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Modern Legal Cultures and the Globalization

The topic lies, in essence, in the question of the impact that globalization has on legal cultures of the modern world, or put differently, whether it is compatible with the diversity of those legal cultures? Examination of the topic need to be preceded by questions of methodology, which need is due to the fluidity of the concept of legal culture and to an insufficient study of the problem of typology and classification of legal cultures. An attempt to define the concept of legal culture leads us, in turn, to concepts of culture and law which form its basis... In this sense the concept of legal culture is in a way a related category which represents the element of law in culture, and the element of culture in law... [5: 92]. Legal culture is a form of a 'bigger' culture or culture in a common social sense. This is why substantial and structural 'parameters' of the latter in a sense predetermine the corresponding characteristics of the former... In the same way, the content and the structure of the concept of 'law' are a reflection of a corresponding legal culture. A large number of definitions of the concept of culture might apparently be reduced to the two interpretations — a 'wide' and a 'narrow' one. With the former the concept of culture identifies with some historically changeable 'world construction' within which the man lives and creates, and the society develops. The question is the characteristics of certain historical epochs, of social and economic formations, of certain societies, peoples and nations [5: 76]. An equally all-inclusive sense lies in the concept of culture which includes everything that in the surrounding reality is created by man unlike what was created by nature [2: 14]. It is important to point out that culture expresses means (or methods, mechanisms) of vital functions of men, the results of this vital activity in material and spiritual spheres but not social relations proper [5: 77].

With the 'narrow' content of the concept of culture, it only refers to the

sphere of spiritual life of humans or specific spheres of vital activity (the culture of labour, the culture of the way of life, etc.). To our mind, both approaches are characterized by the notion of culture as some unity of man and the cultural milieu, the product of which he is. That is why almost everywhere the two 'strata' of culture can be observed that can conveniently be named as the objective and the subjective one.

In real life there is constant interaction between the objective and subjective elements (or 'strata') of culture. At that, the former is the cultural milieu that forms a person as the bearer of a certain culture and that acts as the 'coordinate system' where the vital activity occurs. The latter 'stratum' in the structure of the concept of culture representing a micro-level of culture is only a subjective reflection of cultural milieu as a man's habitat in his consciousness [5: 78].

The content and the structure of the concept of law are in a number of parameters similar to corresponding aspects of the concept of culture; this is at least due to the fact the former concept is an inseparable element of the latter's structure. However, this similarity is incomplete because a part and a whole presuppose differences. The point of similarity, in particular, lies in the fact that wideness, multidimensionality and fluidity of the content are inherent in both the concept of law and the concept of culture. In particular, like culture, law also includes elements of both the objective and the subjective nature. Their correlation, viewed by this or that researcher, to a great extent predetermines the character of the notion of the law. For instance, it can be 'narrow' including only the whole set (system) of regulations which are compulsory for all, and 'wide' when besides it its structure also includes legal consciousness, legal relations, etc. At that, in any case it reflects the specificity of the historical epoch and of the culture determined by it.

Various approaches to the definition of the concept of the legal culture can also be reduced to the two types — a 'narrow' and a 'wide' one. The bases of one and the other are formed by the differences in the notions of law and culture.

For instance, the 'narrow' or the regulatory legal notion is compliant with an equally 'narrow' notion of legal culture which boils down to a certain state of legal consciousness, to people understanding and obeying legal regulations [4: 331]. Interpreted in this way, the legal culture becomes a phenomenon which is exterior to the law.

Some authors identify a 'wide' notion of the legal culture with the legal system of the society [1: 801], others assign a wider meaning to it which can be compared in a number of aspects with the concept of culture in common social sense [3: 514]. Although this approach is not an undisputable one we cannot deny that here the 'bigger' culture acts as a paradigm of legal culture. While admitting the relevance of both approaches to understanding the legal culture – the 'narrow' and the 'wide' one, we view it in the 'wide' sense in the context of this paper.

An important component of this topic is the issue of typology and classification of legal cultures. We will base our typology on the type of civilization within which the classification of legal cultures is conducted. From this point of view we will obtain the traditional, i.e. pre-bourgeois, and the bourgeois (post-bourgeois) types of legal cultures. The traditional type of legal cultures is distinguished first of all by the specificity of the doctrine (legal interpretation) of the structure and the sphere and mechanism of applying the law. For instance, the traditional interpretation proceeds from the assumption that the law was not created, it was given by God, by the ancestors, etc. Hence this law has a religious form or is religious in its essence and is unified (at a certain level of its structure) with morality and religion. It predetermines the specificity of its effect: it involves the relations that are not of the legal character from the point of view of the modern European legal interpretation. Consequently, the mechanism of the effect of the traditional law does not always presuppose the necessity of state protection of legal regulations. The traditional type of legal cultures includes the culture of common law and the culture of traditionally religious law (Judaic, Hindu, Zoroastrian, Muslim). The bourgeois

type of legal cultures includes Anglo-Saxon and Romano-Germanic legal cultures. The specificity of the modern legal map of the world is that along with the developed legal cultures of the bourgeois type and with those in a period of transition towards them (like, for example, in Russia), it includes the elements of all the preceding types of traditional legal cultures. With a different degree of intensity they become apparent in vast regions of Africa, the Near and the Middle East, South and South-East Asia. At that, the role of the 'supporting frame' in national legal systems is performed by the law of a European type that has considerably pressed the traditional law in the sphere of national law and order over the last one and a half or two centuries. Along with that, constitutions of the countries of the Islamic East usually guarantee a number of fundamental principles of Islam (the state nature of the Islamic religion, shariah as the basic source of law, etc.). The constitution of Iran of 1979 includes extensive quotations from the Koran, etc. It all is the proof of a certain and sometimes considerable impact of traditional legal cultures on social consciousness of the mentioned countries.

Besides, the unified character of traditional legal cultures give rise to the phenomenon of the so-called 'live law' that forms and takes effect in the traditional (semi-traditional) society of the mentioned countries without the participation of the state, i.e. beyond official legal systems. This situation is secured by an incredible stability of the traditional (semi-traditional) social structures and of the corresponding forms of social consciousness even in the countries that are economically prospering (India, Emirates of the Persian Gulf), and also by the fact that the gap between the levels of social, economic and cultural development of the most highly-developed and the most backward countries is not getting narrower but, on the contrary, it is getting wider.

If the process of globalization in the sphere of law means conferring a universal character on the ideas, regulations and institutions that appeared on the basis of the European legal culture, can one in the present conditions predict its successful completion in the foreseeable future? There seems to be no

definite answer to this question today...

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