Articles

Law and Order or Global Disorder

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Abstract: Substantial problem of Humankind is at the junction of Philosophy, Sociology and Jurisprudence. Based on my attempt to harmonize philosophies of Kant, Hegel and Husserl, and studies of famous legal scholars Bentham, Ostin, Holmes, Kelsen, Ehrlich, Reinach, Hart, Llevellin, Kardozo, David, Dworkin, Rawls concerning the problems of public law, private law, comparative law, justice, human rights, post-modernism, and Georgian philosophical, sociological and legal traditions since XII century, I discovered a synergetic model of dialectical, spiral, evolutionary and mutual transformation of irrationalism and rationalism as the effective method of conflicts prevention and peacefully resolution at the International, Regional, National and Local levels under the auspice of Bill of Human Rights.

Keywords: dialectical jurisprudence; legal order; social justice; human rights; Saint Francesco D' Assisi

1. Introduction

Globalization in modern world reflects such transnational problems which have never been exist in history of Humankind in such widespread aspect: Monopolization of World Economics and Extreme Poverty; European Union and NATO; World Bank, IMF and Developing Countries; International Drugs Network and Terrorism; Internet and E-mail; 'Judaism' and 'Islamism'; Global Warming and Ozone Depletion; Deforestation and Marine Pollution; Israel, USA, UK and Muslims; Contraband Armaments Traffic and Unregulated Financial Transfers; Amnesty International and Greenpeace; Coca-Cola and Macdonald's; Exhausting of Non-renewable Earth Resources and Neo-colonialism; Corruption and Illegal Human Trade; International Trade Union Organizations and Transnational Woman's networks; "Black Africa" and "Yellow Asia"; Catholic and Orthodox

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Churches; Ethnic Conflicts and the vast herds of Displaced Persons; Growth of Racism and Ethnic separatism; and a cross synthesis of abovementioned realities in combination with other factors.

However, in my scientific articles and newspaper statements since 1994 I have many times warned about the Islam fundamentalists attack on the **parallel 38**. (Savaneli, 1994) (Savaneli, 1994, pp. 23-24) Unfortunately prophesy was realized: **Washington** is near the area of parallel 38, **Madrid** is located on the parallel 38, and tsunami in **Japan** was falling upon parallel 38. New danger is issuing from the parallel 38 between **North and South Korea** and etc. through **Iran and to the West**.

In order of outcome from such dangerous situation in worldwide, I am suggesting a synergetic model. In this respect, decisive role belongs to the Hegel's Philosophy of Dialectics, particularly Dialectical Jurisprudence, which will envelop institutionalized study and comparison of legal orders and positive laws of each nation-state, group of nation-states and all nation-states, evaluate a **synergetic model** of their mutual transformation, spirally and sustainable development, and elaboration of world positive law under the auspice of Bill of Human Rights as effective method of conflicts prevention and peacefully resolution at the International, Regional, National and Local levels in direction to establish **Just Global Order**.

Any biological being, including human being, is the member of appropriate biological community. Any member of appropriate biological community, including human being, has submitted to the naturally and objectively established norms of appropriate biological community. Naturally and objectively established norms of appropriate biological community, including human community, regulate individual activities and mutual interactions of its members. Naturally and objectively established norms of appropriate biological community, including human community, regulate their members' individual activities and mutual interactions with the members of other biological communities, including human community. In the process of individual activities and mutual interactions of the members of inside and/or outside biological communities, including human community, it has been appeared contradictions among them which are resolved by the naturally and objectively self-regulated and protecting norms of appropriate biological community, including human community.

However, as it is well known, essential attributes of human being are following: a) Human being is a rational being; b) Human being is an irrational being; c) Human being is a social being; d) Human being is a creative being; e) Human being is a words producing being; f) I would be added that human being is being that previously plan or lay out their future actions.

However, human beings distinguish from other biological beings. Human beings as freely willed biological being are capable to get out of established naturally and objectively cyclically closed normative order and inversely influence upon the normative order i. e. naturally and objectively established practice of individual activities and mutual interactions of members of human community. In the process of influence upon the normative order i. e. naturally and objectively established practice of individual activities and mutual interactions of members of human community sometimes have been appeared naturally and objectively unresolved contradictions among them. For peacefully resolution of such contradiction Humankind set up artificial and subjective outside regulated and protecting norms, among which the norms of moral, religion and law are leadings. In distinction of moral and religious norms, norms of law divided into material and procedural norms, and in this aspect they are more perfect and efficiency. In the process of activity of artificial norms of law is beginning their interaction with the natural and objective norms of normative order, and as a result the normative order transform into legal order, then legal order into positive law.

Violations of symmetry between legal order and positive law civilization many times have felled down in disorder. Clear examples are massive and increasingly conquest, aggressive, pitiless, ruthless and massive armed wars that is unknown for the animate world. As a result, it has been established natural and objective normative order.

The substantial legal problem of Humankind is at the junction of Philosophy, Sociology and Jurisprudence.

From the position of sociology of law, the picture is looks like in following image. Usually participants of social relations are acting in accordance with appropriate social norms, beforehand subjectively know nothing or mainly nothing how much his/her action is strictly accord or not to the norms of positive law. On this level we have the unity of social norms and social acts which might be called as normative facts. The normative facts in summary represent established norms of social order. At the same time, objectively established norms of social order might be contradicted to the norms of positive law, and positive law has non-compulsory attempt to reconstruct partially the norms of social order. That is the sociological explanation of interdependence of the norms of positive law and the norms of legal order.

From the position of legal theory, the picture is looks like in following image. First of all, usually participants of social relations are acting in accordance with the distributed by them mutual obligations and related to them rights, beforehand subjectively know nothing or mainly nothing how much his/her action is strictly accord or not to the norms of positive law. On this level we have the unity of legal norms (mutual obligations and related to them rights) and legal acts which might

be called as legal facts. The legal facts in summary represent established norms of legal order. At the same time, objectively established norms of legal order might be contradicted to the norms of positive law, and positive law has non-compulsory attempt to reconstruct partially the norms of legal order. That is regulatory to the legal order function of positive law. Secondly, as the continuation of the first stage of regulation, objectively established norms of legal order (mutual obligations and related to them rights and legal acts) might be so contradicted to the norms of positive law that positive law cannot able to reconstruct partially the norms of legal order by the non-compulsory means and necessity of conflict resolution and prevention dictate to the state to use compulsory means through the application of legislative, executive and judicial powers against wrongdoers. That is protectoral to the legal order function of positive law.

All of these two functions are the legal explanation of interdependence of the norms of legal order and the norms of positive law.

On the planet is raging tornado of amorphous and inadequate rules of politics out of the frameworks of rule of law, justice and human rights. Globalization of such politics globally turned human being into slave without visible fetters. Therefore, we the people of the world need a New Human Philosophy of Positive Law and Legal Order under the auspice of Universal Human Rights, which links the East and West, North and South, ethics and religions, public and private life, technologies and environmental protection, and the myriad problems, which have never been exist in the history of mankind in widespread aspect.

Morale already needs in legal transformation and protection from politics and politicians, because politics and politicians has polluted moral for a long time, especially after September 11. In this respect, I would like to introduce the notion of **Legal Morality.**

The fact is that almost all post-modern scientists in legal theory subconsciously alienated from substance of created by private persons and/or public bodies legal norms i. e. mutual obligations and reflective to them rights of above mentioned individual participants of different economic, social, cultural, civil and political relations, and flitted to philosophy, anthropology, hermeneutics, sociology, ethnology, economics, and more over in geography and etc. They attempt to analyze the legal notions and categories through the above mentioned spheres of science, while no one are not substantially specialized in appropriate fields, and they made their way to width but not to depth. They disembowel law from law. As a result, in jurisprudence, sorry but, has been established a smell of dampness without perspective of light to the end of dark subway, and societies really remained without just law and human beings without human rights. Societies and human beings remained in “stark naked”.

In the frameworks of positive law human rights have an active and leading role over the obligations of the State. This active and leading role is expressed by civil and political freedoms (*freedom from*) to which correspond passive and reflected to them obligations of the State (*obligation to be passive*). Related to the economic, social and cultural rights an active and leading role of human rights is expressed by the permanent claims to the State (*obligation to be active*).

For me, Positive law and Legal Order have different contents from the point of view of role of human rights in the process of their functioning.

2. The Greatest Mistake of Canonical Jurists is that they Identify Legal Order and Positive Law (Bentham, 1977)

Legal order is the existence order that it is. More concretely, legal order is the established by the private persons and public bodies real order of distribution of mutual obligations and correspondent them rights among them. At the same time, legal order is such order which has legal pretension to be ideal order i. e. positive law. However, positive law is non-existence order that ought to be. More concretely, positive law is the established by the legislator ideal order of distribution of mutual obligations and correspondent to them rights among private persons and public bodies. At the same time, positive law is such ideal order which has legal pretension to be real order i. e. legal order.

Accordingly, it is necessary to differ: statuses of subjects of positive law and statuses of subjects of legal order. State, church, individual, group of individuals and like subjects have two statuses: statuses of subjects of positive law (static status) and statuses of subjects of legal order (dynamic status). Statuses of subjects of positive law are defined by general and stable constitutive rights and obligations despite of their present activities. Statuses of subjects of legal order are defined by concrete and unstable not constitutive rights and obligations volume of which depends on their present activities. Particularly and in other words, the statuses of state, corporation, and family as collective subjects of positive law appropriately based on the constitution, regulations and contracts through distribution of mutual obligations and reflected to them rights among the parties of each subject (static status). Particularly and in other words, the statuses of state, corporation, and family as collective subjects of legal order appropriately based on the established practice of execution of constitution, regulations and contracts through distribution of mutual obligations and reflected to them rights among the parties of subject (dynamic status). In this respect, distinction between “Law in the books” and “Law in the actions” I consider in other sense. “Law in the books” is represented by positive law at any level, simply be the Codes. “Law in the actions” is represented by legal order at any level, simply by the established practice of legal activities of private persons and public persons.

Although, in Tanzania at the time of independence Muslim, Hindu and customary law were officially recognized as plural sources of positive (state) law along with established plural local legal norms, but that was exception than rule. Classical examples are Australia, New Zealand and Canada. Local 'laws' of indigenous people of Australia, New Zealand and Canada are the parts of legal order but not positive (state) law of these countries. That is fact.

Translating into philosophical language, legal order is a 'phenomenological realism', while positive law is a 'phenomenological idealism'. Philosophical point of departure of distinction of legal order and positive law based on the distinction between 'subjective existence and objective existence', using by Husserl, and especially Heidegger notions. But made by them such distinction excludes their interaction in the aspect of mutual and endlessly transformation using by me the method of Hegel. In that sense, Husserl comes to a stop in the middle of road, has remaining their isolation. Remake phenomenological method of **Husserl**, **Heidegger** (Austin, 1954) purifies phenomenology of Husserl from the admixtures of 'objectivism'. At the level of 'existence philosophy' Heidegger has exposed individual-personal character of 'subjective existence', and does not using dialectical method, he fully excludes any possibility of coexistence with 'objective existence'. As a result has erased crisis of 'existence philosophy'.

However, existentialism cannot argue freedom, duty and responsibility, and just because, I have proposed dialectical model of mutual and endlessly transformation of legal order and positive law. As a result, it has been established natural legal order, and artificial positive law. In this sense, positive law is not legal order but potential legal order i. e. legal order establishing of which is the end of State. Legal order is legal reality. After that is becoming apparent transcendental tendency of mutual transformation of legal order and positive law. Such transcendental tendency produces a necessity to elaborate a model of their mutual transformation based on the laws of dialectics. The name of model of mutual transformation of legal order and positive law is Dialectical Jurisprudence.

Controversially, using **dialectical method** I have proposed not only coexistence of 'subjective existence' and 'objective existence', but their mutual transformation. Controversially, using dialectical method at the level of jurisprudence I have proposed mutual transformation of legal order and positive law.

6. I am drawing distinction between legal acts of public bodies and legal acts or norms of conduct of private persons. However, if **Ehrlich** (Hart, 1953) point sought to make was that the "living law" regulates social life is different from the norms for decision applied by courts, I seek to make is that the "living law" envelops both – norms that regulate social life and norms which regulate activities of courts and other public bodies, and these norms have been differentiated in the frameworks of "living law" using Ehrlich's term. The norms which regulate social

life are the established legal practice of activities of private persons. In this sense, I think that Legal Order is "living law". So, the norms which regulate social life and norms which regulate activities of courts and other public bodies (including those disputes that are brought before judicial or other public bodies) have enveloped by legal order, and in their unity represent life of community i.e. economic, social, cultural, civil and political life of human communities. 'Living law' is a framework for the routine structuring of legal relationships among private persons and/or their groups, and private persons and their groups and/or public bodies and among public bodies through the distribution of mutual obligations and reflective to them rights. Its essence is also dispute and litigation, which includes mediation and co-operation.

My position is that the material source of positive law is legal order, which envelops plural forms of economic, social, cultural, civil and political relationships and they may conflict. Legal norms are, thus, regarded as socially fundamental. In addition, legal norms concern certain kinds of transactions which I described as 'legal facts" but not 'facts of the law' i. e. special important topics for legal regulation. However, for me a written law i. e. public positive law and private positive law is two forms of positive law, but practices of judges and what people in the community actually do are two forms of legal order. So, in the frameworks of legal order I make differences between `positive law in action' (public legal order) and `living law in action' (private legal order).

Therefore, positive law is divided into public law and private law, as well as legal order – into public legal order and private legal order. Public law is oriented on the regulation of activity of public bodies, while public legal order is an established practice of activity of public bodies. Private law is oriented on the regulation of activity of private persons, while private legal order is an established practice of activity of private persons. In other words, I am oriented on "State Legal Order" and "Non-State Legal Order" in the frameworks of Legal order. More exactly, positive law is legislative law that is divided into public and private legislation. More exactly, legal order is established practice of activities of executive and judicial bodies on the one side, and established practice of activities of private persons on the other. Summary of Positive Law and Legal Order is Legal System.

The secret of jurisprudence is hidden in two partial structures of the norms of positive law and legal order - hypothesis and dispositions, in which they coexist accordingly logically and really, and are indivisible. Scientific exploration of adequacy of hypothesis and disposition at the level of positive law, and adequacy of hypothesis and disposition at the level of legal order, and cross-sectional adequacy of hypothesis and disposition at the level of positive law and legal order, is point of departure of dialectical jurisprudence towards the harmonization, mutual transformation, spiral and evolutionary development of plural legal order and

single positive law in the context of conflicts prevention and resolution and guarantee of sustainable development of Humankind.

The result of implementation of the main function of positive law is the establishing the definite legal order directly by the public bodies and indirectly by the private persons, appropriately 'Official Legal Order' and 'Unofficial Legal Order'. Legal order in official and unofficial contexts we should consider in whole as unity of two sections of legal order. In philosophical aspect, both are under **GiantGoethe's** formula:***"Im Aufang war die Tat"/ In the beginning was the deed***. (For assess and clarification of legal order in official or unofficial contexts we could be used the official reviews of internal and/or international authoritative bodies and competent organizations). After that we pass to the situation where it begins to act a formula of *"How to Do Things with Words"*. This function undertakes a positive law. After that the process should be repeated spirally.

In any case, the basis of the positive law is legal order in accordance with **Hegel's** law of the negation of the negation, because *"Im Aufang war die Tat"/ In the beginning was the deed.* (Kelsen, 1941, p. 377) Things negate words, words negate things, things negate words, and etc. In this sense, for me the Legal Order is *"Ordo Ordinans"* using slogan of neo-platonic from Georgia - **Rustaveli** (XII c.).

Legal relationship is unity of mutual activities (facts) and pending of mutual activities (norm), and possible subsequent mutual activities (facts) and pending of mutual activities (norm) of participants of such relationship. Mutual activities (facts) and pending of mutual activities (norm), and possible subsequent mutual activities (facts) and pending of mutual activities (norm) of participants of legal relationship creates legal atmosphere, logical disposition to which define them as bearers of mutual obligations and reflected to them rights. In short, unity of mutual activities (facts) and pending of mutual activities (norm) is legal facts. Summary of legal facts i. e. legal relationships contents legal order of society.

Legal order is a core of self-organized normative system of society in the form of established practice of distribution of mutual obligations and reflective to them rights, and in this kind, legal order basically has trend to be free from directly outside encroachment i. e. immanently is in need to be stable and, at the same time, to be in the process of sustainable development. However, in legal order, as well as in any system, gradually gain upper the natural process of entropy which naturally provoke emergence of 'instinct' of self-defense through the seeking and striving for neutral outside power as guarantee of its stability and sustainable development. As one of forms of natural being, and analogically to it human beings, naturally such power have granted to the recognized or elected one human being or group of human beings. In the end, Humankind creates a States, particularly legislative, executive and judicial powers, and sets up for them positive law - a system of laws according to which a state, particularly legislative, executive and judicial powers,

are governed. But as it was found later it was insufficient, because statesmen begun to abuse granted by the nations to them power. In order of eradication of abuse of power inside and/or outside of nation-country after the Second World War civilized nations created UN and adopted Bill of Human Rights. But as it was found later, it was insufficient too, because contrary to the Bill of Human Rights, particularly to the first articles of Covenants of Human Rights concerning of self-determination of the people, "great" nation-states continue directly or indirectly violation of **Bill Human Rights** of the people of "small" nation-states, particularly – the right of self-determination. Therefore, is aroused a special necessity to strengthen national sovereignty of "small" nation-states and, at the same time, prevention of abuse of power inside and/or outside of nation-states despite of their sizes.

Private persons as subjects to the law are **relatively pure** i.e. artificial legal persons because they are bearers recognized by the constitution, laws and International Covenants – **human rights and freedoms** of private persons, and stated by laws of State – **capacity for rights** of private persons to participate with other subjects (private and public subjects) to the law in legal relations in order to possess by mutual obligations and reflected to them rights including right to sue.

Public bodies as subjects to the law are **absolutely pure** i.e. artificial legal persons because they are bearers stated by the constitution, laws and International Covenants on Human Rights and Freedoms – **legal obligations** to protect recognized by the constitution, laws and International Covenants – human rights and freedoms, and stated by laws of State – capacity for rights of private persons to participate with other subjects to the law in legal relations in order to possess by them mutual obligations and reflected to them rights including right to sue.

Related to above-mentioned, some crucial questions have aroused: How should we conceptualize the **'Rule of Human Rights Law'** with regard to global society? What are the unique challenges confronting attempts to develop the 'Rule of Human Rights Law' given the nature of transnational society? Does 'Rule of Human Rights Law' constrain states' power, facilitate it, or entrench it? What new effective supra-national mechanism must be creates that prevent government to establish tyranny and oppression over own people? What are the particular ways in which 'Rule of Human Rights Law' works – are they different in different areas of life of Humankind? What are the accommodations and compromises that 'Rule of Human Rights Law' seeks to make with States' power? Is 'Rule of Human Rights Law' more or less effective as a result? If 'Rule of Human Rights Law' can be seen as a legal system of power in itself, what are the characteristics of this system? What is the constructive power of 'Rule of Human Rights Law' as a general public idea? Can 'Rule of Human Rights Law' be characterized as "Soft Power"? How does such power work? How does 'Rule of Human Rights Law' contend with national cultures and/or regional cultures? How successful have 'Rule of Human

Rights Law' mechanism been in changing local and regional cultures? How does 'Rule of Human Rights Law' situate itself in relation to civilizations? As mediator, decider, authorizer? How can we overcome Euro-centrism, West-centrism, North-Atlantic-centrism, and/or male-centrism through the 'Rule of Human Rights Law'? How 'Rule of Human Rights Law' could be work in Muslim States?

The fact is that 'Rule of law' no more operates effectively in interstates relations. Therefore, as outcome from the above mentioned extreme situation I am putting forward the idea of necessity to replace 'Rule of Law' by 'Rule of Human Rights Law**'**. Implementation of such idea is urgent goal of Humankind.

We have a lot of theories on positive law but we cannot say so on legal order. Moreover, we have no theory which envelops both fields of legal system, compares them, interprets their correlation and creates the model of their harmonization. Such function could be undertakes **dialectical jurisprudence**.

At the level of positive law jurisprudence has statically interpretative i. e. theoretical characteristic. At the level of legal order, jurisprudence has dynamically interpretative i. e. practical characteristic. More clearly, at the first level, jurisprudence interprets what the positive law 'is' i. e. what it demands from the private persons and public bodies theoretically. At the second level, jurisprudence interprets what the legal order 'is' i. e. what it demand from the private persons and public bodies practically. In other words, at the first level, jurisprudence creates a theoretical model of activity of private persons and public bodies, but at the second level, jurisprudence creates a practical model of activity of private persons and public bodies. Thus jurisprudence interprets both situation and creates the model of their harmonization i. e. model of their mutual transformation, spirally and evolutionary development of legal system in whole.

Classical example of public legal order is the system of English law. The system of English law, which based on the precedent (*stare decisis*), do not represents positive law, but legal order of England. However, the system of law of UK, which based on the laws of parliament, is represent positive law, but not legal order of UK, excluding the precedents, for example, of England. Legal order of UK represents the system legal acts i. e. established practice of legal activities of public bodies, including legal acts of the courts i. e. precedents of England.

Comparative analyze of positive laws of different countries traditionally had been made by scientists carefully, but comparative investigation of legal orders of different countries has not been made. Moreover, situation states more complicated after introduction of notion "Legal Pluralism", because really comparative law basically envelops different forms of "Pluralism of Positive Laws" ignoring different forms of **"Pluralism of Legal Orders"** and mutual transformation of positive law and legal order. On the other side, the representatives of sociology of law run to extremes. They idolized so called 'Social Order' and recognized it as

true positive law, and thus ignore even indirect regulatory function of legislation. Therefore, they both basically ignore exclude possibility of not only transformation, but even interaction between positive law and social order.

Each positive law of nation-states is monistic but out of nation-states it seems that positive law pluralistic. For example: European Union Law, Laws of Developing Countries of Africa, Laws of Countries of Council of Europe, Laws of Continental European Countries, Laws of Anglo-American Countries, Laws of Central and South American Countries, Laws of Islam Countries, Laws of Far-East Countries, European Convention of Human Rights, American Convention of Human Rights, International Law, Transnational Humanitarian Law.

However, European Union Law, Laws of Developing Countries of Africa, Laws of Countries of Council of Europe, Laws of Continental European Countries, Laws of Anglo-American Countries, Laws of Central and South American Countries, Laws of Islam Countries, Laws of Far-East Countries, European Convention of Human Rights, American Convention of Human Rights, International Law, Transnational Humanitarian Law are monistic in appropriate spaces. On the contrary, legal order i. e. established legal practice of activities of private persons and public bodies are basically pluralistic in the frameworks of abovementioned spaces of single positive laws.

So, Western macro and micro models of comparative law are long ago exhausted its energy and have transformed into schematic, closed and non-dynamic theory, and because of that should be replaced by non-schematic, open and dynamic legal theory, which could be take into consideration richness and diversity of legal reality. Practically, contemporary macro and micro models of comparative law are a result of comparison of positive laws of countries or group of countries ignoring legal reality i. e. legal orders at the International, Regional, National and Local levels. Positive law of each country is only one side of medal, while a reverse side of medal is legal order. Both sides construct a ‘medal’ in whole.

In short, contemporary jurisprudence is not being adequately performed for comparative legal studies. So, the time is ripe for substantially radical rethinking.

We think that each legal system is a summary of legal order and positive law. Comparison of legal systems should be includes: firstly, comparison of positive law and legal order inside legal system of each country; secondly, elaboration of model of mutual transformation, spiral and evolutionary development positive law and legal order inside legal system of each country; thirdly, comparison of legal systems of countries or group of countries including comparison of positive laws and legal orders; fourthly, elaboration of model of mutual transformation, spiral and evolutionary development legal systems of countries or group of countries including comparison of positive laws and legal orders; sixthly, analyze of World Legal System i. e. World Positive Law and World Legal Order as a result of

elaboration of model of mutual transformation, spiral and evolutionary development legal systems of countries or group of countries; seventhly, comparison of World Positive Law and World Legal Order; and finally elaboration of **Peaceful Model** of mutual transformation, spiral and evolutionary development World Positive Law and World Legal Order.

The comparative approach to the legal order helps to highlight world outlook bases of the legal reason**.** It pushes Humankind from the closed cyclic position to the spiral-evolutionary stage. Moreover, that is a New Variation of Theory of Legal Order based on the comparison of the legal orders of at all levels through the lens of Bill of Human Rights. Concerning Human Rights the name of this theory is: "Anthropology of Legal System". In order of support this theory it is necessary to strengthen the European house and the distribution of Democracy in Post-Soviet and developing countries, and whole in the world.

Therefore, I am putting forward **a unparalleled comparative legal theory**, which proposes model that can help to resolve the traditional problem of confrontation between *"sein"* ("to be") and *"sollen"* ("ought to be") through the theoretical substantiation of relative equality of positive law and legal order, and then through the production of practical mechanism of their mutual transformation, spiral and evolutionary development as the guarantee of conflicts prevention and peacefully resolution at all levels.

My legal theory is bringing to light Dialectical Interaction between Single Positive Law and Plural Legal Order, and **Dialectical Interaction between Comparative Positive Law and Comparative Legal Order** at the national, international and global levels. Dialectical Interaction between Single Positive Law and Plural Legal Order and between Comparative Positive Law and Comparative Legal Order means the harmonization, mutual transition, spiral and evolutionary development of positive law and legal order, which is also expressed inside and outside the system of law in relation to legal environment, towards the optimization of the any legal system. Such system is under permanent self-organization, self-reproduction and self-catalysis, and is receiving feedback and exchanging legal information with its environment it may move and develop toward decreasing entropy.

Fundament of each Nation-State is a civil society that represents a system of established practice of social relations among individuals and/or their groups. This system is functioning in normative form i. e. in the form of distribution of mutual obligations and reflected to them rights among individuals and/or their groups. Such fundament has been served by the small group of the people that are united in legislative, executive and judicial bodies i. e. in State. That serve bodies are legally ensured of peace, security, social maintenance and sustainable development of civil society. As result, it is established legal order as summary of individuals and/or their groups and public bodies. Out of legal order located 'pure' positive law by

which is indirectly governed activities of individuals and/or their groups and directly – activities of public bodies concerning distribution of mutual obligations and reflected to them rights among them. Legal Order and Positive Law consist of Legal System of Nation-State.

In distinction of Lock, any natural state for me is not anarchy but the state that has its own order, and this order has its own legal form: parties of such order are acting in accordance of distribution by them mutual obligations and reflected to them rights, and in summary create established practice of mutual obligations and reflected to them rights i. e. legal order. At the same time, as well as the peoples are living in the frameworks of Stately-organized society, established practice of mutual obligations and reflected to them rights i. e. legal order, such legal order is not 'pure' legal order because participants of legal relations in the process of satisfaction of their different interests are forced to be in contact with public bodies that are under the regulation of norms of positive law. As result, at the established practice of mutual obligations and reflected to them rights have been sub-scaled norms of positive law (especially, norms of administrative law). As result, in the frameworks of legal order partially has been established dialectical coexistence and interaction of norms of mutual obligations and reflected to them rights of private persons and norms of positive law 'in actions' side by side with other independent norms of legal order that consist a system of legal order in whole.

At the same time, legal order has the power of authority, while positive law – the authority of power. However, the deeply roots of not only private positive law but public positive law in 'action' are in the wombs of Legal Order. Legal order as summary of legal facts causally gives rise to positive law, but positive law causally is not gives raise public positive law.

Legal life of society is an objective process of dialectical transformation of legal reality (legal order) into legal possibility (positive law), and legal possibility (positive law) into legal reality (legal order). In other words, legal life of society is an objective process of dialectically mutual transformation of legal reality (legal order) and legal possibility (positive law), because motive force of such processes are the objective **wills** of participants of legal relations in kind of private persons (individuals and their groups) and public (legislative, executive and judicial) bodies.

At the same time, legal life of society is a subjective process of dialectical transformation of legal reality (legal order) into legal possibility (positive law), and legal possibility (positive law) into legal reality (legal order). In other words, legal life of society is a subjective process of dialectically mutual transformation of legal reality (legal order) and legal possibility (positive law), because motive force of such processes are the subjective **wills** of participants of legal relations in kind of private persons (individuals and their groups) and public (legislative, executive and

judicial) bodies. 'Having translation' into philosophical language, dialectically mutual transformation of legal reality and legal possibility (positive law) represents the mutual transformation of 'phenomenological realism' (legal order) and 'phenomenological idealism' (positive law).

In summary, legal order is accumulated energy that has tendency to be transformed into content of positive law by the legislator. In positive law is accumulated energy that has tendency to be transformed into content of legal order by the private persons and public bodies. However, will or not will mutually transformed both energies generally depends on economic, social, political and cultural i. e. meta-legal factors. At the same time, priority should be given to legal order than to positive law, because stable and effective legal system could be guaranteed in situation when legislator adequately transformed above mentioned factors, of course, taking into account the standards of Human Rights.

Ignorance of priority legal order over positive law means ignorance of leading role of human being in sustainable development of society in whole including positive law because in the frameworks of positive law human being has been wholly absorbed in abstract *sollsein*, while human being is leading figure in practical process of mutual transformation of legal order and positive law.

I differentiate functions of jurisprudence and dialectical jurisprudence.

Jurisprudence studies: (1) Legal facts and legal rules of the norms of legal order and positive law; (2) Rational interaction of legal facts and legal rules of the norms inside of legal order of each country, and irrational interaction of legal facts and legal rules of the norms inside of positive law of each country; (3) Legal mechanism of mutual transformation of the norms of legal order and positive law of each country.

Dialectical jurisprudence: (1) Compares legal orders inside the legal system of each country, and compares legal orders of different countries and positive laws of different countries; (2) Elaborates the legal model of mechanism of mutual transformation of legal order and positive law inside and outside of legal systems from the point of view of their spirally and evolutionary development in accordance with the legal principles and norms of the Bill of Human Rights.

Transformation of positive law into legal order is not causal-effectual connection because connection between them intermediated by psychical motivation of private persons and by legal wills of public bodies, and also by the objectively established legal practice of distribution of mutual obligations and reflective to them rights of participants of legal relations. These phenomena are moving forces intersperse in evolutionary development and mutual transformation of legal order and positive law, and, to the end, in legal system in whole. In philosophical sense, this process might be describes as dialectical unity of psychic and logic at rational level i. e. legal order, and at irrational level i. e. positive law, and, to the end, at the level of

mutual transformation of rationality and irrationality. However, in this process legal order has always prevailed over positive law because legal order as part of social life is largest and deepest one.

Dialectical jurisprudence has four functions: a) **to censor** how participants of legal relations justly distributing mutual obligations and reflected to them rights in space of legal order (*seinregel*); b) **to censor** how legislator justly distributing mutual obligations and reflected to them rights among the participants of legal relations in space of positive law (*sollenregel*); c) **To censor** how justly observing the participants of legal relations distributed mutual obligations and reflected to them rights at the junction of legal order and positive law *(sollseineregel)*; d) **to suggest** justly censorial legal (material and procedural) model of mutual transformation, spirally and evolutionary development of legal order and positive law.

So, dialectical Jurisprudence studies the modern problems of legal theory, philosophy and sociology of law at the level of junction of positive law and legal order related to their mutual transformation, spirally and evolutionary development based on the comparison of positive laws and legal orders inside and outside of nation-states.

If we look over a contemporary scientific works concerning notion of **justice** we discover that its content is very diversely and often contradictory. As well known, justice defined in following terms: Justice as harmony, Justice as divine command, Justice as natural law, Justice as human creation, Justice as trickery, Justice as mutual agreement, Justice as a subordinate value, Justice as reconciliation of liberty and equality, Justice as social and economic equalities, Justice as basic liberties of citizens, Justice as Fairness, Commutative justice, Political Justice, Distributive Justice, Organizational Justice, Restorative Justice, Retributive Justice, Social Justice, Spatial Justice, Social Contract Doctrine of Justice, Criminal Justice, Global Justice, Injustice, Just war, Just-world, Justice in economics. It is a nightmare.

Before the exploration of category of justice it is necessary to distinguish civil and political freedoms, and economic and social rights in the aspect of category of equality and inequality. Civil and political freedoms are unconditional rights. Economic and social rights are capacity for rights. All of them are equal rights that equally belong to all human beings. This is a space of supper positive law. Civil and political freedoms (direct rights) and economic and social rights (capacity for rights) should be recognized and guaranteed by the State in the process of their free realization by the individuals. In this sense, civil and political freedoms and capacity for rights are public rights to the States. After realization of civil, political freedoms (direct rights) and economic and social rights (capacity for rights) each human being is possessed of unequal volumes of concrete rights. This is a space of supper legal order.

Therefore, it is necessary to differentiate general and equal status of human being at the level of positive law, and concrete and unequal status of human being at the level of legal order.

The volume of civil and political freedoms and volume of capacity for rights as well as volumes of concrete rights depend on the quality of the ability of people to fight for rights which includes fight for just law. **"**To make just law makes a dry tree green", as **Shota Rustaveli** - famous Georgian poet-philosopher of the XII Century and one of the founders of Neo-Platonism – has proclaimed. More clearly: "Making just law makes a stagnant society evolutionary". On the contrary, "Making unjust law makes a green tree dry". More clearly: "Making unjust law makes any society - stagnant."

Reaching of just law is possible if decision-makers observe general principles of law, such as due process of law, particularly: reasonability, rationality, proportionality, efficiency, fairness, equality, nondiscrimination, impartiality, '*detonrnement de pouvoir/ misuse of power*, zero discretionary power, adequacy of means to end, '*rebus sic stantibus clause'*, good faith, confidence binding, security, stability, to act with diligence, prudence attention, listen to others before making decision, not to deceive or mislead others.

As conclusion, I would like to underline following. Not justice should be based on positive law but positive law – on justice. Not religion should be based on justice but justice – on religion. Not human rights should be based on justice, but justice – on human rights.

If we sincerely want to solve the global **environmental crisis**, moreover – save the life on the Planet, we must make a revolutionary break and establish new, Earth-amenable legal and social institutions oriented on **daylight-power generation**. Actually it means a global substitution of very expensive and dangerous exploitation of Earth's un-renewable resources by using at the beginning of inexpensive and safety Day-light, including Solar-Wind energy as a stable guarantee of the sustainable development of humankind. All above mentioned bringing them in mutual transformation should be spirally, evolutionary and endlessly process of civilization. This will certainly necessitates a fundamental change in philosophy, religion, beliefs, norms, values and lifestyle for many people (Kelsen, 1967)based on Zen-Buddhism and the doctrine of **Saint Francesco D' Assisi**, find common propositions in fundamental religious systems and act in concert towards the creation of new and united **ENVIRONMENTAL RELIGION**, because the **God was, is and will be one and unique!**

Theoretically weakness of declarative ethical norms and call for a "basic change of values" against real politics of permanent members of Security Council of UN decisively claims to transform ethical norms into regulative and protective legal norms based on third generation of Human Rights and formation of new sub-

discipline of philosophy. Practically, formation of world judiciary system in order to protect environment is decisive claim that we have faced today.

3. My Generally Philosophical Conclusion - in Hierarchic Model of Dialectics

Universe is normatively rhythmical and moderately broadening system. Particularly, Universe is such normatively rhythmical natural system that envelops **cyclical** process of deducing of 'ought' from 'is' and 'is' from 'ought'. Particularly, Universe is such moderately broadening system that envelops **cyclical** process of mutual transformation of 'is' and 'ought'. These processes dialectically interacted. Normatively rhythmical and moderately broadening of interactive processes could be mathematically formulated.

Human society analogically, but not identically (non-causally), is normatively rhythmical and moderately broadening social system. Particularly, human society is such normatively rhythmical system that envelops **spiral** process of deducing of 'ought' from 'is' and 'is' from 'ought'. Particularly, human society is such moderately broadening system that envelops **spiral** process of mutual transformation of 'is' and 'ought'. These processes dialectically interacted. Normatively rhythmical and moderately broadening interactively processes could be mathematically formulated. Mathematically formulated normatively rhythmical and moderately broadening of interactive processes are precondition of wisdom, justice and stability.

Legal system analogically, but not identically (non-causally), is normatively rhythmical and moderately broadening legal system. Particularly, legal system is such normatively rhythmical system that envelops **spiral** process of deducing of 'ought' from 'is' and 'is' from 'ought'. Particularly, legal system is such moderately broadening system that envelops **spiral** process of mutual transformation of 'is' and 'ought'. These processes dialectically interacted. Normatively rhythmical and moderately broadening interactively processes could be mathematically formulated. Mathematically formulated legally rhythmical and moderately broadening of interactive processes are precondition of establishing Rule of Human Rights Law in the World. (Merkel, 1913)

Summarizing abovementioned, I would like apologetically say that I think that this paper was ready to be published, not only because it is near discovery in Humanitarian and Social Sciences, but rather because it is time we heard more opinions and experiences, and because it is time for shearing reflections in a broader environment of contemporary World at the junction of local, national, regional and global problems of Humankind.

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