Vlado KAMBOVSKI*

CULTURE OF *IUS NATURALE* AND CHALLENGES OF POST-INDUSTRIAL SOCIETY

INTRODUCTORY REMARKS

The contemporary law and its future occupies the great attention of legal thinkers, philosophers and sociologists. We live in a time of hyperinflation of legal norms and legal institutionalization, and the conception of modern society and the state is supported on the idea of the rule of law. This implies the conclusion that their contemporary images are under great influence of the culture of law. The question arises — what are its roots and how it relates to the challenges of modern society.

THIS THESIS REQUIRES EXAMINING SEVERAL ASPECTS OF THE DEVELOPMENT OF CONTEMPORARY CULTURE OF LAW

1. CULTURE OF LAW IN A GENERAL CULTURAL CONTEXT

The discourse on the culture of law, especially natural law, imposes a demand for the prior categorical determinations of the concept of culture, and its normative aspect of embracing not only the norms of a different nature (law, morality, custom), but also the tradition and attachment to the traditions, beliefs and artistic, creative heritage of a particular society.

Taking into consideration the problems of establishing a global cultural paradigm, above the consensus on cultural diversity, we return to the question of the culture of law, which is, undoubtedly, a cultural and civilization

* Macedonian Academy of Sciences and Arts.

trait. Is and to what extent is the law related to culture, is there a relationship of interaction between law and culture? Finally, if there is no universal cultural and moral corpus of values, can and under what conditions can a universal paradigm of law be established?

In social sciences, three starting points are distinguished in the relationship between law and culture: that culture is regarded as an independent variable that explains variations in legal systems; to view the law as an independent variable that explains culture; or that the right is considered a culture, or its essential part.

The term "legal culture" relates to American historian Friedman, who identifies three components of the legal system: the social forces that create the law, the law itself, and the influence of the law on social relations. Legal culture refers to customs, attitudes, and ways of thinking, which influence the relationship of social structures according to the law. According to *Friedman*, legal culture is a special component of the legal system in addition to the legal structure (institutions and processes within an institutional system — judiciary, etc.) and legal reality (laws and norms applied by institutions). Legal culture is part of the general culture — customs, opinions, etc. which "tie the social power to the law or distract them." Each individual has an individual legal culture, as well as a general culture, but as a member of the social community shares both general opinions and attitudes to the law.

On the natural link between culture and law, the German professor of law, *Radbruch,* established his own system of philosophy of law, such as the teaching of the correct law, understood as a cultural phenomenon which is governed by the idea of justice. According to him, the leading idea of law is justice, while legal reality is a cultural phenomenon that refers to justice. This trialism — idea, reality, culture — turns legal philosophy into a cultural philosophy of law. The law is a cultural phenomenon, the purpose of which is to serve the legal value, the idea of the law that precedes the positive law and is reduced to the idea of justice. Other German authors (*Kaufmann, Lampe, Maihofer, Lampe*, etc.) on the same idea of the natural connection between law and culture develop learning about the philosophy of law as the theory of legal anthropology.

On these issues, we can carry out the next conclusion: there is no culture of law without law, but there may be a law without culture. This duality reflects, in fact, the relationship between correct law and positive law, or between the idea of law (as it should be) and positive laws. The law without culture is a non-cultural law, without human content, it is legalization of ordinary violence and coercion, characteristic for totalitarian systems.

2. MEDITERRANEAN CULTURE OF LAW AND ITS CONTRIBUTION TO THE WORLD CULTURAL HERITAGE

The Mediterranean, as a historical and cultural region that has provided an invaluable contribution to the world's cultural heritage, is the first and most powerful source of contemporary Western culture of law in general and the background on which a developed and developed continental (Roman) legal family was formed. As a general syntagma, the notion of a Mediterranean culture of law unites time and space associated with interdependent, very complex cultural influences. Of the many traditions and legends that originated in the Mediterranean Sea, along the Mediterranean Sea and their background (Italy, the Balkan Peninsula, Asia Minor, North Africa, the Iberian Peninsula), the most unforgivable explanation of the peculiarities of the Mediterranean culture and its enormous spiritual energy is contained in the Bible the legends of the Tower of Babylon (Book of Genesis, chapter 11): "All the earth had one tongue and the same words. But as the men moved from the east, they came to a valley in the land of Sennaar, and it was here... Then they said, Let us build a city and a tower with its top to the heavens! Let's get ourselves a name, so that we do not spray on our soil! The Lord descended to see the city and tower, built by the sons of man. The Lord said, 'They really are one nation, with one tongue for all!" This is just the beginning of their endeavors. Now they will not be impatient to do anything. Let's go down and tongue confuse their tongue, not to understand one another's language. So the Lord has given them race from all over his land, and they have not built the city.'"

In interpreting this biblical legend, it is less important to explain the intentions of God when he collapsed a tower: did he want to stand in the path of human wickedness, pride, and aspiration to reach the heavens, or deflected the tongues of Adam's descendants to dwell on them to the entire Mediterranean area, considering that they are sufficiently prepared to build large cities and towers ("Now they will not be unfeasible whatever they thought to do"). The key to the explanation is the emergence of the multitude and the richness of plurality, the differences of languages and cultures that, in mutual contact, encourage the pursuit of perfection. The basic characteristics of the Mediterranean culture, from its beginning to the present, is precisely the creation of new and ever-increasing values in the infinite cultural game of different nations that speak different languages, with special historical experiences, traditions, forms of creativity, religions and other specialties. The Tower of Babel is created in the Mediterranean not on earth but on spiritual and cultural foundations, thus circumventing the threat of

God to the intention of creating a monolingual (mono-cultural) empire on earth's foundations.

The history of law and legal thought in the Mediterranean area provide the basis for the conclusion that without the Mediterranean culture of law, developed for centuries, there could be no present-day continental law. Several sequences from the philosophy and legal thought confirm this claim. In the Mediterranean, the first western philosophical and legal tradition was born, which experienced its peak in the time of Antiquity through the philosophical and legal views of *Socrates, Plato* and *Aristotle,* developed in their historical and cultural context of the ancient polis where every free man has the status of a citizen (polites). The Mediterranean culture of law gets a combination of classical antique thoughts and universalist ideas stating its concrete forms and contents, establishing the tradition of continental law by the emergence and development of Roman law and Roman legal science.

The crowning development of Roman legal culture, positive law, based on the idea of jusnaturalism, is the adoption of the most famous codification of law, a book that to this day is considered to be the "legal Bible" — Corpus Juris Civilis of Emperor of the Eastern Roman Empire, *Justinianus Primus*, formed from 529–534 years. Corpus Juris Civilis has made a strong impact not only on the territory of Byzantium, which, in addition by adopting new laws, continued with its application. For example, Byzantine law was accepted by the Slavic people who conquered part of its territory or were in contact with it. The earliest Slavs legal code of the "Law on the trial of people" of the 9th Century, which is supposed to be the work of *St. Methodius*, the administrator of the "Slavs principality" in the Strumica-Bregalnica region, was created as a reception and modification of the Byzantine Eclogy; The *Dushan Code* from 1349–1354 was created as a combination of Sintagma of *Matej Vlastar* from 1335 and other Byzantine regulations and customary rules; Roman and Byzantine law have affected the medieval statutes of the Dalmatian and other cities along the coast of the Adriatic Sea.

The intense reception of Roman law began in the Middle Ages in Western Europe for the purpose of finding regulations that, at the end of the feudal society, was necessary to regulate increasingly dynamic market relations on the eve of the new capitalist society. CJC and other sources of Roman law served as an inspiration and a model for the preparation of the most influential codification that begins the modern era of law — the Code civil of *Napoleon* since 1804. The whole series of civil codes of European states during the nineteenth century took many decisions of the Code, including the General Property Code for Montenegro from 1888, whose author

Valtazar Bogišić explicitly invokes *Paulus* and other prominent Roman lawyers. For all these reasons, Roman law can be regarded as the basis of the Western legal tradition.

3. RATIONAL JUSNATURALISM AS A NEW CULTURE OF LAW

In the eve of the new historical epoch of Humanism, Renaissance and Reformation (XV–XVI century), a reaction to the dominance of the church and its extreme dogmatic views is rationalistic philosophy, which requires that man be placed at the highest pedestal of society as a source, and object of civilization. The main preoccupation of humanistic thought inspired by antiquity is the notion of natural and universal law. The theological-dogmatic conception of divine law as *ius naturalis* gives way to its secular-philosophical understanding. A special contribution to such a "Copernican reversal" had the *Grotius* School of Natural Law. Its historical context is the creation in Europe of powerful states and their expansion in overseas colonies, the emergence of the early elements of a capitalist society and the emergence and development of natural sciences. Human activity, human reason, free will of the individual, are seen as proven phenomena of human liberation from deist determination or dependence on nature. As much as it is under the influence of God's will, the individual has the ability to create thought constructions, define general ideas and principles and, from all this, perform norms of positive law. Together with *Pufendorf* and *Locke* (all three Protestants), *Grotius* regards natural law as a constant value system with a human and social substrate, identifying its essence with the basic human values: the right to life, equality, freedom, dignity and property become central concepts of natural law learning.

Unlike the overseas colonies of Spain, Portugal and other Mediterranean countries, where the culture of law dominated by the spirit of Justinianism (the imperative conception of law), the English colonists conveyed the ideas of natural law, constitutionalism, national sovereignty, social contract and the division of power into the new homeland — North America. These principles became the political platform for the adoption of the first acts of the American Revolution: Body of Liberties (1641) and Laws and liberties (1648), adopted in Massachusetts, the first Virginia Declaration of Rights, and then the United States Declaration of Independence (1776), whose main author is *Jefferson* and finally the "United States Bill of Rights" (1789), which contains the top ten amendments to the American Constitution (the main author is *Madison*). The liberal principles of natural law that anticipate modern society are proclaimed in Europe whith French

Declaration of the Rights of Man of 1789, under the influence of American documents on human rights. It declares that: "the goal of any political association is to protect the natural and inviolate human rights". The Declaration proclaims four basic rights: freedom, property, security and resistance to oppression.

After a brief enthusiasm with the principles of natural law (liberté, égalité, fraternité), at the very beginning of XIX century, the period of social reality arises with numerous opposites. On the one hand, throughout the XIX century, there is an accelerated development of legal law and its codification (civil and penal codes), inspired by the ideas of natural law. On the other hand, by strengthening the position of national states, there is an increasing tensions over the discovery of new markets or the mastery of existing ones, creating and dividing areas of strategic interests and growing international conflicts. Throughout the 20th century, these contradictions broke out in the Balkan wars and wars between European countries, and especially during the First and Second World War.

The difficult experiences of mass suffering have created solidarity of the people after the Second World War and their determination never to repeat previous bitter historical experiences. The result of that was the adoption of the Universal Declaration of Human Rights of the UN 1948. As a comprehensive document on innate, natural, inalienable and inviolable human rights and freedoms, the Declaration announced the Second Renaissance by the reaffirmation of natural law, and marked the beginning of a new epoch of human dignity as a self-centered, a priori and absolute value and source of natural freedoms and rights. Universal Declaration is the act that finally created the first rational community between the eternal tradition of Mediterranean and Western culture of natural law.

4. SYNTHESIS OF NATURAL AND POSITIVE LAW AGAINST THE CHALLENGES OF POST-INDUSTRIAL SOCIETY

The basic characteristics of the post-industrial society are: economic transition by which the provision of services takes precedence over the production of goods; knowledge becomes an increasingly valuable form of capital; production of ideas is the main path of economic growth; through the process of globalization and computerization developing sciences and technologies on human behavior and informatics.

Based on knowledge, research and scientific and technological development, post-industrial society opens up not only new perspectives for positive law, but also for the theoretical reflection and search for new models that will meet the demands of the new society, without abandoning the

traditional values and the culture of natural law. Today's society changes its identity under the influence of ever more intense use of technology. The culture of law is also changing by using new technologies in creating and implementing the law and its presentation through mass media. The biggest problem for the law is the weakening of the traditional values and the penetration of new values of the modern epoch (money, profit, success at all costs and power).

The culture of natural law, created at the time of the formation of liberal principles at the beginning of the new era (XVIII–XIX century), was suppressed by the great state ideologies that had nationalistic and imperialist foundations. We live in a world where there is no reason. How can such an environment promote, expand and strengthen the culture of natural law, which just calls for rational elements of human existence and human dignity that implies unconditional respect.

Another challenge is the problem of reconciling the culture of imperial (imperative) law, created by the highest legislative authority, and the culture of individualism and natural human freedoms and rights in a new global environment. The global economic and political order fails or is difficult to form a supranational authority of law, with the exception of the UN and regional associations, such as the EU, the SE, leaving the last word to national legislations, and, on the other hand, failing to establish powerful mechanisms for the supranational protection of human freedoms and rights.

The only human and rational counterbalance of the negative by-products of the process of globalization and dispersion of power and decision-making in a post-industrial society is the culture of universal and natural human freedoms and rights, whose strengthening can compensate for the weakening the power of state laws. This postulate requires the establishment of more solid forms of interconnection of the international legal order and national legal systems, through constitutional reforms.

CONCLUSION

In the context of the globalization process, post-industrial society faces challenges of mutual influence, domination or conflicts of various inherited cultural paradigms. Transformation of the post-industrial society can not bypass the requirement to create a new, global culture of law adapted to the technological era, affirmation of common legal values, the rule of law, the harmonization of legal systems based on different legal traditions, and creating real conditions for functioning of the rational community of natural and positive law.

BIBLIOGRAPHY

[1] *American Declaration of Independence: The Want, Will, and Hopes if the People*, In Congress, July 4, 1776, The unanimous Declaration of the thirteen united States of America, online ed.
[2] *Aristotel,* (1970): Nikomahova etika, Beograd (2003): Politika, Beograd
[3] *Avgustin, Avrelij,* (1997): Za državata Božja, Skopje
[4] *Ciceron, Mark Tulliŭ,* (2003): Ob obяzannostяh, Moskva
[5] *Dahlbom, Bo*, (1996): "The New Informatics," Scandinavian Journal of Information Systems: Vol. 8: Iss. 2
[6] *D'Antrev, Alesandro P,* (2001): Prirodno pravo, Podgorica
[7] *Del Vecchio, Giorgio*, (2004): Philosophie du droit, Paris;
[8] *Friedman, Lawrence M*. (1975), THE LEGAL SYSTEM: A SOCIAL SCIENCE PERSPECTIVE, New York
[9] Friedman, Lawrence, M, (1994): Is There a Modern Legal Culture, Ratio Juris, An Internationa Journal od Jurisprudence and Philosophy of law, july
[10] *Hajek, Fridrih A,* (2002): Pravo, zakonodavstvo i sloboda, Podgorica
[11] *Huntington, Samuel P,* (1998): Sukob civilizacija i preustroj svjetskog poretka, Zagreb
[12] *Huntington, Samuel P.*, (1993): *The Clash of Civilizations?*, Foreign Affairs, vol. 72, no. 3
[13] *Igličar, Dr. Albin,* (2008): Pravna kultura kot sestavina pravne države, ZBORNIK ZNANSTVENIH RAZPRAV — LXVIII
[14] *Jeknić, dr. Ranka*, (2007): Sistemske i kulturne razlike: četiri stajališta o individualizmu i kolektivizmu kao dimenzijama kulture, Zbornik radova Pravnog fakulteta u Splitu, God. 44, Broj 1 (84) 119–135
[15] *Locke, John,* (2018): Two Treatises of Government, ed. Thomas Hollis, London: A. Millae et al, 1764 e-book online ed.
[16] *Kambovski, Vlado,* (2010): Filozofija na pravoto, Skopje
[17] *Mautner, Menachem*, (2011): Three Approaches to Law and Culture, 96 Cornell Law Review
[18] *Montesquieu, Charles, (1961): Lettres persanes, De l, esprit des lois, Les philosophes de XVIIIe siecle, Paris*
[19] *Platon,* (1969): Država, Beograd (s. a.): Закони, Скопје
[20] *Radbruh, Gustav,* (2008): Filozofija na pravoto, Skopje
[21] *Ruso, Žan Žak,* (1978): Opštestveniot dogovor, ili načela na državnoto pravo, Skopje
[22] *Saguy, Abigail C, Stuart, Forrest*, (2008): Culture and Law: Beyond a Paradigm od Cause and Effect, The Annals of the American Academy of Political and Social Science, 1, str. 149
[23] *Смит, Адам,* (1997): Богатството на народите, Том I–III, Скопје
[24] *White, Jefferson/ Patterson, Dennis*, (1999) Introduction to the Philosophy of Law, Readings and Cases, New York-Oxford