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On Correlation between Politics and Law

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Abstract

Unilateral stance on the correlation between politics and law poses difficulties in analyzing the issue.

The political system gives rise to the legal system which needs the organization of society, formation of appropriate institutions, regulation of certain kind of activity and processes, ensuring of legitimacy of political system. Acting as instrument here is the legal politics.

Conceptually, the idea stems from political considerations; hence, the politics predetermines the law and as a whole, the process proceeds in the form *politics (conceptual) → law-politics (strategic) → law*. Political purposes and tasks of conceptual nature account for the creation of legal system to thus regulate political processes of strategic nature; identify character of law and strategic politics. In identifying political goals through potentialities of political-legal system, the politics seeks to employ existing legal opportunities at the highest possible level.

Acting as subjects determining these borders and range of authorities are, as a rule, social strata and groups that regulate and control directions of political processes. An identical process typical for social sphere is observed at the international level. Active as leading subject, dominant political forces, within the framework of their purposes, rely on the international law as instrument to introduce adequate norms and standards. Also, it is great powers that venture to deviate from existing standards.

Keywords: politics, law, norms, system, power

Paper

Under certain conditions, a question of dominance of politics or law may become a subject of comparison between the legal state and the power based on non-democratic traditions. However, the point is not merely about a level of development of modern political and legal thought but rather the necessity of exploring the history of political thought as fundamental scientific problem. Debates over correlation between politics and law going back to Plato notwithstanding, they are still underway in scientific circles¹. Followers of one trend consider politics to play dominant role, i.e. law is subordinated to politics; others stick to the contrary opinion. In their view, it is laws,

¹ G. Druri. Political Institutions in Terms of Law // Political science: new trends. Trans. from English by M. M. Gurvitz, A. L. Demchuk, T. V. Yakusheva. Ed. By E. B. Shestopal. – M., Veche, 1999 – 816 p.

not political actors that govern processes and institutions in the legal state. Debates are not simple. Thus, opponents of the first view try to argue that the system based on formal and non-formal standards provides no room not only for non-standard conceptions and activities but also for any interest and needs. Under the second point of view, advancement of draft laws, their discussions and adoption process form a part of political subject's scope of interest and activity, following which the related process starts, laws are adopted and the working mechanism is triggered. As is seen, controversies are great and deeply rooted. Our aim is not to involve in disputes but rather identify dominant features either of politics or law, features that unify or separate them, contribute to their mutual conversion and form appropriate framework and dimensions. To our thinking, should we succeed in attaining our goal, the two trends would occupy a fitting place.

The political system engenders the legal system and thus creates necessary conditions for implementation of its goals and objectives, formation of appropriate institutions, regulation of adequate activities and processes, ensuring of lawfulness and legitimacy, official recognition abroad. In cases where the legal system impedes the implementation of goals and objectives of the political system or regime, either political or constitutional crisis arises. Contrariwise, the Constitution meets objectives of the political system, while the political processes tend to develop inconsistently to the objectives set above. That said, some steps are required to ensure inviolability of the Constitution, which, in turn, may provoke internal and external pressures. Also, contradictions of two kinds may arise between political-ideological goals and the Constitution, viz.: 1. some provisions of the Constitution are not legitimate and need amendments; 2. contradictions are inborn to arise from the very nature of the Constitution, i.e. there are contradictions either between principal provisions or related laws, and this aims to favor either political regime or ruling elite interests.

Demands to change or make amendments into the Constitution come from society or different political groupings, sometimes from political parties which came to power but failed to enlist full support of society (for instance, Erdogan's Party in Turkey). If favorably, these demands are adjusted to norms and standards of the system. Demands to the New Constitution are attributable to quite new goals and objectives: the new system, new territorial division is linked to changes in the very nature of power (stratum, nation, etc.).

In considering the above-stated, conceptually, the politics predetermines the law; hence, the picture is as follows: *politics (conceptual) – law – politics (strategic) – law*. Political goals and objectives of conceptual level contribute to the creation of legal system and thus give an appropriate shape to the political processes of strategic level and regulate them by means of the legal system. For this reason, the law is regulated to thus contribute to the regulation of the politics at strategic level. Following the attainment of political goals through the use of opportunities as provided by the political-legal system and their identification within the framework of purposes and conditions set before, the politics of strategic level is seeking to avail itself maximum of the legal opportunities available and thus advance ahead. The problems to be solved on this track arise from the following:

1. accession to power;
2. division of powers and establishment of coalition government;
3. governmental crisis and resignation of government;

4. legitimacy of power;
5. political speculations (putting draft laws and decisions in the package form on the vote by some interested Parliamentary factions);
6. attainment of goals and objectives within the framework of political programs of the party in power (by means of legislation, etc.);
7. implementation of foreign political purposes to comply with international interests;
8. ensuring of social-political interests of citizens.

Within the legal state, legal standards and procedures, laws and decrees with their crucial role in identifying interests, goals and strategy, predetermine main lines of political behavior. Forming a qualitative pivot of the system is the effectiveness of the political system and the related regime, as well as the political ideology to give a proper direction to the political processes. In this respect, frames of law and its limits are identified by the new political line to ensure inviolability of objectives being attained by the political system. Entities that predetermine these frames and limits are, as a rule, sections and groups, which come out as instruments of power implementation and bear responsibility for regulation and control over political processes (No experience has so far been persuasive enough to asseverate people's claims to be source of power. People's right to vote being ensured notwithstanding, the selection of candidates is, in our view, the major stage on this track, and this stage is predetermined and concerted in some democratic states by oligarchs; at best, the process proceeds with the participation of middle sections of the population). Their rights are regulated to comply with political purposes, and exercised on the basis of political agreement through legislative acts put forward by their representatives.

Regulations that adjust political processes in legal states are notable for civilian methods of control (In non-democratic systems a tough political regime is eager to replace the legal system or supplant it). However, the legal system is not shaped unilaterally. Recognizing this, the law turns into an instrument of the politics. But the methods of the use of this instrument, their levels and forms are not identical depending on specific case and circumstances. In some cases it is the Constitution, not the legal system, which accounts for the politics implementation; in other cases, it is laws, decisions and decrees, contrary to the formal Constitution that helps accomplish political goals. The latter is attributable to specificity and demands of the political regime. In this case, even if the Constitution relies on democratic principles, the regime, remaining to be non-democratic, prefers to apply the legal system at a lower level than the Constitution. Meanwhile, within the framework of democratic systems, the actual (for example, in Great Britain) and formal (in most constitutional states)² Constitutions rely, depending on society's traditions, stereotypes and behavioral experience, on the legal system only. Should the need arise, the legal system acts as means of bringing goals and objectives of the politics into society's notice. In other words, the subject is means of politics; the object is means of society and the law is bridge or means equally. However, this mechanism operates bilaterally, not unilaterally. Thus, society also preconditions the law as its means, and the process is determined, led and framed by the politics.

² Constitution of the Azerbaijan Republic. "Legal literature" Publishing house, Baku, 2006

Ideally, the legal system is predestined to present the politics at the highest possible level, however, it is rarely met with in practice (at best, it is typical for sustainable systems without hard geopolitical conditions, secured against possible threats by great powers, with small territories and populations). Even social structures with the status of legal state dispose of no ability to regulate political processes within the legal systems. As a result, control functions of the politics are performed either openly (Great Britain)³ or secretly (USA)⁴.

As viewed by Matuzov, the legal politics as manifestation of the state politics is designed to accomplish the political goal, express the political will and finally protect the social system⁵. In other words, the legal politics as strategic line of political course is intended for creation of the political system to answer goals and dominant ideology of the political system.

However, concrete definition of political goals and interests in legal terms is not solely dependent upon the political will. No scientific substantiation of the process is available, so this may result in confusion, alienation of views and difference of opinions. For this reason, the legal politics as guarantor of political goals should identify social, economic and cultural needs and opportunities and concurrently comply with natural laws. Taking these two factors into no consideration, one cannot be confident in validity and effectiveness of the legal politics.

In other words, the process proceeds as follows: *political ideology* → *legal politics* → *social-economic system*. At the same time, the effect of *social-economic conditions* → *legal politics* accounts for the scientific validity of political goals and conceptions.

Besides, economic and social needs of social groups contribute to the intensification of political and legal processes which give impetus to stirring up political and legal relations and lining up *society* → *politics* → *law* file. It is the society and social groups that may come out as initiators of programs and strategic projects. In short, political and legal systems are mutually related and predetermined within the framework of programs and strategic line.

Legal priorities prevail over the politics from programs and strategic line standpoint; as a result, the legal states come into being. Legal approaches provide for squeezing political processes into formal frames of the political system with its own political-ideological goals and objectives and thus identifying levels of security of the political system, its goals and principles.

However, security of the political system and its bringing into conformity with social system and regional and global conditions calls for improvement of this system to comply with modern requirements. Hence, there is the necessity of protecting fundamentals of the system, so this problem is solvable through the mediation of the legal system. Improvement of the political system (democratization, liberalization, socialization, etc.) starts with actual changes in social life; then these changes find their parallel in appropriate laws and constitutions; as a consequence, the political system changes. That's why some researchers put forward an idea that the law

³ Chirkin V. Y. Constitutional Right of Foreign Countries. – B. Digesta, 2000, 724 p., 507 p.

⁴ Ibid, p. 420-446

⁵ Political Science for Lawyers. Ed. by Prof. N. I. Matuzov and Prof. A. V. Malko. – M., 1999, p. 128

predetermines the politics⁶. Still, one cannot forget that democratization and liberalization processes (both in political and economical terms) take place on the basis of strategic line, appropriate agreement and concessions of the ruling regime, other political actors, both internal and external. Reforms of political institutions evolve into changes in the law. Otherwise, no accomplishment of this goal is feasible, i.e. concretization of political principles in legal terms is accompanied by intensification of the process as a whole.

It should be noted that this process does not proceed serenely, since one political process comes into collision with another differently-minded process. Thus, a governmental crisis that broke out as a result of certain political processes blocks up adoption of laws or amendments hereto, while this process is to proceed unceasingly in legally and politically developed countries. The point is that every new stage in the development of state, society, economy, social sphere, etc. necessitates appropriate changes in the sphere of law. No transition to the new stage is feasible without the said changes and amendments. If the adoption process is drawn out at the legislative power (owing to the crisis the work of a body in charge of the preparation of package of proposals is suspended), the stagnation penetrates into other spheres as well and, as a result, all the political, economic, and legal systems suffer crisis. Specifically, the crisis breaks out in the sphere of international relations as well. Process of preparation and conclusion of agreements is suspended, political trust in the government decreases, all the subjects, political, economic, legal, are waiting.

To operate the political system, it is essential to adopt laws, ratify previously agreed arrangements, etc. The law is intended to protect the political system, related processes and activities against disorder; create necessary conditions for effective activity, sustainability and development of the political system. Division of powers aims to consolidate the political system, the state as a whole, strengthen political institutions, etc.

Processes going on in the social sphere find their parallel at the international arena. It is great powers or a group of states acting as subjects that set goals and create an appropriate legal system to serve them. Other states have to stick to these principles and behave to comply with the related legal system. Exceeding these limits are dominant forces acting as the subjects above.

The international law is predetermined by the global security. However, the global security comes out as continuation or derivative of local and regional security of leading powers. An eloquent testimony to this is the fact that the said law is based upon domestic and regional values of the states mentioned above. For this reason, when exploring sources of the law, it would be wrong to construe local, regional and global security systems and their standards out of touch from each other, as marginal systems. Elements of these systems, depending upon importance or insignificance of the problem, are mostly identical. In order to solve their national security problems (political, military, ideological, economic, cultural, etc.), the states are in need of not only local conditions and opportunities but also regional and global environment and standards to secure it – the sound legal system. That said, issues of this sort go back not only to the local security system but also reach elements of regional security. At

⁶ Druri. Op. cit., p. 213

the same time, depending upon specificity of the region (geographical location, regional neighborhood, etc.), other elements of the regional security system are formed. As a result, an appropriate legal basis of the regional system is created to thus ensure security and continuity of the system. In turn, local and regional security forms a foundation of the global security system to comply with requirements of an appropriate legal system. The very process, depending upon political and military significance of states and regions, is bound for any direction. In other words, problems within the framework of local, regional and global security system, their legal basis are mutually complementary, act as means or cause of another, or even enter into conflict with each other. To put it more specific, for great powers the global security is a continuation of local and regional security, and the problem of sustainable regional security raises, in turn, global security problems.

In strengthening local and regional security, the great powers avail themselves by enhancing their influence effect and control opportunities and identifying their security priorities. Then these states choose their global security strategy and, extrapolating from their own political objectives, raise problems before small states. These problems cover various spheres, including policy (foreign and domestic), ideology, military, economy, etc. and may, sometimes, meet interests of small states or, instead, be adverse to them. It is the interrelation between local, regional and global security systems that gives birth to local, regional and global problems. The state's ability to cope with these problems through the use of international legal standards accounts for international legal system's effectiveness in resolving issues of this kind.

Attending to the international legal system and concurrently predetermined by this system, the law is a diverse, multifarious and multiform social phenomenon. Together with dynamism of security motives, it is also noted for dynamism of its values roaming from one level to another. An attempt will be made to uncover this subject.

It is obvious that just a super state or association of states acting as subject are in position to create a legal system which pursues security targets and attends to these targets at the conceptual level (including defects and gaps, two-faced and controversial principles). Other states tend to adopt these principles and advance toward this legal system. A dominant force acting as subject can overstep the limits of these opportunities.

Capable of creating legal norms, a political subject, with the help of these norms, regulates behavior of smaller subjects. Acting as dominant subject within the international system, super powers, using norms as set forth by international legal institutions, urge on other states advance toward the selected targets while a state, relying on the constitution and intra-state laws, push political parties, individuals and public organizations toward the same targets. For this reason, *policy* → *law* → *policy* process proceeds from greater, leading political subject to smaller political one.