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SYSTEMATIZATION OF CONSTITUTIONALITY

Vardan Ayvazyan[1]

If we set a task to monitor the world order, the flow of the events both on a global scale and on the domestic level would largely be reminiscent of the chronology of war news, which cover not the national and global welfare gains and development, but rather the conflicts most of the time.

In this regard, the arising conflicts are not prevented or resolved on the plane of the defined legal realm. Instead, an extremely dangerous trend of situational inflammation of the existing conflicts is observed, which is being implemented with the use of forceful decision-making regime inherent of the wartime law. As a striking example of the abovementioned, we may refer to the current crisis in the Korean Peninsula, to the Middle East region, the uncontrolled global migration, the disruption of integration processes and the elimination of the systematic initiatives on the harmonious and consistent development of world community and world order, changes in European Union's challenges (Catalonia, Hungary, Poland), international terrorism, accompanied by recurrences of local organizations and relapses of turning into pseudo-governments (ISIL); an increase in interracial uncontrolled clashes, sanction policy in the economic sphere, which in essence buries the concept of the legal globalism and paralyzes the already existing institutions, such as International Monetary Fund; the right of self-determination within the framework of political coalitions that comes to replace international law; the international and local conflicts; the fall of UN role and authority in solving the humanitarian disasters and cataclysms, and so on. All of these is not yet the complete list of conflictology state on the modern world's map.

[1] Candidate of Legal Sciences, Associate Professor, Head of the Chair of Constitutional Law of the Yerevan State University. E-mail: iravaget@mail.ru

Observing all these through the prism of law (the theory of state and law), one can argue that the world is in a systemic crisis, and the regulation of global processes is in systemic conflict.

Within the scope of the Comprehensive research on the origin of the Systemic Conflics of the Constitutional and Legal regulation, we have published a number of scientific articles, aimed at coordinating the methodological tools within the framework of newly emerging scientific discipline of "Legal Conflict". This article is a logical supplement to thematic analytical blocks of these scientific articles[1].

One of the practical targets of the Legal conflictology is the description of the current state of the world order within the format of the required scientific capacity and analytical equivalence of legal monitoring.

As the world order, as a legal object or object of law, is predetermined at its core by systemic interactions within interstate relations, under the conditions of the Globalization revolution, as an established fact, the use of such terminology aggregates like "Humanity" and "World Community" becomes a top priority.

The work of one of the most original political philosophers of modern Europe "The State" by Anthony de Jasay begins with the following expression: "What would you do if you were a state?" If

[1] ,Принципы конституционализма в экономической системе ПРАВОВОЕ ГОСУДАРСТВО: Теория и практика Выпуск N 1 (47) 2017 (Principles of Constitutionalism in the Economic System. Lawful State: Theory and Practice, issue # 1 (47) 2017), page 167-177; ,Конфликтогенная Природа Принципа Верховенства Права и Генезис Системных Конфликтов Конституционно – Правового Регулирования, Бизнес в законе. Экономико-юридический журнал, Москва, Выпуск №2 2016 (Conflicting Nature of the Principle of Rule of Law and Genesis of Systemic Conflicts of Constitutional Legal Regulation: Business in the law. Economic-legal Journal. Moscow, issue #2 2016), page 120-127, ,Конфликтологическая Природа Несовершенства в Системе Международного Права Пробелы в российском законодательстве, Москва Выпуск №3 2016 г. (Conflicting Nature of Incompleteness in the System of International Law: Problems in the Russian Legislation. Moscow, issue #3 2016) page 242-248.

this question was changed into “What would you do if you were humanity?”, then the answer would be the following postulates, which constitute the system technique of constitutionalism.

- Humanity should responsibly and unambiguously realize that its survival and vital activity cannot be of non-systemic nature and be in an uncontrollable self-shaping mode, and within the framework of global civilized existential system should call to life the collective existence of the global community, acting in conformity with the equivalent effective structures of legal regulation.

In the case of adoption of the above-mentioned postulate, humanity acts as the bearer of the intelligence with immanent legal consciousness, on the basis of which the legal genesis and legal formation process is put into action, in which the legal personality of the international community, as an object of legal fixation within the framework of the existential system, is formed. In this case, the legal metric is bound by the principle of compulsory reasoning, the system, as an objective beginning of substantial basis of any existence, and systematization as a mandatory feature of societal form of existence, which acts as a primary expression of legitimacy, within the framework of constitution. Legitimacy, as a legal criterion, puts into force the constitutionality act, establishing the legal status both of the humanity and the international community as legal entities.

It should be noted that the legal content of Legitimacy lies in its special “Supra-hierarchism” over all other legal entities, as it acts as a “Systemic Censor”, which defines the “Legal Status” of the law with any of its manifestation both in itself (i.e., on a category level, where criteria are required, which define the cases where Law has the right to be Law, and cases where it doesn’t have that right, i.e. the format of how the right should be to have the right to be Law) and in the feature of compliance of legality (as the operational level of legitimacy manifestation) of all legal regulation objects (including

the complex social process and international community).

At the same time it is necessary to underline the category of "Constituition", its meaning as a basic toolkit for law formation and construction material in the field of functional manifestation of the law as a system. And in that sense, the "Constituition" should be viewed not only as an analytical act, but a legal act as well. In this sense, the "Constituition" acts accordingly as a system-and-technology aggregate, which carries out the technological process of system formation in the synthesis of analysis and law (analytical law). Therefore, the "Constituition" is not just a mere fact record.

When viewed on a scale of a separate statehood, this postulate comes into force through the expression of public will. Here the people act as the bearer of the immanent right, confirming the conceptual model of the existential system. This model, on an unequivocal formalism level, fully and presentably describes and explores the value system as a legal fixation object, on the basis of which the operating model of the existential system should be elaborated, applying the legal space, where both the society and the state, being founded by the latter (with the legal fixation of its operational mission and authority), as well as the legal regulation system of complex public processes should be accommodated.

This is the first constitutional act of law formation, resulting in the formation of legal space that regulates the governed existence in the value coordinates system, by incorporating the society therein, thus obtaining juridical legitimacy. Thus, the Hegelian "right and non-rights"[1] threshold is defined, and the occurrence of the content action exposure of the law takes place.

This is the most basic aspect the second postulate is being built upon.

[1] See Георг Вилгельм Фридрих Гегель, Философия права, Академия наук СССР, Институт Философии, издательство "Мысль", Москва, 1990 (Georg Hegel, Philosophy of Law. Academy of Scencies of USSR. Institute of Philosophy. Moscow 1990).

Humanity should have the will and functional capability to build its existential system as a complex technological process, involving the construction of all subsystems, the systemic interaction of which results in ensuring the harmonious and balanced functional existence of the world community both at supragovernmental and supranational, and the intranational and national levels.

The adoption of this postulate means that humanity, by already having the adequate legal consciousness and self consciousness to identify itself as a rational existence (the natural immanent legal personality of the highly organized intelligence bearer), recognizing the necessity and objective nature of its existential governing at the systemic level, as a functional-active originator, creator, undertakes to build an existential system in the format of the legal personality of a functional.

This is the second constitutional act of law formation, in which the legal objects of "Humanity" and "World community", having the constitutional right to life and survival, are already burdened with responsibility for their fate and livelihood as functionals, thereby completing the full act of legal personality. Thus the specialization of law's functional act occurs. In other words, the law ontogenesis takes place as synthesis of rights and responsibilities in the obsolete whole, as a result of which the law formation is practically implemented, as already there is both the law structure and its bearer, in which role the Subject acts. Thus, the system formation acquires a legal nature, an attribute of a legal object, and, respectively, legal content within the framework of system, being created with the structure of commitment, adjustment and control. Also, the system technique acts as a legal object with a content mission of technological implementation of system formation of a functional.

The third constitutional act of law formation is also being considered in such a set, concluding system-and-technology structure

of the law-genesis integrity, puts into effect the operational action space of law, by placing the state as a legal object at the technical procedural level, within the legal framework for the adoption of the basic law.

As a result of such a system technique in the construction of the legal system, constitutional objects that have the highest legal weight in the law and state system formation are emphasized, and the system of normative acts' ranking and introduction is defined, which put into practice the legal regulation of the complex social process within the operational regulation and metric of the constitutional act of law, thus commencing the constitutional and legal regulation at the operational level.

Basically, the law formation system technique is a format, according to which the law-genesis and system formation of legal regulation within the framework of state-building ensure the constitutional integrity of the law validity, by excluding, forbidding and preventing, or at worst, resolving the systemic conflicts in the reasonable and analytical metric of the law legitimacy.

The perception of the legal content of the principle of the rule of law as the main prerequisite for legal state and civil society status assurance, is predetermined within the legal system by legal awareness of not allowing the systemic conflicts at all levels of law enforcement.

Such a methodological approach can be explicitly used in any part of the recursively collective existence form and manifestation ranking, setting the task of defining the system technique of constitutional and legal regulation per each concrete level. Those levels are:

- Humanity
- Civilization
- People

- Nation, nationality
- State conglomerations, from empires to united, federal, programmatic, targeted formations, unitary state formations
- Business conglomerations: from transnational to private entrepreneurs
- Public unions and movements,
- Social formations: with tribal, family, club interests, and etc.,
- A human being, as a bearer of legal personality of private existence, who concludes this ranking of system formation, is being considered the substantial base of the ranking for the above-mentioned collective existence regulation forms.

In this case, it is obvious, that within the framework of the law system or exercise of law the legal space, legal fixation and lawmaking have a nature of interconnection and introduction in accordance with the above-mentioned ranking, in which the person acts as a central legal object.

The legal content in each degree of the collective existence ranking may not be viewed outside the integrity of the Human content constructive, as well as the legal content of a human cannot be restricted by a narrow corridor of legal personality, within the framework of the private existence's law formation.

Without disclosing the content of the legal fixation object the legal fixation cannot be made in the absence of the fixing subject, that is, the essence of the object cannot be absent or uncertain and unequivocal, as the legal fixation must clearly and distinctly ensure the co-mandatory nature of the construction essence selected by the object itself, as a basic truth, successively avoiding the diversity in its legal content through interpretation of the normative constructive (through a law or another sub-legal act).

In this sense, the constitutional system technique of law formation selects in the role of the legal fixation object not the separate episodes of the collective existence ranking, but the entire tree of the collective existence ranking as a partial whole.

In this case, in the conceptual space of law enforcement one more, methodological key problem of navigation is being solved: from the system forming basic object predetermining the substantial level of law-genesis, which is a man, upward to the ranking objects of a collective existence, the highest level of which is considered to be humanity as a legal object, the legal content of which is predetermined by the final synthesis of all objects of the collective existence ranking.

Also, the navigation in the space of law's operational exercise becomes possible, where the downwarding of operational realization of the law practice's operational application is already under way in constitutional and legal regulation mode, i.e., legal regulation of each degree of the collective existence ranking derives from the legal space of the superior object existing in ranking.

In other words, any normative act should have a trajectory deriving from the constitution. Such a system technique allows excluding law system conflicts on the content level through the systematic synchronization of the legislative system, any statutory act of which should reflect the legal content of the complex social processes' implementation within the framework of a person, as a representative of the people, member of a society, a citizen, and a state.

The realization of the principle of a human being existence within the framework of the collective existence must be aimed at ensuring that every person has the right to life. Accordingly, the state has a duty to ensure the citizens' lives' immunity as their basic and primary right. Without such a consciousness, the legal consciousness public institution of legal jurisdiction will be incomplete, with the recession of citizens not perceiving their rights and responsibilities at a conscious level.

Particularly, this aspect is considered to be the causal level for the imperfection and sometimes also for the impossibility of creating

an equivalent system of conflict-free legal regulation. For example, the crisis in the international law system, the operation of the two-level constitution on the supranational, federal levels, and the exercise of the right at the level of autonomy, in accordance with one or another sovereignty model.

At the same time, the methodological approach is selected for the purpose of law as a systemic phenomenon, system and systematics as a substantial base for law-genesis, system technique as the operational capacity of the law system and building the state structure, constitutionality as a legal fixing system, which ensures the systemic integrity of law at all stages of state genesis, phenomenological synthesis of a content nature.

As a consequence of the phenomenological synthesis, the constitutionalism acts as a responsible methodological law formation principle of a state body and the system formation ability of the complex social processes' legal regulation, with the system-and-technology principle of excluding the systemic conflicts in the legal regulation system.

In this case, the constitutionalism acts as a law legitimization system, with its baseline functional content mission and manifestation, through the metric of the law system integrity, the loss of which makes it a non-right.

As it can be seen, any simplification beyond the above-mentioned spectrum in the sense of constitutionality perception will inevitably lead to the complete incapacity of perception of the essence of law and the essence of the constitutionality, in particular, as a result of which the constitutionality will be regarded as a technical act of the constitution adoption, which, as a rule, occurs through copying from other constitutions' texts and editing them within the framework of subjective jurisdiction (as a rule, by unqualified professionals or by non-professionals), which guarantees the deformation relapses in the exercise of the right from the constitutional and legal regulation level to the procedures of a law-

enforcement nature.

The negative answer, that is, the non-acceptance of legal postulate enables the permission of a non-system, as a result of which the construction of a harmonious and balanced existential system does not become possible, or narrows the status of the system formation to the format of the situational arrangements of interests of those world community members, whose positions cannot be neglected from the right of force point of view. Under this arrangement, a systemic conflict of law system formation occurs, in which it is impossible to build a law system that ensures the constitutional principle of the rule of law and under which the substantial tissues of law formation are replaced by the code of conduct that is beyond the legal metric of legitimacy, replacing the legal imperative (the objective nature of constitutional legal legitimacy) by the authoritarian dictate of the decision-making force group (the intrasubject nature of non-legal legitimacy).

Together with the universality and monumentality of the terms “Humanity” and “World community”, from the jurisprudence point of view, which is obliged to consider them as objects of law, those cannot remain in the plane of “intrasubject perception of the states”, and it is evident that they should be formally modeled in the analytical format of the constitutional universal, which defines the content and operational unambiguousity, without which the general perception of the “World community” concept will make the world community itself at least unable to do so. As a result, in the current period, we face the challenge of global systemic conflict at the planetary level. Because the lack of legal self-identification at the constitutional level is supplemented by the dictation of "Superpower” principle, based on a formal collective consensus, which is being acquired by outwardly non-public imposing of the already defined scenario to the world community members, relying on the “Self-Proclaimed Right of Exclusivity”.

In this case, the central problem is the uncertainty of perceiving the “Law System”, “Conventional Right Prevalence” and “Constitutional Right” categories. The problem is that they are not identical at the content level and are incompatible with introduction of the law force in system technique of building the operational system.

The most crucial issue in building a law system is the projection of such a coordinate system where the principle of the rule of law (power of law) is not only considered as possible, but also on the basis of objective analytical formulation it is being fixed at the constitutional level, excluding the dependence of the right manifestation on the geopolitical arrangement of forces aimed at the outlining of the national interests as per subordination ranking.

In a result of such a system technique of legal system the exercise of the right is put into action in the format of active legal personality paradigm. In this case, it is acknowledged that the permission for the state to act as an active actor that pursues its own interests, which are opposed and mutually exclude the model of statehood, based on a political philosophical conception, according to which "the state is a “passive instrument”, which serves exclusively to the interests of society completely.

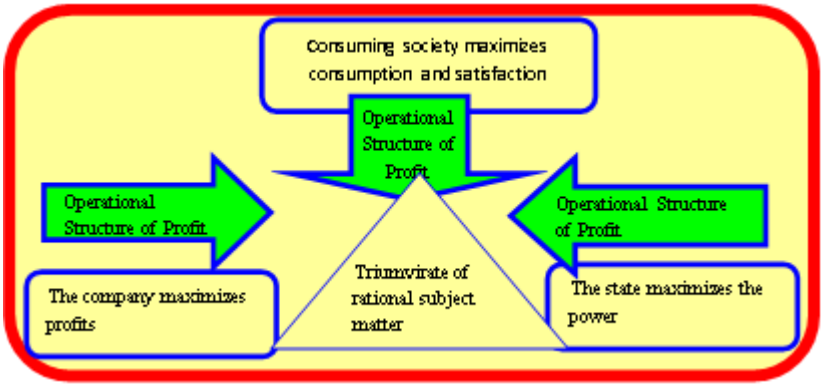
The legal content of these different concepts is different and incompatible, where the constitutional essence and content are different. In the case of an active model of state subjectivity, the constitutional and legal regulation imposes a conceptual conflict of the terms, which eliminates the essence of the law and substitutes it with compulsory rules, replacing the law formation with the rule formation, the obligation institution is being replaced by the coercive application of rules. From the point of view of operational functionality of the state it may be unnoticed as the law exercise level of rights manifestation “has no right” to discuss or define the fairness standards of the justice as functional, due to its executive nature, it is obliged to comply with the rules of "coercive code of conduct".

As a result the systemic conflict of state-emerging looms, which lies in the methodological basis of the statehood, the state-operated operating basis, which is viewed beyond the political philosophy, is strangled by the economists' approach that view the state as a business entity, as a universal constructive, it is only in the case of the state that the latter strives to maximize not the profits but the extent of the authority power, using them to reach their ultimate goal, no matter what those goals are.

Under such a systemic conflict, systemic relapse is formed.

Everything is viewed in the benefit plane: the dysfunction of the state acts as a substitute for the legal essence where the economy does not derive from the statehood ranking structure, as a public structure system, but on the contrary, the state acts as a private case of economic constructive for the benefit. As a result of such ideological definition of rights of the state essence, as an indisputable and primary constitutional object of duty, it is replaced by trade between the society and the state that have different spheres of benefit.

Below we present a schematic constructive for the operational function of right in the «paradigm of rational choice", within the framework of the state's political dynamics.



In such an arrangement, "the main instrument of the state is the seizure of the support of one or another group of loyal people through the redistribution of wealth they have taken from others, in their favor" . . .

In this case, the state is embedded in the internal nature of the political power, having a central goal and a task, to ensure the power system's eternity and continuity by any means under changing circumstances, by determining the way in which the forms of governance develop, rather than the way it is defined in those forms. This is a hidden relapse of the constitutional systemic confrontation, when the constitution is written or altered for a comfortable form of government, but not the contrary, the form of governance and the complex process management system are derived from the constitutional framework of owing (долженствование), which realized the societal system of values through the legal metric of state interests. (Conflictological Nature of Positivism).

An imbalance between the interests of the state and the society can not be solved without the legal metric of legitimacy, which determines and outlines the limits of legal permissiveness (the interests as such) which can, in its turn, be withdrawn from the legal content of the state's interests and the legal content constructive of the public interest.

Absence of an imbalance emergence possibility still does not mean that this imbalance will disappear and will not be, albeit from the legal point of view no legal entity can formally prove it in the absence of the constitutional format, on the basis of which it would be possible to hold constitutional monitoring. This directly relates to the above-mentioned constitutional objects in terms of both the legal content constructive and the law exercise format resulting from it, which gives an opportunity to evaluate the imbalance in practice and to carry out constitutional monitoring in the prevention of conflicts

between the state and society. Because the existence of a conflict is by itself the elimination of the constitutionality, the principle of civil society, and is a violation of the Constitution in one way or another.

Hence, the logical platform of jurisprudence theoretically allows the existence of such a conflict as the "natural state of things" in the dynamics of the state's development and, accordingly, the emergence of new circumstances in the state-society relations. Moreover, all these are not natural and lawful and exclude the constitutionalism, the task of which is to define the invariability of the state system (the constitutional constructive form of value system and governance, which ensures integrity and inviolability of those values' system) and the legal system that ensures the legal fixation and legal support of that statehood already at the operational functionality level.

In this case, the essence of constitutionality becomes vague in proportion to the civilian jurisdiction of the society, sometimes falling to the level of everyday thinking, forming the inability to understand the difference between the legal content and status of the change's constitutional basis and the circumstances, which, by virtue of a change in the configuration of the partnership, require legal fixation within the framework of a complex social process, which requires improvements and additional legal fixation due to new circumstances (the legal content of which should not go beyond the framework of the constitutional basis).

This is a key issue of accountability for the quality of legal analysis that is able to comprehend the essence of the law in general and the legal content of the constitution in order to "respectfully" treat any genesis, society, state, law formation fixation of the statehood institution and any issue relating to the operational drafting of the basis of the state legal personality. The Constitution can not be written under the current situation. The concept of constitutionalism discipline as a legal fixation of statehood cannot be based on the law-creation over the short-term or even mid-term circumstances,

however, the object acquires the status of constitutional law-making only if it has a system-developing functionality, that is to say from the structural point of view at the content and, in particular, its legal content it has not only the long-term functionality nature, but also as a base object, the immanent status of impermissibility, from which the systemic integrity is dependent. In particular, the state has no immanent right of supreme authority, it belongs exclusively to the people-society (the legal content of the society). In this case, the systemic engineering of the law building system, in principle, does not enforce the first and second constitutional acts of law formation, merely covered by adoption of the formal constitutional act in the operational area of law exercising, as a technical procedure.

The central core issue, facing the genetic methodological complex of systemic conflicts from the essence of the right point of view, still remains the factual ability to answer the question related to the most scandalous relapse of the collective existence in the history of humanity: How are the state and society interacting with each other, as a result of which they do not justify one another, throwing each other in a despicable and unworthy state?