A Holistic Analysis of Law, Connecting Theory and Practice

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Universal Solutions to Global Problems

Edited by

Charalampos (Harry) Stamelos

Cambridge Scholars Publishing

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This book first published 2023

Cambridge Scholars Publishing

Lady Stephenson Library, Newcastle upon Tyne, NE6 2PA, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

ISBN (10): 1-5275-0335-6
ISBN (13): 978-1-5275-0335-9

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INTRODUCTORY NOTE

CHARALAMPOS STAMELOS

The holistic analysis of law is at the same time a general idea, a method and a modern approach for analyzing law. It embraces other approaches and denies the monolithic analysis. Thus, it offers the freedom to the jurists to apply philosophically and practically norms and tools to analyze law in a way which is beneficial to all. It sheds light to the path of law which is necessary for "the whole truth" literally, not just technically or procedurally. True justice, full justice and progress are related to a holistic analysis of law. Law may be interpreted in ways to set people free. The ultimate purpose of law is the improvement of the lives of all people, not of selected groups of people. A holistic approach shall establish rules and methods leading to the total repeal of poverty in the world, to the total education for all, to the absolute and fair justice for all, to the food security and the energy security for all, and the public health for all. Human rights are for all people in all countries and in all cities. Rule of law is for all people in all countries and in all cities. Human dignity is for all people in all countries and all cities. All people shall enjoy their lives, health, water, food, education, energy and justice. It is possible to convert the world from a "bad place" to live into a "best place" to live. The improvement of infrastructures and of peoples" lives depend on how people think, how people act, how people behave.

The general idea of a holistic analysis of law is to establish earth as the best place to live: if a baby is born anywhere, he or she shall enjoy the maximum possible goods. It is not a utopia to have all people satisfied, it is possible and achievable.

The following questions are: why and how, when and who will secure maximum welfare for all people in the earth.

The short question is: all people can do it now, because they have the means and the reason. If all people apply the same rules or similar rules, they will be cured from all diseases. A perfect example is the human war against COVID-19 virus. Humanity won the war. We were united against the same enemy. And the worst enemy of humanity is humanity itself. How is it possible to convert our minds as one race, the human race? The first step is to apply holistic approaches not only to law, but also to all sectors of

knowledge, communication and technology. And, the United Nations started to apply these ideas by setting ambitious goals, such as the repeal of poverty worldwide. So, there is hope and we can start applying the holistic analysis of law to further improve human lives, to save human lives. All human lives are so precious and we do not have the right to kill people or let people die.

According to the "bad man" theory, people will always commit crimes. However, according to the "good man" theory, most good people will prevail over the less bad people. Actually, most people work and live without harming other people. Otherwise, the majority of people would be disputing in courts or in arbitration and mediation centers. On the contrary, the majority of people live their lives peacefully and in cooperation with other people. If we apply the holistic analysis of law, then we may achieve the peaceful resolution of disputes effectively and through alternative ways of dispute resolution, such as negotiations, mediation, conciliation and arbitration both for personal disputes and for state disputes.

As for international law the holistic analysis may offer useful solutions for all states and all people similar to the effective solution of a global warming problem or climate crisis. Universal solutions for global problems are necessary and the United Nations is a useful organization for such solutions.

However, we need more NGOs and more social involvement through social media and other innovative methods for new ideas and new institutions to solve problems internationally and globally.

Cheap and healthy food, cheap and effective medicine, cheap or free education and freedom of information, cheap smart phones and cheap energy may allow people to live peacefully and to progress faster and more effectively. Despite the difficulties and the obstacles, human race will evolve and achieve amazing goals. If we apply the holistic analysis of law wisely, more positive results will arise earlier than expected. Private interests will continue to move humans and the public interest or the global interest may exist in harmony with private interests.

The theory of law shall try to contribute positively towards the improvement of humanity.

This book aims to set the first step to establish the holistic analysis of law as a useful, efficient and meaningful method for the improvement of law and the improvement of human life.

In the first part there is one introductory chapter, and in the second part there are two chapters on history of law and universal rules.

In the first chapter, Charalampos Stamelos introduces the holistic analysis of law as a general theory and in the second chapter he analyses the universal rule of law in the historic context of classical democracy of ancient Athens.

In the third chapter, Annalisa Triggiano connects historically the notion of good faith from Roman times to modern times. A global notion of good faith is generally accepted and contribute to the global solution of fair and justice in private law.

In the third part, four authors contribute four chapters on procedural law and the holistic analysis.

In the fourth chapter, Caitlin Robinett Jachimowicz explains how a lawyer shall practice in a holistic context in the US and beyond. If lawyers practice law holistically, then the clients will get the maximum of the benefits and rights they deserve.

In the fifth chapter, Daria Zhdan-Pushkina presents the holistic method in conflict management and how a mediator studies conflict in Russia and beyond.

In the sixth chapter, Liangying Liu presents a holistic analysis of Chinese procedural law by connecting theory and practice in the context of the institutional construction of guidance cases comparing to case law systems.

In the seventh chapter, Konstantinos Tsimaras contributes his ideas on international law, evidence and the holistic analysis.

In the fourth part, three authors contribute four chapters on modern issues and the holistic analysis.

In the eighth chapter, Raphaël Déchaux analyzes the issues of legal regulation regarding Artificial Intelligence in an international context.

In the ninth chapter, Arunima Shastri and Aparna Singh analyze the issues relating to climate crisis and offer solutions in a holistic approach framework.

In the tenth chapter, Athina Moraiti sets a holistic approach to the economic diplomacy of Vietnam relating to its significant bilateral and multilateral agreements.

The authors are based on different countries and jurisdictions in the world (Cyprus, Italy, USA, Russia, China, France, India) and they have different legal backgrounds. However, they all contribute to the holistic analysis of law for the benefit of all jurists around the globe.

I would like to personally thank and congratulate all authors for their contributions and publicly call for them to keep writing and thinking holistically. Further, I would also like to call the readers to actively participate in the forthcoming conferences on the holistic analysis of law.

I would like to dedicate this book to my uncle, Vasileios Stamelos.

The editor-in-chief
Charalampos Stamelos
January 31, 2023
Nicosia, Cyprus

PART A.

HOLISTIC ANALYSIS AS A GENERAL THEORY

CHAPTER 1

A HOLISTIC ANALYSIS OF LAW AS A GENERAL THEORY AND ITS APPLICATION TO PRIVATE LAW IN CIVIL LAW AND MIXED LAW SYSTEMS (BY REFERENCE TO EXAMPLES)

CHARALAMPOS STAMELOS

The freedom of transactions is the basic idea, on which it is based the entirely building of the private law in the context of the autonomy of the will. Apart from the classical methods of analysis of private law (natural law as established in ancient India, China, Greece and Rome, legal positivism as established in modern times) or modern methods such as legal pragmatism, legal realism, the economic analysis of law or critical legal studies, there could also be another method of analysis, i.e. the holistic analysis of law. In this paper we refer to specific examples of Greek theory of law which can establish such a holistic analysis of law which was first proposed in the USA in the context of criminal law and the protection of vulnerable members of the society. At first, we present the main classical and modern theories of law and in the third and fourth paragraphs we propose a general theory of a holistic analysis of law.

Keywords: holistic analysis of law, jurisprudence, natural law, India, China, Greece, USA, legal realism, legal pragmatism, economic analysis of law, critical legal studies

1. Introduction: What's fair? What is the law? What is justice?

These are just some of the questions of the Philosophy of Law, especially Analytical Philosophy and Natural Law. These are questions

inherent in human history, human emotions, human society, morality, economy and politics. What is the purpose of the law? What are the moral or political foundations of the law? These are also some questions of the Philosophy of Law, mainly in the Regulatory Philosophy of Law, and of Natural Law.

These questions have been asked to answer scientists and philosophers from different countries and cultures. From ancient India, China, Greece and Rome to modern Greece and the United States of America and from the depths of centuries to the present, judges and lawyers, professors and philosophers have suggested theories and ideas have raised concerns and have answered these questions in their own way. Even artists have expressed their understanding of justice and law through their artistic creations.

The first pair of concepts and theories of the Philosophy of Law (natural law-legal positivism) revolves around the criterion axis of superior law (divine law, God, moral, fundamental law), the second pair of concepts and theories of the Philosophy of Law (pragmatism-realism) revolves around the axis-criterion of finding the value of theory in practice with tangible results, the third pair of concepts and theories of the Philosophy of Law (left-wing legal liberalism and critical legal studies, right-wing legal liberalism and economic analysis of the law as an expression of utilitarianism) revolves around the criterion axis of political ideology and starting point in the dipole left-right. In this regard, moral, practical and political are the three criteria on which the theories of the philosophy of law have been formulated to date.

2. Classical methods of analysis of law: natural law, legal positivism

> "True law is reasonableness in accordance with nature. It is universally applicable, unchanging and eternal. With its requirements, it delivers us to duty and with its prohibitions, it prevents us from injustice. And it neither sets to no purpose its requirements nor its prohibitions for the good, although these do not touch the evil. It is a sin to try to change this law and it is not allowed to try to nullify any part of it, and it is also impossible to fully abolish it.
>
> There is no other law in Rome and other law in Athens, other law now and other law in the future, but one eternal and unchanging law shall apply for every people and every era, and there shall be one common master and ruler for all, God, who is the writer of this law, the one that adopted it and the one that applies it as a judge.

> Whoever violates it, abandons his own self and denies his human nature, and that is precisely why he shall suffer the worst punishments even if he avoids human punishments."[1]

With this extract from the work of the Roman Jurist Cicero, who was indeed a just governor of Cyprus, the framework of the natural law theory becomes clear: it is a universal, supranational, timeless, prevailing law.

According to one view, natural law is the transubstantiation of the overlapping of two concepts, justice and morality.

Plato considered that justice must be realized in the town society aiming at the reach of a superior law, the ideal law.[2]

Aristotle believed that with the rules of logic we can reach values protected by the law. However, these values are not transcendent or supernatural, as Plato argued, but inherent in human nature [3]

The main drawback of the natural law theory there is room for wide arbitrariness by authoritarian leaders [4], them being either in China or in Greece or in Cyprus.

Although in Cyprus Cicero implemented a fair governing system, where it is assumed that he set and implemented moral and fair rules himself, however, no one can exclude totalitarian ideas being brought forward as pure, moral and naturally fair (e.g. Nazism lead to the Holocaust based on theories of racism). Forsthoff states in this respect: "with natural law one can prove and justify event the gas chambers of Auschwitz, as long as he conceives respectively the conceptual starting point of the nature required!"[5]

Natural law in China expressed the golden age (almost in the same era with the Golden Age of Pericles and earlier, from 770 to 453 B.C.) Taoism (there is one "Tao" way: the inaction of the government without posing obstacles to the natural order of things[6]) in order to support the authoritarian rule[7] of the Emperor and the nobles (in origin and good manners), whereas Confucianism had similar results (although Confucianism prompted interventional government policy to address social injustice) considering human nature to be good. These Chinese theories affected both the law of China and the laws of Japan and Korea and other East Asian countries. India dominated in the West Asia[8]. Today, the law of China is based on the socialist [9] rule of law with Chinese characteristics (Article 5 China Constitution 1982 as revised)[10]

In China Confucianism (Li, "good human nature") expressed the natural law theory, whereas legal positivism was expressed by the theory (Fa, "good human nature") already since 770 B.C. In theory and in practice Confucianism dominated in China up to 1949. The legal positivism theory (Fa) had prevailed regarding criminal law: each infringer of criminal law was severely punished and was aware in advance that the violation of a

provision of the criminal law entailed his severe punishment[11] . After 1993, China has now adopted western legal standards (in administrative, civil and commercial law), thus legal positivism is now also dominant in China[12], whereas the tendency has emerged to legal realism[13], to which we shall return in a later Chapter, the natural law theory not having been eliminated [14] in certain cases.[15]

> "Legal positivism is the thesis that the existence and content of law depends on social facts and not on its merits. The English jurist John Austin (1790–1859) formulated it thus:
>
> The existence of law is one thing; its merit and demerit another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. (1832 [1995: 157])
>
> The positivist thesis does not say that law's merits are unintelligible, unimportant, or peripheral to the philosophy of law. It says that they do not determine whether laws or legal systems *exist*. Whether a society has a legal system depends on the presence of certain structures of governance, not on the extent to which it satisfies ideals of justice, democracy, or the rule of law. What laws are in force in that system depends on what social standards its officials recognize as authoritative; for example, legislative enactments, judicial decisions, or social customs. The fact that a policy would be just, wise, efficient, or prudent is never sufficient reason for thinking that it is actually the law, and the fact that it is unjust, unwise, inefficient or imprudent is never sufficient reason for doubting it. According to positivism, law is a matter of what has been posited (ordered, decided, practiced, tolerated, etc.). Austin thought the thesis "simple and glaring". While it is probably the dominant view among analytically inclined philosophers of law, it is also the subject of competing interpretations together with persistent criticisms and misunderstandings."[16]

A natural law theory of (the nature of) law seeks both to give an account of the facticity of law and to answer questions that remain central to understanding law. As listed by Green 2019 (having observed that "No legal philosopher can be *only* a legal positivist"), these further questions (which "legal positivism does not aspire to answer") are: What kinds of things could possibly count as the merits of law? What role should law play in adjudication? What claim has law on our obedience? What laws should we have? And should we have law at all?[17] These questions can be also answered by applying a holistic analysis of law, as we attempt to explain it below.

3. Modern methods of analysis of law: legal pragmatism-legal realism, economic analysis of law, critical legal studies

We quote here short definitions of legal pragmatism, legal realism, economic analysis of law and critical legal studies.

> "Legal pragmatism is a theory critical of more traditional pictures of law and, more specifically, judicial decision-making. The classical view of law offers a case-based theory of law that emphasizes the universal and foundational quality of specifically legal facts, the meticulous analysis of precedent and argument from analogy. Legal pragmatism, on the other hand, emphasizes the need to include a more diverse set of data and claims that law is best thought of as a practice that is rooted in the specific context at hand, without secure foundations, instrumental, and always attached to a perspective. A pragmatic stance towards jurisprudence offers many philosophical challenges to more traditional descriptions of the legal domain."[18]

Legal pragmatism was developed in the USA, as legal realism, and this is why it is also called as "American Legal Realism". However, there was also the "Scandinavian Legal Realism".[19]

> "Legal realism is a theory that all law derives from prevailing social interests and public policy. According to this theory, judges consider not only abstract rules, but also social interests and public policy when deciding a case. In this respect, legal realism differs from legal formalism. Either theory can be understood in a descriptive way, prescriptive way, or both ways at once."[20]

> "Realism is a diverse school of thought and any attempts to homogenize it will distort more than simplify. When it comes to judicial decision-making, realists had two general theses. First, judges have a preferred outcome of a case even before they turn to legal rules; that preferred outcome is usually based on some non-legal grounds – conceptions of justice, attributes of litigating parties (government, poor plaintiff, racial group, etc), ideology, public policy preferences, judge's personality, etc. Second, judges usually will be able to find a justification in legal rules for their preferred outcome. This is possible because the legal system is complex and often contradictory. Of course, occasionally a judge will come across a preferred outcome that just "won't write", but these are rare. Normally, however, judges will find some cases, statutes, maxims, canons, authorities, principles, etc, that will justify their preferred outcome."[21]

> "Economic analysis of law applies the tools of microeconomic theory to the analysis of legal rules and institutions. Ronald Coase [1960] and Guido

Calabresi [1961] are generally identified as the seminal articles but Commons [1924] and Hale [1952] among others had brought economic thinking to the study of law in the 1910s and 1920s. Richard Posner [1973] brought economic analysis of law to the attention of the general legal academy; by the late 1970s, his work had provoked a vigorous controversy. This controversy was both general and doctrinally specific. Posner had claimed generally that the common law was and ought to be efficient. This latter claim provoked a broad controversy about the evaluation of legal rules generally. More specifically, controversy recurred each time economic analysts of law addressed another doctrinal area. More often than not, the introduction of economic analysis into the study of a doctrine transformed that area of scholarship. For a time, economic analysis dominated the study of private law in the United States; arguably it still dominates, though a healthy resurgence of moral accounts of these areas has recently emerged to challenge economic analysis of private law. Many practitioners and critics alike believe that economic analysis of law offers a comprehensive theory of law. As traditionally understood, a comprehensive theory of law has several components. First, a comprehensive theory of law begins with a characterization of the nature of law. This component distinguishes law both from other normative systems such as morality, religion, and social conventions such as etiquette but also from coercion and politics. The second part of a comprehensive theory of law characterizes the grounds of law. Dworkin framed the grounds of law as the truth conditions for a proposition of law. From this perspective, much of the debate over the concept of law concerns the role that morality plays in these truth conditions. As discussed in section 3 below, the first and second parts of a comprehensive theory of law have often been conflated in the debate over the concept of law. The third part of a comprehensive theory of law identifies the nature of the reasons for action that law provides. Often, this aspect of a theory of law is subsumed under the second part that identifies the grounds of law. For purposes of an exposition of the economic theory of law, however, it is useful to distinguish these two questions. The fourth part of a comprehensive theory of law identifies the value of legality. The fifth and final part of a comprehensive theory of law articulates a normative theory of adjudication, a theory of how judges ought to decide cases. Framed this way, it is not clear that economic analysis of law does provide a comprehensive theory of law. The questions posed above have rarely been addressed clearly and explicitly by economic analysts of law. The early debates conflated theories of adjudication with the value of legality; subsequent debates have largely concerned theories of private law rather than of law generally. This essay thus offers both an interpretation of the approach to these five questions implicit in the practice of economic analysis of law and a recharacterization of economic analysis of law generally. Economic analysis of law is not a single, unitary practice but a set of projects that share a methodological approach. The typical economic analysis of law does not set its task within the framework of a general legal theory. Rather, it addresses

a specific question about the causes or consequences or social value of a specific legal rule or set of legal rules. Phrased differently, the typical economic analysis of law investigates a specific legal rule or institution rather than make general claims about the nature of law. Nonetheless, economic analysis of law, or at least strands of it, implicitly offer distinctive, often radical, answers to the questions addressed by legal theory. Moreover, some strands suggest a radically different perspective on law and legal theory. The next section sets out the complex set of claims that emerge from the mass of economic analyses of law and identifies three projects that organize much of the work in the field. Subsequent sections ask what perspective on law these claims and projects implicitly or explicitly provide."[22]

"Critical Legal Studies (CLS) writers argue that judicial decision making is not politically neutral; rather, it is only a stylized version of political discourse. More pointedly, these writers argue that the belief in legal neutrality legitimates an unrepresentative political process, thereby benefiting the powerful to the detriment of the weaker. Accordingly, CLS writers consider the belief in legal neutrality to be ideological. Also, CLS writers consider judicial decision making itself (as opposed to beliefs about legal decision making) to be ideological in the sense that the outcomes of legal decision making are informed and influenced by conservative ideology."[23]

4. Holistic analysis of law

In the following paragraphs we present the concept of a holistic analysis of law and we attempt to establish it both as a general theory of law and as applied to private law by giving specific examples.

4.1. Towards a holistic analysis of law as a general theory of law

Holistic law analysis or alternatively the new legal realistic analysis with elements of holistic pragmatism (without a priori ideological anchorages or commitments, 'active neutrality') can work on multiple levels: first, at the level of analysis of branches of law or sub-sectors of law, secondly, at the level of scientific analysis on law and justice (mixed or complex method of philosophy of law), thirdly, at the level of interdisciplinary analysis for any phenomenon relating to law, sociology, political science, economic science (mixed or complex method of humanities theories).

The scientific and interdisciplinary discussion and the scientific and interdisciplinary discourse with an open and innovative spirit and free thought (and with respect to the opinion of each minority or minority) for the selection of criteria and to gradually realize the holistic analysis of the

law , it is necessary to carry out at national and international level in order to make essential modern findings on the law and the mild law of the present but also in essential proposals on philosophical foundations of law and the law of the future.

In mediation, for example, and not only, holistic law analysis can and should be a method and tool for resolving disputes from the injustice of harm to the most complex compromises. Holistic analysis of the law does not mean universal, abstract ethical discourse and many theoretical attempts are required to make the holistic analysis of law until it is indeed a useful methodological scientific tool.

Pericles had a holistic approach to the institution of democracy. A visionary politician and educator (his educators) applied his ideas both with the building project (Parthenon) as well as with his institutional interventions and speeches. Laws and habits contributed, but the Athenians honestly shared his visions and goals in a free society and were willing to implement them.[24]

Professor Charalampos Papacharalampous rightly points out: 'the desire to conquer generality does not mean accepting the catholic, abstract ethical discourse'.[25]

In addition to the theory, the courts should adopt approaches that meet the need for effective justice.

For example, Professor Konstantinos Tsimaras, in an overview of the fifty years since the passage of the French Constitution of 1958, mentions characteristics for the linking of theory, history, legal practice and ethics to this and not abstract ethical discourse: "the Constitutional Council of France deeming the unconstitutionality of the laws (e.g. in Resolution 70-39 DC of 19 June 1970), it limited control only to the 92 articles of the 1958 Constitution, but based on the preamble to the Constitution, it extended the reference texts for the verification of unconstitutionality by incorporating both the Preamble to the 1946 Constitution and the Declaration of human rights of 1789".[26]

The courts recognize the importance of history and ideas, morality and social context, and sometimes the courts or the judges have the courage to go one step ahead of the society and its era, to shape the conditions of a new era.[27]

Professor Theodora Antoniou rightly points out that discrimination in favor of the wronged by taking positive action by the institutions ("affirmative action") is constitutionally required, commenting on the 1978 US Supreme Court Regents of University of California v Bakke:

> "The need not to prove that the members of the minority who are now under privileged treatment have in the past actually been victims of discriminatory

> treatment is also emphasized by Judge Marshall in the separate opinion delivered by the Court. As he points out, it is unnecessary in 20th-century America, given the very high permeable infiltration of racism in this society, that individual blacks have to prove that they have been victims of racial discrimination."[28]

In the same area of protection of the individual right to equality, Professor George Gerapetritis aptly refers to the good judgment of Judge John Marshall Harlan who held a dissenting opinion in the 1896 US Supreme Court decision (Plessy v Ferguson) disagreeing with the phrase: 'separate but equal' and arguing that "the US Constitution has no color".[29]

As Professor Christos Satlanis rightly points out: "the ECJ, in order to remain in no doubt, ruled as follows: the prohibition of discrimination between men and women, since it is imperative, is not only imposed in relation to the actions of public authorities, but it also applies to all contracts aimed at collectively regulating paid work and contracts between individuals".[30]

Professor Leonidas Kotsalis notes clearly and in keeping with the holistic analysis of the law that: "in the field of Human Rights, a jus universalis has been developed step by step, common to all without discrimination (political, national), derogations or specificities".[31]

Professor Konstantinos Papageorgiou in his book 'War and Justice, Political Philosophy for the World', clearly and in a spirit of holistic analysis of the law, expresses the scientific and philosophical phrase on human rights, which reflects the current broader perception of people, scientists and philosophers:

> 'The word of human rights and values is not Western, but pan-human, it applies to all and must be accepted by all.'[32]

4.2. Towards a holistic analysis of law in private law

Section 361 of the Civil Code of Greece is considered to express precisely this freedom of transactions[33].

Furthermore, each branch of the private law based in more specific philosophy but the freedom of transactions (conclusion of a contract, liability, provision, compensation under conditions) remains key point for the branches of the civil law, as indicated

- Law of obligations[34],
- Property law[35],
- Law of inheritance[36],

- Labor law[37],
- Commercial law[38], such as
- company law[39],
- fair capital market[40],
- bankruptcy law[41],
- evaluation rights[42],
- competition law[43],
- fair mental protection[44],
- maritime law[45],
- aviation law[46],
- sports law[47],
- cooperative law[48],
- banking law[49],

Family law has its own characteristics, a law that is primarily a personal matter, as well as property relations (between spouses, alimony obligations children, alimony obligations of spouse and children after divorce, etc.)[50]. Here the main issue, the main principle is not the freedom of transactions, but the freedom of private will of the people to conclude this particular marriage contract that is important for their lives. This contract is not bound obviously only with financial rewards, but mostly with emotions and ethical values. However, because there is always the issue of property, many couples, especially in the USA, sign a prenuptial agreement to regulate all the property issues from the outset, including the provision of lawlessness in case the couple later decides to dissolve the marriage with the process of litigation or consensual divorce[51].

4.2.1. Towards a holistic analysis of law in private law: insurance law example

On the other hand, Professor Ioannis Rokas refers to the history of insurance law (originating in France translated from its Commercial Code 1807), in today's law (2496/97) which is purely Greek, modern, groundbreaking, and in fact a model for the new German legislation from 2008 and after, then finds that at international and European level there is a tendency for the basic principles and institutions of the law of insurance contract. However, this trend in Europe is observed as the only one on European continental legal systems, to which the Greek one belongs. In these systems the legislation is distinguished in countries that are laconic settings such as e.g. Greece, Italy, the Netherlands, and those with detailed such as France, Belgium, Germany, Spain, Sweden. In recent years It has

been introduced at European/academic level a set of provisions that constitute the PEICL, "Principles of European Insurance Contract Law" and includes all insurance contracts with the exception of marine insurance and reinsurance. PEICL exist specialist position in relation to the general (PECL, Principles of European Contract Law). Both texts are the fruit of European progress to convergence of the basic body of private law of the Member States with creating a common frame of reference. The team of European academics for the 'Restatement of European Insurance Contract Law' drafted by PEICL intended for an optional Regulation which, if adopted by the European Principles will only apply if the insurer chooses to do so and policyholder and, if selected, will prevail even over the compulsory law provisions of national law of any state EU member, and its provisions cannot be amended by based on the interests of the insured with the exception of contracts that relate to high risks[52].

If we analyze what is mentioned above, we should start to find out that the principle of freedom of trade is confirmed, because the rule applies only if the parties choose parts of the insurance contract. If one wants to understand the reasons, then must know the philosophical background of private law: the state allows individuals to trade freely, legislation allows (for example, Greek Civil Code, article 361), the whole philosophy of the system of private law, and therefore of commercial law, and therefore of insurance law, ensures the substantive right of free choice to enter into a contract. Further, they stand out aspects of EU law and the philosophy of EU law: instead of the method of coercion that often provokes reactions in society and citizens, the EU is following the American path. Assigns to scientists and high-ranking lawmakers to draw up a proposal for its reform legislative status. This is called (Restatement) which means redesign. With this method, the EU seeks the gradual convergence of legislation in order to achieve the EU's ultimate goals: a single market for goods, capitals, services. We converge on the principles. Therefore, the fact that the Greek Law was a model for the German Law is practical proof that the legal systems communicate. From the oldest French Law that we had translated, today we are in the process of setting a standard for Germany. This process is dynamic, it proves that there are no seals now, the borders of the states are not "hard" and its holistic analysis of law "sees" these developments and recognizes them as a logical evolution of things (realism). In the event that a German court applies Greek court ruling, will not be a surprise, but a logical consistency and continuity of the transfer of provisions of Greek law to the German legal order. Such a situation would be unthinkable before any years, but today in a rapidly evolving world and in a Europe of changes and reforms, are now fully accepted. This happens, because the society itself,

the economy, the politics matures. We recognize practices needs and seek practical solutions that have results and this regardless of ideological or other ideologically or morally charged attitudes. In fact, we are looking for the best solutions and best practices in order to achieve the big goals: a single market and their protection consumers in a state of real freedom and justice with increased protection of private rights, human rights and individual freedoms[53].

Of course, every law has its peculiarities and there are limitations to it prefecture for reasons of public interest[54]. For example, under the provisions of aviation law there are very strict regulations for the establishment and operation of an airline (safety reasons of the flights etc.), similarly for the establishment and operation of a bank (safety reasons of the banking transactions and security of their own bankruptcy risk[55]), similarly for the establishment and operation of a company providing investment services and advice (safety reasons in the capital market).

In most textbooks in general each branch of private law, civil law or commercial law, some sections are devoted, usually in the beginning, in order to analyze economic, social, political and historical aspects of the corresponding law.

4.2.2. Towards a holistic analysis of law in private law: maritime law example

For example, Professor Georgios Orphanides reports on the claims shipwreck and ship auction: “The term may not have a single one content over time or within the positive law of a particular time. Essentially the relativity of the concept continues in the different way in which the legislator understands the concept of the shipwreck as its object shipwreck. The term “shipwreck” does not correspond to its original version Commercial Law. However, it is found in time in the relevant with the subject Law ThB of 1856 “on shipwrecks and shipwrecks” which was in force for many years. It did not contain a legal definition of the shipwreck, but the concept preceded by the individual provisions. A broad understanding of the term was adopted. This term is used continuously by the ΓΨΙΜ/ 1910 Law. In the same year, in 1910, The Brussels Convention on the Integration of Maritime Rules let help and shipwreck is signed. It is ratified by N. GOPST (3886) / 1911. Followed by The Code of Private Maritime Law (Articles 84, 86), the Public Code Maritime Law (Articles 146, 200-201).

Another example is Law 2881/2001 “lifting of shipwrecks, insurance of ships”. In contrast to the above exposed regulations proceeds in an explicit

definition of a shipwreck. With this wording the legislator was obviously partly oriented towards the concept of shipwreck who had previously been adopted and for a limited time valid Compulsory Law 464/1945 'on the lifting and dismantling of shipwrecks definition for shipwreck'. The evolution of the legislation attributes the change of wrecks by the state. Protection of the environment is already proposed. The term "shipwreck" is not found in the last two laws, the Code of Public Maritime Law and the Law 2881/2001. The term lift is now being used. The theory identified (...) Nomology understands. From these reports results as common element the need for existence emerges that is the rescue of the endangered or shipwrecked ship. It is self-evident and at the same time configuration that the rescue of the endangered ship is more practical than the shipwreck. Relatively large case-law is formed, while consecrated the interest of the theory. There is no doubt that there is a difference between the clear letter of the law and the will of the legislator. As it turned out from the previous one, shipwreck was a product of time an issue that was considered that interests the shipping and the public interest. The finding for the public interest refers to the need to lift and remove shipwrecks found in the sea and especially in ports which can may impede free navigation or be a source of danger for the marine environment. Here the purpose of clearing the seas is paramount in areas of dangerous shipwrecks for marine ecosystems. However, the possibility of a conflict of interest cannot be avoided. Problematic may be the case of the withdrawal of the project of removal of the ship by the owner of the ship, while there are claims, possible provisions on the ship, against the owner. The law of privileges constitutes is primarily a field of legislative policy (Law 4331/2015). It is about in essence for a law of limited time to deal specific cases. There are several ways to deal with the shipwreck by the legal order."[56]

From the above and the excellent analysis of Professor Orphanides proves that the law is not cut off ("absolute" legal positivism), but pre-comes from, inherent in and coexists with people, institutions and the factors that make up the legal order, the political sphere ("public interest, legislative policy"), economic reality ("conflict interests") and the social structure with its evolving sensitivities ("danger for the marine environment") in an international environment (" the same year the Treaty of Brussels").

Therefore, from all these data and their historicity of those, it emerges one set of rules that are not morally neutral, but that must be assessed realistically in the spirit of holistic pragmatism or in the light of its holistic analysis of the law ("practical significance, beneficial result"), taking into account all these factors, but also the factor "future generations" ("change

of opinion, marine ecosystems"). Time and law are connected not only historically and, in the past, but permanently and in the future. The law sees through his rules, but the judges are called upon to breathe law, not only through the letter but also through the spirit ("his illiteracy law, will of legislator").

This spirit that each theory and philosophy of law, occasionally tries to limit and subdue it.

In other words, it is attempted by some of its theorists of law to present only through the lens of each branch of the law.

On the contrary, the correct approach is this: philosophy of the law without the holistic analysis of the law has no content in essence. The above approach has the of the "holistic" analysis of the law. Refers to all the data and the analysis is sober, targeted and takes into account (where is possible) what he owes.

Besides, if someone supports e.g. that the maritime law or civil law in Greece or Cyprus or in any jurisdiction has been shaped only by its historical development (based at the principles of Roman law), then he will analyze this law partly, with piecemeal. If respectively, someone claims that the maritime law or the civil law in Greece or Cyprus or in any jurisdiction has been established only on economic criteria, so it must undergo the control of the financial analysis, then again, he will analyze the law partly, with piecemeal. Continuing this thought, every analysis (critical, sociological, feminist, moral, ethical, behavioral, liberal, interpretive, utilitarian, phyco-legal, positivist, realistic, pragmatic, Marxist, etc.) wrongs the law. It is wronging its history, its economic dimension, its sociological dimension, its moral dimension, its liberal dimension, its real dimension.

Therefore, only the holistic analysis of the law or even the new legal realism analysis of law with elements of holistic pragmatism can give results that tend to be as close to reality as possible. The corrupted reality is not reality. The gigantism of theories with verbalism and morality, dramatic tones or exaggerations, fanaticism or aphorisms, does not fit the law or the advanced society of the 21st century. Today, there is a need for legal theorists in a unifying movement to be similar in practical solutions, theoretical solutions but also effective with respect to traditions and values taking seriously in account the economy, the society. The ultimate goal is to be the best conditions for everyone. Example: doctors hold conferences and end up in medicines given to all patients worldwide (in terms of the essence, it is another matter the brand name and the trademark of the medicine).

Entirety includes the justice and the law. The lawyers can suggest specific solutions to theoretical and practical level to everything that tends

to improve human life, e.g. solutions for all countries to become more mature democracies. For example, the use of technology may improve the life of citizens and drastically reduce corruption. This has tested in action and has worked. It can be offered in international level and national level. Regardless of whether governments accept it, the suggestions must happen towards this direction. At the same time, the analysis of the law must be holistic and for better understanding by the students of Law, the citizens, the jurists, the lawyers, the judges. With innovation[57] and courage we must, in the author's opinion, respect the value of life, every citizen of our planet (we saw it clearly above the example of change of orientation in one direction of protection of maritime environment in the field of maritime law, two branches of law that phenomenally are not related, mainly due to the broader perception it has hold on to both the public interest and the need to protect the man through the protection of nature in parallel with a reference to the timeliness and time-varying settings).

Everyone understands the value of human life. Everyone understands the value of the different manifestations of human action. Everyone understands, for example, the value of transaction freedom. Of course, there are different criteria or different ethics or evaluations. But the core of values has already formed from the history and data of our advanced culture today focusing on the protection of human rights without a direct conflict with other values or institutions or structures.

Therefore, evaluations, weights and suggestions should not be aimed necessarily in the representation of a school, but in highlighting the value of humans and emphasis on the protection of individual rights and freedoms, especially the freedom of trade, but also the dealing with urgent issues with prioritization, e.g. climate change (which can again be analyzed as protection of individual rights in order to improve the life).

4.2.3. Towards a holistic analysis of law in private law: another maritime law example

For example, Professor Aliki Kiantou-Pampouki points out for the maritime law: "the diversity of opinions on the content of the maritime law, and consequently the variety of its definitions, is due to many factors, historians, socio-political, systematic, legislative, factors that influenced the formation of modern maritime law. However, we have the impression that the whole issue has been unjustifiably inflated" (*she means the exaggeration of confliction of maritime law theorists*). "Without a doubt, in maritime law belongs all those issues that arise from the human activity that develops in the sea, in the liquid element, even the measures to protect the sea from the

risk of pollution which today (1993) is becoming more and more threatening.

The content of the maritime law takes incalculable dimensions. From these things the Greeks created valuable and successful naval action. And so, today our country has not only a rich maritime tradition but a rich shipping as well. Our shipping, indeed, always holds a high position internationally. And it is one of the main sources of wealth for our national economy one of the most important forces of our nation. So much more which employs a large number of people. Which is special at a time when unemployment is plaguing"[58].

All this analysis contains the philosophy of holistic analysis, because (a) disagrees with the excessive analyzes and conflicts of the theorists about the content of maritime law (considers them unjustified), (b) refers to factors that have influenced modern maritime law, historical, political, social, (c) also refers to the special need to protect the sea for environmental protection reasons, thus expanding the field of maritime law, (d) refers to the Greeks, tradition and shipping, (e) refers to the economy and the benefits of shipping, (f) refers to labor and the benefits for the unemployed who find employment. Understands the complexity of maritime law, because indeed today almost every industry law seems to be "multi-sectoral" to a greater extent than in the past (unity of law).

This is another excellent example of a holistic analysis of the law that is neither only positivist, nor only liberal, nor only economic, nor only social (as mentioned above, justice is not wronged), but it is fair way of analysis (justification of the law).

Any branch of private law, of course, can be read under the theoretical law philosophies that we presented in the First Part.

An economic analysis of private law is done systematically by Antonis Karabatzos[59], which is extremely interesting and contributes creatively in the scientific debate and philosophical search for law and in particular for private law.

4.2.4. Towards a holistic analysis of law in private law: a civil law example

Professor Spyridakis states that the modern trend is the effort of combination two initially diametrically opposite currents of positivism and idealism. This shows that seemingly opposite currents can merge into a new holistic analysis of law or at least a new legally realistic analysis with elements of holistic pragmatism. As for the law and morality Professor Spyridakis says that they neither identify nor abstain from the other infinite

distance, but that law and morality are common in the sense that law is the moral minimum that society has by its members. A reference to good morals, that is, to the perceptions of the ordinary social man for morality is made by the law, and so ethical order become indirect rules of law, e.g. article 5 par. 1 of the Constitution, 13 par.2 of the Constitution, Civil Law 33, 150, 178, 179, 730, 919[60] (examples from both public law as well as civil law).

Furthermore, Professor Spyridakis mentions for the law and politics that the views "see the problem from a different perspective and do not oppose it fall into its sphericity. The finding that the positive law is mainly formed by the state, the political power and that in the relationship of interdependence between law and politics, politics have a prominent place, that does not diminish the value of evil, just presents it in its true dimensions. It makes it obvious the need for proper education of the people and proper control of political power, so that positive law and its individual rules tend always to the realization of the idea of justice, that is, to be specialized violation of so-called natural law."[61]

By these words Professor Spyridakis tries to unify the theory of law and make a holistic analysis of law or at least in a new realistic analysis with elements of holistic pragmatism trying to reconcile views with a spirit of reconciliation and unification. These views, as well as the views mentioned above, e.g. the professor's views Aliki Kiantou-Pampouki and the views of Professor George Orphanides prove that they exist in all branches of law, if not philosophers of law, at least philosophical jurists who approach the phenomenon of law and the idea of justice holistically or at least realistically.

5. Conclusion

It is a fact that there is a need for more books, articles and texts of theoretical and philosophical reflection on law in general and private law in particular regarding the holistic analysis of law.

Especially in terms of commercial activity, Professors Perakis and Rokas are mentioned in a matter of law and morality. Entitled "the negative sign" they analyze in particular the morally at least controversial action of trade.

> "While the need for commercial action is obvious, phenomena such as advantageous trade, robbery, speculation on sensitive, dangerous or prohibited goods often lead to a moral depreciation of trade and their traders. It is observed that the trade tends to understand everything for which customer comes and therefore profit, automatically turning it into a commodity. The recent economic crisis has renewed the debate on the relationship between

law and ethics (model of honest and virtuous merchant, Plato, Cicero, Bible). Criticism is unfair, if it is simply focused on the profit that in the contrary it can be a motive for creative action. In transactions the boundaries of morality and immorality are not always clear. An example is the difficulty of morally evaluating phenomena such as the insolvency or the banking practices. Often the content of commercial ethics is a matter of time or social perception.

Prejudice against trade, without having completely disappeared, rightfully is being gradually abandoned.

The moralization of trade is not only the duty of commercial law, but of law as a whole (Civil Code § 932, Criminal Code § 364, Greek Law 146/1914 §§ 11-12)."[62]

USA Professor Melvin Eisenberg on the law of legal acts (Contracts) states, for example, at the beginning of his book: "the law of legal acts is mainly subject to the common law, meaning it stems from court decisions. One of the advantages of the law that stems from court decisions are that it adapts to changing norms and to needs of a changing society. "[63] This is actually a brief and comprehensive description of the common law demonstrates one more time the holistic analysis of law or at least the new legal realistic analysis with elements of holistic pragmatism.

Indeed, court decisions shape the law, the law springs from court decisions in court in the common law cases, but not only that. And indeed, adapting to the new social conditions is one of the issues of law. The above authors and Professors carry out the holistic analysis of law with their sober and correct formulations. They unite positivism, pragmatism, realism and liberalism, social and economic analysis of the law in a masterful, in our opinion, way.

However, holistic analysis of law must not be a no-end course. As Aristotle mentions in Politics (VI, 132.2.a) about justice: 'There is no benefit to private rights from never-ending pending trials'.

And as James Anderson, Maya Buenaventura and Paul Heaton correctly argue in the sensitive area of criminal law: 'Debates over mass incarceration emphasize policing, bail, and sentencing reform, but give little attention to indigent defense. This omission seems surprising, given that interactions with government-provided counsel critically shape the experience of the vast majority of criminal defendants. This neglect in part reflects our lack of evidence-based knowledge regarding indigent defense, making it difficult to identify effective reforms. One approach that continues to gain support is holistic defense, in which public defenders work in interdisciplinary teams to address both the immediate case and the underlying life circumstances — such as drug addiction, mental illness, or family or housing instability — that contribute to client contact with the criminal justice system. Holistic

defense contrasts with the traditional public defense model that emphasizes criminal representation and courtroom advocacy. Proponents contend holistic defense improves case outcomes and reduces recidivism by better addressing clients' underlying needs, while critics argue that diverting resources and attention from criminal advocacy weakens results. Although the holistic approach is widely embraced, there is no systematic evidence demonstrating the relative merits of the holistic approach.'[64]

This US paper proves that the holistic analysis of law may not only apply to private law or public law but also to criminal law. This holistic analysis of criminal law could be the goal of another paper. Another paper could also focus on the establishment of the holistic analysis of international law.

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