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THE INNER TENSIONS OF LEGAL CULTURE IN CONSUMER SOCIETY

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Abstract. *The present article explores the inner tensions of the legal culture in consumer society as a consequence of the interaction between democracy, liberalism and market economy under globalization. The interaction between democracy and modern political thought has given rise to liberal democratic society, moral and religious pluralism, and modern law. The interplay between liberal democracy and the market (“new liberalism”) has generated the idea of “instrumental reason”, whose penetration into many realms of life has transformed the structure of society and democracy itself: consumer society and a dangerous tendency of social decline prevail. Under the expansion of globalization and social decline, instrumental law may not be enough to ensure the functioning of society. Consumer society does not understand modern law and thus renders it inefficient.*

The analysis of the nature of social structures demonstrates that in the light of the interaction between moral relativism, the decline in the instrumental powers of the nation state and the expansion of globalization, the lack of the concept of legal duties and the reluctance to assume them becomes a fundamental agent of destruction of social structures. The parameters of legal culture in consumer society, such as legal order, the scale of the prevalence of individual lawful actions, and legal consciousness, have been increasingly on the decline.

Keywords: *legal culture, democracy, liberalism, market, consumer society, modern law, the state of legal order, legal consciousness, globalization.*

Introduction

The analysis of the ways in which we construct social reality has shown that community (society) has developed and is now consolidated through the institutionalization of common habits, thereby fostering mutual trust and security.¹ In other words, society comes into being and operates as a cultural phenomenon. It is no accident that A. L. Kroeber and Clyde Kluckhohn have thus emphasized the notion of culture as used in the study of society: “Culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values; culture systems may, on the one hand, be considered as products of action, and on the other as conditioning elements of further action”².

Contemporary society is a totality of human beings that has characteristics of a system and usually develops in conditions of procedural democracy. Elements in this totality – people and their communities – are linked on two levels of relationships, i.e. the personal and the social. As a consequence of the symbiosis between democracy and the market, liberal democratic society gradually turns into consumer society, which gives preference to personal relationships. Historically, personal relationships developed on the level of social relationships as individuals became more and more aware of the significance of their individuality. Social relationships are long-term standardized social relations. Therefore, the state of the social relationships in consumer society obliterates the prospects of its further development. As early as in the second half of the 20th century Friedrich August von Hayek showed that both societies and their individual members follow the common rules of behavior: “individuals who disagree on common values, can sometimes agree on certain particular aims and act effectively on such consensus. However, consensus on particular aims will not be enough to create a stable order that we call society.”³

The society of liberal democracy operates on the basis of laws and the transformation⁴ of its social structure inevitably affects, in one way or another, the development of its legal culture. According to Harold J. Berman, “law... cannot be totally reduced to the material conditions or system of ideas and values of the society which has created it; law must also be treated as an independent factor, as one of the causes of social, economic, political, moral and religious development, rather than simply as a consequence of this

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- 1 Berger, P. L.; Luckmann, Th. *Socialinės tikrovės konstravimas* [The Social Construction of Reality]. Vilnius: Pradai, 1999, p. 74–90.
 - 2 Kroeber, A. L.; Kluckhohn, C. *Culture: A Critical Review of Concepts and Definitions*. New York: Vintage Books, 1963, p. 181.
 - 3 Hayek, Fr. A. *Teisė, įstatymų leidyba ir laisvė. I: Taisyklės ir tvarka* [Law, Legislation and Liberty, Volume 1: Rules and Order]. Vilnius: Eugrimas, 1998, p. 146 – 147.
 - 4 Krauch, K. *Postdemokratija* [Post-democracy]. Moskva: Izdatelskij dom Gosudarstvenovo universiteta – Vyshej shkoly ehkonomiki, 2010, s. 74–92.

development.”⁵ This necessitates the analysis of the development of legal culture in consumer society as affected by globalization.

The present research aims to uncover the inner tensions of the legal culture of consumer society as conditioned by the interaction of democracy, liberalism and the market. This research makes use of the methods of the philosophical and sociological analysis of the development of the social-legal reality.

1. Society’s Legal Culture: a Definition

Contemporary society operates on the basis of legal order, which is why it has to continuously show its concern for legitimacy. Legitimacy may be understood as the laws and the corresponding legal acts currently in effect or the legal order as it is implemented. Legitimacy is fundamental to democracy and the legal state. For example, Alfonsas Vaišvila points out that “the power of democracy is the power of legitimacy. Yet, not only is democracy consolidated through legitimacy, but through feedback, legitimacy is also consolidated by the development of democracy.”⁶ To describe the state and development of legitimacy we use the notion of legal culture, which has two dimensions: 1) as an object, legal culture encapsulates the products of society’s and individual members’ legal activity, its forms and systems, whose functioning enables society and individuals to create, use and convey material and spiritual values; 2) as a subject, legal culture indicates the degree of perfection achieved by individuals and their groups in the realm of legal scholarship and legal activity.

The researchers of culture and legal culture tend to emphasize the object-wise approach to culture and its inherent link to social organization. However, contemporary society necessitates also the subject-wise approach, pointing out the significance of the subject’s skills at recognizing and using systems of norms and values created by society as well as the ability to base his/her behavior on the common norms and standards of behavior. Thus in examining society’s legal culture it is important to establish a connection between the two approaches where there is often a gulf between them.

The analysis of the discourse of legal culture must therefore consider the interrelationship between the object and subject dimensions of legal culture. As Vaišvila puts it, “In object terms, legal culture is a totality of legal instruments and procedures [created by society] to standardize and socialize the behavior of its members. This embraces the whole legal system: ideas related to law (the doctrine), legislative procedures, legal norms, the technique of processing legal relations, as well as the state with its institutions of legislation and law enforcement and their functions. It is a wide embrace because these are human creations, meant to make relationships between people more cultural, appropriate for ensuring the security and well-being of every individual.[...] But all of

5 Berman, H. *Teisė ir revoliucija. Vakarų teisės tradicijos formavimasis* [Law and Revolution. The Formation of the Western Legal Tradition]. Vilnius: Pradai, 1999, p. 69.

6 Vaišvila, A. *Teisės teorija*. Antrasis leidimas [Theory of Law. Second edition]. Vilnius: Justitia, 2004, p. 149.

these legal instruments do not work on their own. To socialize people's behavior in real terms, they have to be linked to the consciousness of a particular individual who creates and makes use of that system. We therefore say that legal culture attains the meaning of a subject because the legal system becomes a system of instruments to secure and implement the rights of a particular person since only in regard to this defense all the merits and drawbacks of legal instruments become apparent.⁷⁷

Society's legal culture finds its home in the legal consciousness and legal behavior of its citizens and social groups. Legal culture cannot be singlehandedly reduced to either the legal consciousness or legal behavior or both; it embraces them both and on this basis communicates the quality achieved through the co-existence of members of society and the upholding of social order. Legal culture is realized through both lawful and unlawful behavior. Deviant behavior is not always malevolent for it may be caused by poor legal knowledge, social naïveté, and incompetent activity. The individual's legitimate behavior is based on the knowledge of his/her rights, ability to defend them, and knowing how to make well-grounded claims. Society develops these key characteristics in an individual within the context of constant social interactions. This suggests that the development of these characteristics depends not only on the individual, but also on the nature of social relations, the legal consciousness and the degree of legal culture of the society in which the individual lives.

2. Instrumental Law and the Consumer Society as a Consequence of Modern Political Thought

The theoretical premises of the instrumental approach to law. The instrumental approach to law is the consumer society's notion of law, which emphasizes the creation of law that is radically disassociated from morality. This approach aims: 1) on the positivist level, to legalize and implement the state's will; 2) on the level of the subjective right, to meet individual needs based on the reduction of costs and the increase of benefit. This approach is based on the symbiosis of democracy and modern political thought. A consequence of implementing this approach in society is the currently dominant instrumentally oriented legal culture.

Modern political thought originates from the works of classical liberalism and assumes five premises: 1) putting emphasis on human rights and the fascination with negative freedom related to it; 2) relying on a mechanistic interpretation of politics; 3) endorsing the separation of radical privacy from the public domain; 4) giving preference to justice over the good; 5) working on the idea of moral spontaneity.⁸ Modern political thought, however, is essentially different from classical thought, which characterizes traditional society. Jurgen Habermas has indicated three distinctions between classical and modern political thought: 1) in classical thought, politics is an extension of ethics and in modern

7 Vaišvila, A., *supra* note 6, p. 457–458.

8 Jokubaitis, A. *Politika be vertybių* [Politics without Values]. Vilnius: Vilniaus universiteto TSPMI, 2008, p. 128–129.

thought, the two are completely distinct; 2) classical thought interpreted politics as *praxis*, while modern thought interprets it as *techné*; 3) classical thought held the view that politics cannot be turned into an exact science, whereas the modern notion of politics is based on the opposite idea.⁹ These distinctions between classical and modern thought are instrumental in our attempts to explain the distinction between classical and liberal legal cultures. If the fundamental basis of classical legal culture is spontaneous growth¹⁰, then liberal legal culture is purposefully constructed as a technical mechanism.

Modern political thought focuses on the individual and his/her rights, which are directed to pragmatic ends, i.e. to create minimal instruments to delimit “everybody’s war against everybody else” to the extent where a relatively secure co-existence of individuals is made possible. Modern political thought suggests that the notion of human rights has significance not only as a value, but also as an instrument. It is no accident that classical liberal philosophy assumes the idea that “everybody’s war against everybody else” can be obstructed only by the state created through the agreement of free individuals, a state which may intrude into individual lives as long as it is in line with predetermined rules and only to the extent where it protects them from violence and destruction.¹¹ Such is the notion of the minimalist state where the state itself is created to ensure the security of individuals and their communities. According to P. A. Reynolds, Robert Nozick and a few other commentators, the values of individuals should be the principal criterion in assessing the state’s behavior because the collective structures in the minimalist state must be subordinated to the principal value of human rights.¹² Thus in exercising human rights we realize the dream of classical liberalism to naturalize human rights and thus delimit individuals’ war against other individuals and the state’s actions against the individuals.

The interaction between modern political thought and the market. The interaction between democracy and modern political thought gives rise to liberal democracy. Different social groups decisively construct its legal order as they gain experience in modern political thought. Society masters the first rudiments of modern political thought by “eliminating” through democratic voting two orthodox social institutions – morality and religion – from public life and thereby constitutionally establishing the status of their personal choice. This shift has significance in at least two respects: 1) the social structure of liberal democracy will be further constructed on the basis of law as the only social institution; 2) the “change” in the status of morality and religion as social institutions provide formal premises to legitimize moral and religious relativism and on this basis to shape what, in terms of values, is a pluralist society.

Releasing the society of liberal democracy from the “constraints” of morality and religion enables the state to turn law into an instrument of modern political power, which is used to build the liberal legal order. When law is considered only an instrument of the political power of the state, it is simultaneously held independent from other systems of

9 Habermas, J. *Theory and Praxis*. Boston: Beacon Press, 1974, p. 42.

10 Hayek, Fr. A., *supra* note 2, p. 80–81.

11 Berlin, I. *Vienovė ir įvairovė* [Unity and Diversity]. Vilnius: Amžius, 1995, p. 160.

12 Reynolds, P. A. *An Introduction to International Relations*. London: Longman, 1980, p. 47–48.

social regulation, especially those of morality and customs. In other words, law being in tune with national customs is no longer seen as a sign of its efficiency. In fact, the opposite idea is proposed: law's efficiency is determined by the concentration of its political power. The modern legal system is conceived as a special set of the mechanisms of state power that uses a rationalized legal doctrine, which is created, interpreted and applied by specialized legal institutions of the state. As a consequence, the link between law (as norms applied by state institutions in decision making) and morality (as cognitive and behavioral models factually existing in society) in the social consciousness gradually weakens and ultimately disappears. For both the legislators and laymen, law becomes a purely technical regulation, which lacks a clear moral element.¹³

The above conceptualization of modern law is a state instrument of government in contemporary society and its underlying characteristic is its technical (instrumental) nature. With regard to governing a state, modern law (as a technical rule) may be used for any purpose of regulation. Therefore the disconnection of law from its communal roots is perceived as the liberation of law as a regulatory mechanism. However, society interprets the technical bias of modern law as a drawback: in the consciousness of the social groups that law regulates, the disassociation of law from morality and customs ultimately conditions its factual decline in the civil consciousness because most citizens lack necessary competence to understand and master technical law. Thus in seeking to create law as an efficient and independent means of social control and government, we achieve quite the opposite: society has no understanding of technical law and renders it socially inefficient. In other words, as the unconditional instrumental approach to law becomes more widespread, so the social significance of positivist law decreases. At the same time, opportunities for legal pluralism and nihilism in society increase. Within the context of moral relativism and the decline of the instrumental powers of the nation state under globalization, these opportunities¹⁴ gradually create conditions for the transformation of the liberal legal order into an order characteristic to anarchy.

Ignoring the significance of morality in social relations makes way not only for moral pluralism, but also for competing models of democracy. As moral pluralism develops, the model of pluralist democracy gradually becomes the dominant one. This model is based on the idea that democracy is made more efficient under the circumstances where the nation participates in governing through the competing interests of separate social groups. According to the model of pluralist democracy, democracy is seen a system where many organizations operating independently from the government, coerce or even challenge it in order to pursue their own interests¹⁵. Thus the theory of a pluralist democracy focuses on organized groups and emphasizes a new criterion of democratic

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- 13 Cotterrell, R. *Teisės sociologija. Įvadas* [The Sociology of Law: An Introduction]. Kaunas: Dangerta, 1997, p. 66.
- 14 Castells, M. *Informacijos amžius: ekonomika, visuomenė ir kultūra. Tapatumo galia 2* [The Information Age: Economy, Society and Culture. The Power of Identity]. Vilnius: Poligrafija ir informatika, 2006, p. 291.
- 15 Janda, K.; Berri, D. M.; Goldman, D.; Hula, K. V. *Trudnym putem demokratii: proces gosydarstvenovo upravlenija v SSHA* [Janda, K.; Bery, J. M.; Goldman, J.; Hula, K. W. The Challenge of Democracy]. Moskva: Rossijskaja politicheskaja ehnciklopedija, 2006, s. 69.

governance: government has to be more attentive to the organized groups of citizens rather than to the society's public opinion. This means that the construction of the liberal legal system becomes an object of manipulation for competing groups. As a result, it inevitably deviates from its primary social function, which is to guarantee the dynamic balance of the freedom and security of the members of society.

In the conditions where moral relativism is advocated, the rejection of market regulation on the state level (“new liberalism”¹⁶) became the crucial stimulus for all members of society to accept “instrumental reason”. “Instrumental reason” is the essential characteristic of modern thought. It is the type of rationality that we employ with the purpose of estimating the most economical means of achieving goals. The criteria of its success are maximum efficiency, i.e. the optimal relation between costs and benefit, and its application has comprised all realms of life including the legal system: one may consciously behave against the legal regulations because of the estimation that such behavior will result in more benefit as compared to the sufferings derived from the maximum legal liability. It is often expected to evade legal liability or at least reduce the scope of its application by manipulating the primacy of human rights and freedoms, for instance, in the cases of trade secrets, freedom of information, freedom of expression, property rights, etc.

The application of the criteria of “instrumental reason”, which emerged in the interaction of moral relativism and the market, has gradually overwhelmed democracy itself. The relation between democracy and universal commercialization results in a wider range of the subjects of democracy and affects the formation of the controversial concept of a citizen-consumer. “Today people are more active as consumers and it is this factor that determines their power; for this reason, commercialization has become the opposite side of democratization. These are two inseparable powers driving the democracy wave. The dual character of democratization – granting power to people as citizens and as consumers – explains why the transformation taking place in society is so scarcely criticized”¹⁷.

The symbiosis of democracy with the market alters both democracy itself and the structure of society. This change is reflected in the consciousness of Western societies, which have been invaded by commercialism, and in the rise of the consumer society, whose values mark human relations with strong ambiguity¹⁸. For instance, the legal system is perceived as an item of individual consumption, as an object of negotiation between the state and interest groups. This suggests that contemporary democracy has digressed from the concept of the twentieth-century democracy perceived as one that serves a civil society. Therefore democracy affected by commercialism is commonly

16 Fukujama, Fr. *Silnoje gosudarstvo. Upravljenje i mirovoj poriadok v XXI veke* [Fukuyama, F. Governance and World Order in the Twenty-First Century]. Moskva: Khranitel, 2006. p. 18.

17 Zakarija, F. *Budusheje svobody: neliberalnaja demokratija v SSHA I za ikh predelami* [Zakaria, F. The Future of Freedom: Illiberal Democracy at Home and Abroad]. Moskva: Lodomir, 2004, p. 241.

18 Bauman, Z. *Likvidi meilė: apie žmonių ryšių trapumą* [Liquid Love: on the Frailty of Human Bonds]. Vilnius: Apostrofa, 2007, p. 9–10.

referred to as post-democracy, which is characteristic of the following tendencies¹⁹: 1) a gradual devaluation of the achievements of the activities of state institutions; 2) an increase in the privatization of the public sector, especially education, health service and the commercialization of other social services; 3) an increase in the role of transnational corporations and pressure groups in the national politics and legislation. Thus the symbiosis of democracy with the market evidences a dangerous tendency of the decline in sociability. In the interaction between the expansion of globalization and the decline in sociability, a legal culture of instrumental character may not be adequate to ensure the society's functionality.

3. Human Rights and Duties as Attributes of the Structure of Society

Human rights are understood as a standard of the interrelation between social security and individual freedom which is implemented by legal instruments. However, we seldom realize that the actual implementation of human rights and freedoms has to be linked with the performance of a social role. Talcott Parsons emphasizes that the principal mechanism of the functioning of a social system are roles and role constellation²⁰. How can we account for the fact that a social role is gaining more significance in consumer society? In the interaction between members of consumer society we witness not only a range of expressions of legal nihilism but also the intentions of “instrumental reason” to give primacy to and take advantage of human rights. One of its examples is the position of the media. Regrettably, in their report of 2009²¹, the international non-governmental Human Rights Watch organization sees states as a sole source of breaching human rights and freedoms. In the consumer society, however, the growing aggression in social relationships is also a major source of human rights violations. It is no accident that in the interaction between moral relativism, the decline in the state's instrumental powers and the expansion of globalization, the issue of an individual's legal duties gains significance too. The possibilities of making contemporary globalization more democratic are more clearly linked with “common rights and duties”, the internalization of which can make globalization more democratic and civilized²². It is therefore important to explore the relationship between society's social structure and the social roles people perform.

In the consumer society the need for the self-actualization of society members, i.e. the need to expand the limits of personal freedom, rises to the forefront. This has been interpreted in Abraham Maslow's “hierarchy of needs”. However, it is dangerous to give primacy to the satisfaction of this need, i.e. to distinguish it from greater needs that

19 Krauch, K., *supra* note 4, s. 122–130.

20 Parsons, T.; Shils, E. A. *Toward General Theory of Action*. Cambridge: Mass, 1951, p. 23.

21 Human Rights Watch Report [interactive]. 2009 [accessed 12-11-2010]. <www.hrw.org>.

22 Held, D.; McGrew, A.; Goldblatt, D.; Perraton, J. *Globaliniai pokyčiai: politika, ekonomika ir kultūra* [Global Transformations: Politics, Economics, and Culture]. Vilnius: Margi raštai, 2002, p. 482–483.

evolved earlier, the realization of which is an obligatory condition for meeting the higher needs of a personality. “It is only a disciplined and responsible individual to whom we can say: do as you like and everything may be alright.”²³ Therefore performing adequate social roles is mandatory to the development of an individual’s humanity.

In a society where social values and standards are preserved and fostered, individuals communicate, cooperate, compete and even fight in accordance with certain social values and common standards of behavior that are expressed by the culture of a society and its social groups. This is social interaction, i.e. a process where people function and create the reality in which they live. Social interaction is a purposeful process as it is always affected by the social structure, i.e. it constantly “controls” the creation of reality in one way or another so as to ensure society’s security and the continuity of social existence.

The “building blocks” of the social structure are social positions and their corresponding social roles. Social position is a status that an individual occupies in a given society as a member of some social group and which is related to other positions in the system of rights and freedoms. Social position is realized by performing a social role. Social role is a model of social behavior by which we perform our social status. Any model of social behavior is comprised of corresponding rights and obligations. Thus rights and obligations are the attributes of the social structure.

In contemporary society a human being is the highest value, therefore all social statuses have a common denominator – a person’s social status. A social status can be looked at in terms of legal subjectivity: social status allows one to obtain a subjective right. An individual who, by being born, has obtained a social status, “gets permission” to perform his/her social role as a human being – to exercise his/her human rights and duties. From the legal point of view, social role is a person’s ability to properly exercise the rights and duties entailed in his/her social status. This means that performing a social role requires that each individual have certain skills, among them – to adequately use subjective rights in performing his/her duties. For this reason, in the process of socialization, children ought to perceive themselves as human beings and properly perform their social roles. Learning to perform a social role is a complex process, which, in addition, is essentially aggravated by the fact that a social role, from the point of view of legal capacity, is defined only by human rights and freedoms. The internalization of an individual’s rights and freedoms with no regard for legal duties creates conditions for the development of an egoistic individual.

The absence of the definition of a person’s legal duties is not relevant in the societies which enshrine social values and common norms of behavior. This situation is easy to explain: the social structure consists of and is created by not only legal rights and duties but also non-legal social norms that are often seen as duties. However, in the case of a decline in social values and common norms of behavior, the absence of the definition of legal duties as well as their non-conformity become a major factor of the destruction

23 Maslow, A. *Psichologiniai duomenys ir vertybių teorija. Gėrio kontūrai* [Psychological data and value theory. The contours of goodness]. Vilnius, Mintis, 1989, p. 351.

of the social structure. This is particularly significant in understanding human rights as a standard of the relationship between social security and individual freedom. This standard is fragile because the unconditional enshrining of human rights gradually destroys the social structure and results in the decline in social security. Consumer society takes notice of this decline only when the actual risks to its own security become apparent, for example, in the case of international terrorism and its threats.

4. The Tensions in the Interplay between Objective and Subjective Legal Cultures

The society's legal culture is a system of achievements that it has gained by cherishing and improving the legal conditions of its functionality and social interaction. The conception of the liberal democracy's legal culture is based on the relationship between objective legal culture and subjective legal culture. It is embodied by three parameters of legal existence: the state of the society's legal order, the scope of the dissemination of legitimate behavior, and the state of legal consciousness²⁴. We will describe the legal existence of the consumer society on the basis of the aforementioned parameters of legal existence. For instance, if the state of the society's legal order is poor, it is a sign of a high degree of unlawful activity in that society as well as its low legal consciousness.

The state of legal order. The state of legal order remains part of the scope of the liberal democracy's legal culture as much as it depends on the society's activity, on its efforts and capacities to retain and restore the legal conditions of its functionality as well as social interaction. The nature of legal order is determined by social, moral, state and legal processes related to the guarantees of legitimacy. The guarantees of legitimacy constitute a system of objective and subjective conditions and legal instruments and methods which strives to ensure the implementation of legitimacy as well as facilitates seeking the social relations which meet the essential standards of a social legal state. The guarantees of legitimacy consist of two groups: general and specific. The first group includes economic, political-ideological, and moral guarantees, whereas the second group only encompasses legal guarantees. A crucial role in implementing legitimacy is played by economic, political, and moral guarantees. These include the powers of property acquisition and its disposal, the development of economy, the rate of social employment, political system, ideology, and the condition of common culture. The controversy of the state of these spheres generates an environment that is favourable to violations of law and the criminalization of society.

The dominance of moral relativism and "instrumental reason" in the consumer society leads to the destruction of the economic, political, and social guarantees of legitimacy. Where members of society do not share a sense of justice as the common

24 *Teisė ir demokratija. Demokratija Lietuvoje: tarp Vakarų ir Rytų* (1990 - 2007 m.): kolektyvinė monografija. Sudaryt. ir moksl. red. prof. habil. dr. Alfonsas Vaišvila [Law and democracy. Democracy in Lithuania: between West and East (1990 - 2007 m.): collective monograph]. Vilnius: Mykolo Romerio universiteto Leidybos centras, 2009, p. 311.

good as well its corresponding conception, society loses its essential ability to recognize moral, legal, economic, and political boundaries of social behavior that are crucial for its further civil development. Paradoxically, this sad situation is well “justifiable” in the light of the well-established optimization of the cost-benefit relation. An example of the actual destruction of these guarantees is the current global crisis of financial capitalism. The weakening of the common guarantees of legitimacy in the interplay between moral relativism, the decline of the state’s instrumental powers and the expansion of globalization inevitably cause the weakening of democracy. As a result, the state of legal order in the consumer society is poorer in comparison to its state in the civil society.

The scope of the dissemination of legitimate behavior in society. The dissemination of legal behavior among the members of a liberal democracy demonstrates not only its ability to recreate the state of secure legal order but also the capacity to develop the standards of its members’ legitimate behavior by simultaneously preserving the implementation of human rights and freedoms. These achievements of the civil society gain special legal significance when the state of legal order is actualized. This means that the behavior of society members inevitably reflects their relationship with the existing state of legal order: they either come to terms with its decline or resist it. No neutral position is possible. It is therefore fair to claim that with his/her behavior, an individual in an actualized legal order supports a certain tendency and on the basis of it, his/her legal orientation is considered either positive (constructive) or negative (destructive). The dominance of the constructive legal orientation in society is a sign of its maturity, the ability to realize its interests and mobilize forces in order to improve the state of legal order. The increase in the scope of legal nihilism in consumer society reflects society’s destructive legal orientation. The members of consumer society often neglect the state of legal order as long as there is no threat to the security of individuals.

The state of legal consciousness. The state of society’s legal consciousness is determined by the relationship between legal psychology and legal ideology. We usually emphasize the importance of legal ideology on the basis of culture: to consciously and efficiently function as members of society, individuals need to understand the existing legal regulations. The culture of legal awareness in a liberal democracy is determined by three factors:

- the quality of the evaluation of the state of legal order and the extent of the dissemination of legitimate behavior in society (precision, reliability, efficiency, versatility etc.);
- the scope of the dissemination of legal education and legal information in the civil society;
- the degree of the application of legal education and knowledge in the implementation of legal regulations.

Legal awareness alone is not sufficient as one can know how to behave properly and still choose the opposite model of behavior. This is characteristic of a person of “instrumental reason”, where the behavioral constraints that he/she has experienced are perceived as beneficial. It is therefore necessary to convert legal knowledge to a stimulus of constructive legal orientation. This happens when legal knowledge becomes

people's beliefs, when it is established in their consciousness as principles and standards of proper behavior. Knowledge on its own cannot become principles and standards. Knowledge is a source of facts and their explanations that are necessary in developing intellectual programmes as well as choosing a direction of activity or implementing legal norms. Legal principles and standards stem from core values on which the whole culture is based. These are the values of human existence, moral obligations, the ability to make commitments and take responsibility, the capacity to overcome obstacles and improve welfare by means of will power etc. Legal knowledge can only be significant to the activity of a person who finds meaning in and appreciates not only his/her own life, but also the life of the civil society.

When a society does not share the concept of the common good, "instrumental reason" instigates the application of market conditions in legislation: certain goals of the laws are geared towards the protection of the interests of those in power or the social groups related to them. The concept of modern (technical) law is persistently advocated. It claims that law is a value-neutral instrument of creating social order and is not related to the fact that legal order encompasses real and assumed prospects of social development that are often not differentiated by most members of society. The responsibility for the consequences in the advocated freedom of choice is imposed on members of society, who do not possess the competence necessary for exercising their freedom of choice. Even though the goals of this ideology are optimistic, the consequences of their implementation – society's disorientation in the value system, its moral crisis, and the rise in social inequality – are especially hazardous for the social integrity and democracy of the consumer society.

Conclusions

1. The interaction of democracy and modern political thought gave rise to the conceptualization of modern law. Modern law makes for a convenient instrument of government that society does not understand and thereby renders it socially inefficient.

2. The interaction of liberal democracy and the market ("new liberalism") has resulted in the formation of "instrumental reason", whose penetration into individual modes of thought and many realms of life has transformed democracy itself as well as the social structure: consumer society and the hazardous trend in the decline of sociability have become predominant. In the light of the interplay between the ever-expanding globalization and the decline of sociability, instrumental law may not be enough to ensure the functioning of society.

3. The analysis of the nature of social structures demonstrates that in the light of the interaction between moral relativism, the decline in the instrumental powers of the nation state and the expansion of globalization, the lack of the concept of legal duties and the reluctance to assume them becomes a fundamental agent of destruction of social structures.

4. The dominance of moral relativism and “instrumental reason” in consumer society cause the decline of the economic, political and social guarantees of legitimacy. Society that lacks the idea of legitimacy as a sense of common good loses its fundamental ability to be aware of the moral, legal, economic and political limitations of its social behavior, which is central to the development of its civil consciousness. The weakening of common guarantees of legitimacy inevitably leads to the decline of democracy. Particular guarantees of legitimacy alone are not enough to ensure social freedom and security. The prospects for the development of consumer society are inseparable from the exacerbating issue of the security of individuals. This issue cannot be solved on the basis of the approach to legal culture as an object. Consumer society will have to realize that security in legal order and the provisions for society’s legitimate activities can only be created through the dissemination of legitimate behavior and simultaneous implementation of human rights and freedoms.

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VARTOTOJIŠKOS VISUOMENĖS TEISINĖS KULTŪROS VIDINĖS ĮTAMPOS

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Santrauka. Straipsnyje atskleidžiamos vartotojiškos visuomenės teisinės kultūros vidinės įtampos, kurias globalizacijos sąlygomis nulėmė demokratijos, liberalizmo ir rinkos sąveika. Iš pradžių atskleidžiama, kad demokratijos ir moderniojo politinio mąstymo (liberalizmo) sąveika lėmė liberalios demokratijos visuomenės moralinio ir religinio pliuralizmo bei moderniosios teisės susiformavimą. Modernioji teisė yra patogus valdymo instrumentas, kuris visuomenei nežinomas ir dėl to ši teisė nėra socialiai veiksminga.

Liberalios demokratijos visuomenės ir rinkos („naujojo liberalizmo“) sąveikoje susiformavo individų „instrumentinis protas“, kuriam įsiskverbęs į individų mąstymą ir daugelį gyvenimo sričių buvo transformuota pati demokratija ir visuomenės struktūra: išivyravę vartotojiška visuomenė ir pavojinga socialumo nykimo tendencija. Globalizacijos plėtros ir socialumo nykimo sąveikoje instrumentinio pobūdžio teisės gali nepakakti visuomenės funkcionalumui užtikrinti.

Vartotojiškos visuomenės narių „instrumentinis protas“ pasireiškia bandymais absoliutinti ir privatizuoti žmogaus teises. Visuomenės struktūros prigimties analizė atskleidžia, kad moralinio reliatyvizmo, nacionalinės valstybės instrumentinių galių silpimo ir globalizacijos plėtimosi sąveikos sąlygomis žmogaus teisių pareigų apibrėžties nebuvimas ir jų neatlikimas tampa giluminiu visuomenės socialumo griovimo veiksmu.

Vartotojiškoje visuomenėje moralinio reliatyvizmo ir „instrumentinio proto“ išviespatavimas veda prie teisėtumo ekonominių, politinių bei socialinių garantijų sunykimu. Kai visuomenėje nesiformuoja jos narius jungianti teisingumo kaip bendro gėrio jausena ir ją atitinkanti samprata, tai ji praranda pagrindą išsąmoninti dorovines, teises, ekonomines, politines socialinio elgesio ribas, būtinas tolesnei visuomenės pilietinei raidai. Bendrų teisėtumo garantijų silpimas neišvengiamai sukelia demokratijos silpimą. Vien specialių teisė-

tumo garantijų nepakanka užtikrinti visuomenės laisvę ir saugumą. Tolesnės vartotojiškos visuomenės socialinės raidos perspektyvos susijusios su individų saugumo problemos aštrėjimu. Šios problemos neįmanoma išspręsti vien objektinės teisinės kultūros raida. Vartotojiškos visuomenės nariai turės įsisąmoninti, kad tik su teisėto elgesio sklaida galima sėkmingai kurti saugios teisėtvarkos būvį, neapleidžiant žmogaus teisių ir laisvių tarpusavio įgyvendinimo, bei formuoti visuomenės teisėto elgesio nuostatas.

Reikšminiai žodžiai: *teisinė kultūra, demokratija, liberalizmas, rinka, vartotojiška visuomenė, modernioji teisė, teisėtvarkos būklė, teisinė sąmonė, globalizacija.*

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