S.N. Yegorov

Axiomatic Basics of Legal Theory

Introduction

There are no prophets in our Motherland

''The major part of the ideas, that dominated the minds of the French in the Enlightenment epoch, was undoubtedly borrowed from ''Spirit of Laws'' by Montesquieu and ''Social Contract'' by Rousseau…. Where is the book that could wake up the legal conscience of our intellectuals?'' – this is the question posed by B.A. Kistyakovsky in the ''Vekhi'' journal in the early XX century. Where is our ''Spirit of Laws'', our 'Social Contract''? [32, P.111-113].

B.A. Kistyakovsky's article prompts that these problems are rhetorical for him. In the meanwhile, there are direct answers to these questions. Here are ''our books'': ''Natural Law'' by Alexander Petrovich Kunitsin (1818) and ''Encyclopedia of Law'' by Evgeny Nikolayevich Trubetskoy (1901).

These books might be considered to be ''ours'' for the sole reason: they were written in Russia and in the Russian language. But it is to our regret that they have not become ''ours'' in a sense that the ideas underlying those books have failed to dominate the Russian minds in both the XIX and XX centuries. However, this cannot be blamed on A. P. Kunitsin and E.N. Trubetskoy, and there is no doubt that B.A. Kistyakovsky was right on that. Blamed are ''our intellectuals'' that ''have never respected Right, never seen any value in Right'' [32, P.110]. However, we cannot blame only them. In the year 1822 A.P. Kunitsin's book was confiscated and destroyed by the then authorities, and using it in educational programs was banned.

Written almost two hundred years ago, Kunitsin's book has been the best ever investigation into Law that considers Law to be an obligatory and binding entity. This book defines what Right is, and the reasons of what and why should be determined as Right. We can't say that there is a lack of understanding how important this issue is. ''It is necessary that Law- and in those cases that cannot be

the subject of Law, it is necessary that the public opinion should oblige the people to meet the rules of public behavior. But what rules shall we have to meet? This is the *most important* question people ever ask. In the meanwhile, except for a few cases, this is one of those problems where, in trying to find a solution, little success has been achieved'' [49, P.291]. As many as 150 years ago the great protagonist of freedom – D.S. Mill - realized its significance. But he had to admit: ''too little success have we achieved'' in trying to solve this problem.

About one hundred and a half years have elapsed since then. And has humanity been successful in finding a solution to this question, and arrived at the final conclusion of what those rules **must be**? Alas, not. ''Authors of many works on ''social studies'' that have been published in the recent half a century tend to fall into verbosity, tend to be scholastic in their methodology and compete in wittiness. They have been reinterpreting the sense of the most usable words and quoting endlessly each other, without coming to any definite conclusions'' [57, P.129]. This was said in the late XX century. It means that no definite conclusions have been made by the social researchers so far. This makes even more important and unexcelled the contribution made by A.P. Kunitsin two hundred years ago. If humanity had not wasted these two hundred years so ineffectively, if humanity had made an effort to enhance and develop Kunitsin's cause we would have made much greater progress in improving the conditions of our existence. A real breakthrough in this field is possible only by proceeding from and basing on a rigorous theory.

A.P. Kunitsin laid down the basics of such a theory in all the necessary fields of research. To complete his concepts, he needed to make just a small step. He failed to elaborate a pivot, or instrument, that might have been used in reaching the final harmony.

This pivot can be a correct comprehension and, hence, a definition of the conception of ''Law '' (Right). The correlation of Law as a superordinate concept, or specific name, with something more fundamental – a generic conception - was also necessary. Many researchers have tried to accommodate different entities in defining such a generic term: volition, rule, interest, order, etc. However, none of

them could withstand the burdens befallen it, become the pivotal point that could have been used in integrating all the basics, and elaborate a Theory of Right. It was E.N. Trubetskoy who turned to be able to mould such a pivot.

E.N. Trubetskoy used the conception of ‘’external freedom’’ for this instrument. It is not *freedom* as such as a vague and indefinable concept. It is not an *internal freedom* which is meant to be freedom of volition, used by Hegel once to no purpose. It means *eternal freedom* as a possibility of man to act in a society of the like. An external freedom exercised within the ‘’behavior rules’’ is the very substance of Right. It is not the very ‘’behavior rules’’ that can have any scope and be vague. It is the external freedom that provides these rules and is limited by them.

It is to our great surprise that these two books were published in Russia. E.N. Tarnovsky, E.N. Trubetskoy’s contemporary, once said: ‘’Russia and personal freedom are two ‘’beautiful strangers’’, who have not ever met each other and are totally unaware of each other ‘’ [84, c.66]. No wonder that they have not met yet. Freedom has not come to dominate the Russian minds.

This approach treating Right as external Freedom subject to certain rules turns out to be extremely fruitful. Considering this the above rules can be defined in a clear way. These are about the boundaries of external freedom. This prompts the pivotal question of the Legal theory: what principles should be observed (or goals to be achieved) in shaping those limitations. We can formulate it in other words: what are the rules of formulating these rule limitations. These very principles, that is ‘’the rules of the rules’’, constitute the subject matter of the Legal Theory. The theory should be practicable. It should tell us what our rule and our rights should look like.

The principles of external freedom limitations cannot be as immutable as the laws of nature. They should (and can) be established depending on our goals and aims in formulating the behavior rules and law norms. They depend on our goals. And the goals may be different. This variety of goal setting finds its result in various theories of Right.

This book is an attempt of elaborating a legal theory.

Theory

The commonplace perception plays occasionally practical jokes on us. What seems to be vague in the word 'theory''? All people seem to begin to receive a more or less clear vision of this concept as early as at school. But should anyone want to look into this term and its content in-depth he or she encounters certain problems. Part of those problems is of a semantic character. Like many words of the living language, the term ''theory'' has a multiple-meaning nature, and all the meanings comprised therein are divided into two groups.

The first group is connected with understanding theory as an antithesis of practice. The works ever published on this issue have shown that even here, when taking theory separately from practice, things are not that simple. However, this group of meanings is of little significance for the goals we are setting. Even more so, not everything, that is not practice, is theory.

The second group of meanings is connected with understanding theory as such.

Here are some definitions of theory we encounter in the research works.

Theory is the highest form of organization of scientific knowledge providing an integral insight of the patterns and substantial relations of a certain area of reality – a volume of the specific theory [8, c.435].

Theory is a totality of general definitions constituting some scientific or research field or its area [74, c.491].

Theory is an apical and evolutional matrix of morphologization and tectonization of the scientific and conceptual knowledge that provides/reproduces a total – basal representation – constituation on the cardinal regularities and quintessential coherences of this or that sphere – continuum of reality-science – subject – socium (society) [76, c. 653].

Theory is a system of basic ideas relating to this or that field of knowledge [94, c. 452].

Not to say about the fact of the diversity of the definitions given above which demonstrates vividly a lack of the universally acknowledged standpoint on

this issue, we have to state that these definitions are not by any means ‘’definitions’’.

The task of a definition is a precise delimitation of a specific concept from any other concepts in terms of their content and scope.

There are several types of definitions: ostensive, genetic, contextual, through the relation to their antithesis, comparison, description, through the closest class (genus) and generic distinction and other.

The first group comprises implicit definitions.

An ostensive (pictorial) definition does not employ using the meanings of other words. It is quite enough to finger and say: ‘’this is a table’’. Thus objects, phenomena and actions can be defined.

The flaws of this type of a definition are obvious.

Genetic definitions provide conceptions of definitions through describing the mode of its formation, structure, making and achieving. This mode is employed in defining physical values: ‘’velocity is a vector value equal to the first derivative of the radius - vector in time’’.

The contextual definitions are a procedure wherein the meaning of a term is derived from the context. This is the mode that is used in defining the meanings of words in thesauruses (explanatory dictionaries).

The meaning of explanation through relating to its antithesis is clear and derived from its name.

Such definitions are widely used in defining philosophical categories: ‘’freedom is a realization of necessity’’; ‘’possibility is a potential reality’’.

Through employing a comparison method an object or phenomenon are juxtaposed and compared to another one, which is somewhat similar. It is usual that comparisons are employed to characterize figuratively the object in question: ‘’property is theft’’.

The method of description of an object or phenomenon is characterized by way of enumerating considerable set of its characteristics: «Leviathan is awesome,

knavish, and weird, many mouthed and barks» (quotation from a work by the Russian writer Radyshchev written in the Old Slavic language).

Although the above types of definitions can be named to be definitions only de bene esse under a certain condition, they have their own field of application. However, this field is quite inconsiderable in science – mainly, for characterizing the main indefinable concepts, as the concepts defined in this way cannot be considered *exactly* localized from all the other conceptions as per their content and scope.

The type most widely known and most adapted for using in logical structures is the type of an explicit definition applied through the closest class and generic distinction. Aristotle viewed it to be the only proper type of a definition. Unfortunately, using only this type of definition does not seem to be possible in all cases. There are always some initial, primary ideas (conceptions) inferred through applying a way which is out of logic.

The definition through the closest class and generic distinctive feature is constituted of two concepts: the determinatum (definiendum), and determinant where the determinatum presents itself to be a subset of the set of determinant, as well as the characteristic (characteristics) according to which the set of determinant separates the elements of the subset of the determinatum.

Of all the types of definitions this particular type, often defined as the classical in the literature of concern, is mostly adapted to be used for strictly scientific purposes.

Proceeding from the above, in designing the definition of the concept ‘’theory’’ we will try to render it to be classical.

First of all, it is necessary to correctly define the determinant concept.

In analyzing the available definitions of theory as well as in reflecting on the essence of this concept it is impossible not to admit that theory is always some totality of elements. It is obvious, that in elaborating a theory these elements cannot present themselves to be a chaotic set. Quite on the contrary, they shall be structured and constitute a certain uniformity. The most appropriate concept that meets these requirements is the concept ‘’system’’ (derived from the Greek συστημα that is the

whole, integer, integrating separate units). The vocabulary provides us the following definition: system is a set of elements regularly connected as a pattern related therewith and presenting an integral entity, unity. ‘’Systematic character constitutes the essence of any theory’’ [9, p. 184]. In sum, theory is a *system*.

Now out of the entire set of systems it is necessary to single out the subset of systems that represent the theory. As the system is a totality of elements connected and related therewith, then to formulate the characteristics segregating the theories out of the sets of all the systems it is possible to use two modes:

1) Delimitation and characterization of elements;

2) Delimitation and characterization of the mode of communication between them.

What elements does theory always and necessarily consist of? First of all, those are *concepts*. Here we get obstructed with certain difficulties as what we the concept is difficult to define. ‘’There is no generally accepted definition of the concept’’ [22, p. 354]. The widely used definition: ‘’Concept is a form of thinking that reflects the objects and phenomena in their essential characteristics’’ – cannot be used by us as Concept is first of all an element of the real world. Besides, this kind of definition lets us have little as the ‘’form of thinking’’ [12, p. 87] can hardly be convenient as an element of system – theory – as for theory it is the content (substance) integrated into the concept, which is much more significant. Here are some other definitions: ‘’Concept is an idea or a system of ideas generalizing, delimitating objects or phenomena of a class according to the characteristics definite and totally specific for them’’; ‘’Concept is an idea reflecting and fixing the essential characteristics of objects and phenomena of objective reality’’; ‘’Concept is a judgment the predicate of which is the idea about the universe in a phenomenon’’; ‘’The results that generalize the experience provided by the natural history are the essence of concept’’; Concept is the supreme product of human nerve tissue, superior product of matter‘’; Theory is a comprehensively elaborated and specified concept, and the concept is an abstract source and mode of constructing a theory’’

[22, p.87]. The variety of definitions given above testifies once again that there is no generally accepted understanding thereof.

We will understand hereinafter Concept to be *any imaginable abstract object segregated from any other imaginable abstract object according to its characteristics.*

The totality of substantial characteristics of concept constitutes its content which is reflected in its definition. The totality of specific objects generalized in an abstract object – concept represents itself to be its scope: the totality of all the laws is the scope of the concept ‘’law’’, the totality of all the tables constitutes the scope of the concept ‘’table’’. The definition of the concept shall reflect its content in such a way that the scope of the concept contains all those and only those specific objects that are really generalized in the concept defined. ‘’When the scope increases, the content of the concept decreases; if the concept becomes universal then the content shall vanish at all’’ [100, p. 44].

To finally make the concept of ‘’concept’’ clear, it makes sense to contextually connect it with the concept of ‘term’’. Term is a word or a phrase designed to denote by linguistic means a concept and its correlations with other concepts within the specific sphere (in our case – theory).

Term is the name of concept.

Unfortunately, such a name (term), as any other word, most often has an autonomous semantic charge, which is sometimes in contradiction to the definition. In these cases the definition of the concept is primary, but not the semantic load of the term. It is possible, that for the purpose of overcoming and mitigating this contradiction, while introducing new concepts their authors borrow words from other languages as terms, but not from the one they set forth their theory and give the concepts their definitions in.

The above said in its totality assures us that we have succeeded in defining the concept of ‘’concept’’, meaning that we succeeded in pointing out and

explaining the concept and meaning of the term ‘’concept’’, in measuring the scope and content of the concept of ‘’concept’’ expressed by this term, in trying to rule out a possibility to see some other meaning in the term ‘’concept’’ rather than the one we would want to attach thereto.

The process of comprehension of the concept ‘’concept’’ illustrates how significant it is sometimes, being impossible at times, to overcome the implicit character of definitions. It is especially difficult in connection with the most abstract generalized conceptions and their terms. Never the less, we shall always strive to attain a classical, explicit form of defining all the concepts that may be encountered in theory, and seek to use an implicit form only in the cases when giving an explicit, classical form presents a problem. And in case if despite all our effort some concept cannot be given a classical definition this most probably means that this concept is part of the primary concepts, that are the most substantial, basic concepts of the specific theory. These and only these concepts shall be defined by us as the *basic (fundamental) concepts*. All the other concepts of theory – *determinate concepts* – shall be defined by applying the classical method.

All the classical definitions of the concepts of theory shall be in compliance with the following rules.

1. Definition shall be clear.

This rule requires that the definition employ only those characteristics that do not need either to be defined or clarified. It is impossible to define an unknown through an unknown. If using another concept in the definition is unavoidable, then this other concept shall have been defined by the moment the definition under consideration has appeared in the theory. Any violation of this rule can detriment and sometimes it does detriment and destruct the entire structure of ‘’theory’’.

Besides, the classical definition does not tolerate using metaphors, comparisons etc. as characteristics. However, for the sake of expressing a more vivid and distinct summary this rule is violated sometimes.

2. Definition shall be ratable.

This rule requires that the definition cover those and only those elements that constitute the concept to be defined. A non observance of this rule can result in two kinds of mistakes:

- Too broad a definition with the definition incorporating also the elements not pertaining to the concept to be defined;
- Too narrow a definition with the definition not integrating some elements pertaining to the definition to be defined.

The question of a precise delimitation of the specific concept from all the others was given a special significance by Aristotle. In his formulation the rule of ratability looks like this: ‘’This type (of orders) shall be, consequently, used until they obtain as many of them so that each of them extends over the bigger one, but that all of them taken together do not extend the bigger one, as this [totality of characteristics] is necessarily the essence [of thing] (concept – S.E.)’’[4, p.334]. In other words, more chiming with our time, every characteristic (order according to Aristotle) shall deduct a subtotal from the set of the determinant which would totally integrate the subset of the concept to be defined, and the intersection of the subsets isolated by all the characteristics would give us a precise subset of the concept to be defined. At the same time it is not obligatory, that the boundary of the subset should be described by these very characteristics we used in performing the procedure of isolation. Our definition of the concept will not be harmed if ‘’the lines already specified are used in a new way to set a limit to the field’’ [100, p.110] of our defined concept. What we really need to have ratability of the concept is ‘’its precise boundaries, so that each object had it defined if it falls under this (concept – S.E.) or not’’ [100, p.99].

3. Definition shall not close up into a circle.

This rule requires that the definition do not use the concepts that are in their turn would be defined by way of applying the concept defined. The most persistent form of violating this rule is using a tautological argument, which is such

a ‘’definition’’ wherein the concept defined is defined per se (through itself). For example, an international agreement is an agreement between nations.

4. *Definition shall not contain negation*

This rule requires that the definition indicate what is the concept defined, instead indicating what it is not. For example, the phrase: ‘’Society is not the state’’ cannot be employed as a definition. There is a lot in this world of what is not the state, but not society, either.

Unfortunately, this is one of the most common logical mistakes.

Sometimes, and it is a very rare case, this type of building a definition is justifiable. In order that it were true, it is necessary that the determinant and determinatum (definiendum) of the concept be subsets of some set that constitutes their integrity. In this case this integrated set contains only those and only those elements that are contained in the sets integrated. It is common knowledge that a set integrating as its elements all the hands is constituted by the subsets of the left and right hands only. That is, the subset of the right hands is additional to the subset of the left hands. Thus, it would not be in violation of Rule 4 to say that the right hands are the hands that are not the left ones. It is in this and only in this case that the definition determinatum (definiendum) can be defined through a negation of its addendum. But, firstly, such cases of existence of complemented definitions are quite rare, and, secondly, it is highly dangerous that rule 1 can be violated, as it is most probable that by the time of defining the concept determinatum (definiendum) the concept complemented thereto will not have been defined (determined).

Thus, this widespread logical mistake is in that the structure of the definition that carries negation employs such a concept as the negated that is not complemented to the concept determinatum (definiendum).

The only exception from this rule is the definition of the concepts essentially negative: ‘’an atheist is a person who does not acknowledge God’’.

The next group of elements no theory can be constructed without is *statements*. Statements establish or express non-logical, substantial, essential

relations between the concepts (terms) and they are those very logical units, each of which has an inherent fundamental logical property – to be true or false. However, not every statement can be used as characteristic of theory. One of the types of statements employed is the *statement initial*, which is undoubtedly an element of theory. In this case, the ''initial statement'' is a term generalizing for axiom, postulation, hypothesis, principle, thesis, initiation, etc.

Such statements are expressed as obvious, non demonstrable, whose verity is presupposed a priory. Never the less, ''Axiom is the truth that does not demand proof'' – a phrase used sometimes in course books which does not contain the sense that we are going to invest in the concept ''initial statement''. We mean an axiom not the object ''obvious'', not the one *not requiring* proof, but because it *can not be* proven. At the same it is not to yield to temptation and to use the term ''truth'' in characterizing what is meant to be statement in its meaning of ''representation of the facts, practice''. The first usage is wrong etymologically. The Greek word αξιωμα and Latin word *postulatus* mean literally – requirement. It is not accidental that the author of the first theory in human history, Euclid, would begin his axioms with the word ''required''. Thus, any other theory requires *regarding* something in advance as such and not otherwise in all the resultant argumentation. Consequently, what we mean by the *initial statement* is a phrase (expression) *assumed* in this theory as the true (not false) in advance, until it is constructed. Everything that can be proven to be true subject to this theory is not to be an axiom, postulate, that is to be the *initial statement*.

At the same time, our initial statements shall not necessarily be something self-evident, universally acknowledged. For us it is significant and sufficient that we believe them to be the true *only* in the framework of the theory built. And should they turn to be universally acknowledged we should perceive this as an accidental coincidence that bears neither good nor bad for our further work.

At the same time these initial statements cannot be considered to be immune to someone's criticism. Quite on the contrary, all further manipulations inside this theory serve right to be the very purposeful verification, critical

understanding, that enables to timely give up a lame initial statement, correct and amend this in such a way that the result of these formations can be named Theory. Hence, it is obvious that in the beginning of theory building the initial statements are rather hypotheses, that is, they are assumptions of what is required. In the process of their building they verified constantly by internal methods of the theory built. When this building makes considerable progress and the statements withstand those internal verifications it becomes clear that to build a specific theory required this particular statement. ‘’…Axioms are neither synthetic antecedent judgments, nor experimental facts. They are conditional provisions (agreements): in making a choice we are guided of all the possible agreements by experimental facts, but the choice itself remains to be free and is limited by the necessity to avoid any contradiction’’ [66, p. 40].

Nevertheless, the quality of the set of the initial statements can be judged somehow prior to the moment the theory construction has made considerable progress. The totality of the initial statements as part of the theory is also a system. A good system of initial statements (axiomatic system) of the theory shall meet a number of requirements.

1. *Content-richness*

Every initial statement shall have a content, which means, it shall represent a sensible supposition that can be said to be false or true (in the logical sense). Observation of this requirement is necessary, merely from the logical law of the third odd one that insists that A (statement) can be either true or false. There is no other alternative. This underlies the logical negation: if A is true, then (not A) is false.

If amid the initial statements that constitute an axiomatic system we find such one about verity thereof we cannot judge due to the impossibility to comprehend its content, such a statement is useless in the best case and shall be cut off with the Occam’s razor, and in the worst case it can destruct our theory, violating logical laws.

2. *Formal consistency*

If among the initial ones there are statements that are in contradiction to each other this fact destructs the theory as a system. It is impossible to connect contradictory statements in a regular way. According to the logical law of consistency both contradictory statements cannot be true at the same time. That means that *at least one of them is rendered false.*

In order to make an axiomatic system to be a real system, the primary statements shall be connected therewith. As the methods of connecting statements therewith logic suggests us employing conjunction, disjunction, implication and equivalency. Not all of them are suitable for integrating statements into a proper axiomatic system. Thus, disjunction is not suitable in achieving this purpose because it compels us to choose one of those statements connected by disjunction, saying: either A, or B. But as we find it necessary to stand by both of our axioms we will have to give up disjunction.

Equivalency insists: A is only then and when, if B. However, it means that A is not an original axiom, but a corollary of B and, consequently, equivalency is also to be discarded by us (see rule 4).

The most suitable method of connection is conjunction, which suggests: both A and B, that is, it is the literal totality of all our statements –axioms. We absolutely need the entire totality (conjunction) to be true. In principle, each statement can be both true (1) and false ( ). According to the Table of conjunction

A	B	A and B
1	1	1
1	ø	ø
ø	1	ø
ø	ø	ø

A totality of statements is true only when both (all) statements pertaining thereto are true. If at least one of them is false the entire totality is rendered false. Thus, if we have a pair of statements being in contradiction to each

other, then at least one of them is false, and, consequently, integrating them into a system by way of conjunction we receive a false axiomatic system.

As the implication: if A, then B or A→ B (if the sky is cloudy (A) then it rains (B)), is less rigid, than equivalency, we have to consider such a method of integrating statements into an axiomatic system. According to the table of implications

A	B	A → B
1	1	1
1	ø	ø
ø	1	1
ø	ø	1

In case when the condition (A) is true and corollary (B) is false the entire implication is rendered false. Our axiomatic system makes it known in advance what original statement can be assessed to be a condition, and what can be assessed to be a corollary. Consequently, if just one false statement (statements) is available the whole implication is rendered false. But if it does seems to someone that grouping axioms is sufficient in such a way that makes the condition false, and this improves the situation, this is not true. In the implication table this case has the two last lines correspondent thereto, which suggests us that from a condition logically false everything may be inferred.

The implication table shows that in case if A is false, regardless if B is true or false, the implication A→ B is true. In the colloquial Russian language this fact has been reflected in the following popular phrase: ‘’if (any statement follows hereon that is wrong from the point of the speaker), then I am the Chinese Emperor’’.

Thus, regardless of what position is held by a false (contradictory) statement in the implication, the totality of all the statements is rendered unsatisfactory for the theorists. Hence, formal consistency of the initial statements is an *unconditional* requirement, and it shall be met by any theory.

3. *Deductive completeness*

An axiomatic system shall in an explicit form contain a full set of initial statements, which is necessary and sufficient for a deductive formation of all the conclusions from a specific theory. If a theory contains a conclusion obtained intuitively, which is not in contradiction to the other conclusions of this theory and its axioms, and is not inferred from these axioms in a deductive way, the axiomatic system shall be supplemented by another necessary initial statement, or some initial statements shall be augmented in such a way that this conclusion can be obtained as their corollary. In doing thereof, it makes greater the probability that such an augmentation of the axiomatic theory will not only substantiate this intuitive conclusion but will also provide us several new, unexpected conclusions.

Unfortunately, theories often violate the deductive completeness, which is of two types. The first type of incompleteness is connected with the fact that the theoreticians, and then the researchers consider some objects to be so obvious that they believe that they do not require verbalization. Sometimes it is true. At times it seems to be true. And he who doubts the obvious becomes the author of another theory. However that may be, it is only a pronunciation, fixation of such concealed elements of theory enables us to get convinced and show all the other that the obvious is really obvious. Even Euclidean theory turned to be exposed to such a flaw, postulating, for example, in an implicit way uniformity and isotropy of space. If this axiom had been present in Euclid’s theory in an explicit way, many disputes aged by the adherents of his theory and other theories would have been impossible, as two different axioms that may be found in two theories make the latter *different* theories.

The second type of incompleteness is connected with the fact that some definitions contain axioms in an implicit way. D.S. Mill insisted that *any* definition contains an axiom. A. Poincare believed that the axioms of geometry are not more than disguised definitions. Though it might seem that an implicit axiom fixed in the definition is better than an unfixed and obvious one, in reality it is far from being an advantage. Such an implicit axiom is also made immune to a purposeful criticism, to

a critical understanding of it being an axiom, which makes it difficult to elicit *all* the possible contradictions.

The requirement of attaining deductive completeness is quite justified. However, meeting this requirement is not easy. It is very important that this requirement be understood as a significant goal of axiomatization.

4. Mutual independence

A theory correctly constructed does not allow its different axioms to be inferred from each other. First, it is necessary to avoid tautology (see the rule of definitions 3). Second, in naming a theory to be an axiom we beget essences beyond measure.

Besides, and it is the most important thing, an investigation into mutual independence of axioms is the main weapon wielded by theories in combating other theories. If someone had managed to prove Euclid's postulate about the possibility of drawing just one straight line, parallel to the specific one, across the specific spot not to be a postulate but a theorem, this would have made instantaneously Lobachevsky's theory cease to be a theory. If someone had managed to prove Euclid's postulate about the possibility of drawing just one straight line between two spots not to be a postulate but a theorem, this would have made instantaneously Riman's theory cease to be a theory. But given that nothing of the kind has ever happened, and these postulates remain to be postulates, all these three theories have the right to exist as theories; and in constructing a new fourth theory of his own any theoretician has the right to choose as his postulate any other statement instead of any from Euclid's postulates, should the initial statements of *his* theory not contradict each other. This is why the theories of Euclid, Lobachevsky, Riman are quite legitimate in Science. But should any newly formulated axiom contradict at least one axiom, already accepted, the new theory comes tumbling down as a house of cards, which is resultant from the conclusiveness of the second requirement.

So, we have the elements now – conceptions and primary statements. Is this set sufficient enough for any system constructed thereon to be called a theory?

Perhaps, not. There is another kind of statements, which, of necessity, constitute the elements of theory.

Any theory strives to be useful – there is nothing more practical than a good theory. And it is its elements of a third kind – theories, lemmas, corollaries, comprising all those ‘’correct’’ *conclusions* that can be made basing on the primary statements while using the conceptions of the theory - that make the theory useful. Thus, we are to understand a *conclusion* to be a statement inferred through logical construction from the primary statements (utterance accepted beforehand as true) and true (that is logically not false) in the framework of this particular theory.

Resultant from our reasoning is the set constituted of a necessary and sufficient quantity of elements being part of a theory – conceptions, primary statements, conclusions. If we liken the concepts to the bricks, any part of the theory structure is constructed thereof, then the primary statements (assertions) – axioms – lay the foundation of the theory, and those proven (inferred) statements – conclusions – that of its walls and roof.

To complete the clarifying of the conception of ‘’theory’’, it is sufficient to explicitly shape up the character of connections between these elements. It shall be of a type which is able to show the necessity and obviousness of such connections.

First of all, what draws our attention is the fact that conceptions, statements and conclusions – linguistic objects, that are the objects of language. The concepts (terms) are the words, and the primary statements and conclusions (both are utterances) – sentences. All the primary statements of the theory are assumed to be true by definition. All kinds of theory hold that their conclusions are also true. What can convince any impartial researcher of a specific theory that this is true, that is that the conclusions thereof are really true? There is but one method of the objective internal verification of the true character of the sentences – conclusions which is their correspondence to logical patterns (laws).

Some fields of research have turned out to be luckier – they have facts to their disposal to be used as a means of verifying the real facts as correlating the real

facts. In case if the conclusions of such a theory turn to be inconsistent with the real facts it makes it necessary to verify the procedure of conclusion making, and, if this procedure is correct, then the axiomatic system is to be corrected. Other fields of research are not so lucky – they do not have such an opportunity. However, any theory, as reflecting any kind and field of knowledge, needs using logical laws in constructing a mechanism of its internal arrangement.

All sentences in language are subject to a propositional calculation or calculation of utterances; from a more general point of view – to a calculation of predicates. The calculation of predicates is a field of logic, which is the research underlying the any rational discipline and which *cannot be refuted by any experiment or fact.* The reason of such alienation from practice, experimental verification is in that logic deals not with the world, but with the statements and manipulations therewith totally independently from their content [9, p.56]. There is the only theory which begins almost from scratch, which is not based on any other theory – that is logic. All the other theories imply much more in addition to logic. ‘’Undoubtedly of eternal and supertemporal significance are the ideal truths of logic and mathematics’’ [97, p. 78]. Any scientific theory assumes, as the logical minimum, the so called calculation of predicates with an equation. It is necessary and sufficient to analyze conceptions and inferences that are encountered in mathematics and natural sciences. Any utterance, as long as its form is considered, is a formula of this calculation; and any correct reasoning contains therein the rule of conclusion specified by logic. It is perfectly obvious that the theory can consist of the true secondary statements (assertions) only – theorems, conclusions. All false (in terms of logic) statements are removed thus from the theory.

However, to make possible using the specific logical apparatus it is necessary to meet the condition that all the subjects and predicates, conceptions of all the utterances as part of the specific calculation shall belong to the same universum. The universum (U) is to be called such a set that all the sets (concepts) considered in the system are subsets [38, p.44]. To put it in other words, every subject or predicate involved in the calculation of utterances must be an element of a

subset of the same set- universum – shared by all of them. This condition, easily met in mathematics, poses a tremendous problem for any humanitarian field of research. Resolution of this problem is an important step towards achieving the heights of theoretical science by any science.

It would be incorrect to believe that all scientific theories have been developed through applying the calculation of predicates. Many theoreticians in their work were quite content with their own concept of what the correct is, with common sense, which are based, although implicitly, on logic. It is the logic itself that controls what is constructed with the help of concepts.

Moreover, all kind of theory uses language to make its exposition possible. This language is a logical structure in itself. Thus the logic of the language used also provides the theory with a logical basis. It is highly probable that any kind of theory, being proven to be in compliance with the deductive principles, is likely to withstand subjection to any proof. If it fails, it will signify that something is flawed in this theory. It turns out that many authors of correct theories do not even suspect that, following the well known literary character, they ''speak the prose''.

Thus any kind of theory implies establishing logically correct connections between the elements thereof.

Theory is a system of concepts (notions), statements (assertions) postulated, as well as conclusions inferred strictly logically thereof.

It is obvious that such systems can exist and do exist in the only place in the Universe – in human mind. It is the human intellect that engenders theories. It is a product of human creativity. And the book named ''theory'' (including this book), that is the paper, printing paint, glue, is not the proper theory.

It is also obvious, that it is the human mind and only human mind that *creates* theories. What for? The main feature of any conscientious act is the goal preset, foreseen (by human mind itself) and anticipated as the achievable one.

Why does man create theories? It is normally considered that they are created with the aim of explaining a number of phenomena, properties, objects of theory.

Sometimes it is explained in a most general, philosophical way- to comprehend the Universe, thinking it is constituted totally of the objects of some theories or is one of those objects.

Without claiming to achieve such elevated goals, we think it to be necessary to highlight just one indisputable goal of constructing ay theory – the one pursued by a legal theory.

We hold that the *goal* (or one of them) *any theory strives to achieve is presenting the human intellect with knowledge comprehensible to him on* ***how*** *the object of theory is designed,* ***how*** *it functions and* ***how*** *it should be treated,* in order to achieve any other goals, important for man from the practical point of view.

In a word, it is again about ‘’nothing is more practical than a good theory’’.

Here it is necessary to clarify a few concepts used above.

We use the word ‘’object’’ in the sense that theory expresses in a clear and definite way the properties and mechanism of the design and functionality of this object. However, there can *never* be found such a precise expression in relation to the real objects of the outer world. Even the sciences, which can verify their conclusions experimentally (through observation and measurement), in performing their research, always have a small gap between the theoretical and experimental values, which man strives to possibly reduce by improving either theories or methods of observation. But it always exists.

A banal example: in measuring the angles on the surface of the earth with the aim of making surveillance plans, the theorem of triangular sum congruence with two right lines is never complied or just occasionally complied with. A small ‘’discrepancy’’ in such measuring is considered to be a mistake and a respective correction is made in the measurement procedure.

This example shows that it is not the triangle man can ‘’fabricate’’ by determining three points in space (driving pegs into the ground) that is the object of theory, but some *ideal* triangle, whose angular sum *cannot* be congruent with two straight lines.

It is in the same very way that an ideal warm driven machine is not a real steam engine or internal combustion engine. But the conclusions made based on the theory of an ideal machine tell the designer what effort and in what direction shall be made by him to improve his product, make it closer to the goal to be set (attaining a higher capacity or rendering it more economical, or finding an optimal correlation between the both).

And, what is undisputed, any kind of theory is rendered efficient or practicable depending on how closely its ideal object correlates, according to its properties and qualities (*postulated* in theory), to the real object of the outer world.

We have thus defined the concept of ''theory''. Bearing in mind that the task of defining is an exact delimitation of this concept from all the other concepts, it were of use to make verification. The question whether all the characteristics used by us in the definition are necessary has already been touched upon here in-depth, and there is nothing to be added to it. At the same time what is in store is analyzing whether all the necessary characteristics of the concept ''theory'' have been used by us in our definition. The main criterion for the necessary adding of a characteristic to our definition is detecting some irrelevant element in the scope of the concept defined; something which is not theory but correlates with our definition of theory. We have up to now failed to do. It is possible that our readers might suggest us such elements; and then we will improve our definition. We have also failed to find any single object we would like to name as theory, but which would not correlate with our definition. This indirectly confirms that all the characteristics applied in the definition have answered their purpose.

Formulation of scientific concepts does not always enable to discern the content of this concept – ''theory''.

There three methods of formulating theories: historical, heuristic, and axiomatic.

The historical method of formulating strives to trace in full detail the history of establishing and developing a scientific theory; to consider different attempts of its constructing including those fallacious. This method is the most widespread.

The heuristic method strives to highlight, as soon as possible, the most useful (although not necessarily most fundamental) conclusions of theory and show immediately the methods of their application.

Both the historical and heuristic methods are inefficient in formulating theory in its complete totality. They pay too much attention to the conclusions of theory; fail to give explicitly the most primary statements; ignore a logically articulate definition of the concepts used in theory; leave unclear to a great extent the logical structure of theory. What is more, it is hard to say, until theory has been modified into an axiomatic way, whether a specific totality of utterances, a specific doctrine is eligible to being considered to be a theory. In this connection, formulation of the humanitarian theories, in contrast to those of natural, corresponds to the axiomatic method to a much smaller degree. Law and research connected therewith are not the exception in this sense. It is perhaps for this particular reason that till the XX century the Russian experts of jurisprudence were watchful of calling their research works to be ‘’legal theory (Theory of Law)’’; and their chief course they provided in the legal science was called ‘’Encyclopedia of Law’’.

The difference between the historical or heuristic methods of formulation and that of axiomatic are similar to the difference between the research process and its results. A theory formulated in an axiomatic way is notable for clarity and systematic regularity; it becomes absolutely transparent and open for criticism. This particular property, quite unsuitable for those who expose theory to universal examination, is objectively very useful and advantageous as it helps render any criticism to be constructive. Scrupulous critics have to analyze the basic (indefinable) concepts, definitions of concepts definable and primary statements (axioms) in order to agree with them, refute them (through suggesting their own) or point out to their partial imperfection (specifying them and further developing them). The entire further critical analysis, including logical research of the system

of concepts, statements and conclusions suggested by the theory, is made possible only within the framework of a totality of concepts, statements and axioms suggested by the critic himself (otherwise it is not criticism). The discussion (not dispute) thereof is immediately rendered clear for an observer, who is rendered capable of formulating his own view.

As it can be seen from the above text the set of concepts and primary statements is determined critically by the theoretician himself. In the fields of humanities connected research, where the role of fact, experiment in verifying ‘’correctness’’ of the conclusions from a theory is extremely limited, it is an assessment and qualitative analysis the system of primary statements and concepts is subject to, which is of higher importance. Discussions between researchers, adherents of different theoretical schools, are fruitless to a considerable degree, because they are - if at all - about accuracy of different theories. At the same time the fact is ignored that both conclusions within ‘’their’’ respective theories are often ‘’correct’’. The difference between the conclusions themselves is often conditioned by the difference of their axiomatic foundations. But, given that the axiomatic foundations in humanitarian studies are not formulated explicitly, constructability of such discussions is near zero.

What is more, the axiomatic method of formulating theory is methodologically an independent scientific instrument, the using of which can provide more results. Perhaps, it is for the reason that no great physicists have taken any pains to expound the scope of theoretical physics known to them in an axiomatic way that no single theory of field has been developed by now.

One significant circumstance needs to be highlighted in going over to the substantial part of our theory.

As far as the natural sciences are concerned, the axiomatic systems of the theories used therein provide yet another criterion of the truth in addition to the internal verification – they can be applied to the objects the specific scientific field describes. The success of this application, both through answering to the questions posed on the mechanism of the object’s behavior, and through predicting thereof,

is the sufficient proof of a theory provided it meets the practical requirements (for example, the accuracy of prediction). To put is simply, theory is proven by practice.

We encounter a totally different situation in the humanitarian research, and even more so in political. Those involved in the humanitarian fields of research are, of necessity, not empiricists, followers of Bacon and Locke, in terms of their relation to the technology of obtaining knowledge, but rather rationalists, followers of Descartes and Spinoza. For them the truth lies in the fact that ‘’the highest foundation of knowledge is the truths self-obvious, axiomatic, that are logical judgment of the connection of clear and simplest ideas’’ [97, p.44]; but not the statement that ‘’all the ideas including the concepts of the highest order are colligation provided by experience ‘’ [97, p.46]. For them the basic methodological technique is that of deductive synthesis but not inductive analysis. This is not their whim, resultant from their free volition. Quite on the contrary, this is an objective circumstance preconditioned by the special character of the field investigated by them. The natural sciences expound predominantly the existing, Existence, which is not dependent on our subjective opinion, while the former expound mainly the Normative, what we want from the object the theory is applied thereto. For example, linguistics presents a theory of the existing language; literary criticism endeavors to provide an aesthetic assessment of what is written in the language. Although, the theory of vessel or theory of air craft expound the way the vessel must be designed to prevent it from sinking, or the way the air craft must be designed to take off and fly.

The conclusions provided by linguistics do not condition (almost never) the behavior of a living language (the exception is Esperanto, which confirms the rule). Literary studies, as it were, endeavor to show the direction and give criteria to development of literature.

To put it in other words, the natural sciences – sciences on the existing – do not use the evaluations; they never discuss whether this world is good or bad; they expound *the way* it is designed and operates. The humanitarian sciences are

inevitably conditioned by evaluations; they expound how their world must look like. Thus the subject for the theories engendered by the humanitarian research deals more often not only with the ways the elements of a respective humanitarian field are designed and interact, but also with how they *must* be rightly organized, how they *must* rightly interact.

How shall we differentiate between the theories on the existing and normative; in general – between the existing and normative? As the criterion for such a differentiation, a goal, which is its presence or absence, can be used. If we consider the theory of gravitation, if the subject for a theory is gravitation, the question of: ‘’what is gravitation needed for? ‘’ seems to be quite useless. Gravitation simply exists. The same can be said about the theories of friction, planetary motion, inheritance, etc. This is a theory about the existing.

However, if we consider the theory of ship such a question stops to be senseless. In working out the theory of ship we want a vessel to navigate quickly, reliably, to have an adequate carrying capacity, etc. Thus, while elaborating the theory of ship, we want the ship constructed in accord with our theory to meet the goal to be set by us. It is either about being very quick, or being very reliable, or combining these properties in a proportion set by us. In elaborating a theory on the normative, we want to know what kind of ship it *must* be to have it meet the goal set by us. Therefore, given the conditionality of the above said, if the object of a theory can be premised with a goal, this theory then is a theory on the normative. The subjects of humanitarian studies (and jurisprudence, in particular) usually have such a goal, although it is not always spoken of openly.

People, including those involved in humanitarian studies, have different visions of the normative. Ignoring this fact, that is the attempts to discuss the conclusions from different theories without preliminary formulating the theoreticians’ divergences in their ideas of the normative, always leads along the blind alley.

The ideas of the normative are constituted of certain statements, ideas that can be viewed in accord with our definition of theory as either axioms, or as theorems-conclusions.

However, in political sciences, and in particular in the science of law, it is deemed possible and necessary to preliminarily consider the existing legal systems, those that existed, and those that can exist and the ideas underlying them, in order to formulate our quite full and non contradictory idea of the normative, basing on the maximally possible scope of information available.

To this end, the existing ideas and concepts of the normative can and must be structuralized.

Such structuralized ideas (concepts) on the normative consist of political ideas [*)] which can be grouped around several (three) axes forming the **''political space''.** Given a correct structuring procedure, every local area of the political space must be unique that in a sense it would be impossible for different areas of the political space to formulate a similar set of axioms of the theory on the normative. Political space is the very space of the existing, wherein we have to choose an area to apply our theory on the normative thereto. The normative as the entity that is relevant to the area of the political space we have chosen.

[*)] I have quite conscientiously depersonalized the political ideas proposed in order to concentrate on their content. Although for *myself* I tend to define them as follows: 1- liberalism; 2- communism; 3- socialism; 4- democracy; 5- despotic regimes; 6- exclusiveness; 7- equality. However, as other people might have other ideas behind these concepts and this can prevent them from sorting out the essence of the formulated let us leave these political ideas to be nameless for the time being

Proceeding from the conditions listed above, let us try to structuralize the political space.

The first and most important axis of such a political space is *the axis of unconditional values: man –society- state.*

At one end of this axis there is political idea N 1, according to which every person is the highest value – the centre of the Universe, for the sake of which everything exists and functions. Society is a totality of separate individuals that

must not claim any rights for any personality and any interests that contradict to the interests of a separate individual. The state is an instrument designed for the organization of existence of people and, as well as society, it does not claim any rights for an individual, nor has it any interests that are in contradiction thereto. Man has only three kinds of obligations – not violate the rights as equal as those possessed by other men, fulfill the obligations he voluntarily undertakes to bear, and pay taxes to sustain the state. The state provides for meeting these obligations by every person. This political idea assumes that every man has as much freedom as possible.

At the other end of this Axis there is political idea N 2, according to which the state is everything. Man is a cog, whose role and function has been determined by the state. Any provision of the state is lawful and is to be necessarily obeyed. Man has no independent goals. Society is an instrument of the state that helps coerce an individual to fulfill any provisions issued by the state through exercising a collective responsibility (one for everybody, and all the rest for everyone).

Somewhere in the center of the axis under consideration political idea N 3 is located, according to which the highest value is society. Society sets life and evolution goals for its individual members. Society assesses man's actions and activities from the point of their practical utility in achieving the societal goals – its preservation and development. Man has the right to pursue any goals that are not contradictory to the goals of society as a whole; is obliged to comply with other people's rights; fulfill his voluntary obligations and all societal instructions designed to fulfill these duties by every person. The state provides for everyone to meet these obligations.

All along the first axis there is an element – the state as the totality of structures and mechanisms of governance, the scope and functions of which change depending on the location of the axis. But how is the state formed? What is the origin of its power? These questions are answered by the political ideas located along the second axis of our political space – *axes of the source of law (right).*

At one end of the second Axis political Idea N 4 is located, according to which all the citizens of a specific country are the source of state power and, therefore, they all have the right to exercise state power. This power can be exercised by the citizens directly or through their representatives.

At the other end of this Axis political idea N 5 is located, according to which the state power can be exercised under various pretexts (quite plausible at times) by one individual. Depending on the pretext or method of winning power it can be called monarchy, dictatorship, tyranny, etc. history has demonstrated many a times various intermediate variants of triumvirates, Directoires, septenary aristocratic councils and other usurpations.

When we speak of democracy as equality of the rights for state government and power we mean that this equality of rights concerns the citizens only. In addition to this, there are political ideas that insist that not all people deserve to be called the Citizen. Besides, together with the right for state power every person can in theory possess (or be dispossessed of) other various rights. These facts have not been expressly shown on the first two axes. Therefore, there is a necessity to introduce a third axis of our political space – *the axis of exercising rights*.

At one end of the third Axis political idea N 6 is located, according to which there are people (man) pertaining to the first and second qualities. The first quality people exercise all the rights preconditioned by their location on the first and second axes; all the rest have no rights at all. Appurtenance to the first quality might be conditioned by different circumstances (nationality, religion, background and blood, etc).

At the other end of this axis the axis totally opposite thereto is located – Axis N 7. In accordance therewith, all people are of the same quality politically; and no exceptionality is admitted. Every person possesses as big an amount of rights as any other person.

The following can help explain the arrangement of the ‘’political space’’. We can assign some political indexes to individual points of the axes and name the

respective historical examples (Appendix 3). Let despotism – power of one person – be the identity element (1), and democracy – power of all – zero. It is either that man corresponds to the zero point on the axis, or state – to the identity point. Equality is zero, exceptionality – identity. Then we will see that all the complexes of ideas known historically have deviated from these boundary points: nowhere the value of state has been reduced (or can be reduced) to zero. Even the despotic regimes (power of one) have retained the principle of undivided authority in the current democratic states – president, prime-minister, and somewhere even monarch.

It is quite by accident, although successfully at the same time, that man, equality and democracy turned to be located in the origin of coordinates in our space. There is no need to give proof that humanity, throughout human history, going through sufferings and social turmoil, has aspired to reach this particular ideal point. ''A society that stopped building up ideal arrangements would be a dead society; these arrangements show every time that therein the spirit is alive and there is movement of the moral sense and conscience'' – says P. I. Novgorodtsev [55, p. 602]. Let us also try to make our contribution into sustaining this spirit. It is possible to assume that this aspiration has revealed a law unknown hitherto and connecting in human mind kindness, good, everything good with the very concepts of man, equality, and democracy; evil and ill-being with all the bad things are connected with the concepts, that are opposite to them on our axes.

We explicitly admit that we are not going to resist this tendency; we admit that all our aspirations are connected with this origin of coordinates.

It is obvious that the legal system formulated in full accord with political ideas 1-4-7 is inevitably likely to radically differ from the legal system formulated in accord with political ideas 2-5-6 for the reason that the idea of the normative the developers and adherents of political ideas 1-4-7 is totally different from that of the adherents of political ideas 2-5-6. (Here we have to use the term ''legal system'' without exposing its essence for the time being). This concept is going to be exposed in the respective chapter of this book. However, we hope that using this

term in this place in the beginning of this book will not make it difficult for the readers to understand it).

Let us leave open, for the time being, the question about whether it is possible to create a legal system corresponding to any point of the political space; or here, like it is in quantum physics, some allowed and forbidden areas are available. Something different is important for us now. The legal systems given by us above (1-4-7 and 2-5-6) cannot be described within one legal theory. As we have already determined at least two different axioms in two theories renders them different theories. Therefore, for different areas of the political space *one legal theory is impossible.* Every area of the political space *requires* having its own legal system. It is obvious, that these theories will be based on sets of axioms essentially different. It is essential, but not absolutely. These differences are likely touch on the parts of the theory that are relevant to the normative; however, they might not touch upon the parts relevant to the existing. It is also possible that the theories radically different in the area of the normative can converge in the area of the existing. It would be reasonable to assume that it is here, in the area of the existing, where the basics and fundamentals of any legal theory may be found. Let us also commence our work with finding these fundamentals. But how is it possible, from what constitutes the content of a legal theory, to single out what can be referred with certainty to the existing? It's possible that the phrase J-J. Rousseau begins his immortal work can be of help in resolving this problem: ‘’I want to investigate whether any principle of governance in the civic status is possible which is based on laws and being reliable, if we accept people as they are, and the laws as they can be’’ [71, p.197]. If we are to agree with this great son of the Geneva Republic – and disagreeing with him on this is unreasonable – then the main contender for the existing in a legal theory is man himself, man's essence in the legal aspect, those characteristics of man that are inherent of all the people and are essential for a legal theory. It is without man as the subject thereof that there is no and cannot be any legal theory. Thus

Man

In embarking on investigation into the phenomenon hereunder, it is of importance to point out that man is the very concept which is undoubtedly part of the

fundamental, and therefore cannot be given a precise definition. Drawing on Gödel theorem of incompleteness (90), we will not follow Plato (Diogenes) in trying to define man as something similar to a two-legged creature with no nails and feathers…We will not struggle to define the content of the concept as the scope of this concept is quite evident to us. We can see clearly what human beings, as elements of the multitude of humanity, are. We can be satisfied with the fact that in using the term of man in theory we will certainly not endow it with any different meaning that is beyond the multitude sought. Thus we have the first indefinable concept - *man* (each and every single individual). But this element of the multitude – a human individual – possesses an inexhaustible number of qualities, of which an overwhelming majority is totally irrelevant for our inquiry. Therefore, our task is to identify out of this multitude of characteristics and pinpoint those without which we are unable to build a legal theory.

By the way, being quite unaware we have already embarked on the path of describing essential characteristics of man, having designated thereof as a singular element of some multitude – humanity. The most important of these characteristics is related to the extent to which man is singularity, to which he is autonomous and distinct from other elements of the human multitude, and perhaps to some other important entities, separation or non-separation thereof can matter for legal theory.

«Humanity presents itself as a multitude of spiritual centers, each if which is hiding mysteriously behind a single thing, central and specifically instrumental to him, called his body» [26, p.110]. As for this "central thing" called body, it presents no difficulty in the framework of our inquiry. Each of human bodies is distinct enough to consider it as a singular element of the multitude. But the point is that, as Ilyin rightly noted, this phenomenon is specific. This thing is essentially different from other things, being the house of the *spiritual center*. And this is their totality that makes up what we call man. What distinguishes man from all other things is consciousness inherent in him. When Spinoza says that a falling stone if it had been conscious, could have thought that it was falling on his own, having freedom [81, p. 592], we do see that he is ironical and we see how different man is

from a stone. And what distinguishes man from a stone is that spiritual center, which is mentioned by Ilyin.

However, this very fact of this *spiritual center* does not yet testify the extent to which every man is distinct and autonomous. The assumption that an individual spiritual center is related to some other center, perhaps, global one, cannot be either proved or disproved. We are unable comprehend whether Clio is really weaving the web of our life, whether circumstances are in command of our spiritual center or we are able to surpass them, etc. Question of freedom of will has been debated for centuries since Socrates. “The concept of autonomy (freedom of will – S.E.)…underlies the *entire* life of human spirit” [26, p. 109]. Contributions into this dispute have been made by a host of great philosophers. Determinism and indeterminism, dualism and existentialism, Luther and Erasmus, Schopenhauer and Shelling, Hegel and Nikolai Lossky failed to give a definite answer. The truth is that they were unable to do this, because apart from their own presuppositions, their own conviction and belief in philosophy they had nothing to draw upon. But we cannot avoid it. Because, with this question of *whether man possesses freedom of will* remaining unanswered, no legal theory can be built. Indeed such a theory cannot be construed without giving this question a positive answer.

In fact the aim of any legal system is in restricting arbitrariness in human behavior. But every such restrictive act always appeals to the consciousness of individuals, to their conscientious will. However, if the cause of individual’s acts does not lie in himself, if he does not possesses freedom of will, if every his act is predetermined by someone or something, then no requirements addressed to him and his mind can influence his behavior and therefore any legal system is rendered meaningless. Now we do not mean whether any *actual* legal system is meaningless. We mean only that if we deny man the freedom of will, if we admit that the freedom of decision making lies elsewhere, that those decisions are determined from outside and are not products of his own mind, then our *activity* in constructing a legal system is rendered meaningless. “If the will were not free, instructions of reason were futile as they would contain either what, of necessity,

the will aspires to or what, by its nature, it is unable to perform" [39, p.5]. And those who engage themselves in some legal activities and are unwilling to acknowledge beforehand these activities to be meaningless, are just obliged to allow man to possesses the freedom of will. The idea of constructing a legal system for a herd or beehive or anthill seems obviously nonsensical to us because for an individual ant, bee or goat, the freedom of decision making lies elsewhere. "This designation (anthill – S.E.) implies a universal and consensual amalgamation of live creatures belonging to specific species, based on their sharing one unerring instinct of building the common home. Such an instinct is endowed to all social animals (e.g. ants) except man; therefore while the former always build similarly, the same thing everywhere and peacefully, the latter builds dissimilar things far and wide and is undergoing eternal transformations in his desires and concepts; and hardly does he embark on building the universal as he diverges in his concepts, single individuals and this with death-feud and hatred" [70, p. 149]. Thus it necessitates us to fix this most essential characteristics distinguishing man from the external world in

Axiom 1.

Every man possesses internal freedom (freedom of will).

We have introduced two new terms into our first axiom: freedom and internal freedom. The concept of "freedom" has to be referred to the basic by us, those not defined, hoping that the content of the concept will not cause any difficulties further on for one to understand and use it. It has always been defined very differently, though.

Pericles: "Consider…he who has the courage of facing the dangers of war as having freedom" [59, p. 22].

Montesquieu: "Some consider freedom to be an easy opportunity to overthrow those whom they have endowed with tyrannical power; some think it to be a right to elect those whom they must obey; some other – the right to carry weapons and

commit violence; and some others see it as a privilege to be ruled by a person of their common nationality or be amenable to their own laws. Some people considered freedom to be a custom of wearing a long beard" [50, p.288].

Trölch: "Freedom… is a free, conscious, dutiful self-devotion to the whole, which results from History, State and Nation" [88, p.192].

Tocqueville: "There is civil and moral freedom; power that embodies itself in everyone's unity; power to be protected by authority itself; this freedom is in committing good and just without fear. This freedom should we protect against any accident and, if necessary, we should sacrifice our lives for it" [86, p. 53].

Dostoevsky: "There is nothing more painful a task man has to fulfill than to find someone to hand over that gift of freedom, with which this miserable creature is born, as soon as possible" [23, p. 397].

Leaving the concept of freedom undefined for the time being, we can define the second new concept through the nearest class ("freedom") and generic distinction.

Definition 1.

The internal freedom is man's freedom (ability, power) to make his own choice of what to wish.

"The power to wish according to provisions of one's mind is called volition [volya]" [39, p. 3]. At the same time it is necessary to note that internal freedom has no limitation, for such limitation can only be imposed by its own act, motion of its consciousness, or spiritual center of man, manifestation of man's free will.

Moreover, man's power to choose is not only his essential characteristic but is an ability quite useful, and this is the case even if we agree with F. Dostoevsky in that "freedom of choice is man's unbearable burden" [23, p.398]. It is the basis for his many other useful faculties: comprehending, making judgment, reasoning, distinguishing between good and bad. This and other man's faculties are improved when man makes a choice. Practicing this particular faculty drives man on the way

of his progress. Should man be deprived of this faculty – of thinking options of choice, what specifically human does he retain? Power to choose what to wish is the most important application of the faculty of making choice at all.

Thus, we postulate that all people want something. It is now the right time to analyze this essential characteristic of man – his wishes.

The first thought that comes to your mind, - whether there is something common among these wishes which are inherent in all people? Something that could be of use in characterizing man from the point of building a legal theory. If there are any such wishes which are inherent in all elements of the multitude – people? T. Hobbes gave his answer to this question. He emphasize among the contenders the following: "natural need (cupiditas naturalis), by virtue of which everyone covets the right to own things which currently are in common possession, and natural reason by virtue of which everyone strives to avoid violent death as the greatest of natural disasters» (Hobbes. Works in two volumes, 1989, V. 1, P. 622).

We assume that we can postulate in a more general way one such wish that is really inherent in all people.

Axiom 2.

Every man wants to live a good life.

This means that most, and foremost, everyone wants to live. Instinct of self-preservation is the most powerful instinct inherited by man. At the same time the object called "body", although a necessary *condition* for life, is not the determinant and principal in this tandem. Determinant is the very spiritual center ("consciousness", "mind", "intellect" and the like, whatever name this spiritual center is given by different writers), which essentially characterizes man and determines him as man. According to Karl Popper, it was Socrates who insisted that "man is not only a piece of flesh, not only the body. Man has something bigger – divine spark, reason, and also love for the truth, kindness and humanism, love for beauty and good. It is they that endow a human life with dignity. However, if I am

not only the "body", who am I then? You are the intellect, above all". (Karl Popper, Open Society, V. 1. M., 1992) [62, p. 237].

Being a prerogative of consciousness, intellect is the second component of the axiom – "good". That is why however bad the body feels, however inhuman the conditions (hard labor, concentration camp, etc.) this body exists in, it will cling to even the most adverse existence. Another story is the horror of existence for the spiritual center itself. The feeling of guilt, pride, responsibility etc. may push a man into committing something incompatible with the bodily existence. It is only the collision between "to live" and "to feel good" (for the spiritual center) that can force man to give up "to live". Only if the extent of "worse off" determined by the spiritual center itself becomes such that "well off" is "not to live", because "to live" is intolerable, unbearable, "not good" (for the spiritual center), man can voluntarily give up "to live'. As long as a specific "not good" (meanness, betrayal, etc.) is compatible with the demands of the spiritual center, man will not give up living voluntarily.

Moreover, the overwhelming majority of people assess being terrified, hurt, hungry, cold etc. as "not good" but this "not good" accounts for the human body. And however "not good" it is for the body, the spiritual center will not prevent the body from experiencing any bad bodily sensations at the expense of life itself, and at the same time will push the body into getting rid of this "not good", towards "not horrible", "not hurting", "satisfied", "warm", etc., which is "good". According to Kant, "to be happy is a necessary aspiration of every being that is intelligent but finite, and thus is necessarily a determining foundation for his or her ability to wish" [28, p.141].

It is high time now we located the very center that forms the "good-not good" antithesis. Proceeding from above and basing on Axiom 1 (every man possesses internal freedom**),** we can formulate

Corollary 1.

It is man himself only that decides what is good.

The above is the only conclusion we can deduce from our earlier reasoning. An alternative to this conclusion may be the thesis: sense of what is good and what is not good is something man receives from outside. But it would mean that man is unable to choose on his own, what is to wish (and this is in direct contradiction with the first axiom), and would mean that man has no internal freedom. Co-existence of Axiom 1 and the thesis is logically impossible.

And once it is true, if man only decides what is good for him, it means the right to decide that the sweet is not good for him and to refuse to eat the sweet. He has the right to decide that the soft is not good for him and refuse to sleep on the soft. He has the right to decide that the not horrible is not good for him and watch horror movies. He has the right to decide that what does not hurt id not good for him and hurt himself deliberately, etc. Regardless of what some other would think of it. "Nobody has the right to force an individual to do something or not to do something on the grounds this would make him better, or that it would make him happier, or finally on the grounds that according to some other people to act in the usual way would be more decent and even more laudable. All this can lay the basis to lecture an individual, persuade or admonish him, convince him but not to force him or avenge him for his not doing as they expected him to do. This interference is allowed only in the case if an individual's actions are detrimental for someone else." [49, p. 269]. Thus, "himself" in Corollary 1 means that *nobody* has the right to, from the point of "good - not good" for himself, evaluate other's wishes and actions in a way that could justifiably restrain this other man in achieving him any "good" under the condition that this "good" concerns himself only. In other words, nobody should hinder other man in his actions aimed to achieve what this man considers consciously to be good for him, just because someone else believes that the man is wrong and in fact this is bad for him.

The key word here is the word "consciously" as the only legal ground to restrain man in his achieving his own "good" can be man's inadequate consciousness of his actions. At the same time we should admit that partial

incapacitation is inadmissible: if we believe that a specific person is sufficiently conscious of some wishes and actions of his own, that they are good for him, then he is equally conscious of it in relation to his any other wishes and action of his own. And if we believe that in relation to some part of his actions a specific person is unable to be conscious of what is good for him, then we have no ground to be sure that he is conscious of it in relation to all his other actions. In discussing this it is important not to mix up inadequate consciousness with inadequate awareness. "The principal distinction of man is his ability of rational thinking" [72, p. 18], and the ability of rational thought is the most important component of consciousness. If a rationally thinking person intends to commit a dangerous act without being aware that this action is dangerous, it is sufficient to inform him of the danger, and his consciousness will necessarily prompt him to make a right decision.

Going ahead, we can say that everything mentioned above deals with the concept of "legal competence". Nobody will doubt that prior to achieving a certain age a child is unable not only to be conscious of what is good for him but to be conscious of whatsoever. On the other hand, experience shows us that there are people who due to their specific characteristics normally called mental disorders are also unable to be conscious of what is good or what is bad, even for their physical and bodily existence. These facts convince us that Corollary 1. Stating that man on his own decides what is good is fully applicable to completely legally competent people. The question of the age when man becomes fully competent is very complicated, and even more so is the question of how, what criteria, what procedures, in connection with what the problem of competence or incompetence of an adult person is to be resolved. We cannot go into these questions here. This can become the subject of discussion only after the entire legal theory has been elaborated. This theory must embrace the methods of determining natural incompetence of some members of society. It is of importance to realize one thing: if a person is competent, Corollary 1 (it is man himself only that decides what is good) applies to him in full. Hereinafter the term "man" will be applied only to such a person whose competence is not doubtful.

What we have stated above by no means stops or forbids anyone to evaluate actions and wishes of man from the point of - if it is good for anyone else? Moreover, the word “every” in Axiom 2 tells that anyone else, who wishes to live a good life, has the right to hinder the actions aimed at him in providing “good” for him not in the way he himself sees it, but in the way this “good” is seen by someone else. The question of resolving possible collisions between “good” as interpreted by different subjects will necessarily be our concern below. However, “everyone, even the most ordinary person, be it a man or a woman, has much stronger instruments to comprehend what is good for him or her, than anyone else” [49, p. 335].

Now in this chapter about man we are deliberately avoiding, whenever it is possible, considering any interaction between people, considering man as an autonomous element. Until now our axioms and corollaries have touched upon man’s internal world. But man lives not only in his internal world. Man interacts with the external world. What man decides what is good for him may be connected with some action: to go, take, eat, etc. We have to characterize somehow man’s possible actions in his achieving the “good” he determines for himself. It is necessary to determine if there are and must be some principal obstacles on the way of man’s achieving his “good”. Or putting it in other words, whether he acts well in trying to achieve any “good”. Perhaps, some “good” is admissible in an oblique form only – for example, it was good whether I became very rich (inherited wealth, won a lottery, found a treasure by chance, etc.), but making actual steps toward this, consciously striving to achieve this (or some other) “good” is not right, allowed, inadmissible? Perhaps, there are such wishes that in no way infringe upon other people and are, by their nature, such that achieving them consciously is wrong (to toil and moil day and night, forgetting about one’s spiritual progress; digging the ground day and night in search of a treasure, having ignored the family, etc.)? Perhaps, there might be good and bad wishes in general? Perhaps, there might be good (righteous) and bad (not righteous)? And despite the fact that every man wants to live a good life as he himself imagines it, it is not any

kind of a good life he aspires to justifiably? Perhaps, the question of living a good life (that of a hero, of a great scientist, of a pioneer, of a great writer, of a moral authority, etc.) or a bad life (that of a philistine, of a money grabber, etc.) has not only moral but legal aspects? This question shall not be left unanswered. The question is compelling. However, locating the question in the realm of the Existence and Normative is not that clear.

Axiom 3.

The aspiration of every man for a good life is justifiable.

Even if this statement does not apply to the realm of Existing but applies to the realm of Normative, we accept it with full consciousness, because none of its possible alternatives is suitable for us.

The first alternative is associated with the word "every". We cannot agree that only some (who?) have the right to aspire to a good live, as they imagine it for themselves, and the rest do not. We cannot deny this right to anybody. We have chosen "equality" (point 7), and not exclusiveness on the axis of exercising the right.

The second alternative is associated with the question whether or not every wish is admissible. This alternative has been touched upon by us above and we consider that every man has the right to achieve any goal in full compliance with Corollary 1 (it is man himself only that decides what is good). No doubt, these aspirations cannot be boundless; they can be limited by as many justified aspirations. But we will touch upon it in the chapter "Society", where we consider not an isolated person but a multitude of interacting people.

The third alternative denies man aspiration to a good life completely. There is hardly anyone who would like to defend such an alternative.

Therefore, our choice of Axiom 3 out of all possible alternatives is obvious. It might seem that Axiom 3, together with Corollary 1, does not carry anything new, looks completely banal. Yet it is in sharp contradiction with those facts that are

given to us by both history and today’s reality. All societies, from archaic to modern ones, have always sought to subjugate an individual to their conceptions of the personal good, and the personal good – to the social good. Indeed such subjugation is exerted not only through public opinion but also through laws, which we believe is even more intolerable. “As all the changes in the existing conditions tend to make society stronger, and the individual weaker, an overly strong power society exercises over the individual appears to us to be not such an evil promising to wither away by itself over time, but quite on the contrary. Such an evil is ever growing” [49, p. 300]. These lines, written by D. S. Mill a century and a half ago, are still urgent today.

And finally it is necessary to talk about the goal of life as we now have got a sufficient amount of material.

To begin with, let us propose a few definitions.

Definition 2.

The goal is foreseeable, desirable and realizable state of things and people, achieved by the subject though applying means.

All the words used in the definition are quite clear. With the exception of two.

Definition 3.

Subject – bearer of external freedom – is person (including man) or body.

Definition 4.

The means are are objects, the operations therewith and the people whose operations result in achieving a goal.

Definition 2 tells us of any goal, of goal in general. But it is too high an abstraction for our task. Therefore let us give another definition, more focused and specific.

Definition 5.

The goal of life is the supreme goal aspired to by man.

Man always strives to achieve something: to get to the office on time, eat to one's heart's content, learn a foreign language, avoid a bumpy road, etc. But these are intermediate goals. It is clear that those are not the goals that we called supreme. There cannot too many of them, although it must not be the sole one. For some it is to live as long as possible (the first part of Axiom 2). For someone it is to become a Nobel Prize winner or world chess champion or spaceman. For someone it is to raise kids, plant a tree and build a house. But are they right in recognizing these to be supreme goals of their lives. We believe they are.

All this would not be worth talking about if other viewpoints were not so widespread. There is a lot of people (now they have totaled 2 billion people) who are sincere in their belief that everyone is given the goal at his or her birth – to live their earthly life so that, after they are gone, they would find themselves in a privileged position in eternity in contrast to those who neglects this goal of life. There are lot of people (now they total about 1 billion) who believe that everyone is given the goal at his or her birth – to love their regular life so that in their next life they could attain a higher level. There are people who believe that everyone's goal in life is to serve other people. There are many other options of "supreme" goal setting, accepted by different groups of people. They share one common thing – people, holding any similar viewpoint, believe that the supreme goal accepted by them is the only right one, worthy and thus supreme not for them but also for all other people. At the same time they consider their aspiration to achieve the supreme goal to be justification of any their actions. It does not mean that any

actions committed by these people do not fit into our theory. Not at all. The bigger part of these actions does fit. A big part, but not all of them do. It suffices to mention the fires of Inquisition.

Moreover, basing themselves on their supreme goals, their bearers tend to demand that other people commit certain actions, again in the name of alleged greatness of the goals. And this is regardless whether their goals are shared by the people from whom they require certain actions.

We believe that such phenomena should be out of the scope our theory admits. Basing on Axioms 1, 2 and Corollary 1, let us formulate

Corollary 2

Nobody has the right to designate man with the life goal he should aspire to follow.

It is necessary to clarify the term “nobody”. Here “nobody” means: no other man; no other group of people however numerous they may be; no other (supreme) creature acting by itself or through its representative (oracle, prophet, messiah, etc.). If this creature appeals to man directly, this, from our point of view, shall be tantamount to Corollary 1, as man himself shall decide what he has to do with such an appeal. The other thing is that nobody has the right to refer to such an appeal, *forcing* other people to execute the will of such a creature known to him, being at full liberty to *convince* other people to accept the life goal offered to them. This does not mean as well that some group of people has not the right, through a decision taken by everyone of this group, to accept the goal of life shared by everyone in the group. It does not mean that any person has no right to voluntarily join any life goal proclaimed by anyone else. Both options are quite possible as long as they do not contradict Corollary 1.

As we proceed in building our theory, it was becoming increasingly difficult for us to stay within considering man as an element isolated from the others of the

multitude he belongs to. It is high time we considered man in his interrelation with the other elements of the multitude of people, whose name is

Society

It is sufficient to look around and see that people do not live in isolation. History tells us that it has always been that way. It is enough to briefly speculate upon these facts, and it becomes clear that they are not products of accident.

O. Funnel – Braining, who did think of this, creates a beautiful image [95, p. 17]. We can spell it out in such a way.

It will be wrong to allege that the bird is equipped with wings attached to it like a mechanical contraption. On the contrary, its entire structure is designed to fly. And in soaring it behaves as its nature tells it. The same can be said about the fish that not only uses the fins but it breathes with its gills, and when taken out of the water, it tosses about and pants for breath senselessly. Water is the element where the fish can only live, as such is its nature.

The same can be said about man. The fact that he lives in the community with other people is not his whim and not the conclusion he arrived at from a consideration of public utility. By his nature, both physical and spiritual, man is destined to live in society and becomes human only as a result of his living in society.

By his *physical nature* man is a link in the chain of generations. For him to be born two people were needed. To ensure next generations to appear, he will need to find another human being. But to be born into this world is not enough to become an autonomous individual in society, able to exist without external assistance. To accomplish this, a human baby needs a many yearlong care, protection, feeding, education. Without this he will not become Man even if he survives. The fairytales about Tarzan are mere fairytales.

But even when adult, a separate person, limited as he is, is not self-sufficient, ant this compels him to seek support in society, for outside society, outside interaction with his like he is unable to keep his own existence. “The most intimate need man has is the need to overcome his alienation, break from the prison of solitude.” [101, p. 166]. It is in society where his personal lack of self-sufficiency is compensated through interaction. Other people provide him what he is unable to obtain himself alone, and he gives them what they need. And the bigger number of people is involved in interaction, the greater the total benefit they can derive. It is not accidental that one of the most horrible punishments in ancient times was expulsion, as there were plenty of places then to be expelled to.

By his *spiritual nature*, man is even more destined to live among his like; to live in society. The soul can develop; can become a human soul only through communicating with other souls. Man, deprived of the ability to directly interact with the like, cannot be awakened to spiritual life, especially its complex forms: science, arts, and any creative manifestations, not to say about law.

What is more, the very possibility of communication is an eternal value. Any manifestations of man's love, trust, gratitude can hardly be imagined without involving two people at least connected with love, looking at each other with trust, rejoicing that one of them manages to make other one happy and grateful. It is perfectly possible for him to love himself in solitude, yet love between spouses is made possible only by communication between them; love between parents and children is made possible only by communication between them.

This phenomenon manifests itself even greater in interaction between man's spiritual and physical natures. "Man is unable to survive as an animal only through instincts. He can satisfy his most basic physical needs without intelligence. He needs to be intelligent to know how to plant and grow his food and how to create hunting tools. Instincts could have led him to a cave, if any; but to build the simplest shelter takes intelligence. No sensations or instincts will ever prompt the way of making fire, weaving cloth, making tools, producing a wheel, fabricating a jet, operating for appendicitis, creating an electric bulb and an electric meat grinder or a cyclotron or a pack of matches. A human life depends on this knowledge, and only voluntary act of human consciousness and mentation can secure this." [72, p. 19]. No single person is able to independently go part of the way the humanity has made while learning what humanity knows nowadays. And not even nowadays but even what humanity knew three, four, five thousand years ago. However, man does not need to go the entire way on his own! All he needs to know he can learn from other people, and ''standing on the giants' shoulders'' can enable someone to look farther, make another step on this way of eternal search in obtaining knowledge. ''Man is the only living creature that is a position…to enhance the fund of knowledge from generation to generation; but to make this relay possible every

recipient needs mentation. The witness thereto is the civilizations collapsed, dark times in human history, when knowledge accumulated in the course of centuries was obliterated from human life'' [72, p. 19]. Thus, sustaining man in the human condition is possible only when man is surrounded by other people, who can only provide man with knowledge, from learning how to pronounce the word "mummy" to the highest achievements of human thought at the current stage of human development.

The above is organically inherent in man, makes up his essence and thus is not typical of our field of humanity and social sciences, as it deals rather with the Existing than with the Normative, represents a *nearly* natural law (like the law of gravity) and enables us to make another statement:

Axiom 4.

People are destined to live together.

Living together is the only possible form of human existence.

In other words, the only way of living for people is in society. It would be wrong to evaluate this fact. ''The truth is that human society (its existence- S. Y.) is in its essence a natural fact, equally so it is also a natural fact in its development, which gradually finds volitional character. In its core, it is a natural fact, but not volitional: people do not associate, they have already associated; they are born being associated by their families expanding then to a clan, as well as by the bonds of habit, common language, common moral ways, reminiscences, traditions, common religious cults, common rituals'' [91, p.48]. Let us reiterate one again: society is the fact. This is the objective fact, which is independent of our volition. People do not associate themselves because they want it this way.

They are already associated.

Nobody needs to make a decision of associating or not associating (it is impossible). Upon achieving a certain age, the age of *becoming a human being,* everyone can pose the question: shall I continue to exist in society or shall I try (!)

to leave this association? The result is obvious – the overwhelming majority of people stay within human society. It is of no importance whether this happens due to their voluntary act or actual impossibility to implement another decision. We deem it important that they are doomed for interaction.

The fact that it is impossible to avoid this kind of interaction is good and accursed at the same time. In the course of millennia of human history humanity has been learning to master this way of living. ‘’Since the time humanity began to think of its destiny and seek a better future the human conscience has been cherishing a lifelong and ineradicable dream: the dream of rendering the chaos of life process to be conscious, to reasonably and appropriately directing it along the right way; establishing order and organization instead of blind anarchy’’ [99, p. 244]. Present are some achievements, but it is far too a long way to perfection.

We have already assumed as an axiom that the aspiration of every person to a good and well off life is legal (justified); and while we were considering every person as an isolated object, we found it sufficient. However, as it was rightly observed by D.S. Mill , ‘’through associating into a society people do not turn into something different’’; and now when we have postulated that man’s coexistence with other people is inevitable, it becomes obvious that this aspiration of his cannot be unlimited. The task of this chapter is to define what can limit these aspirations, and how can we are to treat this within our theory.

In contrast to the aspirations, whose emergence and formation cannot be impeded by virtue of Axiom 1 (every person possesses internal freedom) by anybody or anything, an aspiration for a good life assumes some action. Encountering some obstacles towards this life is quite possible. These obstacles can be of two fundamentally different kinds. The first kind of obstacle is that of natural ones in no way connected with other people’s acts. A person might develop a wish to set out on a journey. But on his way he encounters an abyss he is unable to cross over. A person might develop a wish to play football. But he does not have a ball. A person might develop a wish to play the violin but he is deaf.

It is obvious that these obstacles are caused by some objective circumstances that are independent of other people. Nevertheless, these obstacles do not enable man to fulfill his wishes, his aspirations to a good life; it is only out of his achievements and accomplishment of his wishes his life may be rendered really well.

There is the second kind of an obstacle connected directly with other people's actions. There is the bridge over the abyss the person encounters in his way. But this bridge is guarded, and the people on guard might either let the person pass it or they might not. Some people are going to play football. They have a ball, a playground; they might either admit the person into the game or they might not. The person might not have a violin, and the people who have one prevent him from using it. These obstacles are dependent of other people and can also not give a chance to the person to realize his wish.

Now we have an opportunity to introduce another important definition –

Definition 6.

External freedom is a freedom (ability, possibility) to act in society in accord with his or her own internal freedom in this or that way, pursuing this or that goal.

It is necessary to point out that Definition 6 deals with the interaction between the internal freedom and obstacles of the second kind. In other words, man possesses external freedom to the extent and inasmuch as the realization of his wish and his aspiration for a good life are not hampered by other people; that is natural obstacles do not influence the external freedom. Although some inanimate obstacles and Acts of God can become an object of law (for example, in case of insurance against natural disasters), but as objects only, not subjects, whose claims for external freedom shall be settled by us.

Now that we have formulated Definition 6 can we make more specific in the context the indefinable concept of ''freedom''. Internal and external freedom are the subsets of the set of ''freedom'', where they are complementary to each other;

that is, all pertaining thereto that is not internal freedom is that of external freedom and vice versa.

If we have a look at Definition 3 we will see that the holder of external freedom can not necessarily be a human being, but a legal entity or body. Pursuant to Definition 3, which has established that persons and bodies are able to act in accord with their internal freedom, a person or body have a possibility to choose what to wish, how to act in this or that case. At first glance, in this logical construct a mistake, inaccuracy can be found. However, no mistake can be detected. All bodies and persons are either people (president, minister, director, etc.), or are constituted of people (Government, Board of Directors, State Duma, etc). The people that constitute persons and bodies, while possessing internal freedom, can act in this way or another, and, depending on their acts, the people and bodies are likely to act in this way or another, in full compliance with Definition 6. Therefore, in our further reasoning we have to bear in mind that those people and bodies not personified also possess both internal and external freedoms as they are always constituted by people.

Therefore, the existence of external freedom follows, as its direct corollary, from the existence of society. Once a man finds himself to be isolated from society, from other people, his external freedom is immediately rendered meaningless. In some sense, society is primary in regard to external freedom of every single man. From this we can conclude that society is primary in regard to man himself as well. Consider the following argument: “The society, in which we live and without which we could not live, possesses all the rights. Its right is indefinite for it is unlimited. It is unlimited both in principle and in practice. On the basis of which right and with which means can an individual limit the right of society? On the basis of which right? A man is born. Who endows him with the creditor’s right with respect to the state? By what means? A man is alone. How can he oppose the society infringing his “rights”? By protesting? That is the only thing man can do, and society will only laugh at him. The society is vested with all the rights because, first of all, it possesses them due the fact that nobody has given

them to it; and, secondly, this is the case for even if the society had not possessed them, it would have behaved precisely in such a way as if it had possessed them." [91, p.38]. The argument might be quite true if the point was the relation between something huge and homogenous (society) and something incomparably small and strange to such a pile. The author of the argument, E. Faghe, misses a small detail – every man is an element of this pile, and it is only such elements, indeed thinking elements that constitute the whole of it. And this thinking element, a human being, is perfectly aware that the society that "opposes" him is constituted by the same elements as he or she is, i.e. people. In his relation with the "monolithic" society man can either subdue it to himself (which is extremely difficult, and only a few has succeeded in doing this) or yield to its power (which is not difficult at all, and everyone acts this way) or perish (which is very unpleasant).

But in his relation with the other elements it is possible to come to an agreement.

It took thousands of years for humanity to realize this simple thing. Today the idea does not sound like a great insight. However, how difficult it is for the powerful and the weak or for the poor and the rich to come to an agreement! "Many of those who are individually weak, wishing to avoid being oppressed by those who are more powerful than they are, unite for establishing justice and observing it through a common effort so that being unable to compete with the powerful separately, they could defeat them jointly." [17, p.49]. G. Grotius said this almost four hundred years ago! It means that by far the powerful have used to unite with the powerful (and they have been quite good at doing that), and the weak have used to unite with the weak (and they have been far worse at that). Perhaps, it is already the time for all to come to an agreement?

Elaborating a theory, we cannot but set ourselves the task to propose a principle on the basis of which *all* could come to an agreement.

Therefore, it is the time to make one of the most fundamental assertions – an assertion that undoubtedly deals with the due rather than with the existing, an

assertion that have been often pronounced in various formulations but never and nowhere has been enacted in full.

Axiom 5.

All people have equal rights to external freedom.

Perhaps, this is the definition of justice which humanity has searched for but has not yet found?

To be sure, this idea is nothing new, and more than once during recent more than two hundred years it has been spelled out in various editions.

"Declaration of Independence of the United States of America" (July 4, 1776) [20]:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

However, the peremptory character of this statement was softened somehow by T. Jefferson through a number of elements that constitute this statement:

- it is not the truth, it is just we (members of Congress) who hold it to be the truth;
- the reference to Creator requires recognition of his existence, hence, the statement is not to be referred to by all;
- "all men are created equal", well, and what happens after? Rise of inequality during man's lifetime is not excluded, even if the Christian interpretation of these words does not allow inequality thereafter;
- "equal" in what? The question remains open;
- and most importantly, "certain unalienable rights" is a weak formulation, since nothing is said about neither what these rights are nor their equality in all people

"La Declaration Universel des Droits du l'Homme et Citoyen" (1789): «People are born and remain free and equal in their rights. Social distinctions can be based only on considerations of common good ».

This is a much more peremptory formulation. There is neither the reference to Creator nor the phrase "we hold", and it clearly deals with the question of equality in rights. Furthermore, it insists that people do remain equal after their birth as well. But the second sentence is like a big fly in the ointment. The notorious dictum immediately comes to the mind: "All are equal, but (out of considerations of "common good") some are more equal than others".

Universal Declaration of Human Rights (December 10, 1948) [64]: «All human beings are born free and equal in dignity and rights».

There are no reservations on possible inequality for some people here. However, again, it is not clear what happens to the rights during a human lifetime. Does it mean that during his lifetime a man can lose some rights upon his own will (fault)? Is this the right to freedom?

This brief analysis of some high achievements of human thought in the field of human rights shows that our formulation of Axiom 5 at least does not yield to them. Nonetheless, to avoid misinterpretations we should clarify some of the terms used in Axiom 5.

"All human beings" means in this context that for no person or group an exception can be made neither in the sense of reducing some of their rights to external freedom nor in the sense of their increasing. Irrespective of anything. Irrespective of sex, race, skin, language, confession, political or other beliefs, ethnicity, social background, belonging to any minority, property status or any other circumstances.

"Equal rights" means in this context that if we recognize some person's freedom to act in certain way, then we also recognize that any other person has the same freedom to act in the same way. "People are free to the extent that they are equal, and they are equal to the extent that they are free." [52, p.25].

What is stated in Axiom 5 is, perhaps, the most important in our axiomatic system. It is this statement that constitutes the logical foundation for natural human rights. To prove that man possesses these rights it is not necessary to state that "such is the nature of things" or that all people are created "in the image and likeness of"; there is no necessity in any additional essence. Axiom 5 is sufficient. If all people have equal rights to external freedom, we are not able to find two people one of whom is the other's slave. Either one from such a pair (slave) has fewer rights to external freedom than the other, and this would violate Axiom 5, or their rights are equal and, then, none of them is a slave. Hence, the right to freedom, to personal freedom, to freedom from slavery follows directly from Axiom 5.

The man's right to life means that no other man can make an attempt on his life without violating this right. It is not that no one can make an attempt on human life at all. We know that such attempts are being made, often successfully. But this is just because a murderer, when killing, bereaves his victim of the right to life that we call him a criminal. To justify bereaving one man of his life by another man it is necessary that the man being killed does not have the right to live. If we are not to violate Axiom 5 and at the same time deny the man being killed the right to life, we should deny this right to all the rest! And if we do not agree to deny at least one person, for example, ourselves, the right, then, according to Axiom 5, we are obliged to admit it for all the rest, including the man being killed. Hence, he who deprives him of his life is a criminal. And he is a criminal only because all people - and thus the man being killed, too, – have the right to life. If we deny anybody – thus, according to Axiom 5, all the rest – this right, then murder is not a crime.

Necessary defense is the only exception. It is the case when two equal rights to life are in conflict. Only through defending one right to life by destroying another, a man cannot be said to commit a crime.

Abolition of the death penalty is a corollary of Axiom 5, for the death penalty cannot be executed without violating the Axiom. It is impossible to execute without an executioner - a person (persons) who is to drop the axe or to pull the

trigger or to turn the switch or to make the lethal injection, etc. For an executioner not to be a criminal, murderer, one from the pair “executioner - victim” - namely, a victim - must have less of the right to live than another. Today it is widely accepted that the death sentence passed by a court bereaves a criminal of his right to life. But then in his right to external freedom the convicted person is not equal to other people, which is a gross violation of Axiom 5, and hence such a notion is impossible in our axiomatics. We might speculate that the problem of inequality of the executioner and victim’s rights can be resolved by appointing someone to be the executioner who has a bigger right to life than other people have. However, accepting Axiom 5, we would not be able to find such a person, since all people have equal rights to external freedom, including the right to life. Therefore, without violating Axiom 5, we won’t be able to execute the death penalty and won’t be able to find, among people, someone who could execute it.

All this reasoning follows from Axiom 5, from absolute and unconditional equality of external freedom, from people being equal to each other in their rights and obligations. Obviously, it is not the only way of viewing the question. Many people, who are of no respect to us, have thought differently. So have many respected people as well. Thus, B. N. Chicherin argues: “Justice by no means requires that those who bear the consciousness of freedom and rights and are capable to think and speak, accept burdens imposed on them on the same ground as those who are capable to do neither.” [107, p. 65]. For Aristotle inherent inequality between an adult and child, a man and a woman, a freeman and a slave, a Hellene and a barbarian is so obvious that, for him, this “obvious” inequality acquires natural status. Here is not the place to argue about that with Chicherin and Aristotle, both respected by us. Let us just note that there exists a point of view different from the one that is exposed in Axiom 5, but it does not provide logical substantiation for the fact that man can possess some natural (which are not granted by the state) rights.

Each man's external freedom cannot be unlimited just because each man lives among other men.

Axiom 6.

People's external freedom must be restricted.

However strongly we may wish to avoid it, we have to accept a possible (necessary) limitation of individual persons' external freedom. Furthermore, "freedom cannot dispense without limitation, but such limitation is not a goal but rather a means of attaining the goal that means, as one of its principal elements, widening of freedom… Indeed, freedom is based on limitation." [16, p. 135]. However, process of such limitation is complicated and hazardous. "There is a boundary beyond which public opinion cannot legally intervene into individual autonomy; it is needed to settle this boundary and to protect it from transgression – it is as imperative as protection from political despotism is." [49, p. 291]. Clearly, such a limitation cannot be arbitrary. To lower risks we face in establishing this limitation we need to work out some general principle (principles), according to which external freedom could be limited on the lawful basis.

The most widespread solution to the problem is that external freedom can be limited on considerations of common (of society as a whole) good. But what exactly does that mean? We can hardly imagine a society in which all its members, without exception, hold the same views on what is good. A. Kunitsin was quoted as saying: "Securing freedom is the common goal of all people." [39, p. 14]. How beautiful our life would have been in such a world! Unfortunately, that is not true. In fact, not only all people consider freedom their common goal but also even a majority of them do not feel like this. "In fact, people *will* obey much more than they are *forced* into that." [101, p. 169]. "Nothing has ever been more unbearable for man and human society than freedom!" [23, p. 396]. Even if the majority ever agrees to hold the same views, at least one (and more likely, more than one) person will inevitably happen to have different opinion on a particular question. What

then should be done? How to resolve the contradiction between the opinion of one person and that of the majority? The best words on this are those of J.S. Mill's: "Even if the whole of human race, with the exception of a single individual, held a certain opinion, and that individual held the opposite one, the whole humanity would not have more of the right to force that individual into silence than the individual would have if he was in a position to force the whole humanity into silence… If the opinion is true, then to forbid expressing it is to forbid people to know the truth and prevent them from overcoming their error; and if the opinion is untrue, then to hinder expressing it freely is to prevent people from their obtaining no less good than that in the first case." [49, p. 301]. Not even today this obvious truth is solidly established in public mind. Even today more widespread is the notion that struggle for the truth is possible to conduct through imposing prohibitions on "errors" and that an idea can be defeated through prohibition on its expression in oral or printed form. Even today calls to prohibit some ideology, organization or publications are too often heard. Those who issue such calls are unable to see that by doing this they recruit adherents for this ideology, organization or publications - indeed uncritical ones, those who do not want to or are unable to reflect upon their cause and at the same time are often ready to act. Even today Voltaire's maxim sounds like screaming in the wilderness: "I do not agree with what you are saying but I will defend your right to express your viewpoint to the last drop of my blood."

Today not only the whole of humanity but even the greater part of it is not certain on what is societal good. Furthermore, by far no one has succeeded in formulating what is common good or societal good or something similar. "What a deplorable state of human mind: the less important matters like the circulation of the most remote heavenly bodies are clearer to it than is the intimate and most important moral concepts which are in constant change, being shaken by the wind of passions, pick up and spread by the ignorance that is patronized." [5, p. 122].

Let us cite just a few definitions of justice from those ever attempted.

"Firm disposition for rendering *to each his own*." [15, p. 273].

“Impartial assessment of inconsistent demands put forward by individual persons.” [62, p. 144].

“The first task of justice is that you do no harm to anybody provided that you were not challenged by illegal behavior; then it is that you make use of public [property] as public one, and of private one as your own.” [106, p. 304].

As we can see, the attempts have not been successful yet. And it is no wonder since to propose such a definition one needs to ascribe some goal to society first. “Common good is the conception to which no definition has been given – indeed such a definition is impossible to give: there is no such creature as tribe or community; tribe (or community or society) is just a certain number of individuals. There cannot be good for a tribe as such; good or value can *only* be related to a living organism, to an individual living organism, not to a bodiless totality of relations.” [72, p. 25]. Thus, this task – of finding a goal for society as a whole - is irresolvable as it is. But even if somebody succeeded in solving it, any such a goal, taken as a ground for limiting external freedom, would come into contradiction with our Corollary 2: “Nobody has the right to designate man with the life goal he should aspire to follow.”

Let us assume that such a goal is formulated and accepted by the vast majority as just. Then it will necessarily divide into two components: 1) preserving society itself as a whole; 2) providing the majority with goods available to the society. And if this is true, if preserving society, as a whole, is the most important goal to which the whole society aspires, then it (society) has (?) the right to sacrifice its elements – people – to achieve this goal. For example, society has the right to send anyone – better, the strongest or the most adroit one – to war, to fire or whatever without asking his consent. But it would mean that the very moment society sacrifices man, his striving to a good life (Axiom 3) ceases to be lawful, and his right to external freedom (Axiom 5) ceases to be equal to that of the rest, more specifically, those who sacrifices him to the common good. Theoretically the question can be resolved in this way, i.e. by allowing society to sacrifice its individual members (and it is not clear at all who could personify this right) if it is

supported by an *unanimous* decision by all its members. However, those who have not voted for it, specifically, children cannot be bound by this decision. On the other hand, then, Axioms 3 and 5 we have already accepted should have been changed. We will have to deny a man that his aspiration to a good life as he himself imagines it is lawful, and will be compelled to acknowledge that some people have lesser rights to external freedom than others, and that would be an entirely different conception, an entirely different attitude to the due, an entirely different legal theory. We have to deliberately decide, then, whether we agree with that man's aspiration to a good life is *unlawful* and likewise people have *unequal* rights to external freedom, or not?

Therefore, avoiding coming into contradiction with axioms and corollary already established, we can only accept the following principle for allowable limitation of man's external freedom:

Axiom 7.

Man's external freedom can only be limited by the requirements of securing other people' external freedom.

"Man has the right to any actions and conditions provided that other people' external freedom can be preserved according to the general law of reason." [39, p. 34]. "Society's power over an individual must not extend beyond the extent to which an individual's actions concern other people; and in all his actions which concern himself only, an individual must be absolutely autonomous over himself for he is an absolute master over his body and his mind." [49, p. 296].

For the Axiom to be understood correctly it is important to grasp its anisotropic quality. Beyond the requirement that other man's freedom should be limited, no other reason for limitation of anyone's freedom is allowed. But it does not mean that any requirement for securing man's external freedom is a necessary and sufficient reason for other man's external freedom to be limited. It only makes possible a discussion on whether man's external freedom should be limited, and

for the question to be finally resolved other reasons should be brought in, those, specifically, which are spelled out in other axioms and corollaries in this book.

As we remember from Definition 4, means can be of two essentially different sorts – people or things. At this stage of theory building, the relations between things taken as means used by man to achieve goals, present no particular problem. As for the corresponding relations between men over things, we will elaborate on them later when we deal with property right.

The different thing is the relation between a man aspiring to some goal and a man who can be used as means to achieve it. According to Axiom 3, both can lawfully strive to a good life. Hence, their aspirations to achieve their particular goals are equally justified. Two essentially different variants are possible here – either two men's goals are in conflict, or they are not. If goals of two are in conflict, then, according to Axiom 3, none of them can coerce another into acting as means of achieving other's goal and abandoning his own goal that contradicts this other's goal. And if their goals are not on conflict, then nobody else or nothing, beyond his good will, can prevent him from acting as means of achieving other's goal that does not contradict his own one. "Each man is inherently free and is only dependent on laws of reason; and thus other people must not use him as means for their goals." [39, p. 21]. So we are in a position to formulate

Corollary 3.

Nobody can be used as means for achieving other's goal against his will.

"Man is not means for other's goals; he himself is the absolute goal." [109, p. 39].

However, there different views exist in regard to this question. For example, "Not only things but also individuals ought to be socialized." [191, p. 44].

Alternative to Corollary 3 are these assertions:

- All people can be used as means for achieving the other's goal against their will.

- Some people can be used as means for achieving the other’s goal against their will.

Both are in direct contradiction with Axiom 7, since they allow for limiting man’s external freedom with something more than the requirements of securing other people’ external freedom, i.e. the requirements that one must not prevent people from their exercising their rights independently. They also allow for obliging a man to achieve a certain state of things or human beings, i.e. to engage in activity, indeed, such one that contradicts his own goal.

Furthermore, the second alternative is in direct contradiction with Axiom 5, since it allows for people being unequal in regard to their rights to external freedom. It implies then that some people (what kind of them?) can be restricted in their rights to external freedom in contrast to other people.

Furthermore, the first alternative cannot be realized since it leaves unresolved the question of who can use another man for achieving his goals.

Therefore, both alternatives are impossible in the framework of the axioms we have already accepted.

Specifically, this corollary implies that while obtaining a man’s consent and identifying his own will for his being used as means to achieve some goal, he should be informed in detail on what this goal is. This is to make sure that, while turning some details, a man does not partake in manufacturing a nuclear bomb in which he does not want to partake. Or, that while switching levers and pressing buttons, he does not partake in manufacturing poison gases in which he does want to partake. Not to speak about engaging in activity without knowing that it is detrimental to his health.

Every man is aware that his freedom is not boundless. Every man has some intuition where the boundary of his external freedom lies, having been settled by the society he lives in. However, we know how often people transgress the limits of their external freedom and step over the line felt by them. Why does that happen? How should we see those facts? Should we see them as unique phenomena or unintelligible accidents? Is it that those who transgress the limits of

their external freedom are not at all human beings and thus should be treated not as human beings but in some different way? Not at all – as experience suggests, before his transgressing the limits of his external freedom and indeed after that a man is in no way different from other people who are not known whether they have acted in the same way. The whole life experience suggests that there is nothing supra- or unnatural about these transgression phenomena. So we are in a position to formulate the next axiom

Axiom 8.

People are disposed to transgress the normative limits of other people' and their own external freedom.

There are fundamentally different views regarding human nature. According to one of them, people, by their intimate nature, are ideally good. It is only external circumstances (for example, housing problem) that sometimes make them act badly. "Left to himself, he (man. – S. E.) is infallible. All his intentions and even instincts are beneficial not only to himself but also to others, for the elements of sympathy and sociability are present in them from the start. If else he is doing harm to himself and others it is just because he has been corrupted by an outside influence." [78, p. 335].

According to the contrary view, man is a house of sins; and it is only fear of punishment (in any form) that compels people to contain their sinful instincts. "Throughout thirteen centuries after the victory of Christianity it had been held that the Fall of Man blocked the road to perfection and transformed him into a corrupted being that needs to be kept in check for otherwise he certainly goes astray onto the path of vice." [57, p. 61]. "Left to his own, man reveals himself a miserable spectacle or the chaos of conflicting elements or the triumph of the low over the high." [78, p. 334].

In proclaiming Axiom 8, we argue that the truth is to be found somewhere at the middle. Both the positive and the negative are present in man. Which of them

manifests itself depends on a specific situation. Speaking about “disposition” in Axiom 8, we acknowledge that we are not able to foresee in advance how a particular man behaves in a particular situation. We acknowledge that manifestations of the «evil» in man are natural and, therefore, we should take them easy and be always prepared to face them.

At this stage we should focus on another important fact. People behave differently even in similar situations. The fact deserves to be recorded as

Axiom 9.

All people are different.

They are different on the basis of many characteristics – age, education, weight, strength, tastes, mental abilities, etc., that is, on the basis of their potentialities and dispositions. It is this and, perhaps, only this fact that makes it possible for us to put the theoretical principle of equality into practice, seeking its ever more full implementation. It is only this fact that makes it possible for us to apply the same *rules* to all people. “If all people had been totally equal (identical – S. E.) in their talents and dispositions, we would have had to apply different approaches to them in order to achieve something resembling a social organization. Fortunately, they are no equal (identical – S. E.); and it is only because of this that there is no necessity to institute the differentiation of functions through the arbitrary act of some organizing will; but instead, after the formal equality in applying rules is established, we can leave it to an individual himself to find his stand.” [103, p.397]. It is only because of this fact that social differentiation of functions is (can be) instituted by itself so that all positions, necessary to the existence of society, are occupied and all functions performed. Society does not need to resort to violence, placing its members in specific positions allegedly designated for them by some alien will. Inequality in potentialities is a prerequisite for equality in rights. Furthermore, in some sense “equal potentialities” and “equal rights” are antagonistic principles. Only if we acknowledge differences (inequality)

in citizens' potentialities, we will be able to organize their co-existence on the principles of their equality in rights to external freedom. If otherwise we try to organize the co-existence on the principles of equality in potentialities, we will have to circumscribe someone's (who is stronger, smarter or more adroit, etc.) rights and require him to share his potentialities with those who do not possess them. In other words, we will have to acknowledge that not all of his potentialities (capabilities) belong solely and entirely to a man.

So we cannot accept passages like that of T. Campanella's, telling that an individual's mental abilities belong to the whole society, since they contradict the axioms formulated above and are sheer absurd. On the contrary, we share T. Jefferson's viewpoint: "It would be ridiculous and absurd if we suggested that a man has lesser rights to himself than someone of his neighbors or all of them combined do. It would mean slavery, not the freedom that is made inviolable by the "Bill of Rights"." [21, p. 28]. All that is inherent to a particular man belongs entirely to him only.

Of course, although, according to Axiom 5, all people have the equal rights to external freedom, they enjoy their rights in different ways, depending on their personal aspirations and abilities. The same applies to their universal disposition for breaking the limits of their external freedom, i.e. violating other people' rights.

Although we consider this disposition (established in Axiom 8) to be natural, it does not mean that we agree to be reconciled with or encourage it. Indeed, the task of any legal system is precisely in making manifestations of the disposition impossible or, at least, minimizing them. This is why Axiom 8 re-establishes the necessity of limitation of each man's external freedom. Clearly, no "normative" limit is of necessity in the society of "saints" where each of them voluntarily restrains himself to grant freedom to his fellow. "And he who wanteth to be at law with thee and take the shirt from thee, give him and thy coat; and he who compelleth thee to go with him one course, go two with him; give the pleader who pleadeth with you and abhore not from him who wanteth to borrow from thee" (Matthew 5, 40-42). The normative restriction of everyone's external freedom is

needed in a society of ordinary people as they are, with all their merits and demerits.

In Axiom 8 we could not avoid using a new term, “normative”; and we are unable to completely clarify its meaning until we have gained a full understanding of the concept of

Law

Throughout centuries legal sciences along with all the humanity have sought to understand what ‘’Law’’ (‘’Right’’) means. However, even now, in the XXI century, no universal opinion has been arrived at on this issue. No theory of law can skip the answer to this question. ‘’The starting point for any consistent study into any problem shall be the definition to be able to understand what we debate’’. [106, p. 300]. When no satisfactory definition of the concept of law is available the boundaries of its theory cannot be shaped; theory can be rendered contradictory and can be rendered no theory. Thus defining the concept of law is the most significant task of the same theory. ‘’The first and basic task of constructing a

scientific theory of law is forming a relevant concept, the concept of law ‘’ [60, p.203].

We believe the concept ‘law ‘’ to be the most profound and theoretically substantiated definition, which was formulated at the turn of the XIX and XX centuries by the great Russian lawyer E.N. Trubetskoy [89]. The substantiation of this conception in this work follows to a great extent the one elaborated by E.N. Trubetskoy.

Bearing in mind what we talked about the *definition* in the first Chapter, in precisely delimiting this concept from all the other conceptions in terms of the content and scope we need to single out all its substantial attributes.

The first attribute that comes to mind is that Law (Right) expresses some rules which either are obliging or forbid to do anything. There is a big group of cognate words in the Russian language meaning right, righteous, etc. that can be explained by the common concept of something which is right and righteous, which is not worth violating. Hence the word *pravyozh,* which stands for punishment for any kind of violation.

The word ‘’law’’ (‘’right’’) connects intuitively with some dictation coming from aside, prescription of execution, or vice versa, a ban on some actions, which is obligation. In doing this, any kind of obligation, as one side of the coin, implies the other side – someone’s right. No side of the same coin renders useless the other. There is no debtor without the creditor. There is no right of property if there is nobody to infringe on this right. Consequently, right can exist as part of some totality of sentient beings, which is in society. Meeting this precondition in objective reality, which is society, can be considered to have been established in the previous Chapter.

On the other hand, a society constituted of sentient beings cannot exist without Right (Law). It is impossible to imagine a community of people where everyone would deny any other’s rights, either the right to life or right to property. Such a community could not be a human community. People are able to form such

a society only under the condition when its members are endowed with some rights, which shall not be violated by other members of the same society. That is, everyone shall agree to undertake the obligation not to violate other people's rights. Living in society (and we have no other opportunity – Axiom 4), man cannot but waive part of his or her personal rights. He or she shall respect another person's life, views, freedom, and right for ownership. At the same time any person is eligible for similar treatment from other people. ''And in all do unto others as thou would be done by'' [Matthew 7, 12]. The fact that some part of people behaves and acts not in accordance with these principles is an exception, which cannot shake the rule itself. Everyone in society knows and cannot be without the knowledge of a certain order which shall be obeyed to. Basing on Axiom 4, which specifies that we all are destined to live in society, we are with necessity led to this conclusion. Society is unimaginable without having some social order. Hence we can also infer that Right (Law) in its most general outline is *an order, or procedure*, regulating relations between people in a human community. The ''bellum omnium contra omnes'' status [15, p.280] is not a status of society whatsoever; this is not society.

While speaking about human society we imply that it is constituted of rational and free *citizens*. Rational in the manner that every one of them is in a position to at least understand the requirement addressed thereto; free in the manner only that every one of them possesses internal freedom, the freedom to choose to observe or violate another person's right in the sense of Axiom 1, specifying such a faculty of his or hers. As A. Esmein said a hundred years ago: ''The source of any kind of right is in the personality as it is personality only is the being real, free and responsible''.

Thus, the right of person always expresses the obligation of another one. And the obligation can be imputed to such a person who can choose between the Normative and not Normative. Right is not a ''law of gravity'', which coerces people into acting in a normative way against their will. Right (rule) is represented as a requirement addressed to our free will, the requirement we can observe or

violate. Freedom, external freedom, the liberty to act in one or another way constitutes the *content* of Law (Right). ‘’The source of Law (Right)…..resides in freedom; but here freedom appears in another form: this is external freedom, which is in the independence of a person from another person’s will in his or her external acts…External freedom becomes Law (Right), which is the normative requirement only for the reason of its constituting a phenomenon of internal, absolute freedom of a person’’ [108, p. 101].

In formulating the definition of concept it is useful to use J.E. Renan’s rule: ‘’If you want to highlight some idea and its significance remove it and show what the world would look like without it’’. In our case such an idea is freedom as the content of Right. It is obvious that where there is no external freedom there is no right. A being devoid of external freedom is a slave; he or she is a being powerless at the same time. The freedom of a person to achieve this or that aim is such a substantial attribute that its termination terminates the Law (Right) itself. According to E. Kant ‘’Law is the totality of conditions under which arbitrary acts committed by one person is compatible with arbitrary acts committed by another one from the point of the universal law of freedom’’ [29, p.38].

In sum, it is the external freedom that is the most significant component of Right, without which it cannot exist.

An additional proof to this statement, highly important in understanding the essence of Law (Right) is provided by the analysis of the scope of specific rights. For example, the right to life means that it is man himself is free to possess his life, and all people shall respect this freedom in the sense that nobody shall hinder him or her in disposing their lives in any way, up to and including a suicide, and also in the sense that nobody except man himself shall not dispose his or her life, that is no other person or society on the whole shall seek man’s life. The right to property is the freedom of the person owner to possess, use and dispose of the objects owned thereby, and nobody shall violate this freedom. The right to recovery of a debt is the freedom of the creditor to collect payment of the debt, and nobody shall interdict such a demand. These examples can be continued. And we see

everywhere that every right is concomitant with the freedom enjoyed by a certain person in committing certain acts, and if we try to remove this freedom, the right itself is removed thereby.

At the same time we shall not be misled by the words used in describing the name of this or that right. Thus, the law (right) of servage seemingly does not consolidate freedom but, on the contrary, it consolidates bondage of the person (or persons), whose rights are specified in the name. In fact, the law of servage is one of those exceptions that confirm the general rule. The law of servage derogates in reality the predial serf's freedom. But at the same time it asserts the freedom of his master. The law of servage is the freedom of the master to dispose of his serf. If we remove from the law of servage this component – the freedom of the master, the concept itself of the serfdom or servage will be rendered void. The law of servage is obviously is not the right of the serfs as they are not free and thus powerless. The law of servage is the master's right due to the fact that it expresses his freedom. At the same time the law of servage does not only provide the master with the right, but limits it. It is sufficient to recall the ‘’Yuryev Day’’or the ban on selling serfs for their external shipment. Thus, it would be more appropriate to call it the right on enslavement.

Along with freedom –a subjective, legal element, right integrates another – social element – a rule of behavior or norm, restricting the freedom of an individual. This element – restriction of freedom by a norm – appears to be as much an essential sign of right (law) as freedom itself. It is easy to see assuming (although such an assumption makes it difficult for us to do) that such restricting rules are absent; that is everyone has an unrestricted right to dispose of another person's life, of any object, etc. this means that nobody has any right, that is every right is terminated given this order of things. Using J. Bodin's words from his ‘’Six Books of Common Well Being’’, written almost five hundred years ago: ‘’ Nothing can be public where there is nothing private, as well as there cannot be any king where all are kings’’. Where freedom of an individual is not restricted by any rules there exists no law (right) whatsoever.

Neither boundlessness nor infiniteness of freedom of individuals, or their complete not having of it right cannot just exist.

‘’Definition of law as a measure of freedom is undoubtedly just. But then freedom is the content of law comprised in the form of legal norm’’ [82, p. 98]. ‘’Right is common existence of freedom under common law’’ [108, p.101].

Therefore, another substantial sign of law is a rule or *norm*, regulating the volume of freedom of individuals. It is the *emergence of these rules that signifies the emergence of human society*.

Thus the essence of law (right) is expressed in two main manifestations: on the one hand, it provides an individual with a certain field of freedom; on the other hand, it restricts this field with a set of certain rules, with both being implemented through norms.

Basing on the essential signs listed it is possible to agree with the definition of law (right) given by E.N. Trubetskoy.

Definition 7.

Law is external freedom provided and restricted by norm.

The prototype of a similar definition can be found in A. Kunitsin’s works: ‘’ Man can commit all the acts which do not violate other people’s freedom, which possibility is called to be a law (right)…therefore right is, first, as the quality of an individual, a possibility of acting at will, without violating the legitimate freedom of other people; and second, as the quality of an action, it means the compatibility of our freedom with the universe legitimate freedom; and third, as a set of laws, it is the totality of conditions which makes the universe total freedom possible’’ [39, p.22].

The legal science has long been habitually dividing law (right) into the objective and the subjective. ‘’ These two concepts crown the contemporary theory of right, its superior and ultimate generalization…they both are so much different in its nature that they cannot be reduced to any superior generic concept. Each of them has its own superior and independent generic moment. In other words, the

fact that people have historically considered and do consider to be the right, cannot serve as the material for a single definition'' [1, p.156]. N.N. Alekseev set forth the dominant view of this issue in the most explicit way. The only efficient way of its refutation can only be a qualitative definition of the concept ''law (right)'', which generalizes both these categories. We should not be stopped by the fact that some authors consider that ''it is impossible to justify the attempts to amalgamate both the objective and subjective law (right) into any single concept of law (right), as these phenomena lie in different levels of the legal reality'' [85, p.252].

The explicit way specified divides the legal reality into two components: in one of them one can see the universally binding norms established and in the other one can see everything connected with their realization; those specific possibilities, authority, actions, which can be committed and undertaken by people on the basis of and within those norms.

The right as a norm (law) and right as a possibility or authorization of subjects to behave and act in a certain way within those establishments – here is the essence of the delimitation of right between the objective and subjective. Law (Right) in the objective sense is legislation; right in the subjective sense is those specific possibilities, rights, requirements, claims, which emerge on the basis of and within that legislation.

It is remarkable that the definition by E.N. Trubetskoy adopted by us *amalgamates* into the definition of right its subjective and objective sides, doing it in a harmonious and indissoluble way. Right is that only part of external freedom which is provided and restricted by norm. (Further on we will review in detail both the provision and restriction). But norm is required and exists as long as it provides and restricts external freedom. Neither the norm itself nor freedom taken separately is the right (law). Right (Law) is engendered out of their amalgamation and exists as long as their unity exists. There is no objective law and separate subjective right. There is law (right) which is resultant out of amalgamation of its objective and subjective parts. At the same time, this indissoluble tandem is dominated by external freedom of a subject, which is its subjective part. The objective part is

dependent as it is required to provide and restrict the subjective part. However, the subjective part cannot exist separately as it emerges only as a result of its provision and restriction by the objective part. It is due to this fact that it is incorrect to insist on the objective law and subjective right, but it is possible to consider the law (right) from the objective side, from the side of its form, which is the totality of its norms, and from the subjective side, from the side of its content (scope), which is those elements of external freedom that are provided and restricted by these norms.

In order to be sure of the adequacy of our definition to the content defined, it is necessary to test it for the adequate proportion (rule 2). Firstly, if our definition is too broad, that is if it integrates some elements that are not part of the concept of law (right).

The main element suspected for the disproportion is *morality*. Quite a number of authors have many a times tried to equate these two concepts. And this was not accidental as there is a multitude of moral norms restricting some people's arbitrariness over other people. It is common knowledge that the moral norms of today's society forbid killing, stealing, beatings, etc. Therefore, the moral norms protect external freedom of individuals against violence and other manifestations of arbitrariness. It is worth noting occasionally that in this case a moral norm is supported by a legal one, which carries then both a moral and legal content. However, not all the legal norms are by far moral in their content; and in this sense the scopes of the concepts of right and morality are not identical.

On the other hand, not all the moral norms are meaningful from the legal point of view; that is from the point of the meaning of provision and restriction of external freedom. For example, everyone knows that lying is not good. However, the lie itself, as it does not do any harm to anyone, is not violation of an individual's freedom; therefore, this lie is not violation of someone' right. At the same time, a specific type of lie – slander – is violation of not only morality, but also of right, as it is a direct encroachment on a specific individual's external

freedom, on his or her freedom to achieve all those goals that imply his or her good name. The moral rule that forbids slander contains undoubtedly a legal element.

At the same time, it is just obvious that all the moral rules requiring from man a certain internal status, for example, love, goodwill, respect to the neighbor, disinterested commitment to moral imperative, etc., do not carry any legal element. Any person's internal status itself does not touch another person's external freedom and cannot serve to be the content of his or her right. Even if we say about someone's right to love, respect, gratitude, these words do not contain any legal sense. Even if someone hates another person, this fact cannot be assessed legally until hatred becomes apparent in specific actions although due to the fact that until this moment we are unaware of this hatred.

Morality always presupposes two components. One of those components addresses free will, human feelings. It always says about what feelings and wishes are good and what are not good from the point of morality (to love is good, to feel compassionate is good…to be jealous is not good, to wish death is not good….). It indicates man which of his *wishes* are thought to be good by morality, and which are not good, incorrect. It is addressed to man's feelings, educates man's dispositions, and, according to A. Kunitsin's definition, constitutes ***moral admonition*** [39, p.6].

The second component addresses man's intellect. It says about what man should do and what he should not. It shows man which of his *actions* are considered to be good according to morality, correct, and what are considered to be not good, incorrect, and this is called ***legal admonition*** [39, p.6]. ‘‘ Moral admonition compasses people to virtuous things, right – to justice ‘’ [39, p.10]. If only we, people, knew exactly what justice is!’’ (At the same time, see Axiom 70).

From the above said, we can infer a conclusion that morality claims to regulate both internal status and external behavior, while the right regulates exceptionally man's external behavior. The content of morality is a virtue, and the content of right is exceptionally external freedom of an individual, his or her actions.

Thus, the spheres of right and morality to a great extent converge; but at the same time, they have fields that do not converge.

Regarding the essence of right, we have to pay a considerable attention to discussions on morality. It is not accidental as a close interrelation, although not identity, of these concepts is obvious. ‘’ As good morals to be preserved need laws so laws to be observed need good morals ‘’ [45, p.352]. Hardly anyone will ever dare take at issue the assertion that legal institutes *must* serve moral goals, and the right on the whole *must* be subject to the ways of good and justice. All the rulers, who throughout centuries were the only sources of positive right, from Hamurappy till our time, based themselves on the authority of God and Justice. ‘’I, Hamurappy, a glorious god fearing Principle, in order to let justice celebrate in the country, to destroy the evil and lawless, to prevent the strong from oppressing the weak, for me, like God of the Sun, light and justice, to rise over the residents of Accad and illuminate the country, - I was summoned by Gods of Heaven and Earth ‘’ [105, p.150]. In the ancient Russia many of the monuments of right that have survived used to bear a particular name – ‘’truths’’. If the right in its existing forms does not absolutely comply with these goals then a peremptory demand emerges that this incompliance be removed. In this way or that, ‘’right’’ must become to be the ‘’truth’’ – this is its main historical task. Throughout its history humanity has understood this task in this particular way.

The ideas of moral and immoral have greatly varied in time and space. Each society in the course of its evolution (if it evolves at all, which is the subject for a separate research) has come a long way of formulation of its moral ideals. Once, several thousand years ago, declaration of the moral norm ‘’eye for eye, tooth for tooth’’ made a great step forward in contrast to the previous moral assumption ‘’life for eye, life for tooth’’. In the laws of the ‘’ glorious god fearing’’ Hamurappy, death was the second most popular punishment. And once, much earlier, that assumption, so horrible from the contemporary point of view, had been deemed to be quite moral. However, today even this ‘’eye for eye’’ assumption can hardly be called by anyone of us to be moral.

Not less various do moral assumptions look like according to their assignment among various peoples. We won’t touch upon some peoples that seems exotic to us, the Russians- the African Pygmies or Australian Aborigines; being much closer geographically, Turkey, Greece, Albania can provide a host of examples of assumptions being immoral from our point of view, but believed to be quite moral by their respective societies. It does not mean by any rate that some society can be called more moral and some – less moral. This just means that morality (ethics, morality) is an exceptionally social product, and it is absolutely fit for the society and the time therein it evolves and is deemed valid. When we debate about the proportion between right and morality we can compare the right of one country with the right of another one; morality in one country with morality in another; but we are unable to compare the right of one society with the morality of another one. To compare and identify the connection with these two concept patterns we must always review them in relation to the same society; otherwise it will be difficult for us to avoid an ironical situation when we have to correlate the right in Russia with the moral code of the New Guinea cannibals.

Our ideas of morality correspond to the beginning of the coordinates of political space (ideas 1-4-7). That our choice is correct can indirectly be proved by the historical movement of humanity as a totality into that direction.

Thus, having analyzed conjointly the concepts of morality and right we are obliged to confess that neither law (right) is an element of morality, nor, which is even more important, morality is an element of law (right). Both these concepts share the common crossing range of definition; however, they both have (can have) independent ranges. Some time later, when right becomes an element of morality, but even in this case morality, being a broader concept, won’t become an element of law (right).

Thus, morality is an independent concept, and we were correct not to have included it as an element into our definition of law (right).

The next ‘’suspicious’’ element from the point of a possible disproportion of our definition is *law* in the broadest meaning of this term, understood as any

written norm sanctioned by authority. The fact that right and law are related concepts is even more obvious than the same relating to right and morality. Our task is to determine if right is an element of law; if right and law are identical concepts; and if law is an element of right together with other elements.

The opinion of law being equal to right is quite wide spread and could be considered to be correct but for some other form of manifestations of right. Meaning those forms that through some norms would provide and restrict external freedom of individuals. (It is worth noting in the meanwhile that if this opinion was correct then Y.P. Kozelsky would have been absolutely right. He demanded that the respective science be named not *juris*prudence but *legis*prudence [34, p.28]. However, such forms are available.

Historically, the most ancient form of right was *customs* which evolved in human communities. Those customs were evolving on their own, resultant from multiple recurrences of similar situations. In doing this, the obligatory character of their observation was based on the authority of a specific societal environment, and the absence of state power in today's meaning of this term did not prevent people from submitting to the norms known to them and vested in the customs. In as early as the XIII century G. Bracton gave the custom the following definition: '' Custom is what is observed as law in those localities where it has entrenched itself due to a long time application and is observed as a law because the long time application and custom are not less legally valid (than law)'' [7, p.133]. Science knows many examples of when members of communities, although devoid of signs of statehood in its contemporary meaning, submitted to specific legal norms, that had evolved on their own and obtained the meaning of right, having consolidated as a custom.

''On their own'' – in the meaning that such customs, in contrast to the establishments of positive right, can never be identified for their authors. However, it does not mean that those customs had never had any reasons to occur. On the contrary, according to the conceptions of Pukhta, one of the prominent representatives of the Historical School, the legal based custom is underlain by not

soulless automatism of a habit, but a meaningful ‘’ popular conviction’’ [67, p.146] or the feeling of internal necessity – according to the founder of this school – Savigni. The historical school always insisted on some reasonable essence of a legal based custom. There is certain sense, as the obligatory character of the rules secured as a custom is predetermined by the fact they expressed for some period of time the dominant ideas of an organized group of people on the normative and not normative. On the lower steps of historical evolution all the norms of right emerged and consolidated in general in this way, as right had emerged earlier than the state in the modern meaning of this term; that is, earlier than the formal power emerged. What is more, the power itself (state) as a permanent establishment owes its emergence to the custom including, which is people’s habit to submit to some leader or chieftain. It is also true not only for the primitive stages of culture; the civilized peoples also have numerous rules, that have become meaningful as right not due to a legislator’s injunction but due to a long time and uniform application; that is by virtue of custom.

In the deep medieval age, when Europe had a lot of kings, those kings were not required to issue laws - that is to create the norms of right - but stand guard over the customs, that is secure observation of the norms valid and enforced in customs. Those medieval kings found it quite difficult (if not possible) to enforce any changes prior to the moment when such changes had occurred in the depths of society and become demanded thereby. It is here, in this historical memory rests the idea of *right just necessarily following* changes in the societal consciousness. The idea of a legislator (in particular King) being the single and individual creator of legal norms emerged in the medieval Europe as early as in the X-XI centuries and it did not take a long time for it to turn into the ‘’obvious truth’’. The idea of kings creating laws at their own will and being personally above the laws without bearing responsibility for their deeds before God only kept on being generally accepted a few centuries later.

Every nation and even every a compact group of people have a big number of various customs. Do all these customs constitute the right? It is obvious that

they do not. The habit of taking off one's headgear while entering indoors can hardly constitute the right. Or the habit of christening oneself in thunderstorm. Or the habit of putting on a white tie to match the evening dress, and a black one to match the smoking. A person doing otherwise than it is specified in the habits above or similar ones does not violate someone's right.

However, there are some other habits and customs, although not supported and at times even denounced by the state power, but containing legal norms. This is the habit of defending one's honor in a duel, the habit of early fishing or hunting done not earlier than at a certain date, the habit of vendetta, etc. It is absolutely unimportant why the state does not support this kind of a habit through its norms- if it considers it to be negligible or if we consider it to be pernicious. Another thing is important – such a habit provides for and restricts the freedom of people's actions.

Common law is quite efficient in regulating relations in small societies or in narrow spheres of activities. The bigger the social area or the broader human activities, the lower efficiency of common law is. The reason behind such lower efficiency is in bigger differences in the conditions of life or conditions of activities, which results in loss of uniform perception by those who are subject to the influence of this or that habit or custom. As civilization grows, the number of *common* law norms constantly decreases, partly because the customs themselves fade. In the majority of the modern developed states the role of customs is quite modest; it plays the role of bridging the gaps in laws. However, its today's role in a theoretical sense cannot completely abolish this form of right. What is more, the legislator, being aware of insolubility of the task of covering all the spheres of vital activities, all the spheres of external freedom, enforces the right for a custom, when it is possible. For example, the Civil Code of the Russian Federation (Clause 5) enforces the custom of business circulation as a norm of law (right) subject to application, although it has not been formulated in the applicable laws.

Thus, we have defined that right encompasses two elements at least: law and custom. Therefore, right is neither an element of law, nor a concept identical

thereto. Both these elements, law and custom, as providing and restricting external freedom, obviously pertain to right. But right is a broader concept and extends further than these two elements.

Both the custom and law are quite inertial forms of right. For a norm to be enforced in a custom, the situation described thereby must recur many a times. For a norm to be enforced in a law, the body authorized to act thereupon must comprehend the necessity of a norm, formulate and pass it through applying a special procedure. But both take quite a long time. In the meanwhile, people are always faced with new problems in life; to resolve them it needs both a new custom and law, of which there is none. But problems never wait for them to be resolved. Such problems are resolved in court. According to the applicable common theoretical principle court can not deviate from problem settlement on the ground of no available law or custom usual in this particular situation. Court is obliged to rule a verdict despite all the problems with the laws. Which thing is done by Court. In such situations Court settles the law case on the grounds of legal proceedings, common principles, which have not been explicitly expressed in the applicable laws.

Another theoretical principle requires that all similar legal cases be settled on the basis of the same rules. That is why settling one individual legal case in court, when there is no respective regulation in the applicable laws, establishes a legal precedent, which is then the common legal norm for all the following similar cases. Thus court not only applies the law, but also creates new legal norms, both in addition to the laws and instead of it. A court precedent provides and restricts external freedom of the people, who were directly involved in this particular legal case, and of an uncertain circle of people, who can find themselves in a similar situation in future. Despite the fact, that some countries, England for example, officially deem the legal precedent to be the source of right, and other countries (for example, Germany or Russia) do not, in fact, the court precedent *everywhere* is an independent element of right. Thus, legal norms are created by way of *precedents*.

In the course of our analysis we have discovered at least three independent forms of right: law, custom and precedent, which, through norms, regulate, in this way or another, the scope of external freedom of individuals. To prove our assertion that right and law are not identical concepts it is sufficient for us that there is more than one element of right. Some authors (and in particular L.I. Petrazhitsky) believe that there is at least fifteen such elements of right [60]. And even if in the course of further research we identify new elements of right, that regulate through norms the scope of external freedom of individuals, this won't be able to do harm to our Definition 7. For however many *forms* of expressing right are available, that meaning various kinds of legal norms, their *content*, the subject they are supposed to assert something thereupon –either allow or forbid – will always, in all the cases, be the elements of external freedom of man (individual persons, associations, institutions, body, in a word, of those subjects of right the respective norm is addressed thereto).

Our analysis of adequacy of the definition of right will be insufficient until we also integrate thereto the concept of *natural right (law)*.

Throughout millennia people have been debating over if right is rooted in the nature of things, in the eternal and immutable order of Universe or it is the result of an arbitrary agreement of people, which emerged at a certain stage of history.

The background of the first point of view can be traced as far back as the Ancient Greece, where Socrates and then Plato and Aristotle argued that in addition to the laws created by people there were *eternal, unwritten laws* (νομοι αγραφοι), inserted in people's hearts by divine intellect itself. Those ideas were then taken up and further evolved by the Stoics, the key idea of whose teaching was the idea of the universal law, which constituted the logical foundation in both Nature in general and human nature in particular. By the XVIII century this concept had been evolved into the natural school of law, whose founder Hugo Grotius believed that the patterns of natural law were rooted in the nature of

intellect itself, and hence they had the same eternal unshakable significance as the intellect itself; and even God was unable to cancel or change them. As well as God is unable to provide that two by two equal to five, as well He is unable to render the truth to be an untruth, and the norms of natural law to stop being right.

The natural school declared the natural, native human rights to be part of natural law. The brightest and most consistent protagonist of the natural school was J.- J. Rousseau. While comparing in his works the declared norms of natural law with the reality, reflected in the modern laws, he completely and utterly condemned the latter. He considered all the modern and previous laws to be manifestations of human stupidity, egoism and arbitrariness. Such treatment of laws justified insubordination and rebellion thereto.

A completely contrary conception was adhered to by the representatives of the historical school of law, which background dated back to the Sophists of the Ancient Greece. This school evolved especially vibrantly in the early XIX century as a reaction to the Great French Revolution, which had been supported by the ideas of the natural school of law. Representatives of the historical school, beginning from Savigni, argued that laws were not at all an arbitrary establishment of people, an artificial invention of a legislator and not eternal volition of Nature (God). It was said to be representing a *regular result of a gradual historical evolution.* ‘’ Everywhere where a question about a legal relation arises, the rule corresponding thereto turns out to be already existing and does not need to be invented’’ [53, p.83]. According to the historical school no eternal and universal law exists. Such a concept of law, exceptionally historical, and negative attitude towards the natural law has survived predominantly in legal science up to now.

At the same time, peremptory contraposition of these two schools is to a great extent farfetched. It is a historical result of their hostile, century long interaction, their standoff according to the ‘’who will whom’’ principle.

It is hard to take at issue the thesis of the historical school about rights (laws) changing, evolving over time. But the historical school sets asides the question about the reason of its evolution. Whence and where does it evolve? The historical

school holds it obvious that if at a certain moment of time in some geographical point laws have evolved into some specific form, then these particular laws is the "Right''. The pillars of the Right are Nature and volition of Society; hence the legislators and lawyers have to just identify the essence of the laws and instruct the way they should be applied in specific cases. '' If slavery has been enforced by positive law, then it is better than freedom'' [53, p.40]. ''Everything real is reasonable''.

However, not every intellect is ready to agree therewith. Rousseau's reasoning is close and understandable to every normally thinking person. '' Man is born free; in the meantime, we see man everywhere in shackles''. ''It means that it shall be this way'', - reacts the historical school. It is hard to expect from a shackled person to agree with this! ''Man should be unshackled'', - the natural school cries. '' And if thou art not unshackled, unshackle thyself immediately!''. These ''this shall be this way'' and ''immediately'' contain the main mistakes made by the both schools, and this is where they cannot be reconciled. And it is not necessary.

If we admit that, on the one hand, the historical evolution of right must not be arbitrary, that it evolves in a certain direction, and on the other hand, this evolution cannot but be gradual, the contradictions are practically eliminated.

The applicable laws do not always correspond to the requirements of good and justice and often completely contradict them. And this means that the natural law sounds as an appeal for improvement. But this appeal is not sufficient. The natural law is bound to instruct the direction for such an improvement. To do this, the direction of such an evolution must exactly be formulated and instructed, which we intend to do it in Axiom 10.

Natural law is the ideal thereto the applicable law shall aspire in the course of its historical evolution.

It is obvious that nothing, except human intellect, is able to identify and formulate such an ideal. ''Law is called natural as it sets forth laws inferred from the nature of human intellect'' [39, p.6]. To achieve such an ideal, the natural law

must set characteristics to external freedom in terms of its scope and content, and also specify the requirements for the norms, which provide and restrict thereof. In this interpretation, as the ideal, the natural law by no means contradicts our Definition 7.

A few words must be said about the content of law (right) – external freedom – as a value. Among the other important categories, such as glory, honor, duty, patriotism, justice, etc., freedom, throughout the entire history of humanity, has occupied a secondary place in social consciousness. Nor has freedom become the dominant of social consciousness today. This state of things can be quite logically explained. The idea of freedom is contradictory to the idea of commune; as we showed in Chapter three, society is the only way of life for people. It is not easy for man to realize himself to be an element of Society – Humanity. In the course of many centuries human society was represented by a tribe, clan, village, and then a city (do not mix it up with the modern megalopolises). The life of every person absolutely depended on such a society. Being separated from such a society, a human being could not survive. And man realized or at least felt that. This realization of dependence was enhanced even more by the family, interfamily relations and connections. However, faced by the horrible visage of the outer world, man perceived this state of things as fair. It was only though merging with the family, clan, the rural and urban community that man could feel somehow confident of tomorrow, somehow secured against an external aggression. Defense of this possibility – here is what the highest honor and glory for every person is. ‘’ Thou art not born for thyself nor for myself, but for thy Fatherland’’, - says Cicero. We and They, We (good), opposing various Them (bad, although due to the fact that they are not us) – here is the ground for patriotism. The highest honor is to die defending this state of things.

Does the above said mean an attempt to humiliate or insult all our ancestors and some contemporaries? Not at all. A hostile external environment is an objective reality to be reckoned with. E. Fage believed that ‘’society is a league of

defense against external enemies – real, threatening or possible'' [91, p.39]. However, here two comments need to be made.

Firstly, fifty years have elapsed since when this objective reality stopped to be fatal within the entire humanity and for every country in particular. Since the time of the first application of nuclear weapon the majority of humanity has lived without a feeling of their home being encroached by an invader, who is likely to deprive them of freedom. The feeling of being exterminated altogether is left. But this is a totally different danger and it must be overcome not from the position of ''We and They''. No '' They'' will be able to take advantage of realizing such a danger. This danger can be overcome only from the position of understanding that there is only WE – that is We and THEY. The danger of global destruction can be overcome through OUR joint effort only. Today everything is dependent on Our consciousness, on Our intellect, on Our ability of securing coexistence.

Secondly, the values listed above –glory, honor, valor, patriotism, justice, etc., are not values in the literal meaning of this word. They cannot be weighed, compared, evaluated; they cannot be used as the basis for a logically clear legal system. In this sense they do not have any legal content. Such a basis can be *external freedom* **only**. Not internal freedom, as it seemed to Hegel – '' The ground of right is…*volition*, which is *free''* [13, p. 67] and still seems to some modern authors – but external freedom only.

A hundred years ago E.N. Trubetskoy, having indicated the deep essential relation between law (right) and external freedom, did a great thing, which throughout the whole century remained and still remains almost unnoticed.

The definition of law (right) through freedom in itself does not overcome the main drawback of the other definitions of law – the impossibility to distinguish between right laws and wrong ones. But in contrast to those, other ones, such a definition of law – through external freedom – provides us with an algorithm of resolving this task. According to this algorithm, it is necessary to correctly determine those principles, according to which *external freedom* must be provided and must be restricted. And then, by verifying a law to its conformity or

inconformity to these principles, we will always be able to define if a specific law (norm) a right or wrong one, if it correlates or does not correlate with the ideal, the natural right, which we accept and approve. In short, if it meets our ideas of good and justice. (It is worth noting here that a resolution of this problem is the main function of any theory of law (right)).

Axiom 7 has already identified that just one reason exists that allows to restrict human freedom – the requirement of providing freedom of other people; therefore, any law (norm), restricting man's freedom not to provide freedom of other people, is deemed to be a law (norm) unlawful. Needless to say that no legal system today can sustain verification for its conformity to this principle, and mainly because this principle is not perceived by society as obligatory. Ignoring the deep essential relation between law (right) and external freedom, society in general, not realizing that (and some its individual representatives doing it quite conscientiously), bereaves itself of a powerful instrument of improvement of human relations.

Our definition of law (right) contains a very important concept of a ''norm'' as a sign identifying the law (right) from a multitude – the entire external freedom. It is only that external freedom is Law, which is provided and restricted by Norm.

In construing Definition 7, we were content with the characteristic of Norm as a rule regulating the scope of freedom of individual persons. At the same time, the concept ''norm'' is so important that we must clarify it in more detail.

First of all, norm is related in its generic sign to a broader concept – dictation.

Definition 8

Dictation is a verbal expression of provision and restriction of external freedom.

Dictation can be immediate: (''go somewhere I do not know where; bring something I do not know what'') or can be expressed in a norm. An immediate dictation always has a specific addressee, who is required to do something specific; that is why we excluded it from our definition of right.

According to K.B. Petrazhitsky's example [60, p.268], a traveler who is caught by a gang of bandits, can fulfill their dictation to save his life, as they are stronger; for example, to give them away his wallet. However, in this case neither the bandits, nor he himself or anyone else come to insist that the bandits' dictation carries a normative character, regardless if this specific dictation is fulfilled by the traveler or not. For us to characterize some dictation as normative it must necessarily contain an unspecific and universal element.

An unspecific element in a norm can manifest itself in a double way. Firstly, a dictation becomes normative if it provides or restricts external freedom for an uncertain circle of people. The norms invested with this sign dominate in the massive of the norms of a legal system. Secondly, provision or restriction of external freedom of a specific person or body, which envisages its multiple application, also renders the dictation to be normative. Such are, for example, the norms authorizing some persons or bodies. It is important to pinpoint that one of their any of these signs renders the dictation to be normative. In a more general way, a norm is assigned to provide for *governance through applying rules, but not governance through issuing orders*, as this difference was formulated by F. Hayek. The task of a norm is to inform *every* person on the sphere of responsibility, in conformity thereto he or she can act.

Definition 9.

Norm is a dictation aimed at an uncertain group of people or designed for multiple application.

It is worth noting here that our definition of Norm does not connect it with a mandatory sanctioning by the state or with its mandatory reflection in a written

legal act, or with any other grounds which could characterize a norm as an element of an exceptionally positive right.

In analyzing the concept of ‘’right’’ we have come to a conclusion that law (legal act) is not the only form of right; its clauses and paragraphs cannot claim for a complete interpretation of the concept ‘’norm’’. What is more, identification of a norm with a clause or paragraph of a legal act, as it is sometimes erroneously done, is absolutely wrong. (Later, in Chapter 6 ‘’Legal system’’ we will touch thereupon in more detail).

On the other hand, we do not have a possibility to effectively influence the ways of setting forth norms, contained in such forms of right as the custom or, for example, ecclesiastical law, etc. In addition to this, information on common legal norm is not always accessible to everyone. That is why every norm of the modern positive law (right) must be written and accessible to all those it addresses. It is only in this case that it can effectively comply with its designation. However, even this is insufficient.

For a norm to effectively comply with its designation – provide for and restrict external freedom - it must be created according to certain rules and, in particular, must have a certain structure – with necessity be constituted by a *hypothesis, disposition and sanction*.

First of all, a norm must contain a precise description of the circumstance under which this norm is enforced. This element of a norm is habitually called *hypothesis*. (Further on the term ‘*’hypothesis’’* will be used by us in this meaning only and never in the meaning applied in Chapter 1).

Definition 10.

Hypothesis is an element of a norm describing the circumstances under which this norm comes into force.

A special case of such circumstances can be considered to be applying a norm for both everyone or at all times. Sometimes this is missed and said that

some norms do not allegedly contain any hypothesis. In reality a norm always contains a hypothesis; otherwise, such a verbal phrase does not restrict anything and, therefore, is not a dictation.

The second element of a norm is the description proper of provision and restriction of external freedom. This element of a norm is habitually called *disposition*.

Definition 11.

Disposition is an element of a norm describing provision and restriction of external freedom.

As its addressee disposition always has some certain, although usually unspecified (for example, a human being, child, joint stock company, judge, etc), and sometimes specific (President, State Duma, General Attorney of the Russian Federation, Supreme Court of the Russian Federation, etc) subjects of right. Every norm in its disposition provides some subjects with external freedom, restricting it with certain limits, and other subjects are provided with restricted external freedom with the purpose of providing thereof. Thus, the disposition provides rights to some subjects and imposes obligations thereon; and others are imposed with obligations only. So, the rights and obligations in the disposition and, hence, in the norm are always available, like the two sides of the same coin. Time has come to define these sides of the coin.

Definition 12.

Rights are specific elements of Law.

Definition 13.

Obligation is a specific restriction of external freedom of a subject which ensures a possibility of exercising the right of another subject.

From Definition 3 we are aware that a subject can be not only a human being, but also another person or body. If we do not specify Definition 13, it can

turn out that man’s duties (obligations) can be imposed thereon to secure external freedom of a body; this is widely practiced in the legal system of the Russian Federation. It is incorrect. To rule out such a possibility of a wrong interpretation, let us specify man’s obligation (duty) in

Definition 14

Man’s obligation (duty) is a specific restriction of man’s external freedom which ensures a possibility of exercising another man’s (people’s) right.

From Definitions 13 and 14 it can be seen that an obligation is something external in relation to a subject, something imposed thereon regardless man’s will and volition. However, this is not the only framework that generates a subject’s rights in relation to another subject; that creates a subject’s freedom to demand from another subject. Such a possibility of making a demand can be initiated resultant out of an agreement, which is a volunteer and mutual provision by the subjects to each other for a right of demand. The obligation, thus created, has a special name.

Definition 15.

Obligation is a responsibility assigned independently and through a free will by a subject thereupon.

The real life has many a times shown cases when man’s external freedom is restricted from outside not only by requirements (demands) of providing for external freedom of other people. Such a demand can be given

Definition 16.

Arbitrariness is a specific restriction of a subject’s external freedom initiated by another subject, which is not assigned to provide for a possibility

of exercising a man's right equal to other men's rights, or not assigned by a subject thereupon independently and through his own will.

Unfortunately, the clauses and paragraphs of laws (legal acts) represent arbitrariness proper. ''Arbitrariness, should it be in the name of one person or many persons, haunts man in all the ways leading to man's peace and happiness'' [35, p.223].

We have said that there is no right without an adequate obligation and there is no obligation without an adequate right. But this is not just an assertion; this is a corollary of Axiom 7. Restriction of man's external freedom – man's obligation – can result from a demand of providing for another man's (people's) external freedom – right of another person. Any human right is not a right if an adequate duty of observing thereof is not available.

This obvious idea is considered to be so important that we deem it necessary to set forth it in

Corollary 4.

Every right of a subject implies the respective obligation of another subject (subjects), and every obligation of a subject implies the right of another subject.

In other words there is no right without the respective obligation and there is no obligation without the respective right.

Exercising the right is possible in theory in two forms: as alienation, that is assignation of rights to another person; or in the form of its exercising.

History has seen a lot of examples when alienation of rights in favor of a third person was considered to be lawful. For example, self mancipation was widespread among many peoples. In 1620 G. Grotius declared: ''Unalienable things are the things which by virtue of their nature belong to one person so much that they cannot belong to another; such as a human life, his or her body, his or her

freedom, honor, which form the personal domain, sanctified with the natural laws''[57, p.50]. Since that time the idea of inalienability has become universally accepted, and the question of inalienability of the basic rights and freedoms can be considered to be resolved. The basic rights and freedoms are inalienable. At the same time, they are inalienable not so much due to the fact that a right and freedom holder is not eligible to exercise them but due to the fact that an ''acquirer of rights and freedoms'' may not or cannot acquire them.

Corollary 5.

Waiver by a person of his or her element of external freedom, provided also to an uncertain number of people, in favor of another person is not tolerated.

Here we shall distinguish between the rights – elements of external freedom of two different kinds. Some of them are inalienable in their essence. It is they that were meant by G. Grotius. However hard two persons try to redistribute their rights, nobody will ever succeed in attaining a second life, reestablishing second honor, regaining a second body and second similar elements of external freedom, which are called therefore inalienable.

However, it is not the most important in our axiomatic. In dealing with this issue we deem Axiom 5 to be the basis for us, under which all people are eligible to equal rights for external freedom. In case when one person quits an element of his or her external freedom in favor of another, they both come to violate Axiom 5. Regarding the relinquisher himself, it is not a gross violation as under Corollary 1 he himself decides if it is good or not good *for him* to quit an element of his external freedom; that is why he always has an opportunity not to enjoy this element. But the heart of the matter here is not the quittance itself, but waiver in favor of someone else. And this concerns not only the relinquisher himself but all the rest. If this element of external freedom relinquished is donated to ''someone'', then this ''someone'' receives a bigger amount of external freedom than all the

rest. Everybody is equal in their rights to external freedom, but that person becomes somewhat ‘’more equal’’ than the others. This grossly violates Axiom 5 and hence it is intolerable.

However, it is also intolerable by implication as such a person, having a bigger scope of freedom than others, becomes potentially more dangerous for the rest of people. It is here where the practicable advantage of this Corollary lies. This, by the way, was realized by the ancient Greek democrats. The essence of ostracism lies in this particular fact. In the course of every ‘’ostracism’’ procedure – a sacred act performed with applying pieces of crockery – all its participants had to answer the question: ‘’if the influence of anyone of us (glory, fame, popularity, etc) has become too strong on the rest of the citizens to endanger democracy? ‘’. And if the answer to this question turned to be positive such a citizen would be deported to a long time honorary exile in his country side estate and it would be forbidden to make his appearance in the city. This exile was not a punishment by any means as he had not perpetrated anything, and if he had he would have been exposed not to ostracism but brought to justice. Ostracism is just a preventive step meant to be equally useful for both the deported and those who stayed. After all, someone’s popularity is not the wealth possessed by someone in his or her coffers; it is not the strength of one’s muscles. His popularity is something that is borne in others’ heads. This is their concept of him, which is, by the way, can turn out to be false and which is likely to fade over time if the subject of adoration is to be removed from sight. Thus, ostracism was used by the Greeks to resolve a far more complicated task than the one we seek to resolve by applying Corollary 5, as any element of external freedom, which two persons can try to redistribute among themselves, in contrast to human concepts and views, is always visible. In the meanwhile, the redistribution itself is not less dangerous for everyone than a bigger popularity of any of the compatriots.

According to Axiom 5, all people are entitled to equal rights to external freedom, including to participation in the state government. Such participation in government is exercised during election campaigns and at referenda. All people

have equal rights to participation therein, which implies that everyone has one vote. Anyone can abandon this vested right. It is not really hard to imagine what can happen if people are allowed to waive this right in favor of other ones, given the existing social inequality. Such situations are prevented and rendered impossible and illegal by applying Corollary 5.

As the consideration of Corollary 5 elucidated the complexity of understanding the arbitrary character of application (or non application) by man of the right vested therein it is necessary to clarify this issue for good and all.

Every person has the right to life; but can this person dispose independently of *his or her* right, by quitclaiming thereof, for example? Is a person entitled, upon volunteer abandoning his or her right to life, to commit a suicide? Is a person obliged to exercise his or her right to life in such a way as to undertake everything depending thereof to spare his or her life? (And he who does not cling to his life to the last then be he not allowed to be buried at a graveyard). Every person has the right to work. Is he or she obliged to exercise this right at the same time? (He who does not be he not be allowed to eat.) Everyone has the right to participate in the state government, in particular through casting a ballot at an election. Is he or she obliged to participate in balloting? (He who does not be he devoid of a pension.) And so forth. We cannot by any means avoid answering this question and must give an explicit answer thereto. We have already touched upon this in formulating Corollary 1 on man's deciding only of what is good for man. Basing on Corollary 1 we now can formulate

Corollary 6.

Nobody can be forced to exercise any of their rights.

Regarding the relations between rights and obligations, we have not considered yet another aspect – if a right can be at the same time an obligation. Our axiomatic provides an obvious answer –

Corollary 7.

Human rights can never be human obligations.

Every norm and, in particular, its element – disposition describes the procedures of providing and restricting external freedom. In Axiom 7 we set forth the fundamental principle of restricting external freedom. Not less important than the principle of restricting external freedom is the principle under which external freedom must be provided. In order to formulate this principle we need first and foremost to take heed of Axiom 5, which claims equal rights to external freedom for all people. It might seem that dividing equally the entire available external freedom among all people (here we have to apologize for such an absurd speculative sentence) is enough to resolve the problem. Alas! Due to an immaterial character of the object of division nothing will result from it. A specific person won't be able to preserve his or her ''piece of the pie'' intact. By virtue of Axiom 8 on the predisposition of people to violate the boundaries of other people's external freedom there will always be some enthusiasts to encroach on the pie. As the diversity of the ''pie fillings'', that is specific manifestations of external freedom, is almost boundless, the number of situations when man is unable to prevent such an encroachment is quite big; due to this any verbal formulation of some rules for such a division is practically unfeasible. But this goes beyond that. As freedom is not a pie, proclaiming a specific element and a specific right thereof is absolutely insufficient. The right to life proclaimed is worth nothing given that there can be and is always someone who would want to bereave thereof. The term ''provided'' in Definition 7 requires a more specific elaboration; such an elaboration that could enable us to clarify the concept of ''disposition''.

Definition 17.

Provision of external freedom consists in its proclaiming and securing its implementation.

In other words, the totality (system) of norms, which are set forth in Definition 7, must effectively prevent an infringement on a subject's rights perpetrated by another one's actions. To a considerable extent, the efficiency of such prevention depends on the quality of disposition of each norm that constitutes the legal system.

In formulating our principle of providing external freedom we must bear in mind that there exists no right or freedom, for example, of those that are provided in the Universal Declaration of Human Rights, which can be enforced *absolutely*. None! Even the right to life. And it is not because there is capital punishment. Our Axiomatic rules it out. But because protecting a human life against a calculated murder is practically impossible. But aspiring to do it is necessary. The only way of resolving this task is to permit man himself in a situation when his life is really endangered (hypothesis) to protect it by any means up to killing the attempter. And permit not only him, but specially trained persons (policemen, security agents, etc). But this implies that the person who attempts on someone's life at the moment of such an attempt is denied the right to life by us; which means that we restrict his right to life! All the above said can (and must!) be set forth in a more detailed way, in all the thinkable and unthinkable details, predetermine the situation with a necessary and sufficient number of conditions and restrictions; in other words, to preface the disposition with a qualitative hypothesis. No doubt this is correct, but it does not change anything from the theoretical point of view. We assume quite deliberately and consider it to be correct that in a certain situation a *person can be bereft of his life legally;* and this is not an encroachment on his right to life.

Now if we remind again of the allusion to the pie with the filling named ''the right to life'' it turns out that this pie, the whole of it, cannot be divided among all people without odds and ends. Everyone must be given short of a small piece equivalent to the right of other people of bereaving him of his life in case when if he himself attempts to kill someone. But this small piece (a picking) given must be as small as possible; which is the only condition in this case – protection of another person's (people's) life – must be described in as much a detailed and

precise way as it is possible and (this once again emphasizes the quality of a hypothesis). Then everyone will come by a *maximally* big piece of freedom, although a little bit smaller than in the case when this pie is to be divided without leaving any pickings and ends (Attachment 4). Everyone will obtain a piece equal to the one of all the rest. Without this ‘’ little bit’’, some people (many of them) would have to be content with the proclamation, which is ‘’ halavah !’’ (meaning ‘’fine words butter no parsnips’’). If not done, which is the right to life proclaimed to be absolute, we will create an ironic situation when a law abiding person, the one who accepts and abides by the absolute right to life of anyone else, becomes absolutely defenseless when confronted by a not law abiding one ready to ignore the law abiding person's right to life. Given this state of things, a murderer will be able to behave in society like a polecat in a hen-house. By the way, in this Axiomatic the ‘’turn the other cheek’’ principle can look beautiful but it is definitely incorrect.

It is now after all these clarifications have been made that we can formulate the principle of ensuring external freedom –

Axiom 10.

Everyone must be provided with the maximum of external freedom compatible with the same maximum of freedom of everyone else.

Axiom 10 coupled with Axioms 5 and 7 is the formulation of the ideal, which sets the natural law and for which the positive law must strive during its historical evolution.

If we consider a sufficiently long historical period we will have to admit that positive law has been evolving in this direction, although not rectilinearly, alternating with retreats, zigzagging tremendously, but through providing more and more external freedom to an ever bigger number of people. It is not about goods, as argued by I. Bentam and his followers, it's about external freedom. ‘’ Why is it that civil slavery in Europe has been overcome? Because upon the destruction of

Rome, almost all the states have established the fundamentals of external freedom. This was the reason of feudal establishments, detrimental in many respects, but quite useful for a future establishment of freedom'' [79, p.44].

And it is not accidental. As F. Hayek showed [103], it is the ever stronger freedom of the individual that enables the entire population to secure its stronger growth and a respective growth of the production of wherewithal for this ever increasing population.

Thus, in providing external freedom to any person (every one) the following conditions should be met:

- Every element of Right (to life, freedom, property, etc) must be proclaimed;
- In proclaiming every element of Right it must be defined that every citizen is to be its holder;
- It must be proclaimed that every citizen is a holder of this element of Right to the same measure as any other citizen;
- Measures must be foreseen by applying thereof in providing this element of Right, including sanctions for violations;
- Those conditions must be described in as much a detailed and precise way as it is possible (with well substantiated references to the necessary external freedom provided for other people), under which the element of right proclaimed is restricted for every citizen and to what measure this restriction takes place;
- The measure of restriction of en element of right must be minimal, as small as it is achievable under the conditions synchronous therewith.

All this can be attained only in the norms, their hypotheses, dispositions and sanctions.

In formulating the Axiom 10, we reviewed just one example – with a legally possible shorter right to life. However, such examples are more frequent. Every such example is likely to have the *''condition''*, under which a specific element of external freedom can (must) become ''a tiny bit'' smaller. It is absolutely and perfectly inadmissible that this condition is generated immediately at the

moment of decreasing the element of external freedom. In our example it happens at the moment of deprivation of the attempter's life. For example, a person shouts in a public place:' I am gonna waste you all!''. The policeman kills him upon figuring out that the audience has really been threatened, and this kind of murder is accepted later to be legally acceptable; however, until that event no norm in the hypothesis thereof did not foresee a legally sanctioned deprivation of the life of a person, whatever he or she shouted; that is the condition ''threatening might result in losing a life'' was generated at the moment of immediate deprivation of life. It is obvious, that all such conditions must be specified beforehand in as much a precise and detailed manner as it is possible. Any actions restricting a person's external freedom can be considered to be legally sanctioned only when they are based on the norm elaborated *in good time*.

Axiom 11.

An action not provided by any norm, which is designed to restrict someone's external freedom, is inadmissible.

Thus, now, when we were specifying two elements of a norm – hypothesis and disposition – it is necessary to see to a third element thereof – *sanctions*, whose task is in providing for efficiency of the first two elements and norm on the whole. The task of the norm, according to Definition 7 is in providing for and restricting external freedom. A significant element of such a provision and restriction is imposition of obligations to observe the restriction of external freedom by those subjects that can exercise certain influence on the external freedom provided for. However, an obligation is such an unpleasant phenomenon; its voluntary observation is desired by few and not at all times. And we need it to be enforced and observed by everyone and at all times.
As the ''stimulus'' to observing such an obligation the sanction has been applied since the time immemorial.

Definition 18.

Sanction is an element of norm, which describes the circumstances caused by the subject legally concerned, negative for the infringers of the external freedom provided for by the said norm, and which result from any violations thereof.

Everyone who gets acquainted with some obligations charged thereupon must have an opportunity to understand clearly and precisely what will happen if he or she violates this obligation.

The hypothesis and disposition can be found in every norm of positive law, even if it is insignificant at first glance. At the same time the sanction does not provides for every norm of the positive law. This is an utterly inadmissible situation. This is what causes the inefficiency of law. *The norm without the sanction is dead.* In other words, a norm not supported by a sanction is not a norm.

This is such a significant circumstance, that we have to specify it in

Axiom 12.

Every norm must contain a sanction for a violation of the external freedom proclaimed thereby.

Heraclitus, a philosopher, who foresaw and anticipated much of what we today consider to be obvious and banal said once: ‘’the sun does not trespass the boundaries determined, as if it does trespass the terms due it will be found by Eriniai, allies of the Truth’’ [96, p.224]. Even the Sun, according to Heraclitus, roams the heaven not just because of the established order but also because it portends the Sun punishment, sanctions for violations of order.

Any restriction of someone’s freedom almost always results in a conflict. It is also true that it is about applying sanctions. Both the restricting and restricted parties must have an instrument to resolve a conflict between them. Such an

instrument is the norm. Its quality determines not only fair resolution of a specific conflict, but also, to a great extent, prevention thereof. If a norm is inadequately specified, if a hypothesis or disposition are set forth in such a way that they fail to provide for their absolutely unambiguous interpretation; allow possibly various understanding of the text set forth therein; both sides under the conflict can absolutely conscientiously and sincerely consider the opposing side to be the violator. What was conceived or desired by the legislator, when he or she was generating the norm, does not matter after it was published. What matters is not the ‘’spirit’’ he or she wanted to embody in the law, but only what he or she had as the result of that. ‘’There is nothing more dangerous of the conventional axiom that the spirit of law should govern. It is tantamount to destroying a dam containing a stormy stream of arbitrary opinions’’ [5, p.115].

Axiom 13.

Every norm must be formulated in such a way as to minimize a possibility of its wrong interpretation.

Here it is necessary once again to highlight the fact that the norm and clause (article, paragraph, etc) of a legal norm are not identical conceptions. A norm as the combination of a hypothesis, disposition and sanction can extremely rarely be set forth as a separate clause. It more often happens that the elements of the norm are scattered in different clauses of law, and even in different laws. This of course makes more difficult the understanding and application of the norm in practice. This state of things is caused by a lack of the universally accepted comprehension of the norm proper as the central, basic element of the legal system. The interpretation of law as the external freedom provided for and restricted by norm enables us to have a real opportunity of analyzing the norms –elements of the applicable legal system; it provides us with the starting point to make such an analysis, a theoretical basis to qualitatively form new norms and legal acts.

Proceeding from the establishment of law, norm as an element of a legal system is closely connected with a specific element of law, element of external freedom. An element of external freedom provided to some subject restricts external freedom (establishes the rules of behavior – to use one of the contemporary terms) of not one, but several subjects (groups of subjects).

First of all, this is the subject himself endowed with this element of external freedom. We have already said that none of the elements of external freedom can be endowed to anyone absolutely, even the right to life; therefore, the subject who is provided with external freedom (let's call him ''subject endowed''), must be restricted with some limits, within which he or she is eligible to enjoy thereof.

Secondly, this includes all those subjects who can theoretically infringe on the element of external freedom granted to the subject endowed. Their external freedom for infringement of the element of external freedom granted to another person must also be restricted; that is, they must be obliged to observe thereof and never violate the external freedom granted to the subject endowed.

Thirdly, this includes all the bodies and persons, whose task is to provide for an element of the external freedom granted to the subject endowed. In contrast to the former subjects, restriction of whose external freedom is rendered through a ban, restriction of the external freedom of the subjects providing thereof is rendered in obligating them to commit certain actions.

Definition 19.

The subject endowed is a subject (subjects), who is provided with the given norm a specific element of external freedom.

Definition 20.

The subject restricted is a subject (subjects), who has an ample opportunity to violate the element of external freedom granted by the given norm and who is prohibited to perpetrate such a violation.

Definition 21.

The subject providing is a subject (subjects), who is obligated by the given norm to provide for the element of external freedom provided thereby.

Thus, we have arrived at a conclusion that in structuring a legal system a specific norm should not be connected

- Neither with a specific subject as every norm providing and restricting an element of external freedom covers three different groups of subjects;
- Nor with any specific rule of behavior as every norm, that provides and restrict an element of external freedom, covers the whole set of behavior rules different for different groups of subjects;
- Or with the character of behavior rule (entitling, prohibiting or obligating) as every norm, that provides and restricts an element of external freedom, integrates all the three forms of behavior rules: entitling – for the subject endowed; prohibiting – for the all the rest of the subjects; obligating – for the providing subjects.

The only correct structure forming characteristic if a legal system in singling out its element – norm is a specific element of external freedom provided and restricted thereby.

It is especially worth touching upon the forms of behavior rules, social relations, which are regulated by the norm as a structural element of a legal system. The legal books tend to call such relations to be legal relations or *jural relationships*.

Proceeding from the above, the jural relationships always integrate three and only three groups of subjects: those endowed, restricted and providing. Such a structuring of the parties in jural relationship, directly resultant from our

understanding of the norm, makes considerably easier the understanding of the core essence of the jural relationships. Every of the subjects can enter into jural relationships with any other subject.

The subject endowed enters into jural relationships with a subject restricted, when the latter makes an attempt to infringe on the element of external freedom granted, and with a subject providing, when the latter acts or fails to act in the process (or thereafter) of perpetuating an infringement on the element of external freedom of the subject endowed.

The subject restricted enters into jural relationships with the subject endowed, when he or she tries to infringe on the element of external freedom granted thereto, and with the subject providing, when he or she tries to prevent his or her infringement on the element of external freedom granted to the subject endowed, or commit the actions established, when preventing the infringement failed.

The subject providing enters into jural relationships with the subject restricted, when he or she tries to prevent his or her infringement on the element of external freedom of the subject endowed, or commit the established actions, when preventing the infringement failed; and with the subject endowed, when he or she acts or fails to act in the process of violating the external freedom of the subject endowed.

After we have seen the clarifications necessary we can give the jural relationships the following

Definition 22.

Jural relationships are the relationships that occur between the endowed, restricting and providing subjects in the process of enforcing a specific element of external freedom.

According to Definition 7 right can be provided by a norm only; and the provision of right in accord with Definition 17 comprises its proclaiming and

making its enforcement possible. In proclaiming thereof, it is important that all those ‘’listening’’ understood in a correct and, if possible, equal way what is proclaimed. This task was tackled by us through Axiom 13. If the freedom proclaimed in the norm has been set forth in a way made equally understandable for everyone, the task of proclaiming can be deemed to be resolved. This truth – banal as it were – has not become so in the applicable legal practice. It suffices to open **any** law, and what is more, any other legal act, and we will find a host of examples of violating Axiom 13. Here is just one of them. Article I of the Constitution of the Russian Federation from 1993 proclaims our freedom, our right to living in a *democratic, constitutional and federal state with a republican form of governance*. Will anyone agree that this norm has been formulated in such a way that it has minimized the possibility of its wrong understanding? Ask one hundred people in the street, who are eligible for this right, and you will hear one hundred variants of understanding this norm. Ask ten lawyers – professionals, and you eleven variants of understanding this norm.

Yes, winning an absolutely similar understanding of every norm from all the citizens is practically unfeasible, but striving thereto is absolutely necessary.

The requirements set forth in Axioms 12 and 13 are hard to be presented to the norms of common law, as the basic principle of devolution of such rights, their preservation and propagation is that of oral. To all the written elements of law these requirements are applicable in full.

These and other requirements specified in the previous definitions, axioms and corollaries must find their addressee. The one to whom we want to bring these requirements. Such an addressee is available and its name is

State

This is the only means of people's existence which is existence in society. However, it requires an instrument (tool, mechanism, device) to sustain any kind of means, including that of human existence. This instrument in securing coexistence of people is the State. The State not in the meaning synonymous to the term ''country'', which is a combination of territory, power and population, and not in the meaning of ''a unity of people forming an integral, permanent and independent single whole'' [110, p. 233], but in the meaning of an instrument by means of which society provides for existence of its elements – people. The hitherto recorded period of history has seen this instrument change and develop in such a way that it has resulted in the emergence of the modern state. This is hard to equate it to some primitive forms of state as well as it is hard to see in the state-of-the-art bucket-wheel excavator its prototype – the Stone Age digging stick. They do not seem to have anything similar from today's horizon. The digging stick does not have that lot of characteristics indicative of the excavating mechanisms family. However, this supposition is superficial. If we look into the heart of the matter we will see that they are similar in the main – in what they are designed for. The fact that the excavator fulfills their common assignment thousand and even million times more efficiently does not fundamentally change things. We have to bear in mind the most important thing. It is always the case that when we mean the state we mean the following:

Definition 23.

The State is an instrument by which society organizes coexistence of its elements – people that proclaims and provides them with elements of external freedom.

This understanding of the state is nothing new. ''If people could live together peacefully without uniting under the power of certain laws and without

forming any state, then no rulers, no politics would have been necessary created to protect in this world some people against fraud and violence generated by some others'', - Said D. Lock about three hundred years ago [44, p. 48]. By the way, this (our) understanding of the state is precisely given in Article 18 of the valid Constitution of the Russian Federation. Another problem is that much other contained in this Constitution runs counter to the above articles.

Today, in the XXI century, it is not principally significant but still worth thinking – when did the State emerge? What legendry event might we associate its emergence with?

The most widespread, if not universally acknowledged, point of view holds that the state emerged when society was transforming from a tribal and communal into a class organization. This particular period is said to signify the emergence of the state. "The state is nothing more than a machine to suppress one class of society by the other'' [47, p. 447]. ''The state is an agency of domination of a certain class that cannot be reconciled with its antagonist'' [42, p. 8].

If we disregard T. Hobbes's and his followers' obscure and at times incomprehensible stands according to which the state emerged prior to society we are in a position to state as follows: following J. Bodins and H. Grotium, the current scientific conceptions state that the state is a societal product and emerges from society when it achieves a certain stage of its evolution.

Thus, the most acknowledged view is as follows: historically the first state was that of slave-owners. If we admit that it would mean that prior to the emergence of antagonistic classes – slaves and slave-owners – society spared any instrument (tool, mechanism, device) to organize the coexistence of people. But let us remember our Axiom 8, which states that people are inclined to violate the normative boundaries of external freedom. It is hard to imagine that prior to the emergence of the slaves and slave owners people were not inclined thereto. Quite on the contrary. How did they spare any instrument of overcoming or neutralizing this inclination? Or it might have been that society wielded two instruments only – one used for organization of coexistence, and the other one for suppression of one

class by another? And we give mistakenly to these instruments one name – ''State''? Of course, no. we mean the same. One part of this instrument promulgating laws organized coexistence in some of them (for example, slaves in relation to themselves, slave owners in relation to themselves), and in some others – exercised suppression (for example, slaves by the slave owners). The other part of the instrument (court) in settling conflicts exercised organization of coexistence at times, and at times - organization of suppression. Etc.

Consequently, in speaking about the instrument – the state we are right speaking about one of its functions – organization of coexistence, and about its other function – organization of suppression. The real question is which of those functions is the main, concept forming function? Or, as some modern authors try to portray they constitute the integral unity?

Yes, without doubt, these two functions have been working in parallel from the moment of emergence of the slave owner structures and up to now. But suffice it to remember, that prior to its emergence, which is a considerably long period of history, the function of suppression of one class by another one did not exist, and the function of organization of coexistence existed. There were no classes and it was not necessary to suppress or secure domination. This very undisputable fact was sufficient to define which function was the concept forming and concomitant one (although the question of suppression practiced by someone over someone else prior to the emergence of a class society is not that clear. It is doubtful that before the slave owner society established itself nobody had suppressed anybody else. More probable is that there were some social groups (castes, elites, pagan priests, the wealthy, etc.) that wielded their power over some other groups (suppressed them). And consider also the patriarchate – matriarchate dichotomy! Is it not a form of suppression exercised by one group over another one? Nevertheless, one thing is obvious – even in those old times coexistence was organized somehow).

Besides, there is another significant argument. During all those thousand years, beginning from the triumph of feudalism and up to now, more than 99 % of this time people (specific people) were quite satisfied with their life without

revolutions and did not seem to have been indignant over the fact that one class exercised suppression over another one or resented it. Each revolution and social and political turmoil that has ever happened affected an inconsiderable part of the human habitat and for rather short periods of time. All the rest of the areas populated by man have lived in peace. And they live in peace at present. “Oppressed’’ classes take their share in governing the state, which is alleged to be their oppressor. Might that have been that all the people have misunderstood anything? Is it true that they think their countries to be free from oppression and injustice? Hardly ever! All this is not the cause of their consent to put up with the injustices inflicted by the state in the course of millennia. The most important cause of this state of things is that they see that the state, with all its injustices and imperfections, has always been the only instrument of organization of their own coexistence. This function of the state is extremely valuable (invaluable). Their understanding this function enables them to reconcile themselves to all the side effects concomitant to the functioning of this instrument. This is true for all the cases of curtailment of their external freedom. Over time and whenever it is possible people try to get rid of these side effects, which constitutes the essence of the social progress.

What is more, if we cast a broader look we can arrive at a conclusion that ‘’suppression’’ is a special case of ‘’coexistence’’, however imperfect and perverted, completely in discord with the area selected by *us (1-4-7)* in the political space. But it is another means of organization of coexistence. Thus, the function of securing coexistence supersedes the function of suppression and domination, absorbs it.

As to the class nature of the state it is necessary to remember that the classes themselves are engendered not by the state but by society itself. When there were no classes in society the state did not exercise the function of suppression. No classes in society – no function of suppression by the state.

The state is an instrument of society. But it is not just an instrument to be used and then be put aside for some time. The state is such an instrument society

cannot be sustained without. Historically the state and society emerged simultaneously. They are likely to disappear simultaneously. The idea of the state' dying away is based on the false perception of its essence. The essence of the state cannot be connected with either coercion or exploitation, or any other similar circumstances concomitant with its functioning. The absolute unconditional nature of the state is rooted in human nature, which is set out by us in Axioms 4 and 8 that postulate that people are destined to live together and inclined to surmount their external boundaries. As long as man is a social creature disposed to overcome the boundaries of its external boundaries the state is an eternally necessary entity. Given this understanding of the essence of things it is possible to assume a theoretical possibility of the state's dying out and that is in two cases. First, in case if people wish and learn to live completely separately without getting into a contact with each other, that is without forming a society. Second, in case if human nature is improved to such an extent that no people are left who are inclined to transgress the boundaries of their eternal freedom, meaning that they *all* become sinless angels. Realization of both of these ideas is so improbable that, so far in time from today that we can be sure to reiterate: the state does exist and is likely to exist as long as humanity exists.

We know lots of societal animals. The instrument of their existence is ''the right of the strong''. The strongest is always right and the rest accept it! When he stops to be the strongest he becomes wrong.

I like *this* idealized picture of the emergence of man, society, state: in the moment when our two prehistoric ancestors simultaneously clutching at the same banana did not come to find out by force whose banana it was but appealed to the third one asking him help them resolve their problem, or, even better, divide that banana in that way or another, seemingly fair (and thus reached a consensus). When they did when they transferred into human beings from ''under humans'', formed the first human society and engineered an instrument of their existence – the state.

Since those ancient times the social life has changed greatly, which resulted in developing much more sophisticated state functions. But the main thing is that what makes the state to be the state has not changed in any way. Still only two ways of organization of existence are in place. The first one implies assignment of finding a solution to the problems to one specific person or body – leader, council of elders, oracle, monarch, parliament, president…the second one is finding an independent solution to the problems by way of coming to an agreement. By trying to reach an agreement until everyone involved gives their consent or until their majority comes to an agreement. If an element (elements) assigned to enforce the solution agreed upon through the first or second way is added to this concept we will obtain the sketch or scheme of *any state.*

The only useful function of the state is that of organization of coexistence of people.

To a great regret of all of us, people living on the earth the state is never limited by this useful function. Even the hammer may hit the finger instead of the nail. And sure, the same can be said about such a sophisticated instrument like the modern state is. Besides, the entire history known to us has never seen this instrument function only as an instrument. It has always succeeded (and it does now) in appropriating some other functions not so useful for us people, which are side manifestations of this useful functioning. This inevitably results from a decisively important peculiarity of this instrument: it is constituted by people – intellectual objects and, consequently, the essence of Axiom 8 on a certain predisposition of people manifests itself here, too.

It is of doubt that someone today will dare question the thesis that any existing state requires improvement. This type of improvement has two totally different directions. The first one is improvement of the functions exercised by the state. The second one is improvement of the fulfillment by the state of its functions. Obviously, that the first one is the master and the second one is the

slave. It is but silly improving fulfillment of functions that are of no use (or even harmful).

Being aware that disputing the thesis on necessary improvement is not wise and even dangerous the state is always keen to agree to improving its efficiency and never – functionality. Having it progress in its main direction is possible only by making big efforts and victimizing on our human part. “Political machines retain the movement preset to them longest of all and readjust their motion slowest of all’’ [5, p. 138].

It is similar to the way the natural right assigns us the ideal, direction of improving the positive right (law), an ideal and direction of improving the state shall be assigned, as well as a foreseeable, desired and feasible status of things and people constituting the state. Which implies that, proceeding from our Definition 2, the state should be assigned with a goal. And this goal cannot be the organization of coexistence. Coexistence may be absolutely different. Coexistence of the czar and its subject, slave and the slave owner, peasant and worker and so on are totally different and, consequently, should be organized differently. We have already said that subjugation is a special case of organization of coexistence. In formulating the goal of existence for the state we find ourselves in the realm of the Normative, but not the Existence. In formulating this absolute we make one of the most important choices that render the quality of our existence so dependent thereon. Within the boundaries of our theory, which corresponds to field 1-4-7 of the political space, the goal of existence of the state is to be given in the form of

Axiom 14

The only goal of existence (functioning) of the state shall be ensuring it citizens’ security.

“The final goal of the state is not in that of domination and keeping people in awe subduing them to someone else’s power but, quite on the contrary, in that

everyone must be liberated from awe to enable to live in security as much as it is possible that he or she could at best retain his or her natural right for existence and carrying out his or her activities without doing any harm to him or herself or another one'' [80, p. 288].

Despite the fact that from the time of the Great French Revolution that declared in 1789 freedom, *security,* resistance to oppression as being part of the basic and unalienable human rights security has always been understood differently and that's why the definition of ''security'' shall be given

Definition **24**

Security of the citizens is an opportunity to freely and independently exercise their right through their own effort.

The key word here is the word '' independently''. The natural and law school announced a long time ago that there are the natural fundamental rights belonging to man by birth. Today this thesis is considered to be universally received. At the same time human fantasy is boundless and capable to devise an infinite number of ''rights''. Obviously, not everything conjured up by human fantasy is worthy being named to be the natural right. Today it is quite widely prevalent to think that *every* need engenders a *right.* Presenting a claim for such rights does not have any limits because these rights are exercised at the expense of others. The range of this kind of rights conjuring up is amazingly wide and comprises the human right for life up to the right to an everyday cake at breakfast. Where is inside of this range the boundary between the natural rights, that is, those rights whose unconditional character is obvious?

The example of instability of this boundary is given by Richard Pipes in his book [57, p. 319]. There is a widely known slogan: ''everyone has the right for housing''. This thesis is stated in Article 40 of the Constitution of the Russian Federation. However, it can be interpreted in a double manner. It either means that everyone has the right to buy, rent or build a house, which is quite important for

us, as we did not have this kind of a right in its full scope not a long time ago. Or it means that the state shall at the taxpayers' expenses buy, rent or build housing for everyone. In this case the word ''right'' is used here by sheer misunderstanding, not in the meaning we imparted it in our Definition 7, that is not in the meaning of external freedom.

Sometimes in reasoning about this aspect they mean the differences between the right as "protection against" and the right as "claim for". This approach, true in general, has also been defined insufficiently. Any politician can also exploit this ambiguity. While propagating his New Deal, F. D. Roosevelt said that security means not only protection against an aggressor but also economic security, social security, moral security. Where is here "freedom from" and where is "claim for"? It can be interpreted either way.

According to our Definition 7, the right is external freedom, and external freedom Definition 6 is man's possibility to act. By adding in the definition of security (24) to such a possibility to act a requirement of free act, requirement of mandatory manifestation of activities of man himself towards obtaining security, we essentially advance to a more concrete boundary between natural and imagined human rights. And what is not less significant, the state is to play a specific role in eliminating obstacles on the way of man's voluntarily exercising his rights.

It is time to talk about government and try to clarify the meaning of the term in the framework of our theory. "The state governs…" – the phrase is seemingly quite unambiguous. It seems quite clear whom the state governs. Napoleon (see epigraph) did not have any doubts regarding this. Too many seem to be willing to accept their position as the governed.

Since G. Spenser, for his own reason, using "coarse analogies" as "the scaffolds" for building "well-proportioned structure of sociological propositions" [91, p. 48], introduced the concept of social organism, all governments readily took up the idea and came to present themselves not less as the brain of the nation. "Such kind of a government presents itself a god of sorts, which governs the whole nation as the brain governs the body. It is allowed to do everything due to the fact

that what is out of its realm is matter, insensible and unintelligent, if not coarse." [91, p. 48]. That is, it is we, people who constitute insensible and unintelligent matter. And once it is true, it is we who are the object of the state governance. But is this really true?

Again the first we should do is to clarify the very concept of government.

Even N. Wiener, famous theorist of cybernetic control, does not actually define the key term of his theory [11]. However, the overall framework of his book suggests that

Definition 25

Government (regulation) is the activity aimed at reducing divergences between the goal and actual state of things and people.

The government, understood as a complex (system), including society, territory and authorities, is normally taken for granted without insight into the essence. As Voland [the character of the famous novel by the Russian writer Michael Bulgakov, "Master and Margaret" – Translator's note] would say: "To govern something one has to have a plan (goal – S.E.), albeit for a mockingly short time, say, for a thousand years." While understanding the state as a totality of society, territory and authority, it is perfectly clear that such planning is impossible, as even for society (not to say about a territory) nobody can adequately articulate some goal or plan. Therefore, government in this sense of the term (population, territory, authority) is also impossible.

The problem is resolved if we take up Definition 23 and define the state as an instrument. Such a state does have a goal, which is defined by Axiom 14, that is, security of its citizens.

If we also employ our definition of security, we will see that for its every element (bodily security – life and health, economic, security against ignorance,

against senility, etc.) the level of security as interpreted this way can be measured almost in every case.

This also enables us to measure the result (quality) of government as the value of divergence between the existing status and goal – a specific element of security.

Bad policing fails to provide bodily security; inaccessible medical care and education endanger health and aggravate ignorance, etc.

Consequently, government implies such an impact on the state's components – bodies and entities that would make citizens' security stronger, or in any case would sustain it at the level achieved, despite various external intrusions. It becomes clear that relations between the state and society, based on the "pastor – flock" principle, are unsubstantiated. Indeed, people are not the objects of state government. So we are in a position to give the following

Definition 26

The regulation of state affairs (Government) is authoritative acts by some subjects of political power in relation to its other subjects (objects governed), resultant in achieving the goal of the state.

To this we could add another significant observation – it would be better to have no more than one goal. As soon as we admit having two and more goals or the subject of government, the danger immediately arises that they come into contradiction with each other. And this, in its turn, enables the objects of government (remember that they are constituted of people) to take advantage of these contradictions and pursue their own goals.

As it is clear from Definition 26, the objects of government can solely be the elements of the state, that is, the bodies and persons constituting its structure and also the mechanism of government, that is, the techniques and algorithms of activity of the bodies and persons that constitute the state. Going ahead, we can say that the mechanism is a system of norms determining the structures as well as the rights and obligations of the state connected bodies and persons.

Now that we have introduced Axiom 14 (on the goal of the state), Definition 17 (on external freedom) and Definition 24 (on security) it becomes clear who shall proclaim and secure external freedom, specific elements of the right. But until now it is not clear why. Now it is high time to clarify where human rights and state power come from?

The point of view widely accepted and propagated insists that it is the state that endows man with the rights to the extent to which the state deems necessary. It is sufficient to cast a glance at human history and see a lot of proof to it. Since the time of *Magna Charta* it has been debated how the word *freedom* is to be understood – as a privilege "obtained from the King (the state)" or, in compliance with the general customs, as a freedom from violence, attempt on life, encroachment on property. These are incompatible. Freedom interpreted as the good, granted by the royal power, corresponds to the relation of the superior and inferior. Interpreted in the spirit of *natural law*, freedom is the freedom of the equal. The freedom of the equal is not compatible with the freedom of the unequal.

Indeed, we do not even have to go into history. One of the most advanced countries, Canada, to name but a few, was granted its Constitution by the Monarch. Yes, the practice is such. But our concern here is *theory* of law, which is rather the Normative than the Existence. And as far as the first part of the question of human freedom is concerned, that is, where man derives his rights, the Normative has already been stated in Axioms 5 (all people have equal rights to external freedom), 7 (external freedom of man can only be restricted by the requirements of other people' external freedom) and 10 (everyone shall be granted as great an external freedom as that of everyone else's). Note that Axioms 5 and 7 were formulated in the chapter on "Society", where neither the right nor the state was even mentioned. Axiom 7 infers therewith that everyone's external freedom is boundless in all senses but one: it can only be restricted in its scope by the same external freedom that other man possesses. And from Axiom 5 it is inferred that it is equally true for each man. The role of the state here is purely auxiliary, the latter being just an instrument. With the help of the state people put these Axioms into practice, apply

them to all life situations, come to uniformly understand their application in different life situations, resolve boundary conflicts and provide that these Axioms are enforced. At the same time the state has no right to infringe on the meaning of Axioms 5, 7 and 10 and to "improve" or "rectify" them. "People are more consistent and prudent than every Sovereign." [45, p. 373].

We run across the prototype of the conception in writings by Lock who said that the state (the King therein) shall not violate any right of its citizens (the subjects therein), and if the state does it, it finds itself at the "state of war" with them who shall not obey the state thereupon.

Thus, human rights are derived from the nature of things itself, from equality, from these obvious truths – Axiom 5, 7, 10, and each of these rights shall be as big in their scope as possible.

We have the contrary situation when we deal with the state power. The state derives its power also from Axiom 10 on the scope of freedom every man has, from the term "granting" applied therein and clarified in Definition 17. In dealing with the Axioms and Definition in the previous chapter we arrived at the conclusion that in distributing the full scope of freedom among the people, every man shall not be given (otherwise impossible!) a small piece, as miniscule as possible, of each specific element of external freedom, of each right.

Note! It is these pieces of external freedom, deliberately given not to people, in distributing the full scope of freedom thereto, that constitute the state power.

"The sum of all the particles of freedom, sacrificed to the common good, constituted the supreme power of the nation" [5, p. 113].

"Man gave up some of his natural rights and received civil rights instead – something, perhaps, not so complete but more effective as these rights are guaranteed by the collective power." [16, p. 102].

In other words, people sacrificed in favor of the state part of their external freedom consciously (unconsciously), and it is this and *only* this sacrifice that constitute the power of the state.

According to our Definition 16, everything that is in excess of that is arbitrariness. From this becomes obvious

Corollary 8

The only source of political power is the people (nation)

Unfortunately, today, while exercising political power, the state still behaves in arbitrary way, though it has always been the case. Why is it so? To resolve the problem we need to talk about *power*. Obviously, the concept goes beyond the state and legal framework.

What is power exercised by one person (group) over another person (group)? How is it possible at all? Where does its source lie? Where does it originate from? These questions like many other societal questions have not been given a definite answer yet. The legal literature contains a lot of interesting material to formally define the concept of power. History has many a times described and substantiated (retroactively) the cases of concentrating power in the hands of a single person or a group and their eventual loss of power, sudden but explainable. Sociology and political science has described specific preconditions – economic, social, moral and cultural – that facilitate or prevent persons or groups from taking power. But all this by no means gives a straightforward answer to an immensely question: "What is the relation between people that empowers a single person to determine the life and destiny of millions of people, and how is this relation made possible?" [98, p.73]. And it is only about those millions. As the Russian poet wrote: "A man was sent to Anchar by another's man glare."

This problem was posed by Leo Tolstoy most precisely and definitely: "What causes historical events? – Power. What is power? – Power is a totality of wills transferred onto a single a person. Under what conditions the wills of masses

transferred onto a single person? – Under the conditions of the wills of all people being expressed by a single person. That is, power is power. That is, power is the word the meaning of which is unclear to us.” [87, p. 618].

To illustrate this thesis given by the great writer two examples from literature can be given only. The first example is his own.

“Napoleon ordered that troops be called and go to war. So familiar is the picture to us and so accustomed we are to this outlook that the question of why six hundred thousand people went to war when Napoleon said some words seems senseless to us. He wielded power and that is why what he told was executed.

The answer satisfies us completely if we believe that power was given to him by God. But once we do not accept this, it is necessary to determine what is this power, which is exercised by a one person over another.” [87, p. 612].

The second example is that of Carlyle, another great thinker.

“You see two individuals, one wearing the beautiful red attire and other one – coerce worn blue one. The red says to the blue: “You must be hanged and anatomized.” The blue shudders at hearing it and (oh, miracle of miracles!) goes to the gallows sadly. There he is hanged, his body swings for the usual while, and doctors dissect it and make a skeleton out of his bones for medical purposes. How is that? And what are you supposed to do with your “*Nothing can act otherwise than where it is located”*? The red does not wield the physical power over the blue one; he does not hold him and does not get into any contact with him. Moreover, all those executing sheriffs, lord lieutenants and executioners and hangmen are not in such relation to the red giving orders for him to be able to drag them here and there, but each of them stands isolated in their own skin. Nevertheless, what is told is done: the word said brings all the hands into motion – and the rope and the improved shooting board do their job.” All this, Carlyle explains then with irony, happened because “the red hanging individual wears a horse hair wig, squirrel clothes and a velvet mantle that help everyone recognize him to be the judge.”

These two literary examples given by S. Frank [98] help us see several important things.

First, the nature of power may not be supported by physical domination. Neither the judge exerted any physical pressure on the accused, nor Napoleon - if anything – could physically cope with his soldiers in any way. Certainly, the half a million strong French army is stronger than Napoleon.

Second, the nature of power may not be supported by moral domination. History has shown us a lot of examples when people who wielded tremendous power were moral non-entities at the same time. Moreover, history has seen no examples of morally great personalities wielding considerable power.

Third, the nature of power may not be supported by the interests and benefits of the subordinate. Neither Napoleon's soldiers, with each of them having been able to be killed, nor the criminal mounting the scaffold on his own foot benefit from being in subordinate position. That is, in a sense, the command can only be executed through their voluntary consent.

Fourth, the nature of power may not be rooted either in law or norm. Power is primary in relation to law by its nature, since law is based on power, not vice versa. It is hard to imagine that source of power could be found in the pages of legal codes.

Now we clearly realize what does not constitute the essence of power. This essence has yet to be discovered by scientific thought. We should honestly state that we still lack the knowledge of the essence of power which is crucial to legal theory.

There are quite authoritative writers who hold that the essence of power is hidden in man's negative traits. As one of these writers, the great philosopher and humanist Nikolay Berdyayev, said: "Fear rules the world. By its nature power exploits fear. Human society was built on fear and hence it was built on lies as fear engenders lies. It is feared that the truth will reduce fear and stop from ruling over people…And freedom in opposition to fear. From fear the truth about freedom has been concealed…It is not only the masses that are ruled through fear but the masses themselves rule through fear… Man himself is fond of slavery and gets along with slavery easily." [6, p. 112].

When human beings came to live in society, they soon began to get convinced that they were different. One is a bit stupid, another one is smart; one is weak and indecisive, another one is strong and brave; one, the younger, has little knowledge of anything, another one, having a long life behind, has certain knowledge and experience. That is why any collective effort endeavored by the primitive community (such as building a dinghy, common hut, defending themselves against the enemy, etc.) turns successful only when one-man management of the common activity is exercised. Even now highly qualified workers are guided and instructed by an engineer or a team leader. It was even more necessary in the ancient times. Perhaps these obvious facts have some important legal aspect we cannot see yet. We do not know but we would wish that further studies would find utility or, perhaps, even the need for joint effort to be the nature of power.

Perhaps, over time as the essence of power becomes clearer to us, legal theory will be considerably improved. But we do not have much time to wait. We live here and now and it is here and now that we want to improve the process. And to do this we need to say something definite about power. Therefore in the absence of deeper understanding the nature of power we choose to go on drawing on its formal definition

Definition 27

Power is the right of the subject of power to provide and restrict the external freedom of the subjects of subordination.

The definition equally applies to President, gang leader, father to a family and military officer, etc.

Definition 28.

The subject of power (subject vested with power in relation to the subjects of subordination) is a subject that is able to enforce his dictation (command).

Definition 29

The subject of subordination is a subject that is unable to quit execution of the dictation (command) of a subject of power with impunity.

It is clear that both President and gang leader are able to enforce their commands. It is also clear that the methods of such enforcement does and must vary. To rule out gang leaders and family fathers at the further stages of our discussion we need single out the part of the concept of power which is immediately relevant to the functioning of the state. Let us call it *political power* and give it the following definition

Definition 30

Political power (state power and local government) is the power in a specific territory executed by means of law and direct dictations (commands) based thereon.

The expression "state power and local self-government" is essentially wrong. In analyzing it we can make a wrong conclusion that at the local level we rule ourselves and at the state level we are ruled by power. The etymology of the expression is clear. The term "local self-government" appeared in medieval time when autonomous local government had really been made possible without direct rule by royal or principal power. Now, especially after we have said about government in Definitions 25 and 26, it becomes clear why the expression is wrong. It would be more correct to use the term "state power and local government" bearing in mind that both at the state and local levels the mechanism

of government is not different. However, the term “local self-government” is so widespread and deeply rooted having become part of international documents that we will use it in this work in its usual form, remembering that government at the state and local levels is the same in the sense of Definition 26.

As we see, the most significant element in the definition of political power is the territory. Introducing the concept into our definition, we immediately single out the right territorial criterion of defining the subjects of subordination, separating it from any other criteria. The pair of “territory – law” becomes logical as every law has quite specific territorial boundaries of its application.

It is common knowledge that laws are the products off the state functioning. Can it happen that while formulating laws and being able to enforce its commands the state will impose on us a life we will not like at all? This is the real picture we can observe today both in our national life and all the other countries (to various extent). Why does of happen? Because *Weltanschauung* we are exposing in our Axioms has not become the conception of life for people in these countries. Let us clarify the matter.

Axiom 7 (on the principle of restricting external freedom) is already sufficient to exclude any arbitrary acts on the part of the state (Definition 16) in relation to any person. But the axiom alone does not stop us, people, from doing harm to one another. The problem is resolved by Axiom 10 that requires maximum of external freedom for *everyone*. According to our Definition 23, the state is the very subject we entrust with the task of proclaiming and securing us with the elements of external freedom. We have not defined yet what parts constitute the state. Let us formulate it in

Axiom 15

The state is constituted of bodies and functionaries.

The combination and set of these bodies and functionaries can be quite varied. However, the very important point has to be formulated at this stage. There is a single body without which the state cannot be organized in our axiomatic.

According to Axiom 11, an action aimed to restrict anyone's external freedom and not specified by any norm is inadmissible. Procedure of passing the very basic law the state would allow itself to pass laws therewith (any law means restriction of someone's external freedom) shall be specified by some norm.

Unless it is available, the state will not be able by any means to legally pass its first law.

To make passing the very first law possible we need that very special and most significant body. The type of this body is directly inferred from Corollary 8 on the single source of state power. The body is named nation.

It is the nation and only the nation that can and must pass the first and basic law, Constitution, through a referendum.

Everything has its beginning, even law. "The rule of majority vote *per se* is established as result of agreement and implies, at least once, unanimity." [71, p. 207]. Constitution is that very form wherein the beginning is, which, following Rousseau's example, is called 'social contract'. The fact of signing the social contract is, of course, an idealized picture. But we have already agreed that everything which is being described herein is to a great extent not part of the existing but the due. Nevertheless, history has seen examples of a unanimous adopting of such a contract. In the late fall of 1620 more than 100 passengers of the sail ship "Mayflower" setting out for the New World for ever already seeing the American coast but embarking on the shore signed the following document:

''In the name of God, Amen.

We, the undersigned,…having set out in God's name, for the sake of disseminating the Christian belief and for our King and Fatherland's name and glory, to travel, with the aim of setting up a colony in the Northern part of Virginia, solemnly and mutually are to be united herewith before God in a civil and political organism to maintain among us the best order and security, and also

in pursuing the above goals….pursuant this we pledge herewith to make and pass such just and equal laws, ordnances, acts, establishments and administration bodies, that at various times will be deemed to be suitable and benefiting the universal good of the colonies and we promise therewith to observe and abide thereby. In witness thereof, we put our names herein under.

Cape Cod, November, 11…Anno Domini 1620'' [27, p. 131].

Similar social contracts were drafted also in New Haven in 1637, in Rod Island in 1638, in Connecticut in 1638, in Providence in 1640 [86, p.48].

It is obvious that the document presented is a social contract. At the same time, it is also obvious that much in the agreement is referred to the future, to be done thereafter, when ''we will draft and set up administration bodies''. We understand today, that it is insufficient for a full fledge social contract. And those American colonists did understand it too. For example, on January 14, 1638, Fundamental Orders of Connecticut was signed that established the constitutional order in Connecticut in all details [25, p. 21]. What is the meaning of the social contract fixed in the constitution? In a hundred years after writing this remarkable document on board "Mayflower" Rousseau defined the task in the following way: "To find such a form of association that protects through its total power an individual and property of every member of the association, thanks to which everyone, though joining all the others, obeys to themselves only and remains as much free as earlier [71, p. 207].

Here is the ideal: ***in associating with others, remaining as much free as previously***. As "everyone obeys to all the rest he does not obey to anyone individually." [71, p. 208]. The ideal is realizable only in the case if we constantly bear in mind that "in terms of the contract the true freedom implies substantial equality between parties under the agreement." [16, p. 115]. Such an association makes the political organism, and it (organism) creates a special body (bodies) for itself – the state. Rousseau realized it pretty well. However, he did not say anything about the character, treacherous one, of such a political body, which we do say about in regularly Corollary 9.

Constitution is not just a mere law among other laws, though a principal one.

The Constitution is a law wherein we, the citizens, shall specify those conditions thereby we agree to yield part of our freedom to the state. Such conditions should include those elements of external freedom, proclaiming thereof ***cannot*** *be entrusted by us to the state.*

It is after the Constitution has been adopted when establishing laws (norms) will be in the realm of the state. Here in drafting the Constitution of special significance is Axiom 13 on the quality of formulating norms. If we fail to meet its condition, the state will undoubtedly take advantage of it.

The necessary precondition here is to describe how this instrument – the state - is designed, as we agree to yield part of our freedom to quite specific an instrument. And if, when exploited, the instrument changes without our sanction or goes off, our obligation to obey its commands is rendered null and void.

Also, necessary is to describe the algorithms of the functioning of the instrument – the state, as we agree to yield part of our freedom to an instrument that functions in certain way. And even if the instrument begins to perform some unspecified functions or stops to perform the functions specified, or in the case of its malfunctioning, we can give up our obligations to obey it.

This is the meaning of the third part of the preamble of the Universal Declaration of Human Rights: **"…**Whereas it is essential, if man is not to be compelled to have recourse, as the last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of Law **…"** [64].

Proceeding from the above and basing on Axiom 10 on the principle of external freedom, on the definitions of right (7) and of power (27) we can formulate

Corollary 9

Any political power shall be provided and restricted by law.

Finally the analysis of Axiom 7 (**man's external freedom can only be limited by the requirements of other people's external freedom**) and Corollary 7 (**the only source of political power is the nation**) shows that the following statement is not arbitrary but their

Corollary 10

Every citizen is allowed to do everything otherwise not forbidden by law; the bodies of political power and their functionaries are not allowed everything what otherwise is not specified or not allowed by law.

At the same time we have to constantly bear in mind Axioms 7 and 14: man is allowed to do everything that does not prevent people from exercising their external freedom, and the state is not allowed to do everything that is not aimed to guarantee the security for its citizens.

Science of law has long been dealt with two essentially different methods of legal regulation – the universal prohibition method when the universal rule is that everything is prohibited, and what is permitted is specified by concrete norms; and the universal permission method when the universal rule is that everything is permitted, and what is forbidden is specified by concrete norms. We are resolutely opposed to the view that "the content of law can be clearly defined according to the principle stating that "everything that is not permitted is forbidden" [10, p. 384]. It is obvious that both of these methods are present in law. However, they are hardly compatible in relation to one and the same subject, which is not surprising as they are directly opposed to each other. From our point of view, this contradiction is resolved by Corollary 10 that applies different methods of legal regulation to essentially different subjects. Which of these methods should be applied to different subjects depends on which subject we believe is a means in that pair of "man – body of power." And our choice had already been predetermined by Axiom 7.

It is only in the framework of the theory we are exposing that Axiom 7 is a true proposition. Both history and today's reality have given us a lot of examples showing that directly opposing principles are applied in relation to the subjects in the pair of "man – body of power."

The idea that is present in the first part of Corollary 10 has been familiar to humanity since long. "The view that a citizen has the right to do everything that does not go against laws, without fearing consequences except those which can be produced by his act itself, is a political doctrine in which peoples shall believe and which supreme authorities shall profess by meticulously observing laws. It is a sacred doctrine without which the lawful society cannot exist, it is a just compensation for the sacrifice of freedom which is inherent in all creatures gifted by senses and have its limitations in its own powers only. This doctrine creates in people the spirit, free and powerful, the reason, enlightened, and engenders in them the virtue of courage, not that of compliant prudence that is only worthy of those who are able to bear a miserable and unsecured life." [5, p. 121]. However, the idea has not yet been accepted as widely as it is known. That is why various statesmen still argue that it is the state that knows what is useful for man and what is harmful. From this they conclude that it is the state that can and must decide what and to which extent is permitted for people, and what and to which extent is allowed for itself, its bodies and functionaries. Indeed, it must not surprise us. Such an aspiration is absolutely normal in view of

Axiom 16

Subjects of political power are constituted by human beings.

As we remember, the subjects are persons (including human beings) and bodies. As far as the state is concerned, it is functionaries and bodies. The functionaries are, of course, human beings, too, but only in their capacity to exercise influence on other people's external freedom.

Definition 31

A functionary – subject of political power – is a person having the right to restrict another person's (or people's) external freedom.

But the state bodies – parliament, government, municipality, etc. – they are also constituted by human beings.

The reader might have already got the point. Indeed, Axiom 8 (on fatal disposition of human beings) and Axiom 16 make obvious

Corollary 11

Every subject of political power is disposed to go beyond the boundaries of the external freedom, established by law for him.

The latter is true, regardless of whether the subjects claim it openly, whether they pledge one another secretly as Aristotle said the then oligarchs to have done ("And I pledge to be hostile to the common people and conspire against them the worst possible" [62, p.225]), or they do not even discuss it among themselves. They are disposed to do this due to the very fact that they are human beings.

Again, as in the case with Axiom 8 on the same disposition in man, we should not make a tragedy out of this. We should not be indignant and lament when this fact is proved again. But does that mean that we should be completely unperturbed in watching manifestations of such a disposition? No, we should not.

Being aware that it rains on and off, one has to be prepared to withstand the rain and find shelter. Being aware that it gets cold (sometimes for rather long period), one has to be prepared for cold whether and make warm clothing and procure fuel. Being aware that every subject of political power is disposed to go beyond the boundaries of the external freedom established by law for them, one has to be prepared, fortifying these boundaries and building the structures of these subject and formulating the rules of their functioning so that the disposition is limited as much as possible, that is, they can oppose it themselves.

The boundaries come first. While creating every subject of political power, we should see clearly why *we* (people, citizens) need this subject, what elements of

our security the subject is to provide. We do remember that according to Axiom 14 this is the only reason for its existence. Then we need to decide which part of which elements of our external freedom we are ready to sacrifice to this particular subject for him to provide our security. It is high time now to remind of what we are saying about in formulating Definition 17 on the external freedom. While endowing the subject of political power with external freedom, that is specifying his rights and obligations, specifying the boundaries of his external freedom, we reduce our external freedom. We are talking about this earlier – this reduction is inevitable. However, we should be careful about not going too far in reducing our external freedom. Therefore, it is necessary to specify the boundaries of our and his external freedom in the most precise detailed and coherent manner. We should not be afraid to be too wordy here. This is not the case when brevity is the virtue. We should remember that the fatal *disposition* from Corollary 11 is always with us and we it should be counter posed. Every kind of ambiguity will always be interpreted by the subject of power in his favor. We should remember that the subject of power has this freedom of interpretation when he is already vested with authority. It means that this is he who will be the interpreter, the one who is able to sustain his interpretation by force. Now it is even clearer how much important and necessary is our Axiom 13 on the quality of formulating the norms.

Axiom 12 on the sanctions is of even greater significance in this sense. The people that constitute the bodies of political power and the people that are functionaries tend to manifest this *disposition* to a different degree. But fortifying the boundaries of their external freedom, we have to bear in mind as scandalous and mean manifestation of this disposition as possible. While formulating rights and obligations for every subject, we should stipulate a sanction for his failure to meet any such right or obligation. In contrast to the person who shall not be coerced into exercising his right (Corollary 6) the subject of political power cannot give up his rights if the precondition for their application is mature. In every such case he is *obliged* to exercise his *right*. Prosecutor is obliged to bring an action and investigate the case if the facts suggesting that a crime might have been committed

are known to him. President is obliged to introduce martial law in the case of aggression against his country. Government is obliged to annually elaborate and submit to Parliament the budget draft. The pension service is obliged to allocate a pension to a person who has reached the retirement age. It is obvious that to meet their obligations they shall be vested with respective rights. It is also obvious that they do not have the right not to exercise their rights. Hence

Axiom 17

The rights and obligations of the subjects of political power shall concur.

Thus, while formulating the rights and obligations for the subjects of political power we shall avoid the word "right", when possible, and always, whenever possible, shall we use the word "obligation". Every such obligation shall be enforced by a sanction for a failure of its non-fulfillment.

The above can also be supported by a purely etymological argument. Under Axiom 15, the state is constituted of bodies and functionaries. The bodies, in their turn, under Definition 31, are also constituted of functionaries. The state as an instrument is thus constituted only of *elements – functionaries* some of whom are grouped into bodies. All the functionaries hold *posts*, that is, they do what they *ought* to do. Neither "wish" nor "can" or "have the right" but "**ought**"! Napoleon was perfectly aware of this (see Epigraph) though he was part of them. Language, as a logical structure, has correctly reflected the essential characteristics of these elements of the state: unlike the rest of the people who can do what the want to, under the condition they do not interfere with the other people, functionaries can and must do what they must. People – the creator of language – did not want it to be otherwise. Here it is a pure referendum, the results of which could not have been manipulated through skilful formulation of the question; the referendum that lasted for centuries and ended in a perfectly clear result.

Having expounded the principles of enforcing the boundaries of external freedom for the subjects of political power, we should not overlook the question of their structure, not less important.

The extreme manifestation of the defective structure that enables the person vested with power to fully reveal his or her worst disposition, resultant from Axiom 8, is concentration of the entire or considerable part of political power (the right to provide and restrict through their commands our external freedom) in the hands of the single functionary – Emperor, President, tyrant, etc. or the single body – Congress, Politburo, Convent, etc.

We do remember that every subject of political power is disposed to go beyond the boundaries of *his* external freedom, which means for him usurping additional power to restrict *our* external freedom. Which subject of political power finds it easier, simpler, more convenient to realize this disposition? Of course, the one who has already concentrated a lot of political power in his hands. Indeed, a functionary finds it easier to reveal his disposition compared to a collegial body since he does not have to come to terms with anybody. "The more people participate in it (collegium. – S. E.), the smaller the danger of abusing the laws, since it is more difficult to corrupt the persons watching each other; and the less the share of power they have, the less they are interested in strengthening their power." [5, p. 169]. What conclusion can we draw from this reasoning?

Corollary 12

Political power shall be as dispersed as possible.

At the same time we should not be misled by any pseudo-dispersal of power. If, basing on the structure accepted, a subject of political power can at will form and / or dissolve other subjects or give them direct commands to be necessarily executed, then despite the fact that number of subjects is more than one, no dispersal of power takes place. The power is concentrated by the subject who has the right to arbitrarily form and dissolve and the right to issue direct commands.

The subjects that are obliged to execute the commands or can be dissolved are subjects of subordination for him (Definition 29).

There are at least two methods of dispersing the power.

First, it is the division by functions.

(Hereinafter, the usual term "division" is used in the sense of "dispersal").

As we remember, the external freedom is granted and limited by *norm*. Thus, one of the most important functions of the state is norm-making. We have already described a very special norm-making body, that is, the people who assemble at the referendum with the aim of adopting the Constitution. However, holding a referendum is an expensive thing and cannot be used too often. Indeed, we believe that it cannot be used at all in most cases. Therefore, it is imperative to have another norm -making body (bodies), a legislative body (bodies). This body shall proclaim and restrict the external freedom.

It is the other body (bodies) that shall provide the opportunities for citizens to exercise their external freedom, and thus directly abide by the norms. The police shall watch that our life not be threatened by anything, and if a danger arises, it shall take all measures possible to prevent it. The army shall be prepared to rebut any attack from outside of the borders of our country. Tax officers shall timely and fully collect taxes and duties. Pension service bodies shall timely and fully pay pensions to all pensioners. Etc. ***"He who rules over people, shall not rule over laws, and he who rules over laws, shall not rule over people."*** [71, p. 231]. Here we should emphasize that the making of norms that grant or restrict external freedom, is an exceptional right of the legislative body. To govern the state (Definition 26), some higher executive bodies may need to create norms for their lower counterparts, which contain a precise description of what and how the latter should do in all cases. This would not be an intervention into the legislative power field of operation. What is important is that the executive power functionaries clearly understand that such rules engender only rights for citizens and only obligations for themselves.

Having noted in Axiom 8 and Corollary 11 the disposition for transcending the boundaries of external freedom, we establish the fact that life cannot be smooth and without conflicts. Unless people become angels, conflicts are inevitable in our lives. Hence, the state body (bodies) is needed, which function is to resolve any conflicts – between persons, between persons and society, between persons and the state, between society and the state, between the state bodies. Court is such a conflict resolving body.

It is not by accident that the Goddess Themis is more often portrayed blindfold. It is not only because the sight of litigants can hinder meting out justice. The court can and must resolve the conflict only when the conflict has become reported to it. However, Themis must not have a possibility to independently seek out violations and conflicts. Considerable number of cases finds the party concerned that is in a position to bring the conflict case to court. It is not always the case. In all the other cases it is a special body (bodies) that shall do it. This body is called to exercise control over how everyone observes laws and, mainly, how other the state bodies do it.

Thus, the state structure shall integrate the bodies that exercise at least four essentially different functions (legislative, executive, judicial, controlling) and, according to Corollary 12, considerable part of these functions should not be concentrated by a single subject. At the same time it would be illusory to believe that all four functions can rigidly be divided.

A legislative body is always a representative body. Therefore, it cannot but exercise the functions of setting up other bodies as well as performing some of control functions.

An executive body will not be able to perform its functions without having the right of specifying the laws for its functionaries in the by-laws thereof. Besides, the veto power and the initiative, if any, are also elements of the legislative process.

To perform its function effectively a controlling body shall have the power to carry out investigation, which is generally the function of the executive body.

Making precedents, the court creates legal rules, that is, it performs to some extent the rule-making function.

Thus, as we can see, in fact the so called principle of the "division of power" is not quite a principle. Moreover, it is not even the ideal to strive for, since the above functions can *never* be absolutely divided. What is important is that we realize which subject is the main bearer of specific functions and which one assumes part of them by necessity. It is vitally important that the considerable part of the functions performed by one subject, as their main bearer, do not get passed over to another one, which is the main bearer of the other functions. It is vitally important that no subject having specific function, cannot subdue a subject having other functions. It is vitally important that when performing specific functions, the subject, which is not their main bearer, is always subordinate to the subject which is their main bearer. In this sense it is useful that no subject has too many functions, however homogenous they are. This is enabled by

the second method of dispersing the power – division by levels.

Any country, that is a little bigger than Vatican, Monaco or Andorra, cannot have a single level of power. Not to say about such a big country as Russia. The division in itself is useful, as it enables to additionally resolve the problem posed by Corollary 12 on necessity of political power dispersal. "Government becomes good not as a result of concentrating and consolidating its power, but as a result of its adequate distribution. If this country (USA – S.E.) had not been divided into the states, it must have been divided." [21, p. 57]. There must be at least three levels of such a division for Russia – the state power of the Russian Federation, the state power of the subjects of the Russian Federation, local government. To add to it, local government cannot have a single level structure of power, either. Every locality is bound to have government of its own. In doing this, large cities can be divided into districts, and large subjects of the Russian Federation can be divided into municipalities that cover several localities.

Perhaps, there will be other methods of political power dispersal, rather than the two described above. In the meantime, we can formulate

Corollary 13

Political power shall be divided (dispersed) by functions and levels.

We have already mentioned the functions of political power that must be exercised, however possible, by autonomously acting main bearers. The mandatory set of functions the political power has to be divided into must be established in

Axiom 18

By its functions political power shall be divided into legislative, executive, judicial and controlling powers.

According to Axiom 17, rights and obligations of the subjects of political power shall concur. Regarding the judicial power, this requirement can and must be more specific. The only goal of the state functioning, and therefore, of the subjects of the judicial power, is security of its citizens, that is, a possibility provided for them to exercise their rights in an independent and unhampered way. If someone considers that his or her possibility to exercise the vested rights is hampered by someone else, the question of whether this is true or false, cannot but be resolved. The question can and thus shall be given by the judicial power. In other words, the judicial power cannot leave this question unanswered and avoid reviewing a citizen's appeal in essence.

Corollary 14

The judicial power shall review the essence of any citizen's appeal in part of hindering in any way of his right to exercise thereof.

In order to be able to divide the political power but the levels a principle shall be elaborated, according to which this kind of division will be enacted.

Nowadays the most widely used principle of power division by the levels is wresting a part of powers by a lower level from a higher one. To make this formula

sound more "decent", a euphemism has been invented – *lodgment of power*. At the same time a higher level of power lodges a lower level with powers, naturally, to an extent that this higher level deems to be useful for itself. As Corollary 11 on the disposition for going beyond the boundaries of the external freedom is universal, this is always the case. The same happened not only in the Runnymede meadow in 1215, which is quite understandable. The same happened in Philadelphia in 1787. This is what turned into a stumbling block on the way of adopting the Constitution of the USA. This is what a bigger part of the "Federalist" publications are about [92].

At the same time one should not think that different levels of power are in antagonistic contradictions to each other, these contradictions being caused by their multi-level structure. Not at all. They need each other and are perfectly aware of this. Moreover, the highest level is always ready to sacrifice anything for the sake of its existence.

By and large, the historical process of forming a multi-level power structure by applying the trial and error method has been on the right way. But how intricate this course is! And this can mainly be explained by the absence of a principle of political power division by levels, which would be more effective than a crude tug-of-war the power division normally results in.

But such a principle is available. Nowadays we can see it fixed in the European Charter on local government [48, p. 22], Clause Four, which is, to be sure, valid for the lowest levels of political power. Taking advantage of this European achievement and basing on Corollary 8 about the disposition for going beyond the boundaries of external freedom, we can formulate

Corollary 15

The political power shall be divided among the state levels so that powers are exercised by a power subject, which is capable of doing so and is the closest to citizens.

In other words, powers must be distributed among the levels not from top to below but from below to top, that is, from the local government to the state power. Only those powers ("rights-obligations") must be passed over from a lower level to a higher one which cannot be exercised at the lower level.

Basing on the principle established in Corollary 15, it is the lowest level of political power which is responsible for law and order, municipal land improvement, medical first aid, etc. It is the highest level of the state power which is responsible for national defense and monetary policies, customs regulation, etc.

There are powers that do not pose any problems in their attributing to a certain level. But there are such ones (and a lot of them) that are not as obvious as we wish them to be. For example, traffic rules "may" be established by any municipality. It has both the territory for the transport traffic and legislative (representative) body. However, in resolving the issue of attributing powers to a certain level and determining whether a specific subject of political power is able or unable to exercise a specific authority, it is, of course, necessary to be based on the common sense, too, on the adequate understanding of security. It is obvious that if a city enforces the left-hand traffic or another rule, which is different from those of other communities, then they will see accidents, caused by the citizens of this city in this city and other cities, grow considerably in number - and it is the citizens of this city who will be the hardest hit.

Therefore, if we consider the making of traffic rules as an element of traffic security, it becomes clear that *none* of the cities and even the Federation subject is capable of exercising the specific authority, since the strongest security is attained when the entire territory of the state observes similar traffic rules. However, the placing of traffic signs and lights can and, thus, must be done by municipalities within the territory of their authority.

The question of the subject's ability to exercise certain powers can be even more intricate. However, here it is imperative for us to choose the right vector of authority distribution (from below to top) and focus on the question of the subject's ability to exercise a specific authority as well as on those negative

manifestations which appear when this authority cannot be passed over to the subject of a higher level. Besides, it is necessary to analyze into these negative manifestations meaning the very *inability* of the subject of a lower level to exercise the specific authorities.

Despite the fact that “political power… - is the most important phenomenon in social life” [63, p. 148], in order to exercise the vested authority every subject of political power and thus every level of political power must have resources to do it. Today it is financial resources, most and foremost. “One must not allow the economic power to dominate the political power. If this does happen, the economic power must be fought against and put under control of the political power.” [63, p. 148]. Therefore, meaning the division of political power among the levels, we should not forget about this very component. If the “right-obligation” to establish and distribute taxes and duties among the levels is to be assigned to the highest level of political power, Corollary 15 is rendered to be just a declaration.

How important this issue is in the life of the country was highlighted brilliantly by E. Bjork about two hundred years ago: ‘’freedom resides in some specific object, and every nation finds some favorite object therefore, which, due to its significance, becomes the measure of happiness for this nation. Let me remind you, Sir, that since the ancient times the great battles for freedom have been fought mainly around the issue of taxation’’.

Here it is useful also to remind that one of the most important reasons, a powerful stimulus for the rebellion in the North American colonies was the impossibility to exercise any influence on taxation. “The history of the current King of Great Britain has been full of everlasting injustices and usurpations… He approved the acts of this alleged legislative power which foresaw the following measures:

…imposition us with taxes without our consent” [19, p.177].

The French and English parliaments, the Assemblies of the Land in Russia in the XVI and XVII centuries were also convened primarily to levy taxes. The principle was established per se– he who pays he decides how much to pay.

The basic principles of revenues distribution between the levels of political power and/or between the items of expenditures shall be established by the Upper Body in the process of passing the Constitution thereby.

Neither juridical nor economic science has formulated such principles. This does not contain these principles, either. The only thing we can do for now is to state that this principle –axiom is absolutely necessary in our terminology. This axiom shall resolve two tasks.

Firstly, it shall protect every individual person against excessive taxation. It shall do in such a way that the legislative power could not impose *any* tax, regardless of item (for example, on smoke or beard, etc.), or its amount. To formulate the principle according to which every tax – confiscation of money from the citizens – could be verified for compliance with this principle. To do a similar thing to taxation as it was done to restriction of power – divestiture of its portion from from the citizens – which has been done in Axiom 7, when it stated that such a restriction is allowed only when it is caused by the necessity to secure external freedom of other people. To do to taxation a thing which is similar to what was done to provision of freedom in Axiom 10, when it stated that every one shall be provided with the maximum of external freedom, with the same amount as all the other people have and which is compatible with the volumes of external freedom of all the other people. To do to taxation a thing which is similar to what Axiom 5 did to capital punishment – without violating Axiom 5, it is not allowed to execute any person.

Secondly, this axiom (not available so far) shall secure efficient division of political power according to the levels. It is required to do in such a way that down to top delegation of authority was not impeded only because of possible execution

thereof at a lower level being not secured financially; which is to do so that Corollary 15 shall not be a hollow statement.

I believe that this is the current task, the one which can be resolved, although no resolution can be proposed by me for the time being.

Axiom 19.

Taxation.

The analysis of the instrument of people-state coexistence would be incomplete, if we failed to discuss the forms of arrangement for such an instrument. To make this analysis as constructive as possible, we need to highlight some of its essential characteristics. One of those characteristics is *democracy*.

Bearing in mind our Axioms 3, 5, 7, 10, 14 and Corolarry 8, we are in a position to make a conclusion in the beginning of our analysis that our axiomatic means democracy as something positive. Out of the "democracy – non democracy" alternative we unambiguously opt for democracy. Be reminded that in political space we chose area 1-4-7, and political Idea № 4 is identified as democracy. That is why it is not surprising that such forms of rule as monarchy, aristocracy, dictatorship, tyranny etc., are in direct contradiction to the axioms adopted by us. It is not out of place to remind that all this work is devoted as much as possible to to a great extent to the normative, and to a possible extent to the existing. On looking around and analyzing thoroughly the existing, we won't be able to discern in the existing too much of the democratic. However, this shall not stop us from developing the democratic aspect.

So, about democracy. The term itself seems to be perfectly obvious, clear to any schoolchild. However, in reality, even here things are not that obvious. We have to state, that as of today there is no uniform, universally recognized definition of "democracy". The literate translation of this word from the Greek language into the Russian language also clarifies little, and its translation from Greek to Latin

(res publica - republic) makes it utterly complicated. What is more, the great Greek philosophers themselves understood and used this word differently. For Aristotle, "democracy" meant something bad, the antithesis to *good* "politeia". For Plato, this word is obscure, as democracy, according to him, can be both good and bad. And for Polibium, democracy is a good word, the antithesis to *bad* ochlocracy.

Thus, the ancient thinkers understood that democracy is an instrument, and that this instrument, as it is, secures neither good nor bad, as it is very important to learn to correctly handle this instrument. They also understood that in the series "monarchy (tyranny)", "aristocracy (oligarchy)", "politeia (democracy)" the number of participants in management of the common matters, state affairs successively grows. Given that this series lacks any conception that follows democracy (politeia or polity), we can conclude that democracy is such a form of state structure, when the number of persons involved in state government is maximum. And the maximum value for this function can be reached only when everyone can be involved in government and state affairs. "The democratic beginning is when all the citizens are involved in resolving all the matters, as it is this kind of equality that democracy strives for" [3, 154].

State government is an element of external freedom, and according to our Axiom 5, all people have equal rights to external freedom. "Where equality exists it is impossible to create autocracy. Where it does not it is impossible to establish a republic" [45, p.364]. If we add (decipher) explicitly to the ancient concept also this element we will receive

Definition 32.

Democracy is a form of democratic state where all the citizens have a real opportunity to enjoy equal rights to state governance.

The wording of Definition 32 sounds at present almost banal. In the meanwhile, it was as early as a century and a half ago when Guizot was not hesitant in

parliament to characterize the universal suffrage as a meaningless utopia, created for some propaganda purposes. “Never will the time for universal suffrage come, - he would say, - never will the day come that will see all human creatures, whatever they are, being called upon exercising political rights” [37, p.215]. An opposite point of view had been voiced by his contemporary A. de Tocqueville - “When some nation strives to change the electoral qualification applicable in the country, one can assume that sooner or later the people are likely to abolish it completely. Such is one of the immutable rules of life in any society. The wider the electoral rights the stronger the need in their further widening... the more people receive the right to elect the stronger the wish of those who are still restricted in their electoral qualification to win this right. The exception becomes finally the rule; concessions follow each other, and the process develops until the universal suffrage is established” [86, p.63]. Time has shown who was right. A hundred years has not elapsed since the moment when the XIX Amendment in 1920 banned restricting the women of the USA in exercising their right to vote. Just as many as fifty years has elapsed since the moment when women of Belgium, France, Switzerland, the countries believed by the majority of people all over the world to have achieved the highest level of democracy, were enfranchised [18, p.89]. Thus, the opportunity for all citizens, beginning from a certain age, of voting by answering “yes” or “no” to the question proposed to them, is never doubted. This is a precondition for democracy, which is absolutely necessary, although not sufficient, as we shall see soon.

To govern the State means to make decisions. If the number of decision makers is more than one, and this is always true under democracy, the only way of decision making is voting, which is about determining what variant of resolution to a specific issue suits the bigger number of. This implies,

Democracy is a form of rule of the majority.

Having arrived at such a conclusion, we have encountered two problems.

Firstly, a majority is not always right, implying that decisions made by a majority are not always the best of all possible ones ever taken. We can put it down to the unavoidable flaws of this form of rule, partially mitigated by the fact that a majority actually never takes a decision which is the worst of all those possible.

Secondly, if a majority "is *always* right", meaning that *any* of its decisions is legitimate, this majority can take a decision which directly discriminates the rights of a minority. It is about not just "such a decision, which is not considered by a minority to be the best", but about such a decision, which deprives this minority of some part of their rights (in favor of the majority, of course). For example, the country has a very small portion of citizens with red hair, and the rest of the citizens, the majority of them, make a decision that the property of those red haired be taken from them and be distributed among the rest.

One of the most commonly used forms of suppression of a minority by a majority (?) at present is the nation-wide election of the single Head of the executive power. All those who failed to vote for the one who turned out to be the elect are the suppressed minority (?). "In fact, it is possible that the majority will behave like the tyrant insisting on being provided themselves with a small convenience at a possible price of true sufferings of those belonging to the minority" [16, p.110]. This and similar decisions by no means contradict to *democracy*, democratic form of rule (remember, politeia – ochlocracy?) – Everyone has taken part and the majority has decided. " The concentration of tremendous power in the hands of a majority, often fictitious, bears a truly tyrannical character; that's why it is not a mistake to put both democracy and despotism on a par" [69, p.243].

This problem is so obvious that it is natural that experts in law and political scientists could not have ignored it without trying to resolve it. The most frequently used way of resolving it has been an endeavor to integrate into the concept of democracy something else rather than the quantitative characteristic of all those eligible for decision making (for example, the principle of power division,

freedom of speech, etc.), which does not in fact have anything to do with the state structure.

However, the resolution of this problem can be found in a totally different area. It is time now to remind once again of the political space , which was described in the first chapter. Democracy was described there as Political Idea №4, located at the axis 4-5, and it really turned to merge on the same board with despotism – Political Idea №5 – although on the opposite side of the same board. The resolution of the problem mentioned is located at the axes 1-3-2 and 6-7. All the axioms formulated by us up to this moment and corollaries covering the Normative but not the Existing do position our *Normative* along these axes. It is the correct positioning there along these axes and fixing this in the norms of our legal system that will enable to avoid using this instrument – democracy – in suppressing personal freedom, suppressing the minority by the majority. It is about *using*, regardless of however this instrument is designed, even regardless of what part of the population takes part in forming the decision making majority.

Yes, democracy is only the form taken by the instrument –state. It is like a hammer or an ax. Nobody will ever think that an ax is a bad instrument only because it can be used for beheading! And even more than that, basing on this, demand then that the ax be removed from circulation. However, the ban on beheading seems to be only natural. And the same may be said about democracy:

Axiom 20.

The possibility to take arbitrary decisions by a majority shall be restricted - inadmissible are the decisions which are not aimed at provision of the possibility of exercising human rights equal with those of other persons.

And in particular, those described in our example about the red haired. Our axioms and corollaries have already done this. No such decision which could deprive the

minority of some of their rights can be made by the majority without violating at least one of our axioms or corollaries. Because it is just there we conscientiously opted for a certain area in our political space and (one would like to hope) have quite sequentially and purposefully been fixing with the axioms our disposition. To formulate in the form of norms what decisions are forbidden for making by the majority is the task of the Constitution – Basic Law. And this task can be resolved by applying our Axioms and Corollaries.

Human intellect has been heading towards one direction – towards obtaining a bigger scope of external freedom – and for quite a long time. Every legal document fixing the rights of the subjects in as big an extent as possible is an element of such a restriction. Formerly, when no rule of the majority could be heard of, instead of the majority there was the king, and it was he whom they had been striving to forbid making some decisions. It was as early as in 1215, when the Magna Charta prohibited the king and someone else the following,

Take benefits from free people;

Coerce into doing the knightly service longer than it was deemed to be proper;

Arrest or imprison a free person otherwise than under the verdict of a lawful sentence;

Disallow tradesmen to freely and safely leave England and enter therein, etc [104, p.131].

These restrictions were further enhanced in Habeas Corpus Act of 1679 and in the Bill of Rights of 1689. And beginning from 1789, the ban for anyone, including the majority in the Legislative Body, to restrict people in their rights and freedoms took the form of the Declaration. According to Iellinek: "It is thanks to the Declaration that we have obtained in all its extension in the positive Law the representation of the subjective rights of citizens in relation to the State" [25]. We can add: including those in relation to the majority in the legislative body. By the

mid XIX century many constitutions of Europe (Swiss, Belgian, Italian, Danish, Austro-Hungarian, Spanish, etc.) had integrated the respective ban. The highest achievement on this way is the Universal Declaration of Human Rights passed by the General Assembly of the UNO in 1948. It is this document that formulated in full scope those decisions that are banned for making by any power body including those of legislative, by their majority.

But we have not been finished with the instrument - democracy. As we have already decided that we believe this instrument to be useful and we are not going to quit using it, it is necessary to specify what follows directly from Axiom 5 about the fact that all people have equal rights to external freedom and from the definition of democracy (32). And here follows

Corollary 16.

All citizens have equal rights to participation in state government.

Indirectly, this corollary postulates that our Axiomatic does not have any place for any other form of rule (governance, polity) rather than democratic: neither monarchy, nor theocracy, or meritocracy, or aristocracy – no other types. This corollary also covers the Normative, but not the Existing, as, theoretically, other forms of polity – not only democratic - are possible and some have been implemented in practice many a times.

Not we need to look into how citizens can practically exercise this right if theirs.

Historically, the first and most obvious form of democracy was direct democracy, meaning such a form of it, under which all citizens are directly involved in decision taking. For many years, this form has been dominant, and to exercise this, all citizens had to get together. Today, to do it is not necessary, it is possible to participate in decision making by ballot, which makes the procedure to be possible for use in a big country, although quite costly. It is possible that in future, as the opilk0communication means develop, this deficiency of direct democracy will be

overcome to a great measure; but now any country as big as or a bit bigger than Vatican, Monaco or Andorra cannot afford for sheer economic reasons to frequently resort to using this kind of decision making.

This method of exercising the right to participation in state government has another deficiency, quite essential this time. A big number of decisions regarding state government demand that special knowledge, special expertise be used for making such decisions, which are not commanded by the overwhelming majority of the citizens and, seemingly, cannot command. Never the less, on the one hand, making them is necessary, and on the other hand, all citizens have equal rights to making any decisions, including those requiring special expertise.

As K. Popper insisted it was as early as two and a half thousand years ago when Pericles resolved this problem: "Not many are able to be politicians, but all can assess their deeds" [62, p.232]. If we remember that the Greek word "politics" is the art of state government, it becomes clear where the way of resolving this contradiction lies.

The only method of resolving this contraction - *representative democracy*, which is such type of democracy when *every* citizen, in making any decision, commissions to do it to *his or her* representative, which is the one whom he/she commissions to act on his/her behalf, and he/she is quite able of assessing these actions and, therefore, reacting respectively thereto at the next elections. If even *every* citizen has his/her own personal representative, and this representative, being in an elected body, represents him/herself also, the number of participants in decision making will be halved. And as some (many) citizens can elect the same person to be their representative, whom they will consider to be sufficiently knowledgeable and qualified to make decisions covering state government on their behalf, there appears a possibility of considerable and dramatic reduction of the staff number engaged in the representative body, and also, on the one hand, authorizing

qualified people to make decisions, and, on the other hand, not violating Corollary 16 on the rights of state government equal for all.

In choosing an optimal decision the representative can come to be in a minority, similarly to a situation when the citizen him/herself could find him/herself in a minority, the one who sent this representative for decision making. However, if his/her representative had an opportunity to participate in decision making by formulating a variant of decision, discussing all options thereof proposed (which means through having his/her say and listening to others) and voting, then it means that the citizen him/herself had an opportunity to fully participate in decision making. Given that quite a number of decisions is banned for making (Axiom 20), such a representative democracy guarantees all people equal rights to external freedom (Axiom 5). But it shall be of this type, in full volume, without exemption and violations, of which we have never had before.

"The old parliamentary machine was established not as much for governance, as for keeping in check the rulers" [93, p.271]. The modern "parliamentary machines", as defined by G. Fedotov, have gone not far away from the old ones and do not guarantee a person rights to external freedom equal to those of all the others. Never the less, this, according to D.S. Mill, "great discovery of our time" (representative democracy) enables to resolve the main task – exercise democracy "for a long time and in a extremely vast space" [18, p.103].

Before going on with the analysis, it is useful to get the result of our argumentation fixed in

Corollary 17.

All citizens have equal rights to participation in state government directly or through their representatives.

So, every citizen has two modes of participation in state government. The main one is direct participation, which can be used in theory in any case. And an

additional mode– through their representatives, which we are forced to resort to by circumstances, which is the *impossibility,* due to some reasons, to always resort to using the main mode.

We have already described one situation, when one cannot do without the main mode – it is about adoption of the Constitution at a referendum. It is possible that some substantial changes in the social environment will force us in furtherance, after the constitution has been passed, into calling this mode. And in particular, when we see the constitution improved. But it is not likely to happen too often. It is more often that the main mode is used at another referendum. At a referendum over the issue which is pretty well known to everyone and beforehand: "Do you agree that your representative in some body of power will be So-and-so", which is at periodical elections of representative (legislative) bodies of power.

It is clear that the number of representatives in a body of power cannot be as big as the one of the represented. The number of representatives shall be determined beforehand, proceeding from the considerations of common sense. As the benchmark for further resolution, the theory provides a simple formula: the number of representatives shall be equal to the cube root of the number of represented.

But then the number of representatives in the body has been preset and it has come out that every one of them represents in the body one thousand represented, *any* thousand people shall have an opportunity to *independently* determine their representative and send him/her to a respective body, and the state is bound to secure them such an opportunity. Independently in the sense, that *no* restrictions are allowed in determining thereof. For many decades, we, in this country, elected "*independently" "our"* representatives through casting ballots, which would contain just one candidate that had appeared therein without our involvement. Who was represented in the elected bodies by such a ''representative''? Today we are able to see if V.I. Lenin was right when he said: "The proletarian democracy is million times more democratic than any bourgeois democracy; the Soviet power is

million times more democratic than the most democratic bourgeois republic " [43, p.257].

The fact that the number of candidates in the ballot cast is more than one (even under the condition that they appeared there by being nominated by those, who is supposed to vote thereby later on) does not change anything in essence. Besides, the more candidates in the ballot, the fewer chances every voter has to see his/her *own* representative, as all those who voted for the not elected are not likely to have their own representative in the body. Therefore, this, which is alternative voting, does not add any more chances in obtaining our own representative.

The only theoretical condition, which is bound to be met by the persons wishing to have this particular representative is to gain the required number (in our case it is about thousand people) of their supporters, the people consent to this particular representative representing them in the respective body of power. Expressing it in scientific language, to have a specific candidate appear in the representative body, it is necessary and sufficient that the volition thereto be expressed by a certain number of voters. Any restriction of this right, for example, voting for party lists with the demand that the number of supporters of a list be assembled in a quantity of more (in our case) than one thousand or any other restrictions, is a gross violation of Axiom 5 about equality of rights to external freedom and Corollary 16 thereto about equality of rights to participation in state government.

Thus, it is only if this condition is met any group of represented (in our case in a number of not less than thousand people) is supposed to be represented by *their* own representative. By the way, it is only in this case that the institute of revocation (recalling) can be rendered sensible, as *it is utterly inadmissible that those who recall are those who did not send; that those are involved in recalling who have never had the recalled as their ''own'' representative*.

If society has smaller groups, *their* concern is associating on some conditions with the purpose of being represented in the respective power body.

All the above shall be fixed in

Corollary 18.

Every citizen shall be guaranteed with the opportunity to send, together with the preset number of supporters, their own representative to a body of political power, formed through elections,

If society has people not ready to make an effort of selecting their own representative, they shall (may?) be provided with an opportunity of electing a representative from the list in forming thereof they have never been involved. But these people must realize that during the election from such a list they can be left without their *own* representative in the body formed. Firstly, such a list can happen to have no candidate, that would sufficiently suite them. Secondly, even if this list did contain such a suitable candidate, quite another person can be elected. Unfortunately, today this is this mode is the most widely usable, and that’s why a considerable number of those citizens who are involved in voting, do not have their *own* representatives in power bodies. Therefore, the resultant form of rule (government), in accordance with our Definition of democracy (32) and Corollaries 17 and 18, is not quite democratic.

Thus, a conclusion can be made that democracy is a positive image, ideal to be striven for. “At first glance at this problem it seems that democratic government must have appeared from the first steps made by human society on the Earth; a closer glance discovers that this shall be the last to emerge, which is at having achieved by society a higher level of its evolution” [86, p.168]. No other country in the world has and, seemingly, will never have an absolutely democratic form of government. Different countries have different levels of approaching this ideal state, concurring with location №4 at axis 4-5 described in Chapter 1 of political space.

A similar positive image and ideal is another stereotyped characteristic – the *constitutional state.* Today there is not only the universally recognized but also a definition of this concept satisfactory in any way, which is perfectly natural, as the basis for such a definition shall be a correct understanding of right (law) itself. For us, the phrase “ constitutional state ” is idiomatic to a great extent. Our definition of Right (7) does not enable to form from the noun “right” the adjective “jural, juridical” or ‘’legal’’. However, on defining the right as external freedom, we have opened the way for resolution of this task, too, - the definition of the concept designated by this term.

The type, or species, which is the closest to the concept of “constitutional state”, is undoubtedly the concept of “state” in general, whose scope is constituted with all the thinkable variants of states. In order to delimit the constitutional state from all the other states, we shall address the definition of right: *right is the external freedom provided and restricted with the norm*. It is obvious that in any state external freedom is provided and restricted in any way; if we do not stick to an idiomatic approach, but literal, any state is constitutional. And this is the trap from which all those who have ever written about it have failed to escape (see, for example, [65]). Therefore, it is here, in the realm of provision and restriction of external freedom, where lies the attribute to be used in delimiting the “constitutional state” from any other. Upon defining for ourselves that the “ constitutional state ” is something undoubtedly positive and remembering the ideal, fixed by us in Axiom 10, whereto the positive (present) law shall strive for on the way of its historical evolution we will receive

Definition 33.

The constitutional state is a state, where its legal system provides every citizen with the maximum of external freedom compatible with the same maximum of external freedom of everyone else.

Thus, “constitutional state” is as much an ideal as democracy. As well as democracy, this ideal has been implemented nowhere into practice. In various countries there exist various levels of approaching this ideal state that coincides with location №7 on axis 6-7 given in Chapter 1 of Political Space .

All the above said is additional proof of the fact that the political space has the number of dimensions not less than three.

The states have always been very different and will stay so for a long time. The main phenomenon which makes them different and enables to analyze and compare them is their

Legal system

Living together, in society, is the only form of existence people can realize. Right is one of the necessary preconditions of joint existence of people. This precondition is expressed in a legal system that exists and functions in a specific society and is constituted by its specific elements – norms. So that the legal system could work, the elements of society – people – must observe the elements of the legal system – norms. People act in this way in their majority. Why do they do this way? Why an overwhelming majority of people in an overwhelming majority of acts legally justified do not violate the laws (norms)?

The first obvious reason for this is that people are forced to do so. And they are forced in different ways. First of all, the state forces them. The state has the special purpose law enforcement bodies to do this, one of whose tasks is coercion into observation of legal norms and punishment for the failure to observe them.

Public opinion normally censures violation of laws by individuals. People as societal creatures in their majority can hardly stand such kind of censure. They deem it necessary to have a positive or, at least, neutral attitude of public opinion that forces them to act that way in accord with the applicable laws. By the way, in the case when the public opinion itself do not consider some legal norms to be just and do not force or coerce people into observing them; the functions of the state law enforcement bodies are rendered difficult to be fulfilled.

Religious people have an additional source of coercion – the church and clergy. It is more often that the church approves and supports the existing legal system and, thus, forces people to observe its norms; but sometimes, more rarely, does not support.

Thus it is obvious coercion is that very particular reason why people observe laws. It is obvious but the only one. Everyone is likely to find quite a number of examples in their personal experience when one was not coerced into observing this or that law. Therefore, we - people – observe laws not only due to coercion, but voluntarily. This important idea is worth being fixed in

Axiom 21.

Laws (norms) are observed by people either through coercion or voluntarily.

Is it significant for us, people, in any way, what reason the majority of us observe laws – through coercion or voluntarily? There is an opinion that was fearlessly expressed once by P. Sorokin: ‘’what motives drive the authorized persons to observe his (legal) duty – for fear of being punished, or the self-interest or pure sense of duty – this is secondary, so often negligently small ‘’[77, p. 20]. Is this true? Let us think, if it is absolutely insignificant for us in what society we have to live – in a society, where laws (norms) are observed by fiat only, or resulted from ‘’the energy created by the bayonet, constantly directed to the chest of every citizen’’ [21, p.46], or in one, where laws (norms) are observed by people voluntarily and only sometimes – under compulsion, where ‘’every citizen is likely to stand under the banners of law and order by at the call of laws and interpret any attempt to violate order in the society as violation of his personal interests [21, p.47]? The answer is obvious –

Axiom 22

Voluntary observation of laws (norms) by people is preferable.

This was clear to Cicero two thousand years ago: ‘’what is committed in the due order is considered just only under the condition that this is voluntary’’ [106, p.306]. What legal sense can we derive from these two axioms? We might allow the state to coerce everyone of us into observing laws voluntarily? Or, perhaps, we have to come to terms and swear to one another that everyone will observe the laws voluntarily: ‘’Hey, guys, let us live on friendly terms!’’. Of course, this will not resolve the problem!

If we want that ‘’people’’ do observe the ‘’laws’’ on the voluntary basis, then in this pair of elements we can operate with the ‘’laws’’ only, and in their totality only, in the totality of all the legal norms we called to be the legal system.

Corollary 19.

The legal system must be created in such a manner and in such a form so that it encourages man to voluntarily observe laws (norms).

First of all, it is important who and how passes those laws. It is far from being true that everyone is likely to read all the laws and go deeply into their content. What is more, until the question arises if a specific law is to be observed personally by him or her. However, *every* person must be confident that all the laws have been passed in a ''legal manner''. Such confidence can be granted to him or her by having his or her representative in those bodies that are authorized to pass laws. This is possible only when the legal system guarantees the observation unconditionally of Corollary 17 in equal rights for governing the state; and Corollary 18 on the guarantees of sending to any legislative body of *his or her own* representative. In doing so, every citizen has an opportunity to regularly be assured at the election campaign that he or she has in reality obtained *his or her own* representative. Then every citizen can be sure that his or her representative is likely to:

- Read the draft of every law to be passed;
- Assess thereof proceeding from the interests of the citizens represented thereby;
- Get this assessment across to other representatives during the discussion procedure;
- If necessary, make every effort to reach a compromise between the interests of those represented by him and all the other citizens;
- See that the law drafting and passing procedure is observed in due manner;
- Vote for the law draft proceeding from the interests of the citizens represented thereby;
- Get across to the persons represented the entire objective information connected therewith.

This confidence can itself cause many people to have a feeling of justice and propriety of the legal system and encourage them to voluntarily observe the laws, basing on this feeling. ‘’Laws are abided by people…., because it is believed, rightly or not, that the consequences resulting from this abidance are better on the whole than the consequences resulting from non abidance’’ [24, p.341]. But this is the absolute minimum, which may exert influence on the people (alas, they constitute a majority today) who are not ready to make an effort to independently investigate whether the legal system is of adequate quality. However, even these people, when encountering regularly in their life certain legal norms, have an opportunity to know how it feels – see their justice or injustice. In doing so, every time they encounter therewith they receive certain information not only on the justice of the legal system, but on the quality of their representative’s activities.

Nevertheless, justice of the laws (legal norms) themselves is even more important for those people who are ready to make an effort and investigate whether these laws are just and fair. And a person becomes convinced as a result of this investigation that the applicable laws provide equitable and maximum rights of external freedom for all; that they prevent from using the person against his or her will as someone’s means; limit his or her external freedom with the purpose of providing external freedom of other people only; provide him or her with the maximally possible security – this person is not likely to have grounds to consider this legal system to be unjust. He or she is not likely to have any grounds to resist the laws constituting thereof even in his or her mind. The person is likely to voluntarily abide by such laws (norms). Neither the society, nor the state is likely to overawe such a person and make them observe them. ‘’To wish freedom is to wish conditions it can be secured thereby’’ [73, p.157].

If a person considers that his or her rights for external freedom are more significant than those of other people; considers he or she is eligible to have the right to use someone in achieving his or her personal goals without someone’s content; and, what is most important, act in accord with such an opinion ignoring the laws he or she deems to be unfair the first similar act committed thereof must

be precluded. He or she must be forced into abiding by the laws and punished for their violation. And the most important thing is that all people shall be aware, with the social environment constantly strengthening this awareness, that such consequences are likely to emerge inevitably and unavoidably as the legal system is constructed in such a way that it is impossible otherwise.

No one has ever had this state of things before anywhere. Someone might say that it is impossible; it is never likely to happen. But I can just repeat this, following Jefferson: ‘’ People, when they are not in unnatural and unfavorable circumstances, …………, are able to live perfectly well under a government, if organized in all its parts on the representative principle, unadulterated by the infusion of spurious elements, if founded not in the fears and follies of man but on his reason, on his sense of right, on the predominance of the social over his dissocial passions, may be so free as to restrain him in no moral right and so firm as to protect him from every moral wrong ’’ [21, p. 169]. The unnatural and unfavorable circumstances T. Jefferson mentioned can be created by a legal system *only* under the condition that those who develop it have set themselves such a task. And it is this particular imperative which is contained in Corollary 19. And it is this particular entity which is the focus of the Axiomatic Theory set forth herein in terms of the normative. It is this particular entity that can be the criterion in assessing its quality.

People are able to live a perfectly normal life – in the way described by T. Jefferson; but *until now* they have not been able to *create* such a legal system that would enable them to do so.

We have already spelled out in our Axiom 7 that man’s external freedom can be limited by the requirements of providing for other people’s external freedom. Such limitations are possible by both forbidding certain acts and by binding to commit certain acts.

In regard to the ban on committing acts, our theory has already given an answer to the question what acts can be banned: any acts are to be banned that limit the external freedom proclaimed to be equal for all. Such inaction resultant

from a ban which is bound is inferred from our Corollary 4, which insists that everybody is bound not to violate other people's rights, that is they must not perpetrate any acts that offend thereof.

The issue of binding to commit an act is somewhat more complex. Our Corollary 3 bans using a person against his/her will as a means in achieving another person's goal. Therefore, our legal system cannot be binding for every person to rush into a fire with the purpose of saving fire victims, and, consequently, punish him/her if he/she does not act this way. We can reward such a person for committing such an exploit, or scorn him/her for not committing such an act. However, *demanding* such a heroic exploit is impossible. We are unable to limit a person's external freedom having him/her act, even when it is necessary to provide for such a vital element of external freedom of another person as the right for life.

Does that mean that our legal system cannot require any actions from man at all? It does not. The danger of a fire is not prevented either by a legal system, or, however sad it might be, even by fire safety precautions. When you have a fire, someone has to extinguish it. This is a fireman. Fire extinguishing is an activity a person volunteers for. This person is remunerated for it; therefore, the fireman is the stipulator under an agreement and is bound therein under (undertake to do so) to take a risk of his life. He is obliged to do so under a contract. And the contract (agreement) is part of private law.

The fundamental principle of private law is the principle of freedom of contractual relations, according to which the parties therein are free to sign an agreement (civil, labor, marriage, etc) and assume mutual obligations. However, from the moment the agreement is signed, the parties therein are not free; they are encumbered by the obligations assumed. At the same time, the disposition we mentioned in Axiom 8, manifests itself in these relations, too. It is normal that the contract (agreement) binds the parties thereof to commit certain actions.

Does that mean that the legal system shall foresee using our instrument of coexistence in cases when one of the parties refuses to act he/she undertook in

signing the contract? Or is it that the legal system shall interpret such a conflict to be a special case and watch with Olympian calm some private persons deal with each other on their own? It has been for millennia already that the legal practice has resolved this problem quite unambiguously enabling the contractual parties to appeal to the state for assistance to concuss the other party under the Contract to meet his/her obligations. The recent years in Russia have shown expressly what can happen when the state is unable to efficiently fulfill this function.

The legal system, as we said in the previous chapter, is a part of the instrument of our common coexistence. If this instrument is inefficient, our normal coexistence will be rendered impossible. Therefore, we all taken together, and every person individually, deem it vitally important that the state shall function efficiently. To have it function some financial means are necessary. And the state does not have anywhere to obtain these but only from us; and our legal system can (must) commit all of us (considering all the Axioms and Corollaries taken by us previously) to act in a certain way – to furnish the state with certain means to enable it to function efficiently.

It is possible that, in addition to the two cases mentioned of lawfully binding man to commit certain acts, some will want to add a third, and even a fourth case…However, we have already been bound by the previous Axioms and Corollaries, that do not allow us to make this list bigger.

Corollary 20.

Laws (norms) are entitled to require from man refraining from illegal actions and are not entitled to demand from him some actions, except the requirement of paying taxes as well as execution of the obligations man himself has undertaken to execute.

For the legal system of the state to provide every citizen the maximum of external freedom compatible with every other person's external freedom (providing also means securing, too (Corollary 17), it must meet a number of conditions.

A legal system, as any other system (the whole constituted from parts) must be structuralized. The nature of a legal system is such that it can be hierarchical only. On top of this pyramid the Basic Law is located – Constitution.

According to Corollary 13, political power must be divided into levels. As we stated in the previous Chapter, such levels must total three, at least for Russia – the state power of the Russian Federation, state power of the subjects of the Russian Federation, local government. A level based power division means a distribution along the levels of the elements of external freedom with granting (imputation) to every level with a right-obligation to independently grant-restrict these elements of external freedom. Such division must be put into practice at the highest level of the legal system – in the Constitution. At the same time it should be done with taking Axiom 13 into consideration and observing thereof, that is, in such a way that all disputes should be ruled out between the levels, if possible; and in case such a dispute occurs, a mechanism of its settlement should be provided for.

So, the first level of the hierarchical legal system is constituted by the Constitution which contains a subject connected and focused distribution of the legal regulation spheres. Each such sphere, respective to the specific level of political power, must contain a rigid hierarchical subordination of all the legal acts issued at the specific level.

Definition 34.

A legal act is a written document containing a command (dictation).

Definition 35**.**

A statutory legal act is a legal act containing a norm (regulation) therein.

At the same time, this hierarchical subordination in itself must be subordinated to a certain principle. In formulating such a principle we have something to base upon. First of all, this is Corollary 8, which determines the people (nation) as the only source of political power. Therefore, it is the people

(nation) assembling for a referendum, which is always likely to be on top of such a hierarchical system. Furthermore, according to Definition 30 on political power it is the law only that can lay down the basis for any other dictations (commands). Thus, any other legal acts can follow laws, but not the vice versa, which means the level determined by a referendum will be followed by a law only in the hierarchy of legal acts.

Definition 36.

Law is a normative legal act adopted and passed by the legislative body of political power of a certain level.

Any kind of legal acts is always directed at a restriction-granting of external freedom. Enactment and edition of an act is an action, and, pursuing Axiom 11, any action not specified by any norm and regulation is inadmissible. Pursuing Corollary 9, any kind of political power, which is the right to grant and restrict external freedom, must be provided for by law. Thus, any other legal act, except decisions taken by a referendum, can be issued on the basis and in pursuance of law only. And, therefore, all other normative and regulative legal acts can located at a level lower than that of law.

Corollary 21.

The system of normative legal acts of every level of political power must have a hierarchical structure: Constitution, decisions taken by referendums, law, other legal acts and regulations.

Bearing in mind our Axiom 15 on the structure of subjects of political power, Axiom 8 on the human predisposition, and considering that even conscientious people cannot avoid making mistakes in their activities, we must state that the legal system can be fallacious to a certain extent; for example, as a special case, regulations contradictory to each other, and as an extreme case of such a

contradiction, regulations and norms mutually exclusive. This might be quite a feasible and real situation; and we must foresee it in

Axiom 23

The Legal system must not contain regulations and norms that are mutually exclusive and contradictory.

When we speak of contradictory legal regulations, we with necessity mean the regulations of the same level! If we have regulations of different levels contradicting to each other, it is a question of *inconsistency* between regulations of a lower level and those of a higher level. In this case, regulations of a lower level are just not enacted; and the body that has enacted the repugnant regulation must be subject to a vindicatory part.

The phrase ‘’must not contain’’ requires some clarification.

Firstly, if during the discussion of the draft of a legal act it turns out that a regulation already contained therein is in contradiction to some existing regulation contained in another valid act the draft under consideration cannot be passed without eliminating the contradiction identified. Elimination of the contradiction is possible both through editing the draft, and through (which is simultaneous to adopting this draft) amending respectively the existent legal act, that is in contradiction to the draft discussed.

Secondly, if during the law enforcement procedure it turns out that some valid regulations are in contradiction to each other, the body that has enforced and enacted these regulations must without delay remove this contradiction as the highest priority measure. The respective right-obligation (authority) must be specified in the list of rights and obligations of anybody vested with the rights and obligations to establishing regulations and norms in both the first and second case.

The legal system consisting of an immense number of regulations and norms is not need per se, but is needed for its permanent application. While applying in practice the legal regulations, the bodies and persons applying them, and courts in

particular, encounter the situation when the legal relation under consideration can be regulated in different ways in various legal acts; that is granting and restricting a specific element of external freedom is described in various legal acts in different and in contradictory ways. Unfortunately, no state including the Russian Federation has ever had any document presenting the legal system as a totality of norms and regulations. It does not concern the only correct type when every norm and regulation is connected with a specific element of external freedom and specific law, whose granting and restriction is intended by the dictation specified therein. But even in the usual way of behavior rules; even if the state systematizes the legal system, it is always the legal acts that are subject to systemizing, but not the norms and regulations, although considered as the rules of behavior. *If the legal system had ever been systematized or at least stated according to the legal norms and regulations, not according to the legal acts, positive results of such systematizing would have gone considerably beyond the opportunities of rarely performed incorporation, consolidation and codification in their totality.*

This is not surprising though, as the view on the legal system as a totality of regulations and norms is the view on its content not blurred by the form of legal acts. However closely we examine the legal system set forth as a totality of legal acts, we will never be able to discern a totality of norms and regulations therein. To be able to discern, the legal system must adequately be set forth. In setting forth Axiom 13, we stated that the elements of a specific norm are frequently dispersed in different articles of a legal act and even in different legal acts. Setting forth a legal system as a totality of norms is in collecting together the elements of norms dispersed in different legal acts, in different articles thereof – its hypothesis, disposition and sanction or, possibly, parts thereof, when they turn out to be dispersed.

The norm thus reconstructed will immediately and directly demonstrate all the flaws of its reflection in legal acts, if any, proceeding from the axiomatic system adopted herein.

Casting one glance at the norm thus reconstructed will be sufficient to notice a lack of some of its elements – hypothesis, disposition and sanction. Casting a second glance will help see the degree to which Axiom 13 is observed or violated in setting forth a norm or regulation in legal acts, that is if it is possible to have a wrong or ambiguous understanding of every element of the norm not only due to their inadequate wording, but also due to the contradictions or discrepancies between different parts of every element of the norm or regulation dispersed along places of perhaps even different legal acts. However, these are only technical achievements. The main thing that could be achieved by such a way of stating or setting forth is a substantial analysis of the norm, which is, to be reminded once again, a verbal expression of granting and restricting external freedom. It implies a substantial analysis of its disposition to comply with the requirements of the axiomatic system. In our case, proceeding from our axiomatic system would make it possible and necessary to check:

- Whether equal rights for external freedom are provided by this norm;
- Whether this norm restricts external freedom of man by anything rather than the requirements of providing for external freedom of other people;
- Whether this norm tries to use someone against his or her will in achieving another person's goal;
- Whether this norm compels someone to take advantage of his or her right;
- Whether this norm provides in reality every person with as big the volume of a specific element of external freedom as possible;
- Whether this norm demands from a person some actions that are beyond the allowed by the in-depth list (Corollary 20), etc.

To carry out such a substantial verification is practically impossible until we see the entire norm in all its manifestations in the legal system concentrated before our eyes, in one location. It is hard to imagine someone capable to grasp with his or her inner look the *entire* system, to mentally single out therein *all* the elements

pertaining to one specific norm and, moreover, make the mental effort mentioned by us above. If the first two parts of the effort are to be made not only mentally but fix its results on paper, this will be just a reconstruction of the norm required. Then substantial analysis of the norm can easily be performed on paper.

If we want to have a high quality legal system, meaning one being fully in compliance with the requirements of our axiomatic, then having its summery as a totality of norms is undoubtedly useful. However, this does not mean that we will be able to use a legal system set forth in such a way in our practical activities. To practically use this system set forth in such a way can hardly be convenient. Upon verifying every norm of the legal system set forth by applying the above method we will have, when needed, to correct those legal acts which contain some deficient elements of this norm and parts thereof; but we will have to use a legal system set forth in a usual way as it is structuralized to meet the law enforcement bodies' requirements, which is more convenient for them, of course.

However, such an effort has not been made yet. Contradictory legal acts can be encountered quite often; in these cases we encounter the problem – which of these contradictory legal acts needs to be applied? We cannot leave this very important question to the law enforcement bodies' own discretion and must equip them with an adequate principle, an algorithm of resolving a dispute, should any arise. It is obvious, that it should be done prior to the moment when respective bodies put to rights the deficient part of the legal system. It is necessary because life goes on without waiting till the legal defects are removed as it is life and our existence that are primary but not vice versa.

An algorithm of resolving a dispute on applying a legal act must be constituted of three stages.

At the first stage it must be checked if the bodies which issued some contradictory legal acts pertain to different levels of power. If it is true, then liable to application is the legal act that has been issued at the level whose power under the Constitution the right-obligation of granting – restriction of external freedom elements is referred thereto, which is the content thereof. If the bodies that issued

competitive legal acts constitute the same level of power we will have to pass on to the next level of check.

At the second stage of check it is necessary to verify if the contradictory legal acts pertain to different levels of the legal system hierarchy. If this is true, then the legal act is liable to application which is higher in the hierarchy (Corollary 21). If the competitive legal acts pertain to the same level of the hierarchy we will have to pass on to the next level of check.

At the third stage of check it is necessary to check what particular time the contradictory legal acts pertain to. Liable to application is then considered the legal act that is issued later than the others. As the one and the same boy cannot issue several acts simultaneously we can always exactly determine which of the competitive legal acts is liable to application.

Corollary 22.

Of two or more legal acts regulating the same legal relation applied is a legal act (as the significance decreases), or one of them is to be applied which is issued at the level whose power has the right-obligation of granting-restriction of an element of external freedom referred thereto under the Constitution with the said element constituting the content of the legal act, or a legal act hierarchically superseding, or one issued later than others.

Thus we have now attained some insight of what the legal system is.

Definition 37.

The legal system of the state is a totality of norms set forth in a hierarchical system of normative legal acts adopted by the political power.

As can be inferred from the above, the norm is almost always scattered long different parts of different legal acts. The norm cannot be considered as a ‘’bare normative status’’ [2, p. 97]. Every norm, as a verbal expression of the granting and restriction of external freedom, is always a complicated regulating complex, complicated at the same time in several meaningful ways. Firstly, this is a complex

which is always constituted by three elements – hypothesis, disposition and sanction. Secondly, this is a complex constituted by constituting parts both representing and restricting external freedom. Thirdly, this is a complex which regulates the relations of three groups of subjects – the subjects granted, subjects obligated, and subjects securing.

A complicated structure of every norm leaves its mark on the structure of the legal system.

The legal system, in contrast to a system of legal acts, is not rigidly hierarchical. There is not such an element of Law (Right), analogous to the Constitution in a system of legal acts, which can be deemed to be the central; so that all the other elements of Law (Right), and, therefore, the norms corresponding therewith, could be deemed to be subordinate in relation thereto and following thereof. The Right to life, Right to freedom, Right to property (the right to have property) – are ''equal'', are placed on the same level in the hierarchy, are not inferred from one another. From the other side, there are some elements of Law (Right), that obviously bear a subordinate character as the former predetermines the latter. The rights to keeping and carrying weapons, for example, are subordinate to the right to legal defense; the rights to vindicate and provide legally obtained evidence are subordinate to the right to legal defense, etc. thus the legal system is a multimodal hierarchical structure.

The disposition of every norm is unique. It is the disposition that makes one norm differ from another one. Hypotheses and/or sanctions can recur in different norms. For example, all the basic rights have the same hypothesis – [all people always] have the Right to life, Right to freedom…Sanctions in many norms also quite often concur.

A more detailed study into the structure of a legal system and structure of system of normative legal acts, as well as interaction of these two structures is important, although independent as it can hardly influence in any way the axiomatic basics set forth herein.

However, we can be sure that such methods of structuring as

- Structuring by the functions of Right into the regulative and protective;
- Structuring by the method of regulation into the imperative, provisional, promotional, those of recommendations;
- Structuring by the content into the entitling, obligating and prohibiting,

is not likely to be applied given this kind of understanding of a legal system.

The basic doubt often raised by members of different audiences when discussing the axiomatic system proposed is that such too rigid a system cannot be realized in practice. No system of legal acts can be developed which would not contradict any Axiom (Corollary) of the system herein. Considering this, the work proposed herewith is of an exceptionally academic character; does not and cannot be relevant to the reality and, thus, is rendered useless.

As an illustration of practicability of the axiomatic system proposed herein below is the supreme system of normative legal acts of the Russian Federation – the bases of its constitutional regime reflected in the Preamble and first Chapter of our Constitution. To the Readers' kind attention a new version thereof is offered to be compared with the working Constitution together with its substantiation from the point of the axiomatic system set forth herein.

CONSTITUTION

We, Citizens of Russia,

Whereas realizing the imminence of coexistence on this Land,

Whereas acknowledging the Rights and Freedoms of Man to be the highest value and in confirming their equality and equal accessibility thereto for all, as well as civil peace and harmony between all the people,

Whereas believing in good and justice,

Whereas striving to provide equal security for every person and conscientiously victimizing part of our freedom to reach this goal,

Whereas striving to restrict the power capacities of the state bodies and officials with limits necessary to reach this goals,

Whereas proclaiming our wish to live in peace and friendship with other nations,

We establish herewith a state - legal successor of the Russian Empire, Russian Socialist Federal Soviet Republic, and Union of the Soviet Socialist Republics – the Russian Federation and

We adopt herewith CONSTITUTION hereto.

A preamble normally provides information on who and why has made the decision of adopting this kind of an historical act. If we pass over the cases when constitutions are ‘’endowed’’ by the Monarch, as for example, it was in Spain or Canada, the Constitution is proclaimed in the name of the nation. ‘’We, the People of the United States’’, ‘’we, the Japanese People’, ‘’German People’’, etc., - this phrase is contained in many acting constitutions [36]. It is this that beginning from the first lines of the basic Law places a person, an individual, free personality, in a ‘’natural’’ and unobtrusive way, in a position subordinate to the people (society); determines a certain area on the 1-3-2 axis of the political space. And the ‘’free’ personality, too much overjoyed, does not even notice anything of this.

A similar claim can be raised to the Fathers Founders of the USA; they created their Document about two hundred years ago in the active struggle against the absolute royal power (area 2 of the political space). But today, we have already celebrated the fiftieth anniversary of the Universal Declaration of the Human Rights; he - Man and Citizen – should be granted a decent place in the process of establishing a state structure. ‘’We, the Citizens of Russia’’, which means not only all of us, but everyone of us individually are to shoulder this heavy burden of responsibility in full compliance with Axiom 5 and 22 and Corollaries 1,3, 16, 17 and 19.

And why? Because we do not have anywhere to escape from it! Being totally sane and aware, we understand that we have to live together on this Earth. And it is not because this Earth is our own and not alien. There is no more place on the Earth for ‘’ Liberia’’; there is no more such a place where some new state can be

established. Perhaps, some people, but not altogether, can leave for another country; however, there are their own laws, alien to you, which we will have to accept unconditionally. For all those, who believe in their own intellect and common sense; those who has maintained belief in the good and justice, inevitable coexistence on this Earth is a realized necessity fixed in Axiom 4.

Every one of us wants to live a good life in accord with Axiom 2. And why should not we then make a common effort to organize our coexistence? Why should not we make an effort to provide a good life for all as maximally achievable as possible? And then why should not we ourselves establish the rules we will live up to in a conjoint community?

We have already chosen quite a specific area of the political space; have decided what the highest value is for us to be safeguarded and protected by the Basic Law. Acknowledging and vindication of this value is one of those most significant rules of our life. In this connection, this value must be equally accessible and available to everyone. Our working Constitution lacks very much this kind of statement. The slogan of the Great French Revolution ‘’ Liberté, Egalité, Fraternité’’ is still relevant; however, the working Constitution seems to be shy to acknowledge this; everything possible is done therein to enable the power to abandon thereof at any suitable moment. Implicitly, it is through acknowledging the priority of the internationally accepted Rights, and, hence, through acknowledging the Universal Declaration of Human Rights as an integral part of the Constitution that the priority of freedom, equality and fraternity *is* acknowledged. But why is it done so unwillingly, as if through clenched teeth? What is especially disliked by the authors of the working Constitution?

‘’ They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood’’ [64]. This appeal of the Universal Declaration of Human Rights is more of a moral imperative and is addressed to every person. The State does not have anything to do with this. It is not its business to secure brotherly relations between people. To secure freedom is an obligation of the State. And it seems to have submitted to this role in the last centuries. As to the

obligation of securing equality, it still defies this! And the authors of the working Constitution pretty well realized the social order they received from those ''more equal''. But the saddest thing is that we all admitted this in such a serene manner. It is sad, but not surprising, if we bear in mind a many yearlong ideological brain washing campaign in regard to this. ''Whoever is for equality, he is for communism!''. And it is not important that the Communist Manifesto [47, p.419] appeared only fifty years later than the slogan proclaimed by the Great French Revolution; and, what is even more important, later than the Declaration of Rights of Man and Citizen was enacted, whose First Article proclaimed nothing else but *equality in rights*.

Unfortunately, this perverted conception is deeply rooted in history of our country. A considerable part of the XIX century was used by the ''progressive forces'' of the Russian intellectuals in trying to implant this particular conception in the people's mind. ''Just distribution'' in the sense of obtaining by every citizen of a sufficient and equal ration with the least sacrifice possible…''- this is how this pernicious idea was formulated by P.B. Struve in the early XX century [83]. This particular somewhat perverted sense was attached to this word throughout the entire XX century in numerous books on ''social science'' in this country. The entire propaganda machine so well equipped and tooled inculcated daily throughout generations' lives the idea that equality is just a ration. And gradually people had to agree to it. However, we dare not agree thereto; we understand and appreciate equality not as ration distribution, but following the Declaration of Rights of Man and Citizen as equal rights. For us equality is not an empty word but the significant truth. And as Lafayette said in the Constituent Assembly: ''it is necessary for us to express the truths from which all our institutions arose'' [33, p.182]. Equality is undoubtedly of those truths, specified in Axiom 5. We are likely to repeat it many a times in the fundamentals of the Constitutional Regime.

We are aware that people are predisposed to violate the boundaries of external freedom (Axiom 8). But we believe that this predisposition can be taken under control by them through reason, through every person's volition. We believe that

the striving for good and justice is also characteristic of people and that these qualities in combination with a reasonably organized order of coexistence will enable us to overcome the predisposition mentioned.

So, we are to establish the state herewith. And what is it - what we are to establish? This was defined by us in Definition 23. We are to establish an instrument through which we are supposed to organize our coexistence.

In establishing the state, we do it with our eyes open, absolutely conscientiously. We realize that we will have to submit to the state. As an alternative: either complete lawlessness and anarchy, or submission to the laws established in the state. And we choose quite consciously the latter. We realize that the state has nowhere else to derive its power except from us, its citizens. But the thing is that in some cases the state takes this power by force away from its citizens; but in other cases the state receives it from their hands. In endowing the state with the power we thus volunteer to restrict our freedom. But the state must bear in mind that we donate only *part* of our freedom thereto, and namely the part which has long explicitly been specified in the resultant text of the Constitution. And the state must bear in mind that we, the citizens, reserve to ourselves the right to resort, if need be, to the ultimate means – an uprising against tyranny and oppression. However, we, the citizens, should also bear in mind that a possibility of establishing a tyranny and oppression results directly from the mistakes we commit in drafting a subsequent text of the Constitution, from our inability to translate into the norms the axiomatic system adopted. In particular, if we fail to efficiently impose reasonable limitations on the authoritative capacity of the state bodies.

We have not said a word yet about what we are going to victimize part of our freedom for. Perhaps, it is for the sake of well being and prosperity of Russia, as it is said to be in the working Constitution? It is noble, but silly. Russia as a state has already been strong and prosperous. For example, it was under the reigns of Peter or Josef. At the same time the people were ill-treated and were not feeling good. Of course, not all of them were. Some were feeling quite good even then. We are

aware that all people are born to be free and equal in their human dignity and rights. Every one of us has consciously victimized part of their freedom. And every one of us must be secured therefore with the guaranteed minimum, which is safety. Safety in the broadest meaning underlying this word: safety against a foreign aggressor, safety against bandits and hooligans, safety against starvation resultant from disability or incapacity to sell your man power, environmental safety, safety against any kind of discrimination, etc. etc., which is in full compliance with Definition 24. In general, it is about the entire scope of the safety and security conception that results from the entire text of the Constitution and, in particular, from its second Chapter.

In creating the Constitution we must clearer see the main characteristic of the concept of ''well-being'', which was mentioned in the Preamble of the Constitution. There cannot be non prosperous country where all citizens are prosperous. But there are plenty of prosperous states with the majority of citizens being not prosperous. So our task is to provide for everyone's prosperity; then the country itself is likely to be prosperous. And we must be straightforward in talking about prosperity. The state established herein by us is obliged to provide equality and security for all; and prosperity can be secured by everyone through their own effort basing on their own possibilities and aspirations.

And what about the other countries? We are not alone on this planet. It is not only that we are aware of our belonging thereto as part of the international community – it is our internal affair. We want the international community to acknowledge us to be part thereof. We openly and loudly proclaim our aspiration for living in peace and friendship with other nations. It is about aspiration as peace and friendship is a mutual aspiration. And if someone is reluctant to live in friendship with us we won't impose our friendship thereon. And if someone cometh with the sword…..

And finally, a few words about the last thing in the Preamble. This new state is not born out of an empty vacuum. It has deep historical roots. Some might dislike part of those roots. Some might dislike some other roots. But all this is *our*

History. This History has never been interrupted by the hoary antiquity up to the present time. It will be right if we admit this fact openly and honestly.

We assume that the Constitution must be started with the most essential; with what places most precisely our legal system in the political space thereof. As we have already agreed the main axis of the political space is the axis of legal values. It is the area of political Idea № 1 which is the most important for us; it is this particular thing which is to begin our Constitution with. In addition, a further chain and sequence of the articles thereto is also of significance. If possible, articles therein must follow each other in such a way that the preceding articles were more important, more meaningful than the following; and the following logically resulted from the preceding.

Fundamental Basics of the Constitutional Regime.

Article 1

1. **Man, safety and security, rights and liberties thereof are the supreme value. Maximum and equal safety and security for all citizens – which is a possibility for everyone to independently and freely exercise all the rights and freedoms thereto – and guaranteeing thereof is the only goal of the state, duty of all its bodies and official functionaries.**
2. **Every citizen is allowed to exercise everything, which is not prohibited under the Law. The government bodies and public officers are prohibited to exercise everything, which they are not authorized by the Law or banned thereby.**
3. **None of the obligations and respective rights thereof exercised by the State bodies shall be in contradiction to the enunciated therein.**

We truly believe that every human being is the *highest* value. That’s why we begin our Constitution with this fact.

According to the Preamble, the pursuit to provide security for everyone was one the main reasons of establishing the state. Security is deemed to be universal and maximum for all citizens. And here, in Clause 1 of Article 1 we charge the State, as the goal of its existence, with provision of such security. In doing so, we fully proceed from Axiom 14 and deem it to be the only goal of the State. This means, that none, even the best aspirations, can justify any actions exercised by the State, which surpass the goals enunciated by the State.

Therefore, the specific obligations of the State it is charged with and specific rights it is provided to execute those obligations shall fully fit the frameworks established herein. And to safeguard the State from the temptation of committing something which goes beyond that we formulate herewith therefore, what is that security, which we are to be guaranteed by the State. However, we state it not only for the State but also for us. We say to one another: ‘’to exercise our rights and liberties is our own matter. We won’t demand that the State exercise instead of us. Its task is to remove the obstacles on the way of our own exercising the rights and liberties’’.

Besides, the first article clearly and unambiguously state: who – the state or man- is primary, directly fixing in the text our Corollary 10 and demonstrating, whom the the general permitting and general prohibiting principles of legal regulation are referred to. As we remember, this thesis goes back to the Declaration of the Declaration of Rights of Man and Citizen (La Declaration Universel des Droits du l’Homme et Citoyen) of 1789.

The State, as an instrument (Definition 23), which is constituted of bodies and public officers (Axiom 15), has its own interests (as the minimum, its bodies and public officers’ preservation and expansion), which have been successfully vindicated at all times (Corollary 11). The first Article insists that if in establishing a legal system a conflict of interests occurs between men and state, man’s interests shall have the highest priority; and the state won’t provide for itself some excessive rights without violating the first Article.

The Clause 3 of the first Article establishes our Axiom 17 on the unity of rights and obligations of state bodies. All bureaucrats shall understand that they don’t have any rights separate from their obligations; that they are unable to make a decision of exercising their right or not. Their rights are their obligations at the same time.

Article 2

1. **The Russian Federation is a republic, where the only source of political power is the people populating thereof, implying that every citizen is guaranteed the right for governance of the state, equal to any other citizens’ rights.**
2. **The citizens constituting the people (nation) of the Russian Federation exercise their power directly through their representatives in the bodies of the state power and municipalities as well as by way of appeal in court against anti constitutional or unlawful actions (inactions) and decisions by a body of power and public officers.**
3. **The highest direct expression of people’s power is holding referenda and regular free elections on the basis of the universal and equal suffrage through voting by secret ballot. The possibility of sending, together with the number of supporters established, a common representative to a body of power formed by elections, nominating an alternative candidate during elections and also an alternative formulation at a referendum is guaranteed by Federal Law.**
4. **Nobody in the Russian Federation can be elected for more than a two year time period. The general day of elections in the Russian Federation is the fourth Sunday of March of every year.**

The many century long disputes about where the power of the state and human rights derive from are settled by Clause 1 of the third Article of the incumbent Constitution. In contrast to the previous our constitutions, which

expounded the sovereignty of the state and about power exercised by the people, it has been established now directly that ‘’the only source of power is the people’’. This is preserved by us in our Constitution (Corollary 8).

It seems that it does not matter where the power of the state and human rights come from, provided that it is exercised by the people. In the meanwhile, the fact of who is the source of power is directly related with how it can be exercised in a legal form. The fact that the Congress has given and then it has taken it away renders it legally unsound to exert any resistance. If the only source of power is the people, than it is the people who have the right of not only at a referendum to improve somehow the functioning of political power, but also the right to resistance to any attempts to destroy the constitutional structure built thereby at a referendum. It is the people that is the source of sovereignty; they derive their rights and liberties not from the state but because they are people. Ipso facto, we, the Citizens, confirm that we also consider being the obvious truth what was proclaimed in 1776 in another country, that all people are born to be equal and that they are endowed with inborn and inalienable rights, of which are life, freedom, aspiration for happiness [20, p.34]. And, therefore, the diminishing and even disentitling of our equal rights is not in power of anyone, including the State. But we have gone even farther in our axiomatic system, and in Axiom 5 and Corollary 16 we have established our equality for governing the State; which required using the relevant formulation in Article 2.

To proclaim that the people are the source of power, as it is proclaimed in the incumbent Constitution, is necessary but absolutely not sufficient. The constitution shall provide a clear, efficient mechanism to make this proclamation effective, not profanation. The basics of such a mechanism are laid down in Article 2.

The national issue is a very significant and painful. In establishing a state, it is necessary to come to terms from the very beginning regarding what is primary – citizenship or nationality. Can one find on the Earth today just one mono national state? Perhaps, one cannot. And Russia is not an exception in this respect. And where is the sense in the pinpointing in the Constitution of this banal fact? Might it

be a throwback to the epoch of great-power chauvinism? Or, quite on the contrary, preparing the ground for separatism (see section the Federal System)? All citizens are (initially) equal regardless the nationality (which is secondary). In any case, there is no use in reminding about the multinational character of our people in the Constitution; and the mentioning of this is the source of danger.

There is another issue: is it that we all, altogether, can exercise power, or every one of us can do it individually at the same time? The State-Leviathan feels better if everyone does it altogether. It has ample opportunities to interfere into the universal expression of popular will and obstruct thereof (let's recall the poet: ''so few real wild lunatics among us…''); but being on the way of everyone's will is far much harder. If all altogether do, the relation- people-bodies – becomes kind of logical. The *people (nation)* have elected jointly (in any way) the *bodies,* and they, these bodies, jointly, on people's behalf, exercise the people's power. This is how things look like now! And it means nothing much about the fact that Clause 2 of Article 3 of the valid Constitution, which underlies the Basics of the constitutional order (the people exercises their power directly, and also through the bodies of state power and local governments), is in contradiction to Clause 1 of Article 32 (the Citizens of the Russian Federation are entitled to be involved in the matters of state government both directly and through their representatives). For one thing, nobody will notice (and nobody has really done it)! And in the second place, ''no other provisions can contradict the basics of the constitutional order of the Russian Federation'' (Clause 2 of Article 16 of the valid Constitution). This is the pretext for the Constitutional Court. And this is the most significant point of the Constitution: how the sovereign people exercise their power in the State at referenda and elections. But referenda and elections don't happen so often. And how do the citizens participate in government management and matters in between the elections – through the bodies or through their representatives? It is certainly correct if it is done through their representatives (Corollary 17). It is not about some abstract representatives, but about their **own** representative every citizen has (if possible).

The entire system of the State is not taking any heed of this short word. However, observation of this fundamental principle determines to a great extent the grounds the legal awareness of man, man’s law abiding behavior pattern, and finally, man’s attitude to the state power (Axiom 22). It was as early as in the middle of the XIX century Herzen wrote: ‘’the outrageous injustice of one part of the laws has taught them < Russian people > to hate the other part; they submit to them as a force. Complete inequality in courts has killed in them any respect to the laws. A Russian citizen, however rank he or she might be of, bypasses or violates the laws everywhere where it is possible to do it with impunity; and government acts in a similar way’’. A century a half has elapsed since then, and what has changed? Practically nothing. The feeling of (by far, not unfounded) injustice, of the laws being imposed somewhere from outside (from above) is still deeply rooted in the mentality of our compatriots. The antagonism ‘’we-they (the power) ’’ has not only gotten rid of in our ‘’democratic’’ epoch, but what is more, it is being cultivated by almost all the mass media today. Suffice it to recall the defamation of the State Duma Deputies; and the people’s representatives are believed to be the better part of the nation, from the point of the formal reason at least. However, this antagonism is the dead end, and escaping from it is possible only through turning the power with its face to the citizens. In doing this, the faceless power shall acquire the face. And this is possible only if the power is constituted of the representatives, who are the citizens’ **own** representatives. The wording: ‘’the Citizens of Russia exercise their power through **their** representatives’’ – sets the vector, imperative for the entire following text of the Constitution, the ‘’truth whence all our institutions would come’’; the truth, which follows directly from Axiom 5 and Corollaries 16, 17 and 18 on everyone’s equal rights to governance.

Representatives of one’s own can only be elected. Today, the valid Constitution does not have any chapter ‘’Election system’’, although such a chapter, and even better ‘’Sovereignty of the People’’, shall be integrated in the text of the Constitution. The fundamental pints – regular free elections on the basis

of universal suffrage with secret ballot are undoubtedly part of the basics of the constitutional order together with the right of every citizen, together with an established number of associates, to send their own representatives to a body formed by way of elections.

And one more thing about exercising power by citizens. It's true, that while adopting the Constitution, we undertook to submit to the State, but only to its lawful requirements. And if any representative of the State acts against the law – not in full compliance with the legal provisions, then every citizen is entitled not to plead but demand that the lawlessness be stopped. Not to lodge a complaint but to appeal against an illegal action or inaction. And this shall be perceived by the legal system not as a request about defense of the week against the mighty, but as a manifestation of authority of a citizen protesting –the only source of state power. This is how in the Chapter of the Constitution "Court Power" and then in the laws about the judicial organization and laws about functioning of judicial power this particular provision shall be developed. *Judicial recourse of a citizen in suing the state, in the person of any of its bodies or officers, is exercising by the citizen of his or her* ***authoritative*** *power.*

Referenda are a special aspect to be mentioned. Yes, it is really one of the highest forms of direct expression by the people's power. However, again, like in the case of universal suffrage and election, this form of exercising people's power can be turned into profanity. We have not forgotten how we would elect ''one among one''. In the meanwhile, what are elections if not a referendum over the question: ''Do you agree that your representative would be….?''. If we do understand today that elections from among one candidate are inadmissible, what stops us from realizing that a referendum with voting over one question only is inadmissible as well. Isn't it clear that those who formulate the list of candidates or formulate the question for the referendum (under the condition that such a law can be enforced by nobody else in reality) cannot lose at all? Con the Constitution, which proclaimed referenda as the highest expression of people's power, admit on default a possibility of manipulating the people's will by way of formulating

questions without involving citizens? Of course, not! And in the meanwhile, nowhere in the text of the working Constitution our right to alternative issues for voting at referenda is specified, as well as to the alternative character of the elections themselves. In formulating Corollary 18, we stated in detail that alternative elections do not provide any guarantee of winning a representative of our own in the body elected. Due to this, Clause 2 of Article 2 provides the regulation on a possibility of the joint sending of the common representative to the body elected.

And, finally, a few words about the terms and election dates. Axiom 8 and Corollary 11 just demand that elections of representatives (deputies) be carried out as often as possible. And the popular wisdom about the ‘’copper pipes’’ states the same. Two reasons allow us to resolve this issue in a rational way.

Firstly, one of the most significant tasks of any representative body is budgeting and budget adoption. Proceeding from annual seasonal changes, it is hardly that the budget is likely to be formed for a period shorter than one year. Thus, it is inexpedient to form representative bodies for a period shorter than one year.

Secondly, to preserve succession at work of representative bodies, to reduce negative phenomena induced by election campaigns can be of use during very election campaign, implying that every year only part (half, for example) of representatives. Then, the half of representatives not elected during a specific year can work peacefully during the election campaign.

Considering these two factors and the fact that elections of representatives shall be held as often as possible, what we have per se is a two year long optimal period of authority of the representatives with a yearly reelection of half their membership.

Proceeding from the same pragmatic considerations, elections cannot be held in the second half of the year, when the procedure of budgeting and budget approval is in full swing. Elections are hardly timely in the summer time as it is the holiday season. In the period of winter-spring it is the school spring holiday that is

the most convenient time for election, which always coincides with the fourth Sunday of March.

Article 3

1. **Nobody is entitled to usurp power in the Russian Federation. Usurpation of power or appropriation of power authority is prosecuted by Federal Law.**
2. **Any activity, which is aimed at amending and changing the fundamental principles of the Constitutional Order by means not specified under the present Constitution, is deemed to be prohibited. Establishment of non state and non municipal armed forces as well as establishment of organizations intending to keep in secrecy such structures and memberships cannot be are sanctioned by the applicable Law.**
3. **The Citizens of the Russian Federation are entitled under the Law to individually or jointly defend by all the available means the present Constitutional Order against any acts not specified by the present Constitution, which are aimed at termination or alteration thereof.**
4. **The Russian Federation rejects violence as a means of settlement of disputes and conflicts between individual people and State. Any instigation to war and violence is prohibited and prosecuted by Federal Law.**

The Constitution is just a legal document, which is unable to take care of its observation on its own. It means that the text itself shall provide for mechanisms securing its observation, neutralizing at maximum the inclination described in Axiom 8, including its extreme manifestations.

It is necessary, first of all, that primitive usurpation and appropriation of power be outlawed.

Then it is necessary that any activity aimed at changing the foundations of the Constitutional Order, including that of leguleian – law giving, shall be prohibited

in the explicit form, which means prohibiting enactments violating the essence of of the Constitution.

It is the most opportune to usurp power by employing secret formations; that's why such formations shall be outlawed.

Everything which has been worded in the variant of the constitutional order proposed is aimed at provision of democracy, at state power exercised by the people and for the people's interests. At the same time, the provisions of the Fundamentals of the Constitutional Order do not in any way restrict the inequality of citizens' property status. And they do not set this task in any way. As Ostap Bender, a popular character of the Soviet literature, would say, if cash circulates in the country it means that there must be people there who happen to have a lot of it. When cash is in abundant, it means also power, although not state power. The power of money is **always** struggling to subordinate the political power. And History has shown that it's been quite successful. Unfortunately, we cannot rule out that the citizens' representatives in the state bodies won't be able to timely discern and prevent this danger. There are other reasons, for which someone else would seek to use power not in the citizens' interests, and their representatives in in the state bodies would not want or will be unable to stop that. And then citizens themselves are entitled to stand up in defense of the constitutional foundations. To enable them to act legally, such a legal norm shall be provided in the Constitution. The Universal Declaration of Human Rights in its Preamble does not call to compel people to resort to, as the last resort, a rebellion and oppression. Such a norm is greatly significant from the prevention point of view, and, to a certain degree, forestalls the necessity of its actual application.

We proclaimed in the Preamble our desire to live in peace and friendship with other peoples. This significant principle has been reflected in Clause 4 of this Article.

Article 4

The Russian Federation strives to the status of a constitutional state, whose legal system would guarantee every citizen the maximum of freedom compatible with the same maximum of freedom of every other person.

In securing in our Axiomatic system the definition of the constitutional state as such a state, whose legal system provides every citizen with the maximum of external freedom compatible with the maximum of external freedom of everyone else (Definition 33), we stipulated immediately that this is the ideal that has not been achieved anywhere else, including our country, which is not an exception. The legal system of our country, without doubt, does contain norms, which restrict excessively the necessary level the freedoms of citizens. And they do it to a considerably greater degree than the legal systems of many other countries. But the vector, direction of development and improvement of the State established by us is bound to be specified in the Constitution.

Article 5

1. **The conditions of acquiring and terminating the citizenship of the Russian Federation are defined by the Federal Laws.**
2. **Any person born on the territory of the Russian Federation is a citizen of the Russian Federation.**
3. **Any person, regardless of the place of his or her birth, provided that at least one of whose parents at the moment of his or her birth was a citizen of the Russian Federation, is a citizen of the Russian Federation.**
4. **A citizen of the Russian Federation cannot be disentitled of his or her citizenship or the right to its alternating.**
5. **Every citizen of the Russian Federation has the rights and freedoms, which are equal to all other citizens' on the territory of the Russian Federation, and bears equal obligations and specified by the Constitution of the Russian Federation, regardless of the gender, race,**

nationality, language, origin, property and official position status, place of living, religion, convictions and creeds, membership in nongovernmental associations, grounds of acquiring his or her citizenship and also any other circumstances.

In the Preamble we stipulated our aspiration to restrict power possibilities of state bodies by the limits provided by the Constitutional Law. It includes also and the power possibilities of the Federal Legislator. Having specified in Clause 1 of Article 5 that the conditions of acquiring and terminating citizenship are determined by the Federal Law, we have established only that this cannot be done by any other legal act. But by doing this, we by no means restricted the power possibilities of a Federal Legislator. However, restricting its possibilities is necessary, although in terms of those whom we consider by all means to be citizens, whose citizenship is considered by us to be acquired regardless of any Federal Legislator's desire.

In the same article, it is necessary to legally formulate our Axiom 5 on equal rights. After the Universal Declaration of Human Rights and European Constitution on Protection of Human Rights and Fundamental Freedoms were passed, this formulation has become to be habitual. At the same time, this provision of the Constitution is undoubtedly part of the basics of the Constitutional Order, and it is this Chapter where it shall belong to.

Article 6

1. **The Russian Federation is a state where all the policies it pursues are aimed at security, equality, opportunity of obtaining dignified life and free development of man.**
2. **The Russian Federation protects labor and health of people, determines the secured minimum of labor remuneration, secures the state support of family, motherhood, fatherhood and childhood,**

medical provision, develops the system of social services, establish state pensions, well fare benefits and other types of social protection.

3. **The financial basis of the State is constituted by taxes and levies. In the Russian Federation no double taxation is allowed; taxes and levies are to be charged and paid wherein the property is located, goods are manufactured, works are completed, services are rendered, which are chargeable to taxation.**

As the State does not have and cannot have any other aims, its policies can only be pursued in aiming at providing man with security and equality. All the rest in this Article strives to disclose in a more detailed way the scope of the concept ''security'' already provided in the first Chapter. This particular Article enlists only some elements of security. Giving the detailed list is hardly possible in this Article.

Here it is very important to resolve a conceptual issue: shall the State only protect man against any encroachments on man's external freedom, in securing an equal volume for all the citizens, that is equality, or it shall, for all that, give something to man (remember the dream about the substantial ration with the least number of victims possible)? In this contest, it is necessary to analyze three phenomena: medical provision, education and social welfare. These are the spheres where the State takes something from some citizens (and there is no other source the State can obtain from) and through this, it distributes something among other citizens directly. Other means of spending the funds accumulated allocated to provide security and equality – sustaining the army, police, and state apparatus officials, etc. obviously reach man only indirectly. We believe that medical provision and social welfare as well as education can be considered as elements of provision of security in a broad sense, of which we spoke earlier. A possibility of any citizen to *independently* exercise all his or her rights and freedoms is directly connected with the education received by him/her; and for a person in need of medical or social welfare provision – with quality of such welfare provision. On

the other hand, property inequality is unavoidable. And this can influence the quality of education, and the equality of social welfare; but this is unjust.

To provide for its functioning, our security and equality, the State needs funds. Clause 3 indicates the source of obtaining these funds. Unfortunately, Axiom 19 in our axiomatic system has not been engendered yet. So, we do not know yet how we can reasonably restrict the power authorities of state bodies in the field of taxation. However, at least partial realization of Axiom 5 in the part of taxation by way of equalization of budget financial flows on the territory and affixing to direct sources of their obtaining is given in Clause 3 of this Article.

Article 7

1. **On the entire territory of the Russian Federation the uniformity of the economic space, as well as free movement of goods, work, services and financial means are provided for, competition and other guarantees of freedom for economic activities are supported.**
2. **The Russian Federation accepts and supports equally private, state and municipal property.**

The unity of the economic space, which is equal rights of the participants of economic activities, regardless of the place of their exercising, is another form of manifestation of Axiom 5 on equality.

Article 8

1. **Land and other natural resources are used and protected as the basis of wealth of the entire nation of the Russian Federation**
2. **Land and other natural resources can be disposed of by private, state and municipal property.**

The eighth Article of the Constitution determines the legal regime of the disposal of land and other natural resources. This issue is also directly connected with the principle of equality and federal structure. The same principles, mentioned

above, do not enable us to accept that the citizens' rights and, as a consequence, their wellbeing, should depend on the fact if there are natural resources – oil, gas or for example, diamonds - in the depths of the territory where he or she was born. It is obvious, that it cannot be otherwise in a unified state. This does not mean that natural resources shall at all times be disposed of by the Federal state property. This means only that the starting point for resolution of all the issues and problems of natural resources use on the basis of of this particular provision of the Constitution shall be Federal Laws. To settle these and other similar issues, which bear conflicts of interests of the country on the whole and separate subjects of the Federation the upper Chamber of the Federal Assembly functions. And the fact that the use of natural resources admits various techniques follows from the second Clause of this Article.

Article 9

1. **The Russian Federation acknowledges ideological diversity (plurality).**
2. **No ideology can be established as the state, mandatory or preferable.**
3. **The Russian Federation acknowledges political diversity (plurality) and multi-party system.**
4. **Public and nongovernmental associations are equal.**

Parity of all before Law, which is instituted in terms of nongovernmental and religious associations by the working Constitution, and equality are not identical phenomena. What is more, parity before Law is only one of the elements of equality. This principle has already been proclaimed by us, and we have no grounds to discriminate citizens associating in nongovernmental and religious alliances.

The Constitution is a legal document and, as we will see below, it has direction action. Such a document cannot use uncertain principles, as this is a direct violation of of Axiom 13 on accuracy of formulations. ''Instigation of hostility'', used in the working Constitution in the context of functioning of

nongovernmental organizations, is a vague term and therefore it cannot be applied in the Constitution; it is more so, as it enables the State to use sanctions – the ‘’instigation of social hostility’’ can be applied, if desired, against a car owners association. In Article 13 of the working Constitution, its authors endeavor to enlist some actions they deem to be inadmissible. But why is it only for nongovernmental associations? And how about business ones? And state bodies? And what about officials? Are they allowed to practice what is meant here? The Universal Declaration of Human Rights defines such actions – ‘’appeals for discrimination’’. Such an edition, as a ban for whoever it might be to cal upon discrimination, this provision shall find its place in the second Chapter of the Constitution

Article 10

1. **The Russian Federation is a secular state. No religion can be established as state, mandatory or preferable.**
2. **Religious associations are separated from the State and have equal rights.**

And again, these are obvious provisions that follow from Axiom 5 and Corollary 1. However, specifying them is necessary.

Article 11

1. **Sovereignty of the Russian Federation covers its entire territory.**
2. **The Russian Federation provides for integrity and inviolability of its territory.**

This Article contains obvious provisions; never the less, their specifying is necessary. So that nobody in the country or abroad will ever doubt their obviousness.

Article 12

1. **The Russian Federation is constituted by the Subjects of the Russian Federation. The names of the Subjects of the Russian Federation are established by them independently.**
2. **Every Subject of the Russian Federation has its own Constitution and Laws.**
3. **The Federal organization of the Russian Federation is based on its state integrity, delimitation of the subjects of competence between the Russian Federation and Subjects of the Russian Federation, unified citizenship of all the citizens of the Russian Federation. On the territory of the Russian Federation, nobody is entitled to establish another citizenship rather than that of Russian.**
4. **All the Subjects of the Russian Federation are equal in rights in all respects.**

The provisions of the twelfth Article of the Constitution proposed are connected with its federal structure. The fundamental principle in this respect is the equality of all parts of the Russian Federation, which are called the Subjects of the Federation according to the terminology accepted by us. Although this principle is fundamental, but never the less, it is derivative. It is derivative in the sense, that it cannot be another one, if we do not intend to violate an even more important principle, acknowledged by the world community (Article 2 of the Universal Declaration of Human Rights, Article 14 of the European Convention on Human Rights and Basic Rights Protection), acknowledged by the working Constitution (Art. 19) and specified by us in Article 5 - the principle of citizens equality (Axiom 5). T is regardless of the place of living. If we acknowledge this principle we won't be able to admit that citizens' rights would depend on the territory where of what Subject of the Federation of Russia they happened to live or appear at various moments of their life. All the more accurate definitions proposed in this part, in contrast to the working Constitution, are aimed at unconditional observance of this principle. Beginning from the name. All the parts of the Russian Federation – its

equal Subjects – and how they should be named – either provinces, republics or states – this is their internal matter. What is more, regardless of their name, they all have their own constitution and laws.

In terms of the federal structure, and in terms of all the other issues of the constitutional organization, if possible, maximum clarity shall be attained (Axiom 13). In any case, this needs to be sought after. ‘’the Federal Organization …is based on…equality and self determination of the nations in the Russian Federation’’. On reading this sly wording in the working Constitution, a lot more questions arises than answers thereto. For example, what is ‘’nation’’ in this context? Is it the population of a subject of the Federation or citizens of a certain nationality? If the former is meant, then let’s specify in this way: ‘’equality of the Subjects of the Russian Federation’’. If the latter is meant, then it is an untruth, disproved many times by the following text of the working Constitution, from it follows that all the nations are equal but some are more equal. The Tatars and Kalmyks do have their ‘’own’ republics, and tens of other nations do not. By the way, the Russian nation does not have it, either. And what is self determination in this context? Self determination in the global community? It is impossible as ‘’the Russian Federation secures integrity, and any President of the Russian Federation, in safeguarding the territorial integrity, will have to go the way of Abraham Lincoln. Self determination inside the Russian Federation? Which means that *any* nation has a possibility (the totality of citizens of any nationality) to set up a subject of the Federation of their ‘’own’’ on the territory of the country? What can be more dangerous for the existence of a unified state in long term prospect?

In any case, this issue shall be resolved unambiguously and, in full compliance with Axiom 13, in a way clear to all the citizens accepting the Constitution. The formulations and wordings proposed do make this clearer.

We also need to resolve with complete certainty the issue of citizenship in individual subjects of the Federation. Citizenship is always introduced to distinguish the citizens, meaning persons enjoying certain civil rights, from the non citizens, meaning persons who do not. He who establishes citizenship is entitled to

establish the conditions of its acquiring; and this is a direct way to discrimination of the rest of the citizens of the Russian Federation. It is only the common citizenship of the Russian Federation, identical and equal for all, is quite compliant with the requirements of Axiom 5.

Article 13

Political power in the Russian Federation is divided into the state power of the Russian Federation, state power of the Subjects of the Russian Federation and local Government.

It is only now, after we have defined the most important provisions referring to man directly, citizens associations, we have reached at last the instrument – State. In full compliance with Corollary 13, we deconcentrate the power of the State along the levels. We have three such levels in our State; at the same time, we name the local government clearly and unambiguously to be a level of political power, as it is require by the European Charter of Local Government, pursuant Corollary 15 [48]. Local Government, which is the basis for a civic society all over the world, has been unlucky in this country at all times. Many still wish to see local government as something optional, not obligatory, a public entity. By no means, local governments are power, which the basis for all the other power, pursuant to our Corollary 15, and we should not expect that life will settle down if local government begins functioning as it is proper.

Article 14

1. **The State Power in the Russian Federation and Subjects of the Russian Federation is exercised by the bodies of legislative, executive, judicial and control power.**
2. **The bodies of legislative, executive, judicial and control power exercise their authorities specified therefore by the Constitution of the Russian**

Federation and Law independently. None of the bodies of legislative, executive, judicial and control power is entitled to exercise the authorities of other bodies of power specified therefore by the Constitution of the Russian Federation and Law, as well as surpass the authorities specified by the Constitution of the Russian Federation and Law.

3. **Nobody can be relieved of his/her authority by any other person or body, except by Court, which or who is not entitled to appoint thereto.**

The next aspect is connected with the division (deconcentration) of power according to the functions. The working Constitution proclaims the principle of power division. It is proclaimed and is immediately violated. It is worth recalling here when and how this principle emerged. It goes back to Aristotle. ‘’ Every state order has three such basic parts; they must be reckoned with by an energetic legislator, benefitting from them in relation to every form of the state order… here are these three parts: first – a law deliberative body, which reviews the state affairs, second – posts (what posts in particular shall be available in general, what they shall be responsible for, what method shall be the one for their filling), third – judicial bodies ‘’ [3, p.154]. In formulating his theory, following Aristotle and Locke, C. Montesquieu [50, p.290] proceeded from the fact that concentration of power in someone’s hands (does not matter whose hands) – king’s, parliament’s, etc) is an absolute evil. That’s why the power shall be distributed; and in such a way that none of the parts involved could submit another one. In this and only in this the essence of such division lies. We have already focused on this issue in formulating Corollary 13, having set forth the reason of such the necessity of deconcentration (dispersal) of power in Corollary 11. What do we see in the working Constitution? There is the legislative power –the Federal Assembly. There is the judicial power –the Courts of the Russian Federation. There is the executive power - the Government. And there is another body of power – President (King?), who has been heard by us to be hovering ‘’over the fight. Why has the principle

proclaimed been violated? The incumbent Constitution, which does not have anything to do with the sacrificing committed by conscientious citizens, we talked about in the Preamble, can afford to violate the principles proclaimed thereby and our Axiom 23 on mutual consistency of the norms. As we can see, these principles were worded in the text not for them to be observed. However, we cannot allow such an inconsistency.

Besides, to say that power is divided, and its bodies are independent, is too insufficient. Our Corollary 11 on the disposition of officials to surpass their authorities is part of the Existing; that is set forth therein is valid everywhere and and at all times. Following Axiom 13 on the way of realization of Axiom 18 can provide us hope for neutralization of this disposition of the subjects of political power. In Article 14 we tried to meet the requirement of Axiom 13 as much as possible, tried to disclose the meaning of the division of power and independence of power bodies. It has been done in full compliance with Corollaries 9, 10 and Definition 17.

And finally, a few words about the principles of the organization of power in the subjects of the Federation. The existing editions of Article 10 and Article 11 theoretically enable to implement in the subjects of the Russian Federation any, even the worst structure of the state bodies, as they do not prescribe any principle to the subjects of the Russian Federation in forming this structure.

The working Constitution leaves this issue to the discretion of the subjects of the Federation, which is incorrect if we don't want to admit even a hypothetical possibility of forming a monarchy, say, in some subjects of the Federation. Article 14 demands from the subjects of the Federation a mandatory division of their power according to the functions (Axiom 18).

Article 15

1. **The legislative power in the Russian Federation is exercised by the Federal Assembly (the Council of Federation and State Duma).**

The legislative power of the Subjects of the Russian Federation is exercised by the legislative bodies formed thereby.

2. **The executive power in the Russian Federation is exercised by the Government of the Russian Federation, headed on the principle of undivided authority by Chairman of the Government (President, Chancellor, ...) of the Russian Federation.**

   The executive power of the Subjects of the Russian Federation is exercised by the executive bodies formed by these Subjects.

3. **The judicial power on the entire territory of the Russian Federation is exercised by the Courts of the Russian Federation.**

The judicial power on the territory of the Subjects of the Russian Federation is exercised also by their Constitutional Courts and Magistracies.

4. The control power on the entire territory of the Russian Federation is exercised by the Prosecutor's Office of the Russian Federation.

The control power on the territory of the Subjects of the Russian Federation is exercised also by the Prosecutors' Offices of these Subjects of the Russian Federation.

After the principle of power division has been established, it is logical to enlist the bodies that are assigned with exercising legislative, executive, judicial and control power. It is here where we merge into the logical correlation of the structure of the bodies involved and power division principle. It is required, however, that the issue of the Prosecutor's Office be elucidated additionally. In it s present status, the Prosecutor's Office, as a body authorized by not only supervisory (control) functions, does not meet the requirements of Articles 14 and 15 of the Constitution proposed and requirements of Axiom 23 on mutual consistency of norms. In order

to meet these requirements, the Prosecutor's Office must be relieved of the functions of investigating criminal cases and incrimination in Court. The Prosecutor's Office shall be involved solely in control (supervisory) over compliance of Laws by all the Subjects on the territory of the Russian Federation. It involves all of them without exception, including all the subjects of the other bodies of power, enlisted in this Article, which is prohibited for the Prosecutor's Office to do now according to the applicable Laws.

Article 16

1. Delimitation of areas of responsibility between the Russian Federation, Subjects of the Russian Federation, and local governments is exercised by the present Constitution.

2. Public authorities between all the levels of power in the Russian Federation are divided in such a way, that they are exercised by a Body of Power of the lowest level, which is the closest to the citizens, and where exercising these authorities is possible.

3. The Bodies of Local Government are not part of the system of State Power Bodies and do not submit thereto.

In addition to the principle of horizontal power division (according to the functions) it is also of high importance for a Federal State the principle of vertical power division (according to the levels). Today, covering this issue, we have two problems unresolved. The first problem is connected with the possibility of contract redistribution of responsibility areas and authorities of the state power bodies of the Russian Federation and Subjects of the Federation. Such a possibility is in direct contradiction to the principle of equality of the Subjects of the Federation and shall be fully dissolved.

The second problem is connected with the fact that the working Constitution states nothing about the principles of authority and areas of authorities of the local

government. What is more, Articles 71, 72 and 76 of the Constitution discredit in fact the local government of any authorities and areas of responsibilities. Be reminded, that Article 71 determines the area of authority for the Russian Federation; Article 72 determines the area of joint responsibility areas for the Federation and Subjects thereof; and Article 76 states that whatever happens to be part of these articles, is under the authority of the Subjects of the Federation. And where is here the local Government, which is said to be guaranteed by this Constitution? This provision shall be corrected; that's why Article 16 of the Constitution proposed contains a norm, according to which the authorities of all the levels of power in the country, including the local government, are delimited by the Constitution and only by the Constitution. This has not yet happened, and in particular due to the fact that stronger power levels wish to take as many power authorities as possible. Although this wish is quite natural, it shall be fought against. This is why here – in the basics of the constitutional order we establish hereby the principle of authority division between the levels in full compliance with Corollary 15.

Article 17

1. The system of legal acts of the Russian Federation is composed of this Constitution, Federal Constitutional Laws, Laws of the Subjects of the Russian Federation, normative legal Acts adopted by the bodies of the executive power of the Russian Federation, normative legal Acts of the executive bodies of the Subjects of the Russian Federation and normative legal Acts of the local Government bodies, and also international Agreements of the Russian Federation.

2. The list and hierarchy of the normative legal Acts of the executive power bodies of the Russian Federation is established by the Laws of the Russian Federation.

3. The list and hierarchy of the normative legal Acts of the executive power bodies of the Subjects of the Russian Federation is established by the Laws of the Subjects of the Russian Federation.

4. The list and hierarchy of the normative legal Acts of the local government bodies is established by the Laws of the Subjects of the Russian Federation.

The basis of the functioning of any state is a system of its legal acts. Any system of legal acts shall have a hierarchical structure (Corollary 21). It is obvious, that it is the Constitution that shall determine this hierarchy. The working Constitution affirms its own highest power only, which is correct, of course, but insufficient.

On the one hand, the hierarchy shall be established in a comprehensive way. In relation to Laws, this will be done in the next Article, Article 18 of the Constitution proposed. On the other hand, other normative legal acts have a hierarchical structure of their own, too flexible, directly dependent on the composition of ministries and agencies, other power bodies, to be established in the Constitution. However, to credit the executive power bodies in establishing this hierarchy is also incorrect. Article 17 demands that these are the legislators of respective levels who are to perform this work, and then amending thereof if necessary.

Article 18

1. The Constitution of the Russian Federation has the highest legal force, direct effect and is applied on the entire territory of the Russian Federation.

2. No laws and other normative legal acts passed in the Russian Federation can be in contradiction to the Constitution of the Russian Federation. In case of such a contradiction identified the Constitution of the Russian Federation is applied.

3. Court is not entitled to abjudicate anyone in defense of any right violated on the grounds of no applicable law available and is bound to apply in such a case the respective provisions of the Constitution of the Russian Federation.

4. The Federal Constitutional Laws are passed regarding the matters directly specified by the Constitution of the Russian Federation.

5. The Federal Laws are passed regarding the matters being part under the Constitution of the Russian Federation of administration of the Russian Federation, as well as joint administration of the Russian Federation and the Subjects of the Russian Federation.

6. The Laws of the Subjects of the Russian Federation are passed regarding the matters being part, under the Constitution of the Russian Federation, of administration of the Subjects of the Russian Federation and Subjects of the Russian Federation.

7. The Laws passed by a Subject of the Russian Federation regarding the matters being part under the Constitution of the Russian Federation of joint administration of the Russian Federation shall not be in contradiction to the Federal Laws. In case of such a contradiction the Federal Law is deemed to be applicable.

8. Other normative legal Acts are passed on the basis and under administration of the Constitution of the Russian Federation, Federal constitutional Laws, Federal Laws, Laws of the Subjects of the Russian Federation.

9. The provisions creating incumbencies for citizens can be contained by the Constitution and Laws only. Other normative legal Acts cannot contain provisions creating obligations for citizens.

10. Any Laws and other normative legal Acts passed in violation of this Article are not applicable.

This Article establishes a hierarchy of normative legal acts, establishes the rules of behavior for law enforcement bodies in case of contradictions between the legal acts pertaining to different levels. Besides, Clause 9 accentuates one significant circumstance directly arising from Corollary 10 and, consequently, from Article 1 of the Constitution proposed. We mean here legal acts of what level can establish restrictions for the external freedom of man and can provide external freedom for bodies and officials. Such a legal act can be Law only. Other normative legal acts, which we mean in Clause 8, are not laws and therefore cannot create any obligations for citizens (Clause 9). Other normative legal acts can be applied only with the purpose of exercising state government (Corollary 26), which means that they can be delegated from some subjects of political power to others. However, this can be exercised on the basis of and in applying Laws.

Article 19

1. The international Agreements of the Russian Federation are deemed enforced after they are ratified by both Chambers of the Federal Assembly. International Agreements regarding the matters concerning the Constitutional Order of the Russian Federation are deemed enforced after they are approved at a Referendum of the Russian Federation.

2. In case of contradiction between the norms of an international Agreement of the Russian Federation and Law, another normative legal Act the norms of the international Agreement of the Russian Federation are applied

This Article reproduces the norm of the working Constitution on the priority of international Laws. Besides, this Article specifies the mandatory ratification of all international agreements (which was not specified in the working Constitution), thus bringing the procedure of signing international agreements in accordance with

the procedure of passing Laws of the Russian Federation, and when necessary, - Constitution.

It is necessary to note that in accordance with the requirements of Axiom 13 the uncertain phrase “generally recognized principles and norms of International Laws” in Article 19 is not applied.

Article 20

1. Laws and other normative legal Acts of the Russian Federation, Subjects of the Russian Federation, bodies of local Government, and also international Agreements signed by the Russian Federation are liable to official publication for public promulgation.

2. Any Laws and other normative legal Acts of the Russian Federation, Subjects of the Russian Federation, local Government, international agreements not published officially in periodical mass media for their public promulgation are not applied.

3. Application of a normative legal Act and international Agreement not promulgated is prosecuted by Federal Law.

It is obvious that no normative legal Acts not promulgated officially and publicly shall not be applied. In addition to this, the working Constitution is so explicitly rigid to Laws only. As regards Edicts by President and other normative legal Acts the Constitution is not that explicit and requires that this norm be conditioned in applying thereof. And as for the condition used again some vague term is applied - "affecting rights, freedoms and obligations". What is more, normative legal Acts regarding legal bodies, under the working Constitution, are not mandatory at all for their promulgation. The flaws of the working Constitution enlisted herein by no means contribute into voluntary observance of laws by people, as it is insisted on by Axiom 22. The option proposed the concept of “promulgation” as required by Axiom 13 is also specified. Any normative legal acts shall be promulgated publicly

and officially in periodical mass media. And, finally, as required by Axiom 12, a sanction is established for violating these requirements.

Article 21

1. The bodies of State Power, bodies of local Government, official persons, citizens and their associations are liable to observe the Constitution of the Russian Federation and Laws, adopted and passed in accordance with the Constitution of the Russian Federation.

2. The Citizens of the Russian Federation are not liable to observe laws and other normative acts, which are in contradiction to the Constitution or passed in violating thereof. In case of a conflict between citizens and a power body or an official person regarding matters of conformity of a Law or another normative legal Act or procedure of their enactment with the Constitution of the Russian Federation the burden of probation of such conformity is to be borne by the body or official person who published such a normative legal Act.

This Article is in fact a hypothesis, common for a big number of legal system norms. However, in contrast to the working Constitution, where the respective hypothesis looks as “always” (citizens are bound to observe the applicable Laws), in this Article the hypothesis contains certain conditions; and it is of importance that the burden of probation of the respective hypothesis for a disputed normative legal Act is to be borne by the State but not by man.

Article 22

1. The Provisions of this Chapter of the Constitution constitute the basics of the Constitutional Order of the Russian Federation and cannot be amended otherwise than at referendums of the Russian Federation.

2. No other provisions of this Constitution shall be in contradiction to the fundamental basis of the Constitutional Order of the Russian Federation. In case of such a contradiction the Provisions of this Chapter of the Constitution are to be applied.

3. No Provisions of this Constitution can be construed as derogatory for the rights of any person and citizen, which are in violation of his or her equality with the rest of Citizens of the Russian Federation, as providing some State body, local Government body, a group of persons or individual persons with the right of being involved in any activity directed at derogation of rights and freedoms, violation of citizens' equality.

4. Every last year of a decade on the common day in the Russian Federation a referendum is to be held on the issue: "Do you consider necessary amending in any form or rendering alteration in the Constitution of the Russian Federation?". In case of a positive answer to the question raised given by more than fifty per cent of the referendum participants, next year on the common day of elections in the Russian Federation a referendum is held on alterations (amendments) in the Constitution, the projects of which shall be registered in due order not later than six months prior to holding the referendum in accordance with the applicable Federal Law.

Of course, one would love to have an absolutely clear, unambiguous Constitution, the one having no internal contradictions, ideal for all times. However, this is an ideal hardly achievable. That's why this Article establishes the internal hierarchy of the Constitution.

The tricks the "menial men of law and servicemen" are using are boundless. The practice of the Constitutional Court, unfortunately, does not leave any doubts that the attempts of falsifying the democratic principles of a legal state are likely to persist. And why don't we, in finalizing the section "Fundamental Basics of the Constitutional Regime", go the well-trodden way of the Universal Declaration of

Human Rights and, in following its thirtieth Article, declare that any attempts of derogating the human rights and freedoms, violating the equality of citizens are ANTI constitutional. Perhaps, it will enable us, active citizens, to a bit more efficiently stand up for the rights, combat those who are on our way in creating a dignified life of our own through our own effort.

However good the Constitution today , tomorrow (or some other day) our children (or our grandchildren) have the right to disagree with us. *They have not passed this Constitution* . One's Fatherland, like one's parents, cannot be chosen. But if communication between one's children with their parents normally results in changing both (even if the parents tend to stick to another point of view), the Fatherland has only been commanding its sons and daughters. When the sons and daughters stop to like the order established without their participation and when such children are in a big number, they resort to the last means - rebellion (if they are lucky) or to a riot (if they are not so lucky). Both are bad. Both have to be avoided as much as possible. But not by methods of suppressing the rebellion that has already begun but by actions directed at eliminating its cause. The cause of a rebellion is in that people fail to find another way to influence the order established without their participation. Or the one established with their participation, but obsolete or just requiring improvement, as they see it. So let us provide them with such a way! It is the voluntary observation of Laws by people that is preferable (Axiom 22). The first step towards it – finding an answer to the question: if any improvement is necessary? The answer to this question can be received at a referendum only. The periodicity of holding such a referendum shall be given beforehand, as its holding, like the periodical holding deputies elections is the obligation borne by the State in providing for the citizens' safety against riots or rebellions. The periodicity proposed is quite arbitrary. However, the functioning of one of the most stable constitutions – the Constitution of the USA (27 amendments over 200 years) has shown that the ten year long period proposed is enough and can hardly be longer.

What is more, of importance here is not the time period itself but the principle. All citizens must know – once every ten years "the Yuryev Day" cometh. It needs to be prepared for, propose and discuss the necessary alterations. And if now it's been a failure – not a problem; it might be better next time. Ratifying the twenty seventh Amendment to the Constitution of the USA took longer than two hundred years.

It means that our correct proposals are likely to find their way. Provided such an opportunity is available. Provided it will be perceived as a normal process but not as an encroachment on someone's power.

Instead of conclusion

In the early XIX century, Napoleon insisted that human spirit had not been mature, or developed enough, for the rulers to do what they must, and for the ruled to do what they want. Two hundred years have elapsed. What can we, those who live in the XXI century, say in answer to Napoleon? Is it that human spirit is not still mature enough? One does not feel very much like agreeing with it.

Napoleon said about two totally different groups of the bearers of human spirit – about the rulers and ruled. But whose role in this maturation is the leading one? For those who have read this book it is clear – the author trusts in the maturity of the spirit of those ruled. Its basis shall be the realization of the ruled of the necessity to become self ruled, which is to become the rulers also. The words of the proletarian song "no one will give us deliverance" have always been the problem of today, and so they are today, for the rulers will never do what they must out of some altruistic considerations. It is not only because the human nature is such as it is. This nature has made them resist actively the advance of human spirit. But, mainly, it has happened because nobody else rather than the ruled themselves is in a position to point them to what they must. And to point the rulers what they must for the ruled is possible only when they, the ruled, realize and formulate what they want.

And here is the tremendous and immeasurable role of that part of the ruled whose main sphere of activity is intellectual work. I would even say that this is their (our) human mission!

This book may help, albeit to a negligible degree, understand what we need to do and what we need to achieve in order to see this come true.

First of all, the structuring of the political space we have proposed in this book can help in this understanding. Everyone can envisage, at least indistinctly, how our life and our existence shall be organized in the right way. Unfortunately, many envisage this too much indistinctly. Identification of his/her own conception of this with a specific (one) field of the political space can considerably clarify for many their own indistinct ideas and concepts.

There is the hope that a considerable part of people will see the field most preferable for them located not far away from Area 1-4-7 (liberalism - democracy - equality). These people can find of special use the axiomatic system proposed. It is in this system where the requirements have been formulated for those who must secure that their – the ruled – wish to live in a liberal and just democracy will come true.

The author does not tend to believe that the axiomatic system proposed is perfect; however, it seems to be a good basis for further work. It is obvious, that this work foresees also further development of theory and improvement of the formulations. But we mean not only this. It is useful time and again to test the axiomatic system for formal consistency of its Axioms – initial propositions. Time and again to verify if some Axioms are Corollaries, and some Corollaries are Axioms. It is necessary time and again to analyze the system for its deductive completeness. It is highly possible that this analysis will result in some new Axioms. A special problem that is pending its resolution is Axiom 19. In short, it is absolutely necessary to make a joint effort in identification and elimination of possible flaws of the axiomatic system proposed, and the author looks very much forward to it.

A special point is the example of application of the axiomatic system as an improved variant of the Fundamental Basics of the Constitutional Regime. It is here where constructive criticism could pinpoint possible inconsistencies of the proposed formulations of the articles of the Constitution with some Axioms or Corollaries of the axiomatic system.

All this undoubtedly were highly important and useful; however, the main question – why it is this particular theory of law is more preferable than any other one – cannot be answered now. An answer to this question can be elaborated only in a discussion with the authors or followers of other theories of law, other axiomatic systems. Of those, that have been elaborated proceeding from the preference of the other fields of political space. However, I am unaware of them at present.

As a rule, politicians don't want, and even more often so, cannot formulate precisely and accurately their political creed. If anyone of them call him or herself to be a liberal, democrat or communist, from this it does not necessarily follow that he or she positions him or herself on the political scene correctly and, moreover, understands this and other similar terms in the way similar to that of his or her supporters or political adversaries. They are more content with the slogans, rather than axioms, clichés rather than definitions. "Property is theft", "laissez faire", " liberté, égalité, fraternité ", "expropriation of expropriators" etc might be beautiful slogans, but any of them contain at least several meanings. "It is normal that the consciousness of people is captivated with the most understandable ideas. A false idea but clearly and precisely expressed is always likely to captivate the world to a greater extent than a true idea although complex" [86, p.138]. Perhaps, the politicians find it more convenient, that's why they never place an order for lawyers. There is no similar order from society. The traditions of the Dijon Academy have long been in oblivion. It is possibly because of this that axiomatic systems describing other fields of political space are not existent at present.

What is more, an analysis of the available information on human history convinces the author of the fact that over the entire recorded period of history humanity has been developing steadily towards Area 1-4-7, towards freedom, democracy, equality. To provide for coexistence in this area is possible on the basis of law only. Consistent approximation of the legal system of any state to the condition described by the theory of law of the axiomatic system proposed is the shortest way to Area 1-4-7, to the area of freedom-democracy – equality.

Appendix 1. Axiomatic system

Axiom 1. (Existing)

Every man possesses internal freedom (freedom of will).

Definition 1.

The internal freedom is man's freedom (ability, power) to make his own choice of what to wish**.**

Axiom 2. (Existing)

Every man wants to live a good life.

Corollary 1. (Normative)

It is man himself only that decides what is good

Axiom 3. (Normative)

The aspiration of every man for a good life is justifiable.

Definition 2.

The goal is foreseeable, desirable and realizable state of things and people, achieved by the subject though applying means**.**

Definition 3.

Subject - bearer of external freedom – is person (including man) or body.

Definition 4.

The means are objects, the operations therewith and the people whose operations result in achieving a goal.

Definition 5.

The goal of life is the supreme goal aspired to by man.

Corollary 2. (Normative)

Nobody has the right to designate man with the life goal he should aspire to follow.

Society

Axiom 4. (Existing)

People are destined to live together.

Living together is the only possible form of human existence.

Definition 6.

External freedom is a freedom (ability, possibility) to act in society in accord with his or her own internal freedom in this or that way, pursuing this or that goal.

Axiom 5. (Normative)

All people have equal rights to external freedom.

Axiom 6. (Existing)

People's external freedom must be restricted.

Axiom 7. (Normative)

Man's external freedom can only be limited by the requirements of securing other people' external freedom.

Corollary 3. (Normative)

Nobody can be used as means for achieving other's goal against his will.

Axiom 8. (Existing)

People are disposed to transgress the normative limits of other people' and their own external freedom.

Axiom 9. (Existing)

All people are different.

Law

Definition 7.

Law is external freedom provided and restricted by norm.

Definition 8.

Dictation is a verbal expression of provision and restriction of external freedom..

Definition 9.

Norm is a dictation aimed at an uncertain group of people or designed for multiple application.

Norm – verbal expression of provision and restriction of external freedom to an uncertain group of people or designed for multiple application.

Definition 10.

Hypothesis is an element of a norm describing the circumstances under which this norm comes into force.

Definition 11.

Disposition is an element of a norm describing provision and restriction of external freedom.

Definition 12.

Rights are specific elements of Law.

Rights are specific elements of external freedom provided and restricted by norm.

Definition 13.

Obligation is a specific restriction of external freedom of a subject which ensures a possibility of exercising the right of another subject.

Definition 14.

Obligation (duty) of man - is a specific restriction of man's external freedom which ensures a possibility of exercising another man's (people's) right.

Definition 15.

Obligation is a responsibility assigned independently and through a free will by a subject thereupon.

Obligation - is a specific restriction of external freedom of a subject assigned independently and through a free will thereby with the purpose of ensuring a possibility of exercising another subject's right.

Definition 16.

Arbitrariness is a specific restriction of a subject's external freedom initiated by another subject, which is not assigned to provide for a possibility of exercising a man's right equal to other men's rights, or not assigned by a subject thereupon independently and through his own will.

Corollary 4. (Existing)

Every right of a subject implies the respective obligation of another subject (subjects), and every obligation of a subject implies the right of another subject.

Corollary 5. (Normative)

Waiver by a person of his or her element of external freedom, provided also to an uncertain number of people, in favor of another person is not tolerated.

Corollary 6. (Normative)

Nobody can be forced to exercise any of their rights.

Corollary 7. (Normative)

Human rights can never be human obligations.

Definition 17.

Provision of external freedom consists in its proclaiming and securing its implementation.

Axiom 10. (*Normative*)

Everyone must be provided with the maximum of external freedom compatible with the same maximum of freedom of everyone else.

Axiom 11. (*Normative*)

An action not provided by any norm, which is designed to restrict someone's external freedom, is inadmissible.

Definition 18.

Sanction is an element of norm, which describes the circumstances caused by the subject legally concerned, negative for the infringers of the external freedom provided for by the said norm, and which result from any violations thereof

Аксиома 12. (*Normative*)

Every norm must contain a sanction for a violation of the external freedom proclaimed thereby.

Axiom 13. (*Normative*)

Every norm must be formulated in such a way as to minimize a possibility of its wrong interpretation.

Definition 19.

The subject endowed is a subject (subjects), who is provided with the given norm a specific element of external freedom.

Definition 20.

The subject restricted is a subject (subjects), who has an ample opportunity to violate the element of external freedom granted by the given norm and who is prohibited to perpetrate such a violation.

Definition 21.

The subject providing is a subject (subjects), who is obligated by the given norm to provide for the element of external freedom provided thereby**.**

Definition 22.

Jural relationships are the relationships that occur between the endowed, restricting and providing subjects in the process of enforcing a specific element of external freedom.

State

Definition 23.

The State is an instrument by which society organizes coexistence of its elements – people that proclaims and provides them with elements of external freedom.

Axiom 14. (*Normative*)

The only goal of existence (functioning) of the state shall be ensuring it citizens' security.

Definition 24.

Security of the citizens is an opportunity to freely and independently exercise their right through their own effort.

Definition 25.

Government (regulation) is the activity aimed at reducing divergences between the goal and actual state of things and people.

Definition 26.

The regulation of state affairs (Government) is authoritative acts by some subjects of political power in relation to its other subjects (objects governed), resultant in achieving the goal of the state.

Corollary 8 (Normative)

The only source of political power is the people (nation)

Definition 27.

Power is the right of the subject of power to provide and restrict the external freedom of the subjects of subordination.

Definition 28.

The subject of power (subject vested with power in relation to the subjects of subordination) is a subject that is able to enforce his dictation (command).

Definition 29.

The subject of subordination is a subject that is unable to quit execution of the dictation (command) of a subject of power with impunity.

Definition 30.

Political power (state power and local government) is the power in a specific territory executed by means of law and direct dictations (commands) based thereon.

Axiom 15. (Existing)

The state is constituted of bodies and functionaries

Corollary 9. (Normative)

Any political power shall be provided and restricted by law.

Corollary 10. (Normative)

Every citizen is allowed to do everything otherwise not forbidden by law; the bodies of political power and their functionaries are not allowed everything what otherwise is not specified or not allowed by law.

Axiom 16. (Existing)

Subjects of political power are constituted by human beings.

Definition 31.

A functionary – subject of political power – is a person having the right to restrict another person's (or people's) external freedom.

*Corollary 11 (Existing)***.**

Every subject of political power is disposed to go beyond the boundaries of the external freedom, established by law for him.

Axiom 17. (*Normative*)

The rights and obligations of the subjects of political power shall concur.

Corollary ***12. (Normative)***

Political power shall be as dispersed as possible.

Corollary ***13. (Normative)***

Political power shall be divided (dispersed) by functions and levels.

Аксиоме 18. (*Normative*)

By its functions political power shall be divided into legislative, executive, judicial and controlling powers.

Corollary 14. (Normative)

The judicial power shall review the essence of any citizen's appeal in part of hindering in any way of his right to exercise thereof.

Corollary 15. (Normative)

The political power shall be divided among the state levels so that powers are exercised by a power subject, which is capable of doing so and is the closest to citizens.

Axiom 19. ***(Normative)***

Taxation.

Definition 32.

Democracy is a form of democratic state where all the citizens have a real opportunity to enjoy equal rights to state governance.

Axiom 20. ***(Normative)***

The possibility to take arbitrary decisions by a majority shall be restricted - inadmissible are the decisions which are not aimed at provision of the possibility of exercising human rights equal with those of other persons.

Corollary ***16. (Normative)***

All citizens have equal rights to participation in state government.

Corollary ***17. (Normative)***

All citizens have equal rights to participation in state government directly or through their representatives.

Corollary ***18. (Normative)***

Every citizen shall be guaranteed with the opportunity to send, together with the preset number of supporters, their own representative to a body of political power, formed through elections.

Definition 33.

The constitutional state is a state, where its legal system provides every citizen with the maximum of external freedom compatible with the same maximum of external freedom of everyone else

Legal system

Axiom 21. (Existing)

Laws (norms) are observed by people either through coercion or voluntarily.

Axiom 22. (Existing)

Voluntary observation of laws (norms) by people is preferable.

Corollary 19. (Normative)

The legal system must be created in such a manner and in such a form so that it encourages man to voluntarily observe laws (norms).

Corollary 20. (Normative)

Laws (norms) are entitled to require from man refraining from illegal actions and are not entitled to demand from him some actions, except the requirement of paying taxes as well as execution of the obligations man himself has undertaken to execute.

Definition 34.

A legal act is a written document containing a command (dictation)**.**

Definition 35.

A statutory legal act is a legal act containing a norm (regulation) therein.

Definition 36.

Law is a normative legal act adopted and passed by the legislative body of political power of a certain level.

Law is a provision and/or restriction of external freedom verbally expressed in the written form, aimed at an uncertain number of people or designed for multiple application and passed by the legislative body of political power of a certain level**.**

Corollary 21. (Normative)

The system of normative legal acts of every level of political power must have a hierarchical structure: Constitution, decisions taken by referendums, law, other legal acts and regulations.

Axiom 23. *(Normative)*

The Legal system must not contain regulations and norms that are mutually exclusive and contradictory.

Corollary 22. (Normative)

Of two or more legal acts regulating the same legal relation applied is a legal act (as the significance decreases), or one of them is to be applied which is issued at the level whose power has the right-obligation of granting-restriction of an element of external freedom referred thereto under the Constitution with the said element constituting the content of the legal act, or a legal act hierarchically superseding, or the one issued later than others.

Definition 37.

The legal system of the state is a totality of norms set forth in a hierarchical system of normative legal acts adopted by the political power.

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