APPLICABILITY OF NATURAL NORMATIVE ORDER TO THE ECONOMIC, POLITICAL, SOCIAL AND LEGAL REALITY IN THE LIGHT OF RULE OF HUMAN RIGHTS LAW

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RESUME

This article is a pioneering scientific work at the intersection of natural human sciences, which aim is to ensure sustainable peace and prevent global economic, political, social and legal disorder under the aegis of the Bill of Human Rights.

The proposed theory offers a new mechanism for overcoming existing disorders and preventing new disorders, and in the end – to open the door "to merge into the orders of order" (Shota Rustaveli XII c.).

The author has a noble goal to provoke the colleagues from different disciplines to participate in the building of bridges between the economic, political, social and legal sciences for properly "fitting" humanity in harmony with natural normative order.

The paper serves as a fruitful source of new ideas for students, researchers and professionals working in the field of physics, biology, anthropology, economics, politics, sociology, jurisprudence, or related fields.

Key Words:

Universal Normative Order and Human Normative Order; Human Genetics and Bioethics; Positive Law and Legal Order, Economic Order and Social Disorder; Legal Order and State Law; Justice and Human Rights, Orders of Order.

PAPER

"If man today does not find a New
Way of thinking, Humanity may well
be doomed to extinction." Einstein

1. I differentiate naturally formed Universal normative order from the artificially formed Human normative order: Social normative order, State normative order, and International normative order.

In naturally formed **Universal normative order** unlike the rest of the living world only Human race artificially has made a disorder. Disorder that human race has made in naturally formed Universal normative order required a need to create an artificial model of human behavior and regulatory institutions in order to prevent disorder, and in case of violation of natural normative order and artificial normative models of hu-

man behavior – to punish the offenders. Progressive Humankind did it: progressive Humankind has created artificial normative models of behavior, and regulatory institutions to prevent disorder and in case of violation of artificial normative models of behavior – to punish the offender. As a result of compliance with artificial models of behavior and observation by the regulatory institutions their duties – has formed an artificially **normative social order.**

However, this was not enough: human race continue to make disorder in naturally and artificially formed normative social order. Disorder that the human race has made in naturally and artificially formed normative social order required a need to create a new artificial normative model of behavior and regulatory institutions in order to prevent disorder and in case of violation of natural normative order and artificial normative models of behavior – to punish the offender. Progressive Humankind did it: progressive Humankind has created new artificial normative models of behavior such as positive law, and regulatory legal institutions such as State that represented by the legislative, executive and judicial powers, to which was assigned a legal duty to prevent disorder, and in the case of violation of positive law impose liability on the offender. As a result of compliance with such artificial legal model of behavior has formed an artificially **State normative legal order**.

However, this was not enough: this time the States began and continue to make a disorder in naturally and artificially stacked normative legal order. Disorders that the States make in naturally and artificially stacked normative legal order have required a need to create more efficient artificial legal model for the behavior of States. Progressive Humankind did it: Progressive Humankind created artificial legal model for States' behavior in kind of international law and international governmental organizations in order to prevent disorder in the international relations. They have been passed to the function to prevent disorder outside of the States, and in case of violations to impose liability on the State-offender. As a result of compliance with such artificial legal model of behavior after World War II has formed an artificially **international normative legal order**.

However, many States have proved insufficient because historically and up today day it was clearly found out that the States became primary and massive violators of their duties of Universally Recognized Human Rights and Freedoms. In this sense many States could be understand as negative legal order.

Moreover, in the space of international law has been established comic situation: the fact is that the principles of Human Rights are created by the states as the potential violators of Human Rights in direction of violation of Self-Determination of non-members of SC of UN. Some States mainly act, not only out of respect of law, but also and very often, primarily in their "best" political and geostrategic interests. Recent actions of Russia and US, 50 years occupation Arab territories by Israel, reiterated occupation and annexing of territories of Republic of Georgia since 1801, and now Ukraine by Russia with the help of some recruited internal officials are the "best" examples of such situations. . . Annual reports of Amnesty International and Human Rights Watch clearly indicate on this comic situation. In Asia and Australia region, where meaningful political organization like Council of Europe, Organization of American States, organization of African Union are failing, and there is a conspicuous lack of corresponding human rights conventions and charters. If a state is not fulfilling responsibilities or is actually violating Human Rights, a curious situation arises as to the standing of the other contracting parties in securing from the detracting the observation of its obligations. In this sense, so called – global administrative law represents global danger for humankind. Global administrative law without global government is nonsense, global government without global parliament and global judiciary is global dictatorship of junta of financial blood-suckers.

2. We are speaking about anthropological catastrophe, about the event that some State-person is not formed still as a "human being". Some politically prejudiced scientists had an attempt to embellish the facade

of humankind society with ideological and religious myths to change the vampire's face at least outwardly. But without substantial results."[1] As I have many times underlined, contrary to Human Rights, which always universal for all disregards of race and etc., the positive law practically links to statehood at the international, national and/or local levels. Only Human Being is a natural entity, all others in society are man-made creations, including laws, but not Human Rights, because Human Rights Law is identical to Human Being. Human Being is the creature of the God. The State is not creature of the God".[2]

In this sense, moral priority has never been so important in biology, as today. Scientific discoveries in biology, which became the basis for bioethics as a decisive condition for the existence of the human person, are an important prerequisite for establishing trust between the internationally recognized scientists and the general public. Enhancement of public confidence to the scientific researches is the main task of the bioethics, which is not a space for general-theoretical debates, but the arena that creates a moral basis for legal science to propose adequate legal measures against aggression of State figures in order to prevent violations of Human Rights and Freedoms by them, and for determining their adequate responsibility.

A. Historically, humankind is a witness of positive and negative effects of human genes and their functions. Sustainable development of humankind is needed to pay much more attention to the prevention of the negative impacts of human genes and their functions.

B. The growing scientific achievements in the field of human genetics of individuals and groups has led to a genetic explanation of negative behavior that have been demanded to review the standards in philosophy, ethics, sociology, "politology", and jurisprudence. This fact has led to establish the term: Humanity's Growing "Genetization".

In this regard, it is necessary to answer the question: what are the problems facing today jurisprudence in relation to the negative consequences of human genes and their functions?

Historically, the most negative consequences of human genes and their functions have been preplanned, organized and implemented mass wars, which at its zenith were reached in the twentieth century. Only one – in the twentieth century, humankind has survived two world wars. The twentieth century was "distinguished" by the fact that humanity has witnessed an unprecedented parade of bloody dictators: Lenin, Stalin, Hitler, Franco, Mussolini, Pol Pot, Jang-SAR, Chiang Kai-Shi, Pinochet, and Milosevic.

The first signal of beginning the most negative consequences of human genes and their functions in XXI century was the tragedy of September 11, 2001. Today, more danger comes from the so-called "Islamic State". The terrorist attack in Paris is undoubtedly distressing! But the need of civilized part of mankind is not only to fight against the results of crime, but predominantly to fight against its substantive and original reason that takes beginning since June, 1997… No less if not more dangerous factor is represented by a relic of Soviet KKB – Putin, particularly – his attempt to restore the Empire of Evil. It is clear that even these last factors create an "opportunity" to accelerate the third world war.

Because of the above, naturally the question arises: how to minimize at the beginning the growing trend of negative impacts of human genes and their functions?

Human genes and their functions due to the above-mentioned negative aspects in human history are

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1 *B. Savaneli, 1993, Legal Theory, Manual, Tbilisi, p. 205, in Georgian. See also: B. Savaneli (Pkhaladze), 1969, Correlation between Fundamental Human Rights and Legal Capacity of Citizens, Candidate's Dissertation Essays, ed. Moscow State University, Moscow, p. 4-5, in Russian. At the beginning of my scientific activity in formation of my scientific thought an important role belongs to the outstanding Russian scientists, now deceased* **Professors: Sergey N. Brattus, Ekaterina A. Fleishitsz, and Alexander V. Mitskevitz. Kingdom them the Devine!** *In salvation of this and other problems mentioned bellow made easier my 35 years scientific-pedagogical and 10 years judicial activities.*

2 B. Savaneli, 2003, Jus Cogens Character of International Human Rights Law, Philosophy and Legal Theory for 21st Century, ed. David Agmashenebeli University of Georgia, Tbilisi, in English, p.p. 22-24. (This work is dedicated to the Memory of Giant of Law and International Law – Hans Kelsen). See also: B. Savaneli, 1993, Law, Religion, Ecology, Chapter in the Manual General Theory of Law, p. 307, in Georgian.

directly indicated on the recipient: that is the Statehood! Why?

Civilized Humankind create the State as guarantee of country's stable development and protection of Human Rights and Freedom through the establishment of legal frameworks in the form of constitution and corresponding to it legislation related to the representatives of legislative, executive and judicial powers.

All authoritative explanatory dictionaries analogically define: "The Constitution is a set of legal norms governing the legislative, executive and judicial powers, based on the principle of checks and balances between them".

However, Humankind's permanent problem is that the representatives of legislative, executive and judicial powers cannot fit the legal obligations imposed on them by constitution and corresponding to it legislation.

Where is the exit?

In order to minimize the growing trend of negative impacts of human genes and their functions on the representatives of legislative, executive and judicial powers first of all is necessary to conduct confidential genetic research, testing and diagnostics of already appointed or elected officials and for elected or appointed candidates.

At first glance, conducting confidential genetic research, testing and diagnostics of already appointed or elected officials and for elected or appointed candidates seemed contradict to the "Human Genome and Human Rights Declaration" of UNESCO General Assembly, and "Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine" and Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings".

But let's in one bowl put pre-planned, organized and implemented mass wars, and on the other – individual rights of already appointed or elected officials and for elected or appointed candidates. What bowl outweigh?!...

On the admissibility of conduct confidential genetic research, testing and diagnostics to the general public many unanswered questions still remain to the end.

I will quote some of them.

• Can individual assessment criteria for the genome?

• Can genetic testing based on the classification of the population groups and the government, "undesirable" people as a pretext for restricting the turn?

• Is it possible to become a biogenetic inequality social inequality?

• Genetic research should be accessible to everyone and if not cover the entire population?

• Genetic testing should be compulsory or not?

• How should be guaranteed and provided materials for the confidentiality of genetic testing?

• Should be limited to whether the science of interpreting abnormal genes, or genes from the forward and begin to reap the so-called "responsible" in human behavior?

My position is fully in line with the "Human Genome and Human Rights Declaration" of UNESCO General Assembly, and "Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine" and "Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard

to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings".[3]

3. To the traditional problem of the relationship between **Human Being and the State** added problems associated with anthropogenic activity: it is the activity of man to the nature, relationship between the State and Civil Society, Individual and Human Society.

States and international organizations are powerless to overcome these problems because the majority of them have long mired in the swamp of corruption that has led so-called civilized humanity crisis dominated paradigm of personal gain, rivalry and struggle. Artificial acceleration of the development of mankind is accompanied by a lowering of its level of stability, stability. The evolution of the crisis has become a planetary character, and it involved the natural and social systems.

Academician N. Moiseev, who is specialized in the field of applied mathematics and physics, underlines that advanced mankind have two imperatives – environmental and moral order. Environmental imperative is that you cannot put the economic interests of humanity above environmental. Moral imperative calls for a renewal of morality in accordance with the need of co-evolution of natural and social systems. Analogically the Russian philosopher Nikolai Berdyaev in the first half of XX century, analyzing the future of humanity, diagnosed him: Individualism, the atomization of society, unbridled lust of life, the unlimited growth of population and the needs of unlimited growth, the decline of faith, the weakening of the spiritual life – all this led to the creation of the industrial-capitalist system that has changed the whole character of human life, the whole style of it, severing the rhythm of human life nature.

Legal order, using Lock's term, is the 'natural state' that stands in need of correction from outside 'artificial state' such as positive law. This idea in analogous form firstly and very simply has expressed by the famous Lock in his well-known essay "Two Treaties of Government".

Many distinguished scholars such as E. Fromm, A. Bullock, M. Maccoby, K. Lorenz, A. Maslow, A. Grinsberg and some others, have argued that a Human destructiveness is more or less immanent characteristic of every human being.[4] Humankind just because have stated artificial norms of compulsion for human beings. It has been established natural i.e. objective legal order, and artificial i.e. subjective legal order. In short, Human Being, in different from other biological creatures, has the right to be a special spiritual creature. Violations of symmetry between legal order and positive law civilizations many times have fallen down in anarchy. Clear examples are massive and increasing concussive, aggressive, pitiless and previously organized armed wars which are unknown for the animate world.

Particularly, in the aspect of legal qualification of terrorism in Paris, I would like to underline the following.

In accordance with the paragraph 1 of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers."

In accordance with the paragraph 2 of article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by

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[3] Bidzina Savaneli, Human Genes and their Function Due to the Basic Legal Problem, Advanced Session of Department of Genetics Research Council at the Tbilisi State University: Humankind's Growing "Genetization", Tbilisi, December 23, 2014.

[4] E. Fromm, 1973, The Anatomy of Human Destructiveness, ed. Holt, Rinehart and Winston, New York, pp. 4, 6, 10, 39, 45, 76, 203, 204, 237, 242, 244, 346, 357, 358. A. Bullock, 1962, Hitler: A Study in Tyranny, Harper and Row, New York/Evanston, pp. 14, 23. M. Maccoby, 1972, Emotional Attitudes and Political Choices, J. Politics and Society, Geron-X, Inc., Incorporation, Los Altos, pp. 211, 220, 232. K. Lorenz, 1966, On Aggression, Harcourt, Brace & World, pp. 52, 70. A. Maslow, 1954, Motivation and Personality, Harper & Bros, pp. 68–69. A. Grinsberg, 1964, Back to the Wall, J. Times Literary Supplement, VIII, p.6. P. Kurtz, 1962, Kierkegaard, J. Temata, N 3, New York, p.117.

law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

On the basis of paragraph 2, the terrorist act violates the interests of public safety (may be interest of national security) which contradicted to the prevention of disorder or crime, protection of health or morals, protection of the reputation or rights of others.

Terrorists (and may be instigators of the crime) violated the paragraph 1 of article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law."

At the same time, terrorists acted in violation of the part a) of the paragraph 2 article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms: "Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary in defense of any person from unlawful violence."

The task of my position is to discover common and distinctive elements among positive law and the legal order, and then the elaboration of "consensual laws" and ways of rapprochement through "an intercultural approach to law and order" based on the universal human rights. In broad sense, harmonization, mutual and spiral transformation of single positive law and plural legal order at all levels has a trend to conceive a spirit and sense of law. The aim and goal of such transition is to achieve sustainable development of Humankind". [5]

Therefore, my position is a broadening variation of my theory of legal order based on the comparison of the legal orders of different countries through the lens of Bill of Human Rights. Concerning Human Rights the name of this theory is: "Anthropology of Legal Order". Such dialectical coexistence, synergy harmonization, mutual transition, spiral and evolutionary development could be open the general mechanism of evolution from disorder to order, by which is opening the door "To teach humankind to be able to join the supernal order of orders" (Shota Rustaveli XII c.). It pushes Humankind from the closed cyclic position to the spiral-evolutionary stage. Any other fixed view would simply be non-dynamical and non-dialectical.

4. Centuries-old world legal practice testifies that in large majority of cases a positive law not adequately reflects and regulates a legal order. Reason that is the permanent ignoring by the legislator of clean basic norms (H. Kelsen), eternal sense of law (G. Naneishvili) on all levels.[6]

At the same time, in difference of H. Kelsen and G. Naneishvili, clean basic norms and sense of law I filled by the Universally Recognized Human Rights and Freedoms that are at the greatest level i.e. on the peak of hierarchy of values of Humanity. For this reason principle Rule of Law I have replaced by the principle Rule of Human Rights and Freedoms. 7 Rule of Human Rights and Freedoms as sense of law is the third measuring, comprehension of which Humanity must aim constantly."[8] Thus, sense of law (in my understanding) is a decision factor and condition of smooth and peaceful transition from one valued level of civilization to other. In fact task and aim of positive law is a reduction of entropy processes in the legal order, in language of thermo-

5 B. Savaneli, 1992, Legal Order in Correlation with the Positive Law from the Point of View of Comprehension Sense of Law, Doctoral Dissertation Essays, ed. Tbilisi State University, p. 41, in Georgian and Russian.

6 B. Savaneli, 1992 Legal Order in Correlation with Positive Law from the Point of view of Understanding of Sense of Law: Abstract of Thesis of Dissertation on Competition of Degree of Doctor Legal Sciences, Tbilisi State University, Tbilisi, 71 p.

7 B. Savaneli, 2003, Jus Cogens Character of International Human Rights Law: Philosophy of Law for the 21st Century, Editor "Meridian", Tbilisi, in English, Dedicated to the memory of Hans Kelsen.

8 B. Savaneli, 1990, Comprehension of Sense of Law, Journal "State and Law", Tbilisi, # 8, pp. 15-24.

dynamics is their adequate “cooling-down”, weakening in the conditions of the increasing “heating” of legal order, and for an achievement society organized in the state that produces new norms or makes alteration in the existent norms of positive law.

In my works I am not explicitly oriented on the traditional question of jurisprudence: what law is and how the state practices it, but preferably on these questions from the point of view of great Jhering’s “Der Kampf um’s Recht” (1889) in the sense of struggle for human rights. By the way, Heraclites device was: “Men should fight for their laws as for the walls of their city.” Human Being without Rights is only ‘instrumentum vocale’. However, centuries-old world legal practice testifies that in large majority of cases a positive law not adequately reflects and regulates a legal order. Reason that is the permanent ignoring by the legislator of clean basic norms (H. Kelsen), eternal sense of law (G. Naneishvili) on all levels.[9]

As I have many times underlined, contrary to Human Rights, which always universal for all disregards of race and etc., the positive law practically links to statehood at the international, national and/or local levels. Only Human Being is a natural entity, all others in society are man-made creations, including laws, but not Human Rights, because Human Rights Law is identical to Human Being. Only one reality is a Human Being and other creatures of God. The State is not creature of God”. [10] Human being as the subject of positive law basically has the rights before the State and other subjects of positive law, and on the contrary, the State and other subjects of positive law have the obligations before the human being as the subject of positive law. Human being as the subject of legal order basically has the obligations before the State and other subjects of legal order, and on the contrary, the State and other subjects of legal order have the rights before the human being as the subject of legal order. So, obligations of the State and other subjects of positive law before the subject of positive law are the reflection of rights of human being as the subject of positive law. So, the rights of the State and other subjects of legal order before the human being as the subjects of legal order are the reflection of obligations of human being as the subjects of legal order.

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 legal 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.

Each physical person as the subject of positive law basically has the rights to the State and other physical and legal persons, and on the contrary, the State and other physical and legal persons of positive law have the duties to the rights of physical person as a subject of positive law. So, the duties of the State and other physical and legal persons of the positive law are the reflection of human rights of a physical person as the subject of positive law.

Each physical person as the subject of legal order has the duties to the other physical persons of legal order, and on the contrary, but not to the State and other legal persons, and on the contrary, the other physical persons of legal order have the rights to the physical person as the subject of legal order. So, the duties of

[9] B. Savaneli, 1992, Legal Order in Correlation with Positive Law from the Point of view of Understanding of Sense of Law: Abstract of Thesis of Dissertation on Competition of Degree of Doctor Legal Sciences, Tbilisi State University, Tbilisi, 71 p.

[10] B. Savaneli, 2003, Jus Cogens Character of International Human Rights Law, Philosophy and Legal Theory for 21st Century, ed. David Agmashenebeli University of Georgia, Tbilisi, in English, p.p. 22-24. (This work is dedicated to the Memory of Giant of Law and International Law – Hans Kelsen). See also: B. Savaneli, 1993, Law, Religion, Ecology, Chapter in the Manual General Theory of Law, p. 307, in Georgian.

the physical person as the subject of legal order are the reflection of rights of other physical persons of legal order. In human society substantially is reigning natural legal order in which participants of relations naturally distributed mutual obligations and reflected to them rights among them for the satisfactions of their natural economic, social, cultural, political and civil interests. In other words, behaviors of participants of legal order are under the reign of mutual legal obligations and reflected to them rights. Disorder in natural legal order i.e. violation of mutual natural legal obligations is an exception not a rule. For the prevention of disorder in natural legal order i.e. violation of mutual natural legal obligations and reflected to them rights, Humankind artificially creates State bodies and rules of their behaviors i.e. rule of law in the form of material and procedural legal rules.

In this respect, I would like to remind a valuable position of Great Dicey. Dicey argued: "With us every official, from the Prime Minister down to a constable or collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen." [11] Special responsibility each of them needs to be reflected in the score of its liability. At the same time, its unique legal position imposes special obligations towards those who are to suffer harm or loss from its actions. In this sense, a theory of sovereign immunity is inconsistent with a state's obligation under treaties such as Bill of Human Rights and/or European Convention on Human Rights. In 1984, the Committee of Ministers of the Council of Europe urged European States to secure that their laws should ensure reparation for damage caused by the failure of state authorities to act in accordance with the law. [12] The recommendation adopted by the Committee of Ministers of the Council of Europe in 1984 reflects the two bases of liability recognized in most legal systems: fault and injustice to particular persons of having to bear a loss for the whole community. As principle I the Committee of Ministers' Recommendation puts it: "Reparation should be ensured for damage caused by an act due to a failure of public authority to conduct itself in a way which can reasonably be expected from it in law relation to the injured person. Such a failure is presumed in case of transgression of established legal rule." [13] More clearly: "The right to bring an action against a public authority should not be subject to the obligation to act first against its agent." [14]

Therefore, we could be talking about sovereign immunity not of the branches of State but of the individual representatives of these branches i.e. their independence from the public and private persons. Individual representatives of these branches are responsible before the State but not responsible before the other persons. However, the State is responsible before the public and private persons towards those who are to suffer harm or loss from its actions. The freedom to act required of members of parliament leads legal system to grant them immunity from suit for acts in performance of their parliamentary obligations. However, in such consequences the State is ought to liable to pay compensation for less as a result of unconstitutional, more over from unlawfully legislative acts. While executive acts can give rise to liability before the State, acts of individual representatives of executive branch before the other persons - do not. The immunity which arises in relation to such executive acts may protect persons such as the signing of treaties and like this. Domestic courts should challenge the legality of such acts in accordance with the Bill of Human Rights and/or European Convention on Human Rights, and this necessary resolve the question of whether compensation should be paid. The need for independent judiciary explains why the courts enjoy an immunity which excludes any legal remedy for loss or injury caused by the improper or mistaken operation by the judicial system. However, it is now recognized that errors can be made in the administration of justice and that someone may suffer serious injury from such errors, including the loss of liberty. Therefore, compensation is available from the state but not from individual office-holders.

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11 A. Dicey, 1959, The Law of the Constitution, 10th ed., by E.C.S., Wade, London, p. 55.

12 Recommendation No., R (84) 15 on Public Liability, adopted by the Committee of Ministers of the Council of Europe on 18 September 1984, and Explanatory Memorandum, Strasburg, 1985.

13 *Supra n. 7.*

14 *Supra n. 7, principale IV.*

Legislation that creates immunity in respect of certain areas of public liability accompanied by specific schemes of compensation for certain forms of loss and its effect to delimit the need for private insurance. In countries where rights are constitutionally guaranteed, such legislation is likely to be subject to review on constitutional grounds. Immunities are declining and the grounds for obtaining compensation, whether through the courts or like this, are expending. This trend is likely continuing. In particular, the increasing judicial protection of individual rights – whether by national and/or supra-national courts – is likely to enhance the availability of compensation from public authority. In all Western legal systems a distinction is drawn between asking a court to review the validity of an official decision (which is the main function of separate administrative courts, where these exist) and seeking damages for unlawful injury to rights (which is generally within the jurisdiction of the civil courts).

In most legal systems, damages or compensation are not payable solely because an official decision has been quashed for defects of competence or procedure. Where the liability to compensate is based upon fault, a finding of invalidity by a court may not in itself constitute fault for the purposes of compensation. For example, in common law systems, damages are not in general payable for decisions that are ultra vires, unless on the facts the individual can show that a tort has been committed against him by the public authority. Such position is not same in other legal systems. For example, in Belgium and France, illegality in itself constitutes a fault so that the only issues for the court determining the liability claim are matters of causation and damage. In Italy, a similar approach is restricted by the basic rule that liability is dependent upon an infringement of the individual's private rights, and not merely of legitimate interests.

However, in Community law the illegality of a decision is not enough to justify a claim for damages: the individual is required to show an additional factor, for example that the decision is a sufficiently flagrant violation of law protecting individuals or that the decision-making body manifestly and gravely disregarded the limits on its power.

The reasoning may be summarized as follows: as all public activity is assumed to benefit society as a whole, it is normal that citizens must bear the resulting burdens without compensation, but if, in the general interest, the public authorities cause particularly serious damage to certain individuals and to them alone, the result is a burden that does not normally fall on them and which must give rise to compensation; the compensation, borne by society via taxation, restores the equality that has been upset. This idea is not very far from the 'Sonderopfertheorie' of German law, according to which individuals who, by reason of lawful public action, suffer a 'special sacrifice', that is to say damage equivalent to expropriation, and must be granted reparation. Presented in this manner, no-fault Community liability could also be based on property rights, which are protected in the Community legal system as a general principle of law in accordance with the constitutional traditions common to the Member States. It would express the idea that even lawful action by the Community's legislative body cannot have an effect equivalent to expropriation without compensation being granted.

5. The proposed model of the mutual transformation of legal order and positive law has an important **Economic Dimension**. Therefore, I should prove the acceptability of the synergy communication to the sustainable economic development.

Economic development of the industrialized countries has not cyclical (recession, recovery, financial collapse, revival, and again decline, again rebirth, etc.), but spiral character, because it is the form of evolution rather than marking time. Any downturn, growth, financial collapse, revival; again recession, recovery, financial collapse, revival, and etc., in any case will not adequate with the last recession, the rise, financial collapse, revival. Any cycle is associated with artificial division naturally indivisible space at intervals, but the spiral – the eternal space. To claim otherwise is a simplified view of the processes taking place in the world in general and the economy in particular, since it is fundamentally contrary to the laws of dialectics in all areas

of material reality, as well as in the spiritual realm as a transformed reflection of reality.

In economic theory, applied movement of a market economy dominated by the concept and the term "undulating cyclical", which is understood as a universal norm of movement of the market economy, reflecting its unevenness, change wavy-cyclical (evolutionary and revolutionary) forms of economic processes, fluctuations in business activity and market conditions, the alternation of extensive or intensive economic growth. By the way, a feature of the market economy, which manifests itself in the tendency to wavy-cyclical repetition of the crisis and depression, was seen in the first half of the XIX century. (Here we are not talking about intermediate, structural, partial and sectorial crises and depressions).

Under cyclical economists understand and repeat cycle imbalances in the economic system, leading to a reduction of economic activity, recession crisis. Such an understanding of the cyclical repetition of the crisis, in principle, has survived to this day. However, this also leaves and overlooked that in reality occurred are not identical, but similar to match the nature and content of such crises and depressions, and ignoring the state-legal methods of regulation. Even where such neglect was not the case, do not take into account and do not consider that the state-legal methods of regulation were to be "identical" i.e. adequate these crises, not identical to the old methods of state regulation. Here is this essential point and overlooked by most economists today. Even though the trend of economic globalization all the people still lives in the near future will be living within the boundaries of the state-organized society, which should be controlled by adequate "laws", in other words - adequate standards of domestic and interstate on the positive law.

It is natural to it is not about pure state, and state-legal regulation, i.e., on state activities in the field of economics in the legal framework of civil and administrative law, provided that they strict compliance with democratic constitution. Otherwise, we get a crisis that forced to adaption dimensions of social production to the volume of solvent demand of economic entities, as aggravation of the internal contradictions of the economic system and external objective and subjective factors, general overproduction and finally – the profound shock of the entire economic system. Of course, state-legal regulation vulnerable to inflation, which demanded that the governments of developed countries to seek a way out of this situation, but not by abandoning of state regulation of production and means of restructuring of civil and administrative legal forms and methods. Therefore countercyclical public policy has been added - the anti-inflationary. Teaches history lessons led to recognition of the need to introduce a democratic system of state regulation as only a focal point of processes of social production and reproduction.

Therefore, the policy of state regulation of the economic cycle has been reduced to counter the phases of the cycle: in a period of economic contraction government stimulates economic activity by reducing taxes, investment incentives, reduction of interest rates on loans, and in a period of expansion - on the contrary, seeks to restrain economic growth. To this end, the government increases tax rates, reducing government spending, pursuing a policy of "expensive" money, tightening credit conditions and increasing the required reserves of commercial banks.

I take the opposite position to V. Y. Iohin. He writes: "Despite all efforts, the government is not able to overcome the cyclical nature of economic development; it is only able to smooth out cyclical fluctuations in order to maintain economic stability." [15]

In my opinion it is fatalism that is fundamentally contrary to the laws of dialectics: the unity and struggle of opposites, the transition from quantitative to qualitative changes and the negation of the negation, which leads the futility of the rule of law to a fair trial (Rustaveli, XII c.). And finally to the total futility of human efforts to overcome poverty permanent, forever be in bondage shackles and mighty of this world (Marx).

At the same time, we fully agree with extended V. Y. Iohin's methods countercyclical regulation. It is known that in spite of the diversity of points of view on the issue of counter-cyclical regulation, they can be

[15] V. I. Iokhin, *2006,* Anti-cyclical Regulation, Part VIII, Chapter 5, ed. "Economist", M., p. 861 (in Russian).

reduced to two main approaches: the Keynesian and classical. State using Keynesian model countercyclical regulation, phase of the crisis and depression increases government spending, including spending on investment activity, and has a policy of "cheap money". With the rise in order to prevent "overheating" of the economy and thus flatten the peak of the transition from boom to recession uses the same tools, but with the opposite sign, directed compressive folding aggregate demand. Supporters classic or conservative direction, focus their attention on offer. It is about ensuring utilization of existing resources and the creation of conditions for efficient production, refusing to support the low efficiency of production and economic sectors and promoting freedom of market forces.

The whole history of the development of national economies since the emergence of the first crisis of the capitalist economy before the crisis 80s of XX century cannot talk about it unchanged.

Output we see a combination of Keynesian and classical models, in other word a combination of regulation and self-regulation at the level of the Constitution and in strict compliance with it - at the level of administrative and civil law. The combination of Keynesian and classical models is nothing but a spiral pattern spiral promote economic development. Subject to the above parameters, we will not have a wavy-cyclical "update" and recurrence of crises, depression and overcoming them through a spiral-spiral for adequate "renewal" of the laws that development of new and for adequate positive law. Therefore, the applicability of the term "undulating cycling" is possible only in the sense of the dialectical transformation of one cycle to another. A dialectical transformation of one cycle to another is something more than a spiral transformation, i.e., conversion of a spiral. Since the economic relations woven norms of legal order and positive law as they respectively the real and the ideal legal forms, so far, economic relations is spread spiral theory taking into account the second law of thermodynamics. Consequently, the management of wavy-cyclical processes in synergetic dynamics economy nothing more than promotes Spiral Dynamics economy in the mentioned sense, i.e., dialectical understanding and transformation of one cycle to another. Thus, the essential difference between legal order of positive law is that legal order, including the economic order, it is a self-governing system.

6. Based on all foregoing, I am pushing in the foreground final determination of the legal order.

The legal order must be a unity of:

1) The state of observation by the legislative, executive and judicial powers basic human rights and freedoms;

2) The state of observation by the physical and legal persons their mutual rights and obligations, impartial analysis of which allows answering the question: what is prevailed on the individual, local, national, regional, international and global levels – the order or disorder.

Coming from all foregoing and as it applies to the global problems of constantly conflicting Humanity, on an order-paper set the problem of association and collaboration of scientists of natural, social and humanitarian sciences gets up for making of harmonious model of spiral, evolutionary and dialectically mutual transformation of "to be" and "ought to be" through making new legal mechanism of providing and protection of Universally Recognized Human Rights and Freedoms.

Both – Legal Order and Positive Law under the auspice of Universally Recognized Human Rights and Freedoms are permanently acting as **synergy spouse**, mutual transformation of which prevent entropy at the local, national, international, and global levels.

In this sense, Universally Recognized Human Rights and Freedoms are not a "middle" way or may not be compromise, but a third high level alternative, like the apex of a triangle.

7. In order of implementation of synergy model through the Universally Recognized Human Rights and Freedoms there are barriers on the path of collaboration of scientific natural, public and humanitarian sciences. [16]

Enumerated below by Lee Smolin barriers are following: Staggering self-confidence resulting in feeling of possessing a right and belonging to the elite association of experts. Unusually monolithic association with the strong feeling of the consensus buttressed up by arguments or no, and unusual homogeneity of looks on open questions. These looks seem related to existence of outline, in that the ideas of a few leaders dictate the point of view, strategy and direction of development of area. On occasion feeling of equation itself with a group, look like equation on religious religion or political platform. Strong feeling is border between a group and other experts.

Indifference and incuriosity in ideas, opinions and works of experts that are not part of group, and advantage for intermingling only with other members of association.

A. Inclination to interpret certificates optimistic character, to believe in the exaggerated or improper for mutations of results and ignore possibility, that a theory can be not correct. It is related to the tendency to believe that results are faithful, as there is a "wide confidence" in them, even if nobody checked (or even did not see) proof.

B. Absence of ability of understanding of limits to that the research program must contain a risk. (See literature of N 18).

And here is a description of the group thinking, extracted by me from the web-site of University of the State Oregon, sanctified to communication. [17]

The participants of the group thinking see itself part of the reserved group, working against an external group resisting to their aims. Whether you can to say that group is subject to the group thinking, if it:

A. Over-estimates the invulnerability or high moral options?

B. Collectively gives the rationalistic explaining to the decisions that it accepts?

C. Will demonize or stereotype examines external groups and their leaders?

D. Has or not a culture homogeneity when an individual exposes to censorship itself et al so, that the facade of group unanimity is saved?

E. Contains members that undertake obligations to barrier the leader of group by concealment from the leader of information from them or from other members of group? There are career barriers too.

At the same time, un-copious and untiring human instincts will prevent adequate introduction of foregoing model mighty of this world that is presented in the veiled political and economic norms conflicting with naturally legal development of Humanity. Permanent de facto giving of advantage of supremacy of advantageous such norms above supremacy of norms of natural law and natural human rights – was and there is reason of the different from other animal kingdom infamous planning, initiations and organizations of mass wars. For weakening and removal of chronic misbalance introduction of the model offered by me is again needed, but already at global level. In this sense creation of Universal Constitution of Human Rights and Freedoms and strict legal mechanism can become precondition of transformation of UN Organization. Moreover, present state of humanity is a result social inequalities and degradations of environment that consists in manipulation values that objectivized in order that moves forward a prospect and interests of dominant groups. Current status of social inequality and degradation of environment constrained with numbed of educational

[16] For details see: Bidzina Savaneli, Parameters of Transformation of Space and Time in Human Being in the Light of Synergistic Theory, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Vol. 5, No 27, December 2014, pp. 1746-1767.

[17] *http://oregonstate.edu/instruct/theory/grpthink.html.*

systems. However, faith of scientists unreservedly observing the norms of scientific ethics, in existence of universal human nature can provide stimuli necessary for their mutual consent and solidarity. Transformation of contemporary educational systems we must make so that to help people in eradication of principal reasons of global and national problems.

In philosophical sense, the real outcome from abovementioned dangerous situation on the Planet is a Shota Rustaveli's (the famous Georgian poet and philosopher of the XII Century and one of the post founders of Neo-Platonism in West Asia and Caucasus) devise: **'To Make Just Law Makes a Dry Tree Green'**. This device reversely means that "unjust law makes a green tree dry". However, in moral and legal aspect, I just declare that the heat that comes from the human soul as the leading subject of legal order, often irreversibly absorbed by the excessive ambitions of representatives of the three powers of the state.

The terrorist attack in Paris is undoubtedly distressing! However, the need of civilized part of Humankind is not only fight against the results and simple prevention of crimes but predominantly fight in direction of eradication substantive and original reasons of crimes, particularly terrorism.

The obvious fact is that 'Rule of Law' no more operates effectively inside nation-states and in interstates relations. Just 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'**. Let us release Legal Order and Positive Law from the prison of unjust rule of politics through the comprehension of Spirit of Just Law, which must be based on the Pure Idea of Universal Human Rights.

Therefore, I would like to underline that we the people of the world need in New Human Philosophy 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. Particularly, search for new methodology of legal philosophy is very important task to reach the practical understanding and peacefully resolution of the current issues and enrichment of new political paradigms and values in the contemporary world. This self-understanding gives the neutral and balance comprehension and explores of non-conceptual epistemology of dialectical jurisprudence and transformation it in economic, social, cultural, civil and political fields.

Universally Recognized Human Rights and Freedoms should be recognized as a beerier of negative energy in the process of mutual transformation of synergy couple – positive law (law in the books) and legal order (law in the action) – as stable guarantee of establishment of irreversible Justice and World Peace on the Planet.

In this sense, I would like apologetically say that I think that this essay is ready to be published, not only because it is near discovery at the junction of Philosophy, Biology, Anthropology, Sociology and Jurisprudence, but rather because it is time we heard more opinions and experiences, and because it is time for shearing reflections in a broader environment concerning local, national, regional and global problems of Humankind in order **to merge into the Natural Environment.**

Shota Rustaveli's fundamental devise: **"Teach Humankind to be able to merge into the orders of order"**, is possible through the observation of Universally Recognized Economic, Social, Cultural, Civil and Political Rights and Freedoms.

To answer on above-mentioned and many other vital for humanity questions, since 1981 I put forward a proposal to create non-profit scientific international organization uniting scientists of Natural and Human Sciences. [18]

[18] Bidzina Savaneli, 1981, Some Ethical, Social and Legal Problems of Human Genetics, J. "Soviet law", N. 2, pp. 21-32. Bidzina Savaneli, 1983, For the Preservation of Diversity of the Life on the Planet, J. "Soviet Law", N. 6, pp. 51-55. Bidzina Savaneli, 1985, The Role of Economic Sanctions for the Violation of Legislation in the Field of Environment, J. "Soviet law", N. 4, pp. 47-51.

REVIEW

On the Paper of Dr. Ph.D. Professor Bidzina V. Savaneli:
"Synergistic Transformation of Space in Direction of Sustainable Development of Mankind in the Frameworks of Human Rights"

No need to be a rocket scientist to understand that the current process of self-destruction of human civilization becomes irreversible as aggressive anthropogenic impact on the planet with his hand has become too large. Obviously, such an acute crisis of civilization caused due to lack of harmony between the processes of human activity with the evolutionary vector paradigm of life itself in its interaction with the general aspects of the laws of the universe.

In view of the above, it is very important to our readers the proposed paper Bidzina B. Savaneli where affected the fundamental questions of philosophy by definition of humanity's place in the living space of the Universe, as well in human community, trying to learn the way of the harmonious development, based on the interaction of general physical laws of the world order with positive law and legal order, and humanitarian aspects of the evolution of human civilization.

The author, aware of the depth of the topic, said that he "maintained the noble goal: to provoke their colleagues from different disciplines denser engage in the construction of bridges between natural, social and humanitarian sciences to properly "fit" humanity in the harmony of nature."

The author in his paper gives a general analysis of the current state of the philosophical views of physical science in understanding the concepts of space and time. It comes in a very original conclusion that "space is curved spring in which energy flows and circulates helically, and initiated core leading energy is accumulated in the axis, around which particles are spirally turbulence". He further argues that the essence of space is a continuous and spiral process of mutual transformation of energies that has no beginning and no end, and it adds nothing and nothing of it unbroken. Without changing the ratio, the space is constantly irrevocably throbbing narrowed and expanded essence. As a working hypothesis Author is proposed thesis: "In the center of the universe is located a self-governing and initial spiral galaxy."

The author is given as an analysis of the factors and the specific manifestations of time depending on the condition of the space, manifestation of time's mechanisms in biological systems, etc., that lead him to believe the applicability of "Space and Time" to nature, human being and to social relations. In addition, an analysis of interaction of synergetic and entropy leads to analyzing application of synergetic theory to the Wildlife and Human Being also, as well as interaction between legal order and positive law under the auspice of Basic Human Rights and Freedoms as third, leading force. In short, the authors' model of application synergy to Human Being I find a breakthrough.

Despite the fact that the author's some propositions are controversial, but the above and other pioneering areas of his research to make representations to the Court of Scientists without borders, his original work is the key to a whole new world on the junction of all science, in particular – the Laws of Physics of inanimate nature and the human soul, his emotional and mental aspects of life as well as in its public relations.

I am grateful to the author that he has opened me – as the author of the monograph "The concept of the dynamic structure of the atom in the space of potential areas" – a space of common and depth extension of the laws of nature not only in microcosm, but in the life of Humankind.

Professor Bidzina V. Savaneli pointed us the way not in a linear arrangement of the world, assuming its single axis having a center, but on sacred geometry, which serve as the center of the linear configuration of forces forming centers outside these linear formations.

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12/29/2014.