (No. 38328/97), §49; Milasi v. Italy (No. 10527/83), §16; Golino v. Italy (No. 12172/86), §17; large number of interlocutory applications filed by the parties; corroborating certain allegations or processing certain claims – Buchholz v. the Federal Republic of Germany (No. 7759/77), §55; Lechner and Hess v. Austria (No. 9316/81), §43; obtaining materials from a foreign court – Manzoni v. Italy (No. 11804/85), §18.[1]

The above example demonstrates that the Court has not previously applied this criterion as an argument that it is impossible to develop its jurisprudence. And also, this criterion was not used by the Court as a basis for denying access to judicial protection (as example, violation of the human right to life).

The next reason why the Court has found its failure to develop case-law is (paragraph 141) "… the fact that such situations are predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict)".[2]

In contrast to this conclusion, the Council of Europe prepared a Report of the Steering Committee for Human Rights (CDDH) "The place of the European Convention on human rights in the European and International legal order", adopted at its 92nd meeting (26–29 November 2019), in which it states the following.

"… It is indisputable that the United Nations occupies a central position in the international system, and correspondingly the Charter of the UN is a central document of the international legal system. The primary aim of the United Nations is the maintenance of peace, but, in its holistic approach to this task, the UN not only seeks to restore peace where conflict has arisen, but it also seeks to prevent

[1] Reasonable Time of Proceedings: Compilation of Case-Law of The European Court of Human Rights by Maria Filatova, Council of Europe, 2021, p. 56., p. 31–34. https://rm.coe.int/echr-reasonable-time-of-proceedings-compilation-of-case-law-of-the-eur/native/1680a20c21

[2] Georgia v. Russian Federation (II).

conflict and address its causes, including through its work on disarmament, sustainable development, human rights and the development of international law. And, of course, it was the same spirit of reconstruction and recognition of the need to build the foundations of a sustainable peace that led to the establishment of the Council of Europe".[1]

For example, in Al-Jedda v. the United Kingdom (GC), no. 27021/08, 7 July 2011, the Court stated the following, "… In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention, and which avoids any conflict of obligations. In the light of the United Nations' important role in promoting and encouraging respect for human rights, it is to be expected that clear and explicit language would be used were the Security Council to intend States to take particular measures which would conflict with their obligations under international human rights law".[2]

Thus, the case-law of the European Court of Human Rights shows that the presence of a fact that is simultaneously regulated by legal norms other than the norms of the Convention (in particular, international humanitarian law) is not an obstacle to denying access to justice.

The foregoing gives reason to believe that in the present case, the autonomous reflection of the Court's law has gone beyond the normative (conventional), own (precedent) and doctrinal equilibrium of law. This confrontation of legal discretion in the Western legal tradition has created for each legal system of the united European conventional legal order a legitimate opportunity for deprivation of a person's right to a life outside its own national jurisdiction during the active phase of hostilities.

Let's consider this conclusion using the example of a graphical model.

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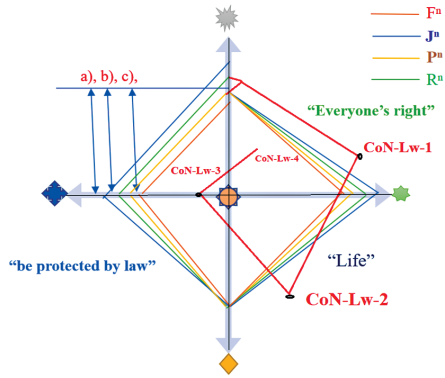
[1] Report of the Steering Committee for Human Rights (CDDH) "The place of the European Convention on human rights in the European and International legal order" adopted at its 92nd meeting (26–29 November 2019) Council of Europe, p. 182., P. 79. (Further. CDDH, (2019).

[2] CDDH (2019), p. 92.

Graphic model –14.
"Lack of conventional law during the active phase of hostilities"

This Graphical model shows how, following rationality and pragmatically about the inability to develop its case-law outside the framework of the "Extraterritorial equilibrium of law" (paragraph 141), the Court came to the conclusion that there was no conventional law during the active phase of hostilities.



The Graphical model shows that the Court's conclusion is not based on "Justice of law" (J^n) and "Formalism of law" (F^n) but based on "Rationalism of law" (R^n) and "Pragmatism of law" (P^n).

Taking only these two social forces as a basis, the European Court of Human Rights has formed a counter equilibrium of law in the Western legal tradition, which may not correspond to the "Political expectations (Social expectations)" (Se^n), "Legal culture" (Lc^n) and "Rules" (Rl^n).

Further, we can observe that this counter-equilibrium of the Western legal tradition creates four points of confrontation.

The First confrontation CoN-Lw-1 arises at the level of the united European legal order of the "right of everyone to life" since it expands the autonomy of interpretation of this right at the level of the future "Precedent" (Lp^n) or "Political expectations (Social expectations)" (Se^n).

The Second confrontation CoN-Lw-2 arises at the level of the united European legal order "Values of life", since "Political expectations (Social expectations)" (Se^n) and "Legal culture" (Lc^n) obtain the reasons not to consider life outside their national jurisdiction as a value of law.

The Third confrontation CoN-Lw-3 abolishes the imperative normative protection of human life, as it shifts the equilibrium of the Western legal tradition towards legal exceptions.

Article 53 of the European Convention on Human Rights provides, "… Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party".[1]

[1] European Convention on Human Rights.

A similar critical position was expressed by several judges of the European Court of Human Rights. Let's consider some of their opinions.

Opinion of Judge Chanturia (paragraphs 33, 34, 35, 38):

"… In my opinion, the fallacy of the methodology applied by the majority started with the separation of the active phase of the military conflict between Georgia and Russia from the subsequent period of occupation (see paragraph 83 of the judgment). The majority stated that "a distinction needs to be made" between the two periods but failed to explain why exactly that distinction was necessary. It is difficult to understand the logic for this approach and the unintended consequence of this separation appears to be an alteration of the scope of the inter-State application at stake.

It would have been more logical and compatible with the scope of the application as lodged by the applicant State to examine, for the purposes of determining the issues of jurisdiction, attributability and immutability, the active phase of the conflict not as a distinct, instantaneous event detached from the historical background but rather as a part of a continuing situation which included both the events that had occurred prior to the outbreak of the military conflict and those which happened afterward. This "continuous" approach to the assessment of the military conflict of 8 to 12 August 2008 in conjunction with the preceding and subsequent events was exactly the method used by the EU Independent International Fact-Finding Mission in describing the conflict (see the structure of its report), as well as by Pre-Trial Chamber I of the International Criminal Court (ICC), when the latter described the relevant factual situation in its decision of 27 January 2016 authorising the Prosecutor of the ICC to proceed with an investigation into the crimes allegedly committed in and around South Ossetia, Georgia, between 1 July and 10 October 2008.

Most importantly, the inter-State application form was presented in a manner that directly requested the Court to apply the above-mentioned holistic approach to the facts of the case. Thus, the applicant Government explicitly and on numerous occasions requested the Court to take into account the jurisdictional situation affecting South Ossetia and Abkhazia prior to the outbreak of the active phase of the hostilities.

In light of all the aforementioned factors, I believe that the only correct methodology in the present case for addressing the issues of jurisdiction, attributability and immutability during the active phase of the hostilities would have been for the Court to start its examination with the question of whether the respondent State had exercised effective control over South Ossetia and Abkhazia before the outbreak of the hostilities. In the affirmative, and coupled with the Court's existing finding that the Russian Federation has remained the occupying power in the two regions after the end of the hostilities, it would have become evident that the direct military intervention by the Russian Federation in the period between 8 and 12 August 2008 was

nothing else but an intensified form of the military support that had otherwise already been provided by the respondent State to the de facto authorities of the two breakaway regions for many years on an uninterrupted basis prior to the outbreak of the "little war".

The main driving force behind the Russian military operation against Georgia was to consolidate Russia's already existing effective control over the two regions of Georgia in issue and to extinguish any attempts by Georgia (be they political, diplomatic, or economic) to claim back its right of sovereign control over those regions. A direct consequence of the respondent State's decision to engage in a large-scale international conflict with the applicant State was an even further consolidation of its status as the occupying power. From a passive occupying power, the respondent State became a belligerent occupying power. This is, by the way, exactly what differentiates the present inter-State case from the situation examined in Banković and Others (cited above), where the NATO forces narrowly tailored military operation in Belgrade never pursued any purpose of occupying territories of the then Yugoslavia".[1]

Opinion of Judge Pinto de Albuquerque (paragraphs 1, 2).

"… This is the first time that the European Court of Human Rights ("The Court") has been required to examine military operations in the context of an international armed conflict in Europe since the case of Banković and Others v. Belgium and Others, in which the application was declared inadmissible on the grounds that the events in question did not fall within the jurisdiction of the respondent State. The present judgment is a pernicious progeny of Banković and Others. The first part of this opinion will seek to demonstrate the "patchwork" state of the Court's case-law on extraterritorial jurisdiction in times of armed conflict, on the basis of an analysis of the key judgments and decisions that have led to the present judgment.

This analysis would not be complete without a discussion of the parallel issue of extraterritorial jurisdiction with regard to non-admission border management decisions. In fact, the majority themselves cite M.N. and Others v. Belgium as an authority in matters of extraterritorial jurisdiction in two core paragraphs of the present judgment. Hence, the second part of this opinion will explain the interplay between the case-law prompted by the migration crisis and the case-law in the context of armed conflicts. I find that both lines of case-law on extraterritorial jurisdiction are not only promoting fragmentation in international law, but also pushing the Court to an extremely isolated position worldwide and thus discrediting its role as a human rights guarantor in Europe. The critique of these jurisdictional developments lays the ground for my vote in favour of finding that the Russian Federation had jurisdiction with regard to the victims of the military operations carried out by the Russian Federation during the active phase of the

[1] Georgia v. Russian Federation (II).

hostilities (8 to 12 August 2008), for the purposes of Article 1 of the European Convention on Human Rights ("the Convention")".[1]

Opinion of Judge Lemmens (paragraph 3).

"… In sum, I conclude that the alleged victims of the military operations carried out by the Russian armed forces during the active phase of the hostilities fell within the jurisdiction of the Russian Federation.

I regret that the majority have taken a step back and restricted the scope of the Convention in situations where human rights are at great risk".[2]

There are other critical opinions of judges.

Thus, the autonomous reflection of law by the European Court of Human Rights created a counterrevolution in the European type of the Western legal tradition. The above three confrontations exclude the presence of European conventional law during the active phase of hostilities; therefore, it can be assumed that this counter-equilibrium in law may exclude further legal protection of the right to life by the European Court of Human Rights.

But the above analysis is critical because it is based on the Liberalism point of equilibrium of the Western legal tradition (LiB^n). We believe this case is a perfect example of the Imperialism point of equilibrium of the Western legal tradition in law (ImR^n).

In contrast to the Liberalism equilibrium point, the Imperialism point of the Western legal tradition is the result of another equilibrium of social forces in law $\{F^n \pm J^n \pm R^n \pm P^n = ImR^n\}$.

In the previous sections of this work, it was shown that in the value context of this equilibrium of law, the dominant place is occupied by the social force of Pragmatism of law (P^n), then Rationalism (R^n), Justice (J^n) and, finally, the Formalism of law (F^n).

In this regard, the social force of Pragmatism determines the further Rationality, Justice, and Formalism of law. The essence of this system of equilibrium of law is based on the practical expediency or inexpediency of the Court or the Legal system (Ls^n) to provide legality and legal protection to certain values of law or not.

Here is an example of the dominance of Pragmatism in the legal discretion of the Court (paragraph 141), "… the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date".[3]

From the side of the Imperialist point of equilibrium of law, the existing understanding of "Jurisdiction" is a sufficiently developed legal category to ensure that Justice and Rationality are respected in relation to other values of law, among which is the human right to life.

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[1] Georgia v. Russian Federation (II).

[2] Ibid.

[3] Ibid.

Even if, in fact, the human right to life is violated, the Court's decision will be considered fair, rational, and lawful (paragraph 144 of the Decision), "… the events which occurred during the active phase of the hostilities (8-12 August 2008) did not fall within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention. Accordingly, this part of the application must be declared inadmissible, in accordance with Article 35 §§ 3 (a) and 4 of the Convention".[1]

As we can observe, in this type of equilibrium of law, the social force of formalism is of minimal importance, even if the normativity of law establishes clear criteria for declaring applications to be inconsistent with the Convention.

In this regard, it can be assumed that it is no coincidence that the majority of judges of the Court support this decision, since this legal discretion is also consistent with the legality of the Western legal tradition. But we believe that this case is an example of the confrontation of the Western legal tradition, which affects its integrity and further continuity.

Reflection of Law in the Formation of the Equilibrium of the Western Legal Tradition

Reflection of law is not only the point of coordinates of the Western legal tradition, it is also a feature and property of Western law. With the help of Reflection of law, the passed factual events and past types of legal orders are reflected and legally assessed in the present time. Consequently, between different types of legal orders over time, the continuity of one model of the equilibrium of social forces in law is maintained.

Let's consider this hypothesis on the example of another court case that received legal reflection from the European Court of Human Rights. Following a certain model of autonomous equilibrium of law, the Court carried out a reflection of this law between two different legal orders.

Streletz, Kessler and Krenz v. Germany (GC) – application nos. 35532/97, 34044/96 and 44801/98 dated 22.03.2001.[2]

In the context of the Western legal tradition, in the present case, the applicants argue that there was a confrontation between the two legal orders. The legal order of the Federal Republic of Germany (FRG) (Lo-t^{FRG}) has entered into a confrontation with the legal order of the German Democratic Republic (GDR) (Lo-t^{GDR}).

Consequently, according to the applicants, their actions were in conformity with the legal order of the GDR and could not be the subject of reflection of law on the part of the legal order of the Federal Republic of Germany.

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[1] Georgia v. Russian Federation (II).

[2] Streletz, Kessler and Krenz v. Germany, (Applications nos. 34044/96, 35532/97, 44801/98), https://hudoc.echr.coe.int/eng?i=001-59353 (Further. Streletz, Kessler and Krenz v. Germany).

The circumstances of the case under the judgment of the European Court of Human Rights of 22 March 2001 were follows, "… Between 1949 and 1961 approximately two and a half million Germans fled from the German Democratic Republic (GDR) to the Federal Republic of Germany (FRG). In order to staunch the endless flow of fugitives, the GDR built the Berlin Wall on 13 August 1961 and reinforced all the security measures along the border between the two German States, in particular by installing anti-personnel mines and automatic-fire systems (Selbstschussanlagen). Many people who tried to cross the border to reach the West subsequently lost their lives, either after triggering anti-personnel mines or automatic-fire systems or after being shot by East German border guards. The official death toll, according to the FRG's prosecuting authorities, was 264. Higher figures have been advanced by other sources, such as the "13 August Working Party" (Arbeitsgemeinschaft 13. August), which speaks of 938 dead. In any event, the exact number of persons killed is very difficult to determine, since incidents at the border were kept secret by the GDR authorities.

The Council of State (Staatsrat) of the GDR laid down the principles to be followed in matters of national defence and security and organised defence with the assistance of the GDR's National Defence Council (Nationaler Verteidigungsrat; Article 73 of the GDR's Constitution – see paragraph 28 below).

The presidents of both these bodies and the president of the GDR's parliament (Volkskammer) were members of the GDR's Socialist Unity Party (Sozialistische Einheitspartei Deutschlands).

The Political Bureau (Politbüro) of the Socialist Unity Party's Central Committee was the party's decision-making organ and the most powerful authority in the GDR. It took all of the policy decisions and all of the decisions concerning the appointment of the country's leaders. The number of its members varied: after the Socialist Unity Party's XI-th., and last Congress in April 1986, it had twenty-two members and five candidate members.

The Secretary-General of the Party's Central Committee presided over the National Defence Council, and all the members of that Council were party officials. It met in general twice a year and took important decisions about the establishment and consolidation of the border-policing regime (Grenzregime) and about orders to open fire (Schiessbefehle).

GDR border guards (Grenztruppen der DDR) were members of the National People's Army (Nationale Volksarmee) and were directly answerable to the Ministry of Defence (Ministerium für nationale Verteidigung). The annual orders of the Minister of Defence were themselves based on decisions of the National Defence Council.

For example, in a decision of 14 September 1962 the National Defence Council made it clear that the orders (Befehle) and service instructions (Dienstvorschriften) laid down by the Minister of Defence should point out to border guards that they were "fully responsible for the preservation of the inviolability of the State

border in their sector and that "border violators" (Grenzverletzer) should in all cases be arrested as adversaries (Gegner) or, if necessary, annihilated (vernichtet)". Similarly, a service instruction of 1 February 1967 stated: "Mines are to be laid in targeted positions and in close formation ... with a view to halting the movements of "border violators" and ... bringing about their arrest or annihilation."

From 1961 onwards, and especially during the period from 1971 to 1989, consolidation and improvement of the border security installations (Grenzsicherungsanlagen) and the use of firearms were regularly discussed at meetings of the National Defence Council. The orders issued by the Minister of Defence as a result likewise insisted on the need to protect the GDR's State border at all costs and stated that "border violators" had to be arrested or "annihilated"; these orders were then implemented by the commanding officers of the border-guard regiments. All acts by border guards, including mine-laying and the use of firearms against fugitives, were based on this chain of command.

The applicants occupied senior positions in the GDR's State apparatus and the Socialist Unity Party leadership:

The First applicant was a member of the National Defence Council from 1971 onwards, of the Socialist Unity Party's Central Committee from 1981 and Deputy Defence Minister from 1979 to 1989.

The Second applicant was a member of the Socialist Unity Party's Central Committee from 1946 onwards, Chief of Staff of the National People's Army and a member of the National Defence Council from 1967 and Minister of Defence from 1985 to 1989.

The Third applicant was a member of the Central Committee of the Socialist Unity Party from 1973 onwards, of the Council of State from 1981 onwards and of the Political Bureau and the National Defence Council from 1983 onwards, and Secretary-General of the Socialist Unity Party's Central Committee (taking over from Mr E. Honecker) and President of the Council of State and the National Defence Council from October to December 1989.

In the autumn of 1989 the flight of thousands of citizens of the GDR to the FRG's embassies in Prague and Warsaw, and to Hungary, which had opened its border with Austria on 11 September 1989, demonstrations by tens of thousands of people in the streets of Dresden, Leipzig, East Berlin and other cities, and the restructuring and openness campaign conducted in the Soviet Union by Mikhail Gorbachev (perestroika and glasnost) precipitated the fall of the Berlin Wall on 9 November 1989, the collapse of the system in the GDR and the process that was to lead to the reunification of Germany on 3 October 1990.

By a note verbale of 8 September 1989, Hungary suspended Articles 6 and 8 of the bilateral agreement with the GDR of 20 June 1969 (in which the two States had agreed to waive entry visas for each other's nationals and refuse travellers permission to leave for third countries), referring expressly, in doing so, to Articles 6 and 12 of the International Covenant on Civil and Political Rights (see paragraph

40 below) and to Article 62 (fundamental change of circumstances) of the Vienna Convention on the Law of Treaties.

During the summer of 1990 the GDR's newly elected parliament urged the German legislature to ensure that criminal prosecutions would be brought in respect of the injustices committed by the Socialist Unity Party (die Strafrechtliche Verfolgung des SED-Unrechts sicherzustellen)".[1]

Applicants' arguments.

"… According to the applicants, their convictions after the reunification of Germany were not foreseeable, and moreover they had never been prosecuted in the GDR. They alleged that even the German courts had accepted that the reason why they had not been prosecuted at the material time was that the acts on account of which they had been charged did not constitute offences under the criminal law of the GDR, regard being had to the wording of section 27(2) of the GDR's State Borders Act. The ex post facto interpretation of the GDR's criminal law by the courts of reunified Germany was not based on any case-law of the GDR's courts and would have been impossible for the applicants to foresee at the time of the events which gave rise to the charges. What had taken place, therefore, had not been a gradual development in the interpretation of GDR law but rather a total refusal to accept the justifications the applicants had pleaded, on the ground that these were contrary to the FRG's Basic Law (Radbruch's formula of "Statutory injustice" – Radbruchsche Formel des "Gesetzlichen Unrechts"). Moreover, implementation of the border-policing regime had been essential to preserve the existence of the GDR.

While all three applicants considered that they had acted in accordance with GDR law, the third applicant contended, in particular, that by the time he became a member of the Political Bureau and the National Defence Council, in 1983, the latter body had decided to remove the anti-personnel mines and the automatic-fire systems. He had therefore been convicted only for the use of firearms by border guards. However, even that conviction had been unjustified since the applicant had not participated in a single meeting of the Political Bureau or the National Defence Council during which an express order to use firearms at the border had been given.

The applicants further alleged that the acts in issue did not constitute offences under international law either. As regards the International Covenant on Civil and Political Rights, ratified by the GDR, they observed that no international body had censured the GDR for violation of its provisions and that, even if that had been the case, there was a fundamental distinction between a State's responsibility under international law, on the one hand, and the criminal responsibility of an individual under domestic criminal law, on the other. Moreover, in the majority of States access to the border was forbidden or strictly regulated, and the use of firearms by border guards authorised if the persons hailed by them did not heed their warnings".[2]

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[1] Streletz, Kessler and Krenz v. Germany.

[2] Ibid.

Government's arguments, "… The Government submitted that the applicants, as leaders of the GDR, could easily have realised that the GDR's border-policing regime, with its unparalleled technical sophistication and its ruthless use of firearms, was directed against persons who had been forbidden to leave the GDR by administrative authorities which constantly refused, without giving reasons, to allow citizens of the GDR to travel to the FRG, and particularly to West Berlin. Consequently, they could also have foreseen that the killing of unarmed fugitives who were not a threat to anyone might give rise to criminal prosecutions under the relevant legal provisions, notwithstanding the contrary practice followed by the GDR regime. In particular, anyone could have foreseen that, in the event of a change of regime in the GDR, these acts might constitute criminal offences, on account of the family and other ties which transcended the border dividing Germany.

The Government submitted that the German courts had interpreted GDR law in a legitimate way. If the GDR authorities had correctly applied their own relevant legal provisions, taking account of the GDR's international obligations after ratification of the International Covenant on Civil and Political Rights and of general human rights principles, including protection of the right to life in particular, they should have arrived at the same interpretation. The question whether or not the International Covenant had been transposed into the GDR's domestic law was of no consequence in that regard".[1]

Some of the Court's arguments.

"… Since the term "Law" in Article 7 § 1 of the Convention includes unwritten law, the Court must also, before going further into the merits of the case, analyse the nature of the GDR's State practice, which was superimposed on the rules of written law at the material time.

In that context, it should be pointed out that at the time of the offences in issue none of the applicants was prosecuted for them in the GDR. This was because of the contradiction between the principles laid down in the GDR's Constitution and its legislation, on the one hand, which were very similar to those of a State governed by the rule of law, and the repressive practice of the border-policing regime in the GDR and the orders issued to protect the border, on the other.

To staunch the endless flow of fugitives, the GDR built the Berlin Wall on 13 August 1961 and reinforced all the security measures along the border between the two German States with anti-personnel mines and automatic-fire systems. In addition to these measures, border guards were ordered "not to permit border crossings, to arrest border violators (Grenzverletzer) or to annihilate them (vernichten) and to protect the State border at all costs". In the event of a successful crossing of the border, the guards on duty knew that an investigation would be conducted by the military prosecutor; in the opposite case, they could expect congratulations (see paragraphs 19 and 23 above).

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[1] Streletz, Kessler and Krenz v. Germany.

As the German courts found, the above measures and orders had incontestably been decided upon by the organs of government of the GDR mentioned in Article 73 of its Constitution (see paragraph 28 above), namely the Council of State and the National Defence Council, of which the applicants were members: the first applicant (Mr Streletz) was a member of the National Defence Council from 1971 onwards; the second (Mr Kessler) from 1967; the third applicant (Mr Krenz) was a member of the Central Committee of the Socialist Unity Party from 1973 onwards, of the Council of State from 1981, and of the National Defence Council from 1983.

Thus, the aim of the above State practice, implemented by the applicants, had been to protect the border between the two German States "at all costs" in order to preserve the GDR's existence, which was threatened by the massive exodus of its own population.

However, the Court points out that the reason of State thus pleaded must be limited by the principles enunciated in the Constitution and legislation of the GDR itself; it must above all respect the need to preserve human life, enshrined in the GDR's Constitution, People's Police Act and State Borders Act, regard being had to the fact that even at the material time the right to life was already, internationally, the supreme value in the hierarchy of human rights (see paragraph 94 below).

The Court considers that recourse to anti-personnel mines and automatic-fire systems, in view of their automatic and indiscriminate effect, and the categorical nature of the border guards' orders to "annihilate border violators (Grenzverletzer) and protect the border at all costs", flagrantly infringed the fundamental rights enshrined in Articles 19 and 30 of the GDR's Constitution, which were essentially confirmed by the GDR's Criminal Code (Article 213) and successive statutes on the GDR's borders (section 17(2) of the People's Police Act 1968 and section 27(2) of the State Borders Act 1982). This State practice was also in breach of the obligation to respect human rights and the other international obligations of the GDR, which, on 8 November 1974, had ratified the International Covenant on Civil and Political Rights, expressly recognising the right to life and to the freedom of movement (see paragraph 40 above), regard being had to the fact that it was almost impossible for ordinary citizens to leave the GDR legally. Even though the use of anti-personnel mines and automatic-fire systems had ceased in about 1984, the border guards' orders remained unchanged until the fall of the Berlin Wall in November 1989.

The Court further notes that, in justification, the applicants relied on the order to fire which they themselves had issued to the border guards and on the ensuing practice, on account of which they had been convicted. However, according to the general principles of law, defendants are not entitled to justify the conduct which has given rise to their conviction simply by showing that such conduct did in fact take place and therefore formed a practice.

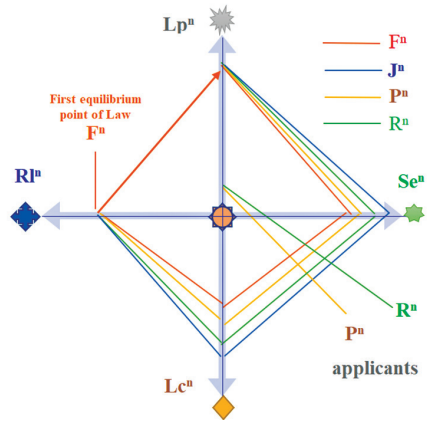
Moreover, irrespective of the GDR's responsibility as a State, the applicants' acts as individuals were defined as criminal by Article 95 of the StGB-DDR (Das Sozialistische Strafgesetzbuch), which already provided in its 1968 version, in terms repeated in 1979: "Any person whose conduct violates human or fundamental rights ... may not plead statute law, an order or written instructions in justification; he shall be held criminally responsible".[1]

The above case demonstrates the continuity of legality between opposing legal orders and legal systems. The legal system and legal order of the GDR were based on the balance of law, in which the point of equilibrium is the "Collectivism of law" (Cll^n). The legal system and legal order of the Federal Republic of Germany are based on the balance of law, in which the point of equilibrium is the "Liberalism of law" (LiB^n).

The applicants' position is based on the opposites of this equilibrium of law. In their legal discretion the "Precedent" (Lp^n), they are guided by the "Rationality of law" (R^n) and the "Pragmatism of law" (P^n) of the GDR legal order, which, in their opinion, justifies the legality of their actions.

But the Court takes into account another feature of the dynamics of the positive law of the GDR, that is the "Normativity of law" of the GDR (Norm-L^n).

Graphic model –15.
"Confrontation of equilibrium in the dynamics of the positive law of the GDR"



In accordance with the applicants' position, the Graphic model –14 shows that the grounds for their actions are "Rationality of law" (R^n) and "Pragmatism of law" (P^n), which are based on "Precedent" (Lp^n) and is focused on "Political expectations (Social expectations)" (Se^n).

This position is based on the substantive level of the dynamics of the law "National legal order".

As we can see on the Graphic model – 15, the social force – the "Formalism of law" (F^n), has been based on the "Rules" (Rl^n) and provide the model of equilibrium of law with the dominance of "Liberalism of law" (LiB^n).

[1] Streletz, Kessler and Krenz v. Germany.

Algorithmic model – 8.
"Autonomy of law in the reflection of the Western legal tradition"

$$\text{CoN-Lw} \approx \frac{\text{Norm-L}^{\text{GDR}}\left(\{\text{LiB}^{n} = \text{R}^{n} \pm \text{J}^{n} \pm \text{P}^{n} \pm \text{F}^{n}\} = \text{EqL}^{n1}\right.}{\left.\text{Lo-t}^{\text{GDR}}\left(\{\text{J}^{n} \pm \text{Pn}^{n} \pm \text{R}^{n} \pm \text{F}^{n} = \text{Cll}^{n}\right\} = \text{EqL}^{n2}\right.} \mapsto [\text{Se}^{n} + \text{Lc}^{n} \pm \text{Rl}^{n} = \text{Lp}^{n}]) \subseteq \text{Rf-Lw}^{n} \in \text{Lo-t}^{\text{FRG}}$$

On the Algorithmic model is shown the admissibility of the reflection of the Western legal tradition. At the level "Normativity of law of the GDR" (Norm-L^n), a system of equilibrium is provided by "Justice of law" (J^n), "Rationality of law" (R^n), "Pragmatism of law" (P^n) and "Formalism of law" (F^n), which has a similar "Normativity" with the law of FRG regarding the value of human life and with the dominance of "Liberalism of law" (LiB^n).

Thus, the applicant's view of the confrontation of reflection of law is in fact based on the confrontation of the normativity of GDR law with the national legal order of the GDR, which allows the applicants to interpret legality in a different way.

In this regard, the judge of the European Court of Human Rights Zupancic pointed out the following, "… Article 7 § 2 is an exception to the principle nullum crimen, nulla poena sine lege praevia formulated by the famous German criminal-law theorist Anselm von Feuerbach. Franz von Liszt later maintained that the substantive guarantees enshrined in the principle of legality are the Magna Carta Libertatum of criminal defendants. This tradition of substantive criminal law protection goes back to at least 1764 and Cezare Beccaria's classic work Dei delitti e delle pene, which decisively influenced the whole continental tradition of legality in criminal law. This is all the more important because, in counter-distinction to the Anglo-Saxon legal model, although Magna Carta had a similar provision in its clause 39 (lex terrae), the guarantees are preponderantly to be found in substantive rather than in procedural law.

The principle of legality (Legalitätsprinzip, principe de legalité) is typically interpreted to entail only the restrictive interpretation of the State's power to punish. In this case, as we shall see, the principle of legality has the opposite effect. It precludes the applicants from relying on their own interpretation of the law. …".[1]

Thus, the European Court of Human Rights pointed out the possibility of reflection by the legal order of the Federal Republic of Germany on actions based on the legal order of the GDR. Hence, the substantive level of the dynamics of the law of the GDR – "Normativity of law" (Norm-L^n) provides for the continuity of legality.

[1] Streletz, Kessler and Krenz v. Germany.

Conclusions

As indicated at the beginning of the work, following Harold Berman's recommendations, our study of the Western legal tradition is based on the Integrative theory of law. The integrative theory of law is represented through academic law and has the following research levels:

- At the first level is the modern doctrine of positive law.
- At the second level, there is the study of Harold Berman as methodological and empirical material of the historical school of law.
- At the third level, as the modern concept of natural law and some approaches of the sociological school of law are also considered.

These three levels of research have allowed us to consider positive law as a dynamic substance in an evolutionary time perspective. In this regard, further research required the integration of theories of dynamical systems (theories of stability, bifurcation, and so on). Thus, our integrative approach to the knowledge of law has received the fourth level – the level of conceptual ideas of theories of dynamical systems. Subsequently, the work received an algorithmic presentation of the evolution of positive law in the context of the Western legal tradition. By applying dynamical system theories to the evolution of positive law in the context of the legal tradition, we were able to recognize the social mechanics of continuity and renewal of positive law. But the study needed visual, concrete, and additional empirical material.

Harold Berman's research contains a great deal of empirical material with the recognition of various axiological directions in the development of the Western legal tradition. But at the same time, the theory of dynamical systems made it possible to draw attention to the importance of the legal environment, and to the impact of its challenges on the development and transformation of law. Namely, the Russian military aggression against Ukraine, international conflicts, climate problems, the consequences of the pandemic and other components of the global legal space have pointed to the most important value of law, which is constantly subject to critical risks, this is the legal value of the human right to life.

Thus, thanks to the integrative approach, the fifth level of research was formed in the work – the level of legal evolution of humanism in the aspect of the continuity of the phenomenon of the human right to life in positive law.

But our research is limited to the thematic boundaries of the project. The Volkswagen Stiftung project is called "Formation of a New Tradition of European Law". Therefore, our attention was focused on the Pan-European legal order in the field of the human right to life, namely the European Convention on Human Rights and the case-law of the European Court of Human Rights. We believe these sources of law have an authoritative influence on the common European legal

order in terms of recognizing and protecting the human right to life. Thus, our work reached the sixth research level.

The quintessence of this study is the sequence of social forces in each of the designated points of equilibrium of the Western legal tradition. As we can observe, each of the equilibrium points has a different sequence of social forces in creating the equilibrium of law.

The conclusion about the sequence of social forces at the points of equilibrium of law is based on the author's interpretation of Harold Berman's study and may have some historical inaccuracies. The main goal pursued in this work, and we believe that this goal has been achieved, is the disclosure of the social mechanics and dynamics of positive law in the context of the evolution of the value of the human right to life in the Western legal tradition.

The book defends the view that in the aspect of legal traditions, the renewal of law is able to preserve the integrity and continuity between historically different and ideologically opposed types of law. Based on this statement, positive law manifests itself as a movement of legal orders of historically different legal systems. In this movement, each specifically identified legal order represents a static state of positive law at a certain point in time, the subjective and spatial jurisdiction of the legal system. In addition, attention is drawn to the fact that the legal tradition provides a connection between positive law and ideologically and historically different legal orders and legal systems.

The study has shown that the Western legal tradition is a form of continuity that is characterized by the conservative and dissipative dynamics of positive law. In this historical dynamic, the legal tradition translates the balance of social forces in positive law. In the Western legal tradition, this equilibrium retains its continuity in the form of structured legal experience from one legal order to another legal order, from another type of legal order to a third, and so on. This model of continuity of positive law has been observed since the first revolution of law and through the moment in time.

As follows from the study of Harold Berman, the legal tradition forms a balance between the social forces of Justice, Rationalism, Pragmatism, and the Formalism of law. Further, this equilibrium affects the Rules, Precedent, Political expectations (Social expectations), and Legal culture, as a result of which points of equilibrium of social forces in law are formed.

The brief analysis presented in the book demonstrates examples of the fact that the points of equilibrium of social forces in law are doctrinally unique and historically individual combinations of Justice, Rationalism, Formalism, and Pragmatism in positive law. Depending on the different types of points of equilibrium of social forces, positive law regulates and protects the values of law in different ways.

Legal traditions are complex and hidden phenomena in law, but at the same time they can be studied. If we proceed from the fact that there is a balance of social forces in law, which bases its dialectical interaction on competition and the contradiction of legal values and values of law, then it follows that legal order is a phenomenon of law that establishes the legal regime for the movement of these values in the legal environment.

The ability of the Western legal tradition to form a balance in law is due to the natural combination of social forces in Rules, Precedent, Political expectations (Social expectations) and Legal culture. The finding of equilibrium points by social forces contributes to the formation of types of legal orders corresponding to these points with different regimes of legality and grounds for legitimacy. It follows that the legal order as a legal phenomenon is the result of the conservative and dissipative dynamics of law, which is characterized by its own normativity and reflectivity of positive law.

The goal of the era of the formation of the Western legal tradition, as can be observed from the study of Harold Berman, is the formation of a holistic and autonomous positive law with discrete normativity and legal reflection.

In this regard, using the methodology of theories of dynamical systems, we were able to find that regardless of the historical type of legal order, the continuity of the Western legal tradition is carried out naturally with the interaction of such elements: Rules, Precedent, Political expectations (Social expectations), Legal culture, Normativity of law and Reflectivity of law. A more detailed analysis showed that legal systems, legal orders, and their types are a consequence of the equilibrium of social forces in law. Therefore, in the context of the Western legal tradition, recreating the model of the social mechanics of positive law, it was noted that of the above eight elements of the continuity of law, only six elements are able to have autonomous discretion in choosing the point of equilibrium of social forces.

Using the example of the genesis of the human right to life, we were able to trace that within the limits of different historical types of legal order, when all six elements of the Western legal tradition received consistency at one point in the balance of social forces in law, then in their dynamic combination they formed the geometric figure “Octahedron”. This phenomenon can be observed after the Fifth Revolution of Law, when all types of legal orders gradually began to combine Justice, Rationalism, Formalism, and Pragmatism in positive law at the same time. Based on a study by Harold Berman, in the Algorithmic model – 5.5. is indicated that the first point of equilibrium, where four social forces are simultaneously present at the level of legal order, was the “Nationalism of law” (Nl^n).

We believe that the observation of the continuity of positive law on the example of finding geometric and algorithmic combinations can further confirm the hypothesis about the nature origin of positive law. Complicating this task is

the fact that in many historical types of legal orders there was not always a perfect combination of the point of equilibrium of social forces in all the constructive elements of the legal systems.

This natural genesis of positive law can be formulated as follows.

The right of one person to life is tantamount to the reciprocal obligation of society, the state, and another person to ensure the observance, preservation, and realization of this right at the expense of a certain order of their own behaviour. Within the legal system, positive law justifies the need to protect the human right to life through a doctrinally recognized type of legal understanding. One or another type of legal understanding chosen in the legal system is balanced by the dominance of one social force over other social forces in positive law. Accordingly, the point of equilibrium of social forces in law is a situation where the dominant social force justifies the need to fulfil the legal obligation to preserve the human right to life by an appropriate legal mechanism. For example, if it is necessary to restore the violated human right to life, the dominant social force justifies the measure of legal responsibility in accordance with the degree of guilt of the offender.

Thus:

- At the equilibrium point LiB^n – "Liberalism of law" one can observe the following sequence of social forces in law: $R^n \pm J^n \pm P^n \pm F^n$. Where "Rationalism of law" – R^n is the dominant social force. In this regard, the value of the human right to life is assessed in relation to the significance of other rational losses, where the loss of human life is unacceptable since it cannot be restored.
- At the equilibrium point Cll^n – "Collectivism of law" one can observe the following sequence of social forces in law: $F^n \pm R^n \pm P^n \pm J^n$. Where "Formalism of law" – F^n is the dominant social force. In this regard, the value of the human right to life is assessed in accordance with the criteria enshrined and declared in a normative act or formal norm.
- At the equilibrium point ImR^n – "Imperialism of law" one can observe the following sequence of social forces in law: $P^n \pm R^n \pm J^n \pm F^n$. Where "Pragmatism of law" – P^n is the dominant social force. In this regard, the value of the human right to life is assessed depending on the feasibility or necessity of protecting this right.
- At the equilibrium point Nl^n – "Nationalism of law" one can observe the following sequence of social forces in law: $J^n \pm P^n \pm R^n \pm F^n$. Where "Justice of law" – J^n is the dominant social force. In this regard, the value of the human right to life is assessed in the aspect of certain national interests and quite often the human right to life is equivalent to the duty of a person to give his life for the protection of national interests.

Each of the considered points of equilibrium equally ensures the legality and legitimacy of different types of legal orders, which correspond to these equilibriums. We believe that most of the legal orders of the legal systems of Western law are built on this Great tradition of law.

We believe that the described phenomenon of the interaction of social forces in the dynamics of the continuity of the Western legal tradition can help understanding the mechanism of causes, symmetries, fractality, spirality, flow, chaos, and the sequence of legal genesis in combination with other types of evolution of social systems. In this regard, using the example of the Small legal tradition of the Western legal tradition, namely the Legal tradition of comparative advantage, we were able to consider the signs of the interdependence of the balances of law and economics. This creates prerequisites for the prospects for further research on finding a symmetrical relationship between social forces in positive law and market equilibrium.

Taking into account the study of Harold Barman, it is observed that six revolutions of law introduced novelties in the value, structural, institutional, ideological, and communicative development of positive law into the Western legal tradition. Based on the study of Harold Berman, the analysis demonstrated that each of the six revolutions of law that transformed positive law entailed not only a change in the balance of social forces in law, but also formed or changed the point of their equilibrium in law. Consequently, in the context of positive law, the value of the human right to life has also changed. But at the same time, in the genesis of each separately selected legal system and legal order, we often observe the simultaneous presence of opposite points of equilibrium of social forces. We believe that this circumstance is capable of explaining the causes of revolutions and counterrevolutions of law.

In his study, Harold Berman warns of a crisis in the Western legal tradition. Forty years after the publication of Harold Berman's first book, now analysing the interaction of different points of equilibrium within the different legal orders, we are increasingly observing that they are the causes of internal confrontations of legal system and external confrontations between legal systems. In contrast to the causes of the revolutions of law, the duration of modern destructive changes in positive law gives reason to call this dynamic – Counterrevolutions of law. In other words, against the background of the productive achievements of the Western legal tradition, the continuity of destructive transformations of law can be characterized as a counterrevolution to the evolutionary development of law.

On the one hand, the modern confrontations of the Western legal tradition can be prerequisites for a new spontaneous and total renewal of positive law, to use the terminology of Harold Berman, they can lead to the beginning of the Seventh Revolution of Law.

On the other hand, the study gives reason to believe that, in contrast to the Epoch of the Formation of the Western legal tradition, in the new Era, positive law has formed tools for autonomous global harmonization and unification of value contradictions.

But the current crisis of the Western legal tradition is the inconsistency of novelties in the legal environment and the legal order, which gives rise to difficulties in the autonomous harmonization of positive law, this is especially noticeable in the example of the value of the human right to life.

According to the Western legal tradition, human life and the human right to life is not a material legal value and is not directly dependent on physical equivalents. But at the same time, the current motives of military conflicts are of concern, and in this regard, the global climatic, epidemiological, economic, and political crises form a new global legal environment that is not typical for the Western legal tradition. This problem is especially relevant against the background of the formation of Asian and Eurasian legal traditions.

Taking into account the history of the revolutionary formation of Western law, the nature of global crises forces positive law to search for a new point of equilibrium of social forces. But at the same time, it is possible that the new equilibrium point of the Western legal tradition will reassess the human right to life in positive law.

On the example of the history of Western law, it can be observed that the risk of reducing the legal value of the human right to life has no direct connection with the legality and legitimacy of the legal order. Since the history of Western law, there have been many cases of the absence of the legal value of the human right to life, while the legitimacy and legitimacy of the legal order have been preserved and ensured by the point of equilibrium of social forces in positive law.

As Harold Berman writes, the revolutions of the Western legal tradition arose as a result of spontaneous and random clashes of a multitude of pre-existing social, economic, political, and legal contradictions. In the modern world, enough contradictions have accumulated: nuclear imbalance, pandemics and climate disasters, global debt, international military conflicts, food, and energy crises, and so on.

The complexity of the problem lies in the fact that the Western legal tradition impoverishes opposite points of equilibrium, each of which is the basis for the legitimacy and legitimacy of different types of legal orders. At the level of autonomy of positive law, the simultaneous presence of these opposites in a legal system can cause a confrontation between Rules, Precedent, Political expectations (Social expectations), and Legal culture within the united Great legal tradition.

In view of these circumstances, it seems that the mission of modern law is not to prevent the coincidence of accidental contradictions, but to create an environment in which these contradictions will be independently reconciled

with the preservation of the value of the human right to life. That is why, having completed the era of "Formation", the Western legal tradition laid down in law the tools for non-revolutionary renewal. Namely, normativity and reflection of law are able to harmonize the opposite points of equilibrium of the Western legal tradition.

In the modern historical period, there is an intensive digital centralization and digital intellectualization of positive law. This process has the prerequisites for a future change in the balance of social forces in law and a change in the component composition of the Western legal tradition. We believe that this circumstance may lead to the formation of a new type of legal order. In positive law, there is a transformation of the social force of formalism due to digitalization. On the one hand, it can strengthen the autonomy of law, but on the other hand, this innovation is able to centralize other social forces in a single model of legal equilibrium. At the same time, the centralization of legal equilibrium cannot guarantee the autonomy of law, and hence its integrity.

Consequently, the Western legal tradition can expect:

- A new global Harmonization of law,
- A new destructive Counterrevolution of law, or
- A Seventh revolution of law.

Obviously, each of these scenarios of the genesis of the Western legal tradition focuses on the reassessment of the value of the human right to life in relation to the value of humanity right to life.

The year 2023 marks the seventieth anniversary of the entry into force of the European Convention on Human Rights. In the context of the Western legal tradition, this document and the seventy years of its application have demonstrated the ability to determine legal reality. A legal reality in which all legal mechanisms and processes are focused on the recognition and protection of human life as the highest value of law.

But at the same time, there are facts in the legal environment that challenge the supreme value of human life. At first glance, this axiological confrontation is comprehensive, as it affects the civilizational, ontological, and synergetic foundations of the current legal order.

Against the background of legal order, these circumstances are in the nature of legal novelties, as they change the movement of social forces in law. In this regard, special attention should be paid to the phenomena of the equilibrium of law, the counterrevolution of law and the confrontation of the Western legal tradition.

While analyzing Harold Berman studies, we observe cases when in the history of the Western legal tradition, the disequilibrium of social forces entailed the destruction of the legal order. These events have always been followed by a spontaneous transformation of law. The value of Harold Berman's research, in our opinion, lies in the fact that it leads us to an understanding of the phenomenon

of equilibrium of law and an understanding of the place of legal tradition in the dynamics of law.

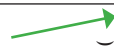
In 1983, Harold Berman's first book "Law and Revolution. Formation of the Western legal tradition" was published and forty years later, the relevance of this topic is still increasing. Taking into account Harold Berman's research and the works of other prominent scholars, we believe that further research of the legal environment in this direction can strengthen the prognostic function of law and contribute to a clearer understanding of the future legal reality.

The approach presented in this work is an attempt to interpret one of the types of positive law dynamics, namely the dynamics of continuity and renewal of positive law in the context of the Western legal tradition.

Table of Conventional Symbols, Abbreviations, and Additional Explanations

#	Name of a legal phenomenon	Symbol of a legal phenomenon	Abbreviation of a legal phenomenon
1	Law (Positive law)		Lw
2	Legal tradition (Great legal tradition)		LT
3	Legal tradition (Small legal tradition)		LT-b^{n}
4	Legal custom		$Lc^{T}n$
5	Rules (Structural component)		Rl^{n}
6	Legal culture (Structural component)		Lc^{n}
7	Legal precedent (Structural component)		Lp^{n}
8	Political expectations (Social expectations) (Structural component)		Se^{n}
9	Justice of law (Social forces)		J^{n}
10	Rationality of law (Social forces)		R^{n}
11	Pragmatism of law (Social forces)		P^{n}
12	Formalism of law (Social forces)		F^{n}
13	Spirituality of law (Point of equilibrium of law)		^{S}n
14	Individualism of law (Point of equilibrium of law)		Id^{n}
15	Imperialism of law (Point of equilibrium of law)		ImR^{n}
16	Nationalism of law (Point of equilibrium of law)		Nl^{n}

#	Name of a legal phenomenon	Symbol of a legal phenomenon	Abbreviation of a legal phenomenon
17	Collectivism of law (Point of equilibrium of law)		Cll^{n}
18	Liberalism of law (Point of equilibrium of law)		LiB^{n}
19	Legal system		Ls^{n}
20	Legal order		$Lo\text{-}^{t}n$
21	Legal environment		$Le\text{-}s^{n}$
22	Novelty of law		NL n
23	Revolution of law		$R^{V}n$
24	Counterrevolutions of law		$C^{r}n$
25	Harmonizing of the truth A ∈ B agree on what is True		∈
26	Subset (Structural linkages) A ⊆ B means that each element of A is an element of B		⊆
27	Superset (Structural linkages) A ⊇ B means that each element of B is an element of A		⊇
28	Correlation (State of tradition) System dependency		+
29	Equilibrium measures (Qualitatively more)		±
30	Functions of the law (Structural linkages) (Dynamics of law)		→
31	Equilibrium of Law (State of tradition)	=	EqL^{n}
32	Reflection of equilibrium		↦
33	Interaction		↔

#	Name of a legal phenomenon	Symbol of a legal phenomenon	Abbreviation of a legal phenomenon
34	Value's components of the legal tradition		{…}
35	Structural component of the legal tradition		[…]
36	Contents of the legal tradition		(…)
37	Confrontation of law (Counter-equilibrium)	≈, >, or <	CoN-Lw
38	Violation of the Equilibrium of law		¬
39	Consequences		⊂
40	Transformation of law		T-lw^{n}
41	Continuity of law		‿ Cn^{n}
42	Renewal of law		R^{W}n
43	Institutionalization of law		InT-Lw^{n}
44	Interactions of law		ItR-Lw^{n}
45	Reflection of law		Rf-L^{w}n
46	Normativity of law		Norm-L^{n}
47	Harmonization of law		G^{L}n
48	Legal Era		LA^{n}
49	The Era of the Formation of the Western legal tradition		F-L^{A}n
50	The Era of the Confrontation of the Western legal tradition		C-L^{A}n
51	Logical operator "Or"		‖

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Serhii S. PAVLOV
Ukrainian scientist, born in Ukraine.

Doctor of Philosophy (Law), Attorney of Ukraine, member of the National Bar Association of Ukraine, National Union of Journalists of Ukraine, and Union of Lawyers of Ukraine.

Volkswagen Stiftung Fellow, Faculty VII of Life Sciences: Food, Nutrition and Health, Bayreuth University.

Studied Law at the Interregional Academy of Personnel Management and the International Personnel Academy (Vinnitsa, Ukraine).

Studied International economics and Diplomacy at the Institute of International Relations of Taras Shevchenko Kyiv National University (Kyiv, Ukraine).

Accomplished postgraduate studies at the Odessa National Law Academy (Odesa, Ukraine).

In 2006, by the decision of the Qualification-Disciplinary Commission of Advocates in Vinnytsia region No. 28 was provided the legal status of the Attorney of Ukraine.

In 2008, the High Qualifications Commission of Advocacy under the Cabinet of Ministers of Ukraine was awarded the gratitude “For High Professionalism”.

In 2010, by the decision of the Presidium of the Higher Attestation Commission of Ukraine No. 71-06/6, awarded a scientific degree – Doctor of

Philosophy (Law). Scientific specialty (State number 12.00.01): “Theory of state and law, history of political and legal doctrines”.

In 2019, was a candidate for the position of the judge of the European Court of Human Rights from Ukraine.

From 2016 to 2022 – General Partner of the Bar Association “Law Firm “SeP&P”.

From 2018 to 2020 – Researcher and lecturer in the Vinnytsia Institute of Trade and Economics of Kyiv National University of Trade and Economics.

From 2015 to 2017 – Researcher and lecturer in the Department of Pathological Anatomy, Forensic Medicine, and Law of Vinnytsia National Medical University named after Mykola Pirogov.

From 2006 till now – Attorney of Ukraine.

From 2005 to 2015 – Graduate student, Assistant, Lecturer, Associate Professor in the Chair of Theory of State and Law of the National University “Odessa Law Academy”.

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Serhii Pavlov engages in scientific research of the societies and the states, in the context of complex legal formations from 2005 till now. His task is to find and explore deeply hidden socio-cultural and legal ties that can constructively or destructively influence the legal development.

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More than 30 academic publications on problems of law, state, and human rights. Lecturing at the following training courses in Ukraine: “International Economic Law”, “International Trade Law”, “Economic Procedural Law of Ukraine”, “Philosophy of Law”, “Theory of State and Law”, “Legal Methodology”, “History of Political and Legal Studies”, “Medical Law”.

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