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© 2015 p. **Ruslana O. Havrylyuk**
Head of Department, LLD, Associate Professor of the Public Law Department,
Yuriy Fedkovych Chernivtsi National University

ORIGINAL TAX LAW OF A HUMAN

Tax law of human became the fact of reality simultaneously with the emergence of him himself and the emergence of a human society. Its origin is caused by mutual public needs of individuals. The fundamental characteristics of original tax law of a human were his antropogeny (human-dimensionality), constructability (constructivism) and contextuality, (conditionalism of redistributive relations due to inexhaustible specific content).

Key words: tax law of human, redistribution, human rights, antropogeny (human-dimensionality) tax law of human, constructability (constructivism) tax law of human, contextuality tax law of human.

Issue. *Etatist doctrine of taxation* links the emergence of tax law solely and exclusively with the state, its needs thus, tax law in its interpretation is nothing more but state tax law with the following basic characteristics: attribution of tax to the state (*public character of tax* is explained by a given cognitive tradition in this way); tax sovereignty of the state; legal establishment of tax (establishment by law); coercive character of a liability to pay taxes; fiscal nature of tax law; asymmetry of tax law; special *penal* on the part of the state and *sacrificial* on the part of taxpayers character of liability for violation of tax sovereignty of the state; paternalism as a functional characteristic of state tax law. Thus, in brief, tax law of a state – is the whole universe of values of a substantive state and, in view of criterion of its requirements, the taxpayers are not of self-sufficient value for this state. According to above mentioned constants of etatist doctrine of tax law, a man, also as a taxpayer, is not a purpose but a means of a substantive state existence.

Anthropo-sociocultural approach to the cognition of tax law as a fundamental prerequisite emerges from the opposite philosophic-methodological postulate, that tax law as the law on the whole, is the right of man, a part of mode of his coexistence with-Others, the purpose of which is to satisfy public (common to-Others) needs of this man in particular, and all Other members of *socium* on the whole having the same public needs. So, there are obvious reasons to assume that fundamental characteristics of tax law and its nature on the whole are prescribed with the same characteristics and nature of man as an exceptionally multidimensional and composed creature, self-developing phenomenon. Though, science does not have an integral commonly accepted definition of man yet. It means that, while researching the original tax law of a man we have to use the most common definition of man, among his attributive definitions, through human needs realized by him, in other words, **need approach** or **need cognition of man as elaborated and the most complete one in comparison with other attributive definitions of man.** It is also important because the **consciousness of own needs** not only belongs to attributive properties of man but, it is common knowledge that it played a key regulative role in providing of survival and evolution of man as species [See, e.g.: 1].

Given article, according to the attributes of corresponding science genre, deals with the characteristics of only *fundamental properties* of pre-state (tax) right of man.

The Main Body. Anthropity (human-dimension) of original tax law of a human. Given property of this right is caused, first of all and mainly, with that circumstance that all needs without exception, including public ones, are the needs solely of individuals. Part of them obtains the sign of commonness (publicity) only because they at the same time become characteristic to many or to all individuals without exception, though, on the level of some individuals they manifest themselves differently [See: 2]. That is, anthropity (human-dimension) of original tax law of man as one of its fundamental characteristics, first of all and mainly is a direct consequence of the circumstance, that all needs including public ones, are inherent property of man, one of his attributive qualities.

Nevertheless, it is only a part of the anthropity (human-dimension) of original tax law of man substantiation. Not to a lesser extent the *mechanism of action and realization of people's public needs* indicates the anthropity of a given right. In economic theory, sociology, political science and other sciences the groups of individuals with com-

mon public needs are usually considered to act for satisfaction of these needs in the same way as the individuals act for satisfaction of their own individual needs. This particularly is asserted by Marxist theory of classes and class struggle, a lot of theories of trade unions, economic theory of "countervailing power", American political "theory of groups" and many others. Perhaps, the authors and enthusiasts of given theories while forming their theoretical constructions proceeded from the consideration that, as far as the public needs are at the same time personal needs for every individual, so the individuals must tend to satisfy them as much as their own individual needs.

In reality, as practice testifies, everything happens conversely. The first among the scientists who noticed this phenomenon as early as in the beginning of XX c. was a well-known Italian sociologist V. Pareto. Studying the phenomenon of *social unconscious* he in "Trattato di sociologia generale" (English version: "The Mind and Society", New York: Harcourt, Brace 1935) came to a conclusion of irrationality to his mind, of human behavior in many, for the first sight, reality situations. In particular, by means of tested sociological methods he fixed *steady manifestation of evasions* on the part of many individuals of their participation in financing their public needs. V. Pareto called this phenomenon *free rider problem* (problem of the passenger without a ticket, as he sometimes specified). According to V. Pareto's explanation of this phenomenon, it has not an accidental character and is explained by a congruence of two different factors at one point: on the one hand, *egoism of the nature of an economic human,* on the other – *indivisible nature of public welfare.* Consequently, V. Pareto emphasized, in providing public welfare at all times, including pre-state ones (and perhaps, at pre-state times even more), the **situation of free rider is typical** when individuals of a group as rational creatures prefer to avoid personal participation in creation and providing common welfare, for under any circumstance provided, they by all means will get their share of this good having spent nothing for its creation, i.e., from the point of view of personal egoism, they are the gainers. Perhaps, if critical part of individuals of the group, by V. Pareto's words, refuses to take an active part in collective efforts aimed to creation of common welfare it will be either not created at all and not provided to anybody because of it, or be provided in much lesser extent than optimal [See: 3]. V. Pareto did not find a constructive way out of this deadlock[*].

By the close of XX c. the author of the *theory of group action* Mancur Olson proposed some other interpretation of this phenomenon. He confirmed the V.Pareto's observations of irrational, at first sight, behavior of individuals concerning the satisfaction of public needs. Besides that, M. Olson studying individuals' attitude to the creation and consumption of public good disclosed a legal conformity: the satisfaction of public needs of individuals by creation of corresponding public welfare by the efforts of individuals-members of socium is inversely proportional to the number of a particular group or socium. The more is their number, the less part of individuals takes voluntary active part in satisfaction of corresponding needs [See: 4].

M. Olson explains a given phenomenon in the following way: „This means that there are now three separate but cumulative factors that keep larger groups from furthering their own interests. First, the larger the group, the smaller the fraction of the total group benefit any person acting in the group interest receives, and the less adequate the reward for any group-oriented action, and the farther the group falls short of getting an optimal supply of the collective good, even if it should get some. Second, since the larger the group, the smaller the share of the total benefit going to any individual, or to any (absolutely) small subset of members of the group, the less the likelihood that any small subset of the group, much less any single individual, will gain enough from getting the collective good to bear the burden of providing even a small amount of it; in other words, the larger the group the smaller the likelihood of oligopolistic interaction that might help obtain the good. Third, the larger the number of members in the group the greater the organization costs, and thus the higher the hurdle that must be jumped before any of the collective good at all can be obtained. For these reasons, the larger the group the farther it will fall short of providing an optimal supply of a collective good, and **very large groups normally will not, in the absence of coercion or**

[*] According to the rule formulated further by P. Samuelson, the extent of provision with public welfare by V. Pareto's principle will be effective only when aggregate tendency of individuals to personal participation in creation of a given welfare will be equal to marginal expenditures of its provision (See: Samuelson P.A., Nordhaus W.D. Economics. – 19th ed. – McGraw-Hill/Irwin, 2010, p. 160-166. See: Ibidem: Слухай С.В. Довідник базових понять і термінів з мікроекономіки. – К.: Лібра, 1998, p. 153-156).

separate, outside incentives, provide themselves with even minimal amounts of a collective good" [See: 4, p. 48] (emphasis added –H.R.).

That is, instead of V. Pareto who only found out the reasons of *free rider's* emergence but could not offer efficient implements to overcome this evil, M. Olson not only found out, at first sight real reasons of irregular behaviour of individuals concerning their personal participation in expenditures for public needs, but offered real means for cardinal solution of this problem. "Only certain special institutional arrangements will give the individual members an incentive to purchase the amounts of the collective good that would add up to the amount that would be in the best interest of the group as a whole" [See: 4, p. 35]. In the other place of his monograph he specified: "Only a separate and "selective" incentive will stimulate a rational individual in a latent group to act in a group-oriented way… These "selective incentives" can be either negative or positive, in that they can either coerce by punishing those who fail to bear an allocated share of the costs of the group action, or they can be positive inducements offered to those who act in the group interest…." [See: 4, p. 51]**.**

As the data of many sciences of pre-state evolution of man and socia on the whole, which in the course of a long historical practice of social coexistence of individuals were incidental – in the form of primitive lawlessness – impress, found out and brought to the level of perfection, caused by the complexity of the problem being solved, *the selective incentive, an institutional structure,* proved to be **original tax law if individuals.** Thus this **right is exclusively human dimensional.** It became a direct consequence of individuals' property to have public needs, on the one hand, and also the property of indivisibility of public good and at the same time human characteristic of individual egoism on the other hand. Original tax law of a human is the right for him because only a man – and nobody else – is a carrier of not only individual but, also public needs, that is why, he is a sole subject of tax right of man.

Along with the fundamental characteristic of anthropity (human dimension) the original tax law of human had its one more fundamental characteristic – its constructivity (constructivism). P.Berger and T.Luckmann were one of the first among the philosophers and sociologists who started researching the essence of not only legal but also, a social constructivism on the whole as a *general ontological assumption* in a special monograph [See: 5] published in 1965. From their point of view, the whole social world, including the law, is not given in advance but constructed by human actions. Man creates law in co-existence with Others and the law, in its turn, creates people. It is not a specific, but a unique process, that is why for its cognition adequate philosophic-methodological tools are required.

P.Berger and T.Luckmann along with other novice researchers of *constructivism* as a social, legal and material characteristic, for a certain time used *traditional methodology of sociology* elaborated first of all by E.Durkheim and M.Weber, and also a *fundamental phenomenology* by E.Husserl and *fundamental ontology* by M.Heidegger. With their help it became possible to realize a lot of the essence sides of law as a social phenomenon. At the same time heuristic potential of above-mentioned tools did not contain sufficient proximate philosophic-methodological principles to find the answer to the question, **due to what is the law and what is it by its nature?**

Thus, a real philosophic-methodological breakthrough in a cognition of constructability (constructivism) as one of basic characteristics of law was *general theory of ontology of social facts and social institutions* [See: 6] worked out by J.R.Searle on the basis of fundamental ontology by M.Heidegger. The given theory allowed at last, from adequate philosophic-methodologic perspectives of how to find answers to the question of how the individuals create, construct, in literal sense, an objective social reality and also to explain the *rules of construction* of human social institutions not forgetting about the paradoxical fact that the agents of given rules are usually not conscious of them, nevertheless they always follow them, to ascertain *due to what the very right exists and how the individuals posses it.*

So, to explain true nature of social, including legal, reality J.R.Searle proposed to use the following specific categorical-conceptual structure: a) *collective assignment* (*imposition*) *of functions of social*, b) *collective intentionality (*common convictions*,* wishes and intentions of individuals*)* and c) *collective constructive rules of social* and also, demonstrated how to use them on the example of *complex legal institution of a border:* "Consider for example, – writes he, – a primitive tribe that initially builds a wall around its territory. The wall is an instance of a function imposed in virtue of sheer physics: the wall, we will suppose, is big enough to keep intruders out and the members of the tribe in. But suppose the wall gradually evolves from being a physical barrier to being a symbolic barrier. Imagine that the wall gradually decays so that the only thing left is a line of stones. But imagine that the inhabitants and their neighbors continue to recognize the line of stones as marking the boundary of the territo-

ry in such a way that it affects their behavior. For example, the inhabitants only cross the boundary under special conditions, and outsiders can only cross into the territory if it is acceptable to the inhabitants. The line of stones now has a function that is not performed in virtue of sheer physics but in virtue of collective intentionality. Unlike a high wall or a moat, the wall remnant cannot keep people out simply because of its physical constitution. The result is, in a very primitive sense, symbolic; because a set of physical objects now performs the function of indicating something beyond itself, namely, the limits of the territory. The line of stones performs the same function as a physical barrier but it does not do so in virtue of its physical construction, but because it has been collectively assigned a new status, the status of a boundary marker" [See: 6, p. 39-40].

The example of a complex legal institution of a border testifies that its quintessence consists of *collective intentionality*, *collective imposition of function and collective rules of construction of social,* more precisely, legal phenomenon. The border itself due to its own physical properties is not able to perform characteristic to it functions, specifically as a border, without corresponding imposition on it of these functions by a corresponding socium. "The key element in the move from the collective imposition of function to the creation of institutional fact [of a border]*"*, according to J.R. Searle, "is the imposition of a collectively recognized status to which a function is attached. Since this is a special category of agentive functions"*,* J.R. Searle called them *status functions* [See: 6, p. 41].

The whole right of individuals is constructed according to a given algorithm. Applying the *method of general theory of ontology of social facts and social institution* by J.R. Searle, and also using already known to anthropology facts which indicate the individuals' satisfaction of their public needs in pre-state period of evolution, it is not difficult to reveal a constructive character of original tax law of a human. For example, a well-known German researcher of primitive and subsequent pre-state societies H.Cunow, on the basis of abundant ethnological material demonstrates the nature (status assignment) and collectively recognized functions of the institute of *common warehouses,* which were characteristic to many of above mentioned societies. So, most Indian tribes of Northern America, he wrote, formed *common warehouse* in which the articles of food remained after the family's everyday use were necessarily kept.. Naturally, *common warehouses* were renewed not according to plan, but from time to time, mostly seasonally. In particular, in autumn during maiz harvest and great buffaloes hunt, tribes of *Omaha* and *Mandan* stored in *common warehouses about half-gathered grains and hunted buffaloes* for worse times, before that they prepared everything for a long-term storage by well-tried methods. All adults from the tribe participated in it. Stores prepared in that way were used in the period of season droughts, in winter or in other cases of emergence [See: 7]. It was a prototype of modern *institute of insurance fund.*

The given institution obtained still more extent in times of early husbandry, H.Cunow and also J.Diamond wrote about it. And in new historical terms the redistributive legal institute of common warehouses, as they noted, kept its nature (status assignment) and collectively imposed functions, and varied itself only in the form. H.Cunow drew attention that Indians of Gulf of Mexico and Pueblo near the fields belonging to certain generations or families had the *institution of communities' external fields* which belonged to common (public) property and were cultivated by all the members of a collective. The harvest from these fields was completely put to communities' barns, and then from the gathered in that way insurance funds certain shares (parts) were given to all members of the community at *force majeure* circumstances [See: 7, p. ?]. J.Diamond substantiated the hypothesis that "the function of the first gardens of nearly11,000 years ago was to provide a reliable reserve larder as insurance in case wild food supplies failed [as early husbandmen did not learn the technology to keep food in harvested state – H.R.]" [8].

The list of pre-state legal redistributive institutions of the socia of those days is not completed with the given examples. As in the case with complex legal institution of border, all institutions of original tax law of individuals also became regular consequence of *collectively imposed functions* (to be insurance fund of public welfare), *collective intentionality (*common convictions*,* wishes and intensions of all individuals who saw in *reserved warehouses* a useful tradition), and *collective constructive rules (consider reserved warehouse to be public welfare,* or consider reserved warehouses public welfare in the case of droughts, winter, etc.). The whole pre-state redistributive right of individuals was constructed in that way.

The inverse side of the characteristic of constructivity (constructivism) of original tax law of a man was his substantive characteristic of contextuality. Simultaneously, it was in inextricable connection also with its *characteristic of anthropity.* Given characteristic became an unavoidable consequence of

invariance of anthropo-sociogenesis. In principal, the historical way of no socium was identical to the historical way of the other society.

Modern historiography lists several dozens of fundamentally different among themselves large *types of civilization* [See: 9]. If take into consideration all socia of one and the same type of society, their total number enlarges minimally in several times and equals many hundreds or even thousands of units. Still more different due to objective reasons and subjective factors, was an internal variety of every socium on different levels of its evolution, which produced the same richness of differentiating among themselves its social norms, rules, patterns on the whole etc. [For more details see: 10]. Though, even on their background the contextuality of the evolution process on the level of separate individuals – this key, system-forming element of socium [For more details see: 11], - proved to be absolutely incommensurable with the both above mentioned phenomena.

Thus, contextuality of original law of individuals particularly, as their whole pre-state right on the whole, mostly was caused by the fact that it was a *dynamic system of symbolic texts and contexts,* still larger set of concrete legal situations, basically common and simultaneously a great deal different, to some extent even original, wich included all individuals of all socia because of satisfaction of their common with all, or with the majority of other individuals', needs.

Given *contextuality* distinguished first of all with pronounced *horizontal character.* It was on the one hand, unavoidable consequence of social coexistence of individuals and, at the same time it much more enriched given sociality, multiplied its abilities and prospects, dynamically developed in space and time. The fundamental condition of the existence of *contextuality* of original tax law was an individual with his private and public needs. He was, practically, the highest, ultimate purpose and value of original tax law.

Naturally, most written documents of antiquity did not fix it, because historically written system coincided with the time, and moreover, as a rule was a direct consequence of the emergence of substantial states which had their system of priorities and values, and created their own, positive right for themselves. Nevertheless, modern anthropology of law is aware of many redistributive (tax-legal) social institutions testifying both, contextuality and person-centricity of this law.

One of the earliest, wide-spread and thus, the best-known institutes was the *institute of cult sacrifices* [See: 12]. Considering *constructivity* as a characteristic of original tax law we have already mentioned the institutes of *public warehouses, common reserved warehouses, external fields of communities. The institute of hospitability* [See: 13]*, the institute of mutual gifts (*institute of *potlatch* in terminology by M. Mauss) [See: 14], which was subdivided into sub-institutes of *reciprocation (*mutual gifts among equal by social status individuals) and *redistribution* (gifts of subordinates for their patrons) [See: 15], the *institute of poliudie* [See: 16], and many others. Along with the above mentioned internal social pre-state redistributive institutes of individuals there also took place the taxation of individuals of another socia in the form of *military robberies* [See: 17]*, contributions* [See: 18], and *tributes* [See: 19].

In available scientific literature in anthropology and other fields of knowledge of the past of a man, it is possible to find without special difficulties a lot of other redistributive social institutes, but from the perspective of the purpose of our research there is no direct necessity in it. Above-mentioned scientific facts and other arguments are sufficient to deny traditional positivist imaginations of the nature of tax law as exclusive law of substantive state, and also to substantiate a scientific conclusion that **state tax law was preceded long enough even from historic point of view period of its development as the *rights of man***. Large as a bottom of iceberg, complete and true history of original tax law yet should to written. It is worth a special attention, and social demand for its appearance has already been shaped.

Conclusions. Original tax law of a human emerged simultaneously with the emergence of the man himself and human society. Its emergence is caused by individuals' needs common with (public) needs of others. The fundamental characteristics of original tax law of a human are the following: his anthropity (human dimension), constructivity (constructivism) and contextuality (causation of redistributive relations by inexhaustible specific content).

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Р.О. Гаврилюк

Витоки податкового права людини

Анотація

Податкове право людини стало фактом дійсності одночасно з появою її самої та людського суспільства. Його виникнення зумовлене наявністю в індивідів спільних з іншими (публічних) потреб. До основоположних властивостей додержавного перерозподільного (податкового) права людини належали його антропність (людиновимірність), конструктивність (конструктивізм) і контекстуальність (зумовленість невичерпним конкретним змістом перерозподільних відносин).

Ключові слова: податкове право людини, антропність (людиномірність) податкового права людини, конструктивність (конструктивізм) податкового права людини, контекстуальність податкового права людини.

Р.А. Гаврилюк

Истоки налогового права человека

Аннотация

Налоговое право человека стало фактом действительности одновременно с появлением его самого и человеческого общества. Его возникновение обусловлено существованием в индивидов общих с другими (публичных) потребностей. К основополагающим свойствам догосударственного перераспределительного (налогового) права человека принадлежит его антропность (человекомерность), конструктивность (конструктивизм) и контекстуальность (обусловленость неисчерпаемым конкретным содержанием перераспределительных отношений).

Ключевые слова: налоговое право человека, антропность (человекомерность) налогового права человека, конструктивность (конструктивизм) налогового права человека, контекстуальность налогового права человека.