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Anahit Manasyan[*]
Taron Simonyan[**]

Legal Symbolism and Constitutional Policy in Contemporary Reality of Changes

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Abstract: *The article tries to bring to the light the role of symbolism in the organized human life, in general, and the contemporary societies with the accelerating changes almost in all social structures, in particular. The rational of symbolism in changing socio-political and legal environment creates complexity of the issue, which has been studied in the article, taking into account the methodology of complex system theory.*

The interconnectivity and interdependency of law, morality and politics create the picture of synergy of different social norms with each other in changing environment. Their positive synergy is able to create a perception of the 'ethical state' – the focal point of equilibrium expressed in the attractor of future admired development. In the legal perspective, the symbol of that attractor appears to be the constitution as the society's and the nation's symbol of coexistence based on the values of mutual past, necessary present and admired future.

It is substantiated that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values. Hence, the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic

[*] ORCID ID: https://orcid.org/0000-0001-6404-4318; Vice-Rector of the Academy of Justice of the Republic of Armenia, Associate Professor at the Chair of Constitutional Law of Yerevan State University. Email: a_manassian@yahoo.com.

[**] ORCID ID: https://orcid.org/0000-0001-8175-9382; Member of the Parliament (Deputy) at the National Assembly of the Republic of Armenia, Associate Professor at the Chair of History and Theory of State and Law of Yerevan State University. Email: tsimonyan.arm@gmail.com.

significance. The authors substantiate that the mentioned significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system. The most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power and the whole constitutional policy of the state should be based on the discussed essential idea. Moreover, according to the authors the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the mentioned changes. The Constitution has a fundamental role from the aspect of regulating social relations, has symbolic significance and can't be used just as a tool for solving ongoing political problems.

Introduction

Symbols have significant importance for everyday life and proper regulation of social relations. They are an essential mean for the process of identification. The history of the organized human life shows that the society will always look for symbols for shaping also its constitutional identity, and in case of choosing wrong shapers the whole constitutional system and identity will be distorted. Though some separate research on legal and constitutional symbolism can be found in literature, there is no uniform academic approach and thorough legal doctrine on them. Hence, the issues with regard to legal symbolism and constitutional politics need a thorough analysis, which will be presented in the frames of the article.

The Essence of Symbols and the Role of Symbolism in the Organized Human Life

In Cambridge Dictionary symbol is defined, inter alia, as a sign, shape, or object that is used to represent something else; something that is used to represent a quality or idea. Moreover, an object can be described as a symbol of something else if it seems to represent it because it is connected with it in a lot of people's minds[1]. In Merriam-Webster Dictionary symbol is presented, inter alia, as an authoritative summary of

[1] See Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/symbol (31.03.2020).

faith or doctrine; an object or act representing something in the unconscious mind that has been repressed; an act, sound, or object having cultural significance and the capacity to excite or objectify a response[2]. Symbolism, in turn, is defined as the practice of representing things by symbols, or of investing things with a symbolic meaning or character; a set or system of symbols; symbolic meaning or character[3]. Symbolism is also characterized as the art or practice of using symbols especially by investing things with a symbolic meaning or by expressing the invisible or intangible by means of visible or sensuous representations; a system of symbols or representations[4]. Symbolism is also defined as the use of symbols to represent ideas, or the meaning of something as a symbol[5].

There is a viewpoint in literature that "Symbols are central features of organized human life, helping to define perception, shaping the way we view the world and understand what goes on within it. But, despite this key role in shaping understanding, there is never a single interpretation of a symbol that everyone within the community will accept, and the way in which symbols can mobilize antagonistic political factions demonstrates that they are as much a central element for power struggles as they are avenues to facilitate processes of identification. … Symbols are central features of organized human life. While most apparent in some formal spheres of activity, like organized religion or the emblems of statehood (flags, hymns, escutcheons), they are actually present in all walks of life. This is because they perform an essential service in making complex phenomena appear simple and legible. They represent, in simplified form, complex ideas, reducing them to simple images which convey the complexity they represent… Symbols facilitate understanding of the world by rendering complexity in ways much more easily understandable by reducing that complexity to simplified images. In this sense, symbols help to define perception; they shape the way we view the world and understand what goes on within it. Although symbols play a key role in shaping understanding, they are not univocal. This means that there is never a single interpretation of a symbol that everyone

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[2] See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/symbol (30.03.2020).

[3] See https://www.dictionary.com/browse/symbolism (30.03.2020).

[4] See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/symbolism (30.03.2020).

[5] See Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/symbolism visited (30.03.2020).

within the community will accept. Different groups and individuals will interpret symbols differently because they all have the capacity to create the virtual reality within which they operate… Symbols are thus multivocal, having different meanings for different people. This multivocality of symbols means that symbolic discourse is a battleground of ideas and interpretations as individuals and groups struggle over political questions and seek to mobilize symbols in support of their cause. … In our day-to-day life, symbols are key markers in the shaping of (apparently homogeneous) collective identities. But, at the same time, the way in which symbols can mobilize antagonistic political factions demonstrates that they are as much a central element of power struggles as they are avenues to facilitate processes of identification… Symbols are thereby central to creating the conditions on which both the community and the state will advance into the future and how they will relate to each other"[6]. It is also emphasized in literature that "Symbols are manifestations of the deeply felt human need to order what Henry James called "the blooming, buzzing confusion" of experience and endow this order with meaning. Order is socially cued and of human construction. Symbols are the artifacts or objectifications of this search for meaning; they are value and emotion laden. Symbols become part of the day-to-day realities we know so well that we are not conscious of their compulsions and demands. At the same time, these social constructs are subject to the constant pressure of changing experiences"[7].

It has continuously been emphasized in literature that the power of symbols is enormous. Men possess thoughts, but symbols possess men. Men are notably more sensitive to images than to ideas, more responsive to stereotypes than to logic, to the concrete symbol than to the abstraction[8].

To human understanding, symbols, in general, are cultural expressions of reality, a set of perceptions, which helps human beings to be oriented in space and time. In different period of times, in different phases of developments, every society, every culture has its own system of symbols, which are associated with different perceptions. But almost

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6 See G. Gill, L. F. Angosto-Ferrandez, *Introduction: Symbolism and Politics*, «Politics, Religion & Ideology» 2018, no. 19 (4), pp. 429–433, https://www.tandfonline.com/doi/pdf/10.1080/21567689.2018.1539436?needAccess=true (2.04.2020).

7 See R. Rothman, *Political Symbolism*, [in:] S. L. Long (ed.), *The Handbook of Political Behavior*, Springer 1981, https://link.springer.com/chapter/10.1007%2F978-1-4615-9191-7_5 (2.04.2020).

8 See M. Lerner, *Constitution and Court as Symbols*, «Yale Law Journal» 1937, no. 46, p. 1293.

in all cases the core of the symbolic understanding of the human, social and natural environment is the same with slight deviations.

The above leads to a conclusion that symbols have significant importance for everyday life and proper regulation of social relations. They are an essential mean for the process of identification. This is the reason that there is a danger of transforming the symbols to instruments for manipulation of the society. Moreover, it is important to differentiate symbolism from fetishism in the sense that fetishism is irrational, while symbolism is rational[9].

Complexity and Symbolic Rationality of Law

Sometimes it is hard to determine the shape of law, bring to the light its essence and make it understandable without turning to symbols. Symbols help to identify in the perception of people what they want to be led by. On this basis, through understanding the way of perception of people and individuals, one can stipulate due symbols of the norms contributing into behaviour of an individual and a society.

But it is not so easy, as we must study the perception not in a stationary environment but in the process of change. "A study of human affairs in movement is certainly more fruitful, because more realistic, than any attempt to study them in an imaginary condition of rest[10]". Things get more difficult when we deal with complex environment of social changes or in other words – complex systems, which are in the process of permanent uncertainty with huge changes in all details, even in pillars of the very essence of existence of what connects people in social realm.

The most striking feature of contemporary life is the revolutionary pace of social change. Never before have things changed so fast for so much of mankind. Everything is affected: art, science, religion, morality, education, politics, the economy, family life, even the inner aspects of our lives – nothing has escaped[11].

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[9] In its dictionary definition fetishism is considered to be an extravagant irrational devotion. See Dictionary by Merriam-Webster, https://www.merriam-webster.com/dictionary/fetishism (30.03.2020).

[10] See A. J. Toynbee, *Sorokin's philosophy of history*, [in:] P. J. Allen (ed.), *A. Pitirim Sorokin in Review*, Duke University Press 1963, pp. 67–94.

[11] See E. Gerhard, J. Lenski, *Human Societies: An introduction to Macrosociology*, McGraw Hill 1974, p. 3.

The law is not an exception, as it must fit the existing social changes and try to regulate them in an effective manner[12]. "We live in a time of continuous, extensive, some might say hyperactive law reform. Law and development is merely a special application of this familiar and pervasive notion. It is based on the same assumption, requires the same leap of faith, and is subject to the same doubts and reservations"[13].

That is why when dealing with the norms (especially with legal norms) regulating social and individual behavior, we must bear in mind all possible interactions, interconnectivity and interdependency within or out of the social system, which predetermine social changes, go in parallel or follow them. Moreover, "social change may also be conceived as occurring at the macro-level of international systems, nations, states; at the mezzo level of corporations, political parties, religious movements, large associations; or at the micro-level of families, communities, occupational groups, cliques, friendship circles. Then the central question becomes how the changes running at those various levels interrelate"[14].

The interconnectivity and interdependence of various players, factors in the social dynamics open a new reality of permanent acceleration in social change with growing complexity in humans' perception of interlinked networks of rules (norms [moral, legal, canonic, etc.], values, prescriptions, ideals, etc.).

"In reality, reality is a matter of perception and focus; we all experience different environments in our lives, and we interpret events in the same environments differently. The things to which we ascribe importance differ from person to person, thus each of us has different perceptions of our environment and corresponding different brands of logic. One of the more interesting human phenomena is the way our different perceptions interact and the degree of energy we put into changing each other's perceptions of reality[15]." Every person in a society with some degree of influence tries to impose his/her perception of things upon another person. Politicians, leaders, managers, advertisers, teachers, professors, lawyers, philosophers, ecclesiastics, etc., they are all trying to

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[12] See T. Simonyan, *Controlled Reality and the Fiction of Freedom: Synergy Algorithms*, [in:] *Materials of the Conference Devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University*, Yerevan State University Press 2018, pp. 25–36.

[13] See J. H. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline & Revival of the Law and Development Movement*, «The American Journal of Comparative Law» 1977, No 25 (3), p. 464.

[14] See P. Sztompka, *The Sociology of Social Change*, Blackwell Publishers 1993, p. 7.

[15] See R. Marion, *The Edge of Organization: Chaos and Complexity Theories of Formal Social Systems*, Sage Publications 1999, p. 221.

impose their perception what is good or bad, legal or illegal, important or not important. By doing so, they also add energy to the changes of the entire environment. And when we try to see the whole picture of influences, interconnectivity, interdependence and "*butterfly effects*" upon the environment with growing amount of information, a holistic system with its deep complexity arises before us.

This new reality of complex environment makes us go deep into network of structural change itself, in order to understand how the change occurs in collective and individual behavior, and how law can shape it. Will symbolic rational in law help to bring the idea of law to people or will it change the idea within? The theory of complex systems will help us in this regard.

One might accept the presence of invisible hands throughout social life and the value of using complex adaptive systems theory to understand them better, but nonetheless resist applying complex adaptive systems theory to legal systems on the ground that the law is where humans write the rules for other social systems. But this misses two fundamentals. First, the legal system, as a source of rules for regulating other social systems, should take into account how those systems operate. If one wishes to regulate a complex adaptive social system, one ought to think like a complex adaptive social system. Second, law, as in the collection of rules and regulations, is the product of the legal system, a collection of people and institutions. Law, in this sense, is simply an emergent property of the legal system the same way prices are an emergent property of markets[16].

In the age of unforeseen social changes and huge information flow, which reorganize the construction of human communication, it is getting harder to make people realize the essence and requirements of law. Thus, individuals prefer to turn to the symbolic nature of law rather than to the content. It is easier and it is convenient. Indeed, some rhetoric questions arise in this regard:

- *Why should a man/woman try to understand the whole picture of accelerating and unforeseen changes in the environment that formulate the absence of any organizational reality full of fear of unpredictable future and resulting in his/her cognitive chaos, when s/he can use the crystalize perception of the majority or a group of people towards a standard behaviour, in order to be oriented in some period of time and space?*

[16] See J. B. Ruhl, *Law's Complexity*, Georgia State University Law Review Symposium Issue, Forthcoming, FSU College of Law, «Public Law Research Paper» 2008, no. 313, p. 897.

- *Why should a man/woman focus his/her mind to understand the structure and complexity of the norms regulating his/her behaviour, when s/he can use the same crystalize perception of the majority or a group of people towards a standard behaviour, which has been formulated as a symbol of a 'good' or 'bad' behaviour?*
- *Why should s/he go deep into questioning the rationale of that very symbol, if by doing so s/he will open the doors for the incomprehensible complexity of its internal world full of interconnectivities, interdependency and synergy networks of social norms (legal, moral, etc.), when s/he can use the same symbols in ordinary life and have legitimacy of behaviour expressed in legal norms?*
- *Or simply: why to overload the mind with socio-legal complexity, when one can reach "almost" the same social result with simple orientation provided by legal symbols?*

Having all these in mind, we should understand the complex structure of social symbols, symbolic communication, as well as symbolic rationality of law.

It is hard to define a finite formula for symbolic rationality of law because of the internal variety of law and non-normative character of symbols. But the structural dependency of both from each other helps us to understand why the law requires symbolic rationality for its appearance in humans' perception, why legal symbolism is a matter of fact in our societies, and why the issue deserves our attention.

There is a profound difference between philosophical and sociological perspectives of social symbols and symbolic communication. The philosophical perspectives emphasize what might be called 'a new dimension of reality'[17] or 'a fifth dimension'[18] of human existence which reshapes the four social dimensions of space-time into a shared universe of symbols communicating the meaningful existence to both individuals and societies. Its primary purpose is to examine social symbols as an expression of human nature and/or the media communicating and searching for the meaning of human existence[19].

According to the anthropological philosophy, symbols do not have actual existence in the physical world, yet they have a 'meaning' and

17 See E. Cassirer, *An Essay on Man: an Introduction to a Philosophy of Human Nature*, Yale University Press New Haven 1944, p. 24.

18 See N. Elias, *The Symbol Theory*, Sage 1991, p. 47.

19 See J. Přibáň, *On Legal Symbolism in Symbolic Legislation: a Systems Theoretical Perspective*, [in:] B. van Klink, B. van Beers, L. Poort (eds.), *Symbolic Legislation Theory and Developments in Biolaw*. Legisprudence Library 4, Springer 2015, p. 108.

thus make a clear distinction between actual reality and possibility. The difference between things and symbols constitutes human culture as a realm of the difference between facts and ideals. The general function of symbolic thought is thus the establishment of ideals, which, by definition, are impossible to materialize. They are in the state of potentiality which is both a necessary and indispensable part of our social reality[20].

Symbolic communication imagines modern differentiated society as a unity and thus enhances moral reflections of social cohesion. It maintains the identity of a collectivity, its social boundaries and its internal development. Legal communication is not immune from this fundamental desire for social unity and collective identity pursued by moral communication. Apart from the instrumental rationality of formal legality, the legal system makes the symbolic rationality of communal bonds, collective identity and unity part of its communication[21].

Symbolism in the legal sector cannot be treated as its normative foundation. It, rather, is independent and emancipated from constraints of legal normativity and therefore can equally contribute to its stabilization and destabilization, confirmation and change[22].

It can be considered as an 'attractor'[23] for stabilization and confirmation of the existing social system, in general, and legal system, in particular, if the existing moral values of ongoing social dynamics do not contradict to the political (with economic and other factors) strategy or drifting inertia to desired social changes. And vice-versa: it can express itself as an attractor of emerging changes, when contradictions between political will of desired changes and socio-moral perception of inadmissibility reach intolerant point. At this phase, different bifurcations will occur: (1) emergence of a new socio-political order with its new legal symbolism; (2) prolonged non-equilibrium with permanent hostile struggles of values and perceptions; (3) formal equilibrium with a new or old order and symbolism but with internal conflict of values and perceptions; (4) other variations.

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[20] Ibidem.

[21] See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*, Cardiff University 2007, p. x.

[22] See J. Přibáň, *On Legal Symbolism in Symbolic Legislation: a systems theoretical perspective…*, p. 110.

[23] See L. D. Gilstrap, *Strange Attractors and Human Interaction: Leading Complex Organizations through the Use of Metaphors, Complicity*, «An International Journal of Complexity and Education» 2005, no. 2 (1), pp. 55–69.

Why is it important to turn to the morality? Because the symbols' function of stabilization or progressive change arises in society in the very point, where the synergy of morality, politics and law reaches its optimal productivity without harming any of them.

Ethical State: Synergy of Morality, Law and Politics

It is obvious that modern societies vary from the classical concepts of any of social systems defined in our books by just only one specific feature. Most of the people in the world live in open societies, where free information flow creates network of interconnectivity and interdependence. The process of changes is accelerated by the synergy of different factors acting in different places within the common interconnected structures.

By bringing together all the puzzles of the big picture of modern societies we face the emergence of various social structures and systems affecting each other and playing at the edge of social order and social chaos until finding relative stability in an equilibrium of choices and interests.

The same situation is with the synergy of moral, legal and political systems and structures. And it is very hard to find and crystalize general symbols, which may cover the mentioned three systems of behaviour regulation, providing easier understanding for common people in their social orientation. "Modern societies have no centre or integrative structure of general symbols and achieve their stability by the different operations of different social systems. Truth cannot be functionalized in the sense of a political authority guaranteeing a generally binding interpretation of social reality and the world in general. … Different systems may only 'irritate' each other via the environment but cannot provide social foundations for each other. Functional differentiation rules out any chance that society itself could be found in the society, its 'authentic' reflection and truth. The moral system, which uses the concepts of identity, good and authentic 'truthful' being, is only one of many descriptions of modern society. It is not an ultimately valid description of this society"[24]. Moreover, "[e]very communication between different social systems therefore supports their self-reference and operational closure and rules out any chance of hierarchy between functionally dif-

[24] See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 11.

ferentiated social systems such as economy, politics, law, morality, art and education"[25].

Despite some difficulties of communication of these systems in the sense of interdependency, these very systems of rules affect each other and try to find themselves in the state of changing equilibrium, when there is a common direction of general change or global change of the common environment for all structures. The directive 'force' of such changes can be an attractor of progress, expressed in a symbolic notion of common good and interests.

The very *path of attraction*, which will be 'focal point' for optimal productivity and interactions of moral, legal norms with the political reality and missions, especially during accelerating social changes of nowadays realm, is the matter of fact resulting from *strange attractor*[26] and not a foreseen strategy. This means that classical paradigm of construction of the social order with solidarity and productive equilibrium for progress can hardly be reached with classical means of legal and political strategy. We can only try to define the *path of attraction*, which will lead to that wishful focal point of social environment. The only legal tool, which can be used in defining that attraction can be *general or basic norm* that has binding force for all members of the same society. For Kelsen's 'Pure Theory of Law' it will be similar to *Grundnorm*[27], but taking into account Kelsen's position on the essence of law, it will not have any moral or other social content in it, except pure legal.

For that desired state of synergy between moral and legal norms, as well as political will, we are inclined to use the term of 'Ethical state'. In this means ethical state can be considered as a hypothetic reality, where possible contradictions between morality, law and politics turn to optimal interdependency, cooperation and productive equilibrium, where the general ethical will supersedes and integrates social and individual morality. This is very similar to the Hegelian approach to the notion of ethical state, according to which "*the right of individuals to be subjectively destined to freedom is fulfilled when they belong to an actual ethical order, because their conviction of their freedom finds its truth in such an objective order, and it is*

[25] Ibidem, p. 12.

[26] The strange attractor is an obvious metaphor for social phenomena. It is stable, but its trajectory never repeats itself; likewise, social behavior is stable but never quite repeats itself. The strange attractor has the capacity to change. It can grow or it can shrink to encompass a broader or a narrower range of behaviors; it can alter its appearance; it can convert to a dramatically different attractor; and it can even fade away. See R. Marion, *The Edge of Organization: Chaos and Complexity Theories of Formal Social Systems*, Sage Publications 1999, p. 22.

[27] See H. Kelsen, *Pure Theory of Law*, The Lawbook Exchange Ltd., Union, New Jersey 2002.

in an ethical order that they are actually in possession of their own essence or their own inner universality"[28].

Instead of being a legal reflection of 'the ethical State', the modern concepts of rule of law and democratic constitutionalism are expected to provide the necessary synthesis of these two social antinomies without regressing to the older concept of politics as an ultimate social integration by sovereign state power. However, it means that the question of hierarchy and the supremacy of law over morality and morality over law is unanswered[29].

If the issues with legal system is relatively clear, as the law has very certain requirements when dealing with its positive material – legislation, the same reflection cannot be done for the moral system. Although morality has also norms for due behaviour of members of a certain society or community, they have no separate formal appearance, but they mostly appear in humans' individual or public consciousness and seldom – in legal norms, as a social-moral foundation for separate regulations. Here we can have a difficult and circulate problem. We should always hold in mind that morality usually lacks the power to integrate other social systems and dominate their communication in fast growing, multinational societies, but it sometimes succeeds in the same integration, when dealing with traditional, national societies. But for the last ones, we should also remember that morality of public consciousness or community-traditional thinking always tries to integrate other social systems (political, legal, etc.) into morality. By doing so the internal operations of social systems (for example, law) can be paralyzed by the same moral system.

This is very sensitive synergy of different social systems, which can be resulted in positive synergy ($2 + 2 > 4$) with effective productivity for all components of interconnected structures and systems, and negative synergy ($2 + 2 < 4$) with damaging results for the same components. The outcome depends on various factors: the speed of the changes in society, level of the multinationalism, the power of traditionalism and customs, the maturity of legal culture, political environment, different other factors, as well as the nature of interactions within the moral system – between the two types of morality: morality of duty and morality of aspirations.

Morality of duty is largely about the binary code of truth/false or good/bad and the requirements to fulfil the obligations demanded by the

[28] See G. W. F. Hegel, *Hegel's Philosophy of Right*, https://www.marxists.org/reference/archive/hegel/works/pr/philosophy-of-right.pdf (27.05.2020).

[29] J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 10.

community understanding of that binary code. For the morality of duty there are two questions to be answered: (1) Is there a moral obligation to obey a rule? and (2) What kind of reasons can justify violation the obligation to obey that rule? Paraphrasing these questions into a simple sentence, it will look like this formula: "To say that there is a moral obligation to obey the law is to say that it *would* be morally wrong to break the law if one had no adequate reason to break the law"[30].

The morality of aspiration is the morality of the Good Life, of excellence, of the fullest realization of human powers. In a morality of aspiration there may be overtones of a notion approaching that of duty. But these overtones are usually muted, as they are in Plato and Aristotle. Those thinkers recognized, of course, that a man might fail to realize his fullest capabilities. Generally, with the Greeks instead of ideas of right and wrong, of moral claim and moral duty, we have rather the conception of proper and fitting conduct, conduct such as beseems a human being functioning at his best. Where the morality of aspiration starts at the top of human achievements, the morality of duty starts at the bottom. It lays down the basic rules without such an ordered society is impossible, or without which an ordered society directed toward certain specific goals must fail of its mark[31].

Bearing in mind what is the main features of the morality of duty, which is about the past and present, we must give the emphasize to the morality of aspiration, because it is about the present and future. Why to emphasize the morality of aspiration, because it has more to do with the changes in the society and individuality, than the morality of duty. Of course, one cannot forget about the importance of the last one, because it lays down the basic rules that connect the past and the present of a given society and is the indissoluble essence of the morality. Meanwhile, the morality of aspiration brings the moral requirements of an ideal individuality and society, the progressive and intellectual part of the society wants to see in the near future. In another word – a state of *arete*, synonym to moral virtue or excellency of any kind[32]. That is why the morality of aspiration brings new energy in the synergy of morality, law and politics. Moreover, the binary code of good/bad and truth/false with the complex code of aspiration will not constitute the moral value of human, national or state history, if they are not "*accompanied*" by legal

[30] See F. Schaver, W. Sinnott-Armstrong, *Philosophy of Law: Classic and Contemporary Readings with Commentary*, Oxford University Press 1996, p. 221.

[31] See L. L. Fuller, *The Morality of Law*, Yale University 1969, p. 5.

[32] See R. W. Hall, *Plato and the Individual*, Springer 1963, pp. 55–66.

and political background and appearance, sense of legal and political history and its temporal dynamics, as well as a clear vision to the horizon of social, national and statehood's progress.

Not trying to dig deep into interdependency of law-morality-politics triangle in the dynamics of complex social systems, we should have clear understanding of possible interconnections of these systems in every separate society, in order define the focal point of optimal productive interactions, which can be the environment of emerging of the 'ethical state', expressed in a *symbolic legal document of political will and moral aspirations*.

Different legal and political teachings have the notion and idea of creating an ethical state with collaboration of moral, legal and political principles. For example, in the VI century B.C., Confucius stipulated three core principles – filial piety, humaneness and ritual, which constitute basic ethics harmonizing law, morality and politics, with emphasize on morality. In the XVIII century A.D., Immanuel Kant introduced his doctrine of categorical imperative as a basic ethical rule with its two formulas: "Act only according to that maxim by which you can at the same time will that it should become a universal law" and "So act as to treat humanity, whether in your own person or in another, always as an end, and never as only a means"[33].

Another, very interesting approach to this issue has been provided by an American author Ronald Dworkin. According to him, the moral evaluation of law is dependent on a political community and its claims of integrity and shared values: "Integrity becomes a political ideal when we make the same demand of the state or community taken to be a moral agent, when we insist that the state act on a single, coherent set of principles even when its citizens are divided about what the right principles of justice and fairness really are. … The integrity of a community's conception of fairness requires that the political principles necessary to justify the legislature's assumed authority be given full effect in deciding what a statute it has enacted means. The integrity of a community's conception of justice demands that the moral principles necessary to justify the substance of its legislature's decisions be recognized in the rest of the law"[34]. This is the pragmatist approach to legal rights and law, according to which the last ones are "*only the servants of the best future*"[35], the

33 See I. Kant, *The Metaphysics of Morals*, Cambridge University Press 1996.
34 See R. Dworkin, *Law's Empire*, Harvard University Press 2001, p. 166.
35 Ibidem, p. 160.

symbols that combine morality (with its two components) and politics, and ensure the effective pathway for the best future.

In contrary to this position there is another view, according to which "the system of morality often uses legal communication but does not provide any ultimate framework of 'the ethical State' and its system of positive laws." And "that acts of modern constitution-making, despite their moral symbolic language of common identity, ultimate principles and 'good' social values, may result only in systemic pluralization and differentiation of law, morality and politics"[36].

Taking all these positions into consideration, we can determine that the optimal tool for formalizing the synergy of morality, law and politics at the effective equilibrium 'state' for all three components of the general social system. That focal point of equilibrium can be more moral, more legal or more political with differentiated or combined formulas. It depends on various factors of the society features – legal traditions, multinationalism, speed of changes, religion, culture, etc. As for the society, all these interactions are not interesting to be realized in the level of conciseness. What is more important for the common people is the symbolic communication with the state, as well as with other people in the same society or sometimes – in the international community. And what is more important for the progress and *best future* of the society, is the nature of that symbols to have historical mission expressed in the policy of the statehood as an attraction for the society towards harmonization its values and perceptions of social reality, thus – emergence of a new or permanent socio-political order with its new legal symbolism.

Speaking through the wording of synergetics, it is similar to what we call attractor that provides a set of numerical values toward which a society tends to evolve, for a wide variety of starting conditions of the same social system. Paraphrasing all results of the interdisciplinary research into legal terms and legal discipline, we may stipulate the symbol of the attractor of social equilibrium and change, as the constitution.

Constitution as a Symbol: Myth or Reality?

The above-presented analysis shows that one of the most important issues subject to a study in the frames of legal symbolism is the symbolic role of the Constitution. Constitution is an important indicator

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36 See J. Přibáň, *Legal Symbolism: On Law, Time and European Identity*…, p. 4.

for constitutional identity and one of the main tools for guaranteeing systemic stability.

A number of Constitutions prescribe that the Constitution is a legal act with a highest legal force. For instance, according to Article 5 of the Armenian Basic Law the Constitution shall have supreme legal force. Article 5 of the Constitution of Bulgaria defines that the Constitution shall be the supreme law, and no other law may be in conflict therewith. In accordance to Article 8 of the Constitution of Poland the Constitution shall be the Supreme Law of the Republic of Poland, etc.

Hence, the following questions arise in the mentioned context: What kind of role does the Constitution have for the concrete constitutional system? Is it just a legal act with a highest legal force or something else for the constitutional system and constitutional identity?

It should be noted that in some states the Constitution formerly had more formalistic role rather than a value-based and value-establishing one, but got also a symbolic significance afterwards. The Austrian Constitution (enacted in 1920) was formerly based on the Kelsenian influence, the concept of Constitution of which focused on the Constitution as a law and not on the Constitution as a state-based approach. The Constitution was understood as a set of procedural rules to enable the state to function. The Constitution was viewed far more as a legal tool of Parliament than as the foundation of the state. Hence, it may be stated that in its early years the Austrian Constitution was characterized by the influence of Kelsen and by quite formalistic and not substantive constitutionalism. At the same time, since the 1980s the influence of the German Constitutional Court and the case law of the ECtHR have changed the approach of the Austrian Constitutional Court significantly towards a strict approach to the rule of law and rights. Thus, nowadays the Austrian constitutional system is a strong one, which significantly protects constitutional values, but still – to a minor extent – relates to its old, formalistic patterns[37].

In many countries the Constitution is more a historical document rather than a normative act. For instance, 1868 Luxembourg Constitution falls within the category of constitutions tending to be more "evolutionary" in nature. Although it is clearly part of the positive law in force, it is at the same time considered rather a historic and political document

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37 See K. Lachmayer, *The Constitution of Austria in International Constitutional Networks: Pluralism, Dialogues and Diversity*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 1272–1274.

than a truly normative one. It has developed over the last 200 years in response to political change and historic events[38].

There are also states which have traditionally had a high culture of respecting the Constitution. For instance, the Constitution, as a legal and political instrument, has traditionally been highly esteemed in Finland. The origins of great respect for constitutional enactments can be traced as far back as the legal-positivist resistance by the Finnish legal and political elite to the campaigns of "Russification" between 1899 and 1905. During the years of "Russification", however, Finns fought against arbitrary Russian interferences in Finland's domestic legal and political affairs by advancing a constitutional challenge, essentially founded on a simple, yet firm claim that all authorities, including those of the Russian Empire, had to strictly observe Finland's constitutional enactments and Finnish law in general in the exercise of their powers. It should be noted that the current Constitution of Finland (Act No. 731/1999) entered into force on 1 March 2000, and replaced the earlier Constitution Act of 1919 and three other enactments enjoying constitutional status[39].

Why do we have such a development in the whole world? Why do we now speak about the Constitution as not just a legal act, but also as a value-establishing symbol?

We already touched upon the issue that the society is always in need of symbols, as they are the key markers in shaping of collective identities. Hence, it is obvious that the symbols are necessary also for shaping the constitutional system and constitutional identity. When we study the existing legal systems, it becomes obvious that the Constitutions[40] and constitutional values defined therein are the shapers and key markers of collective constitutional identities. The acting Constitutions, their essence and wording lead to a conclusion that here we deal with not just legal texts, but with a complex of values, which make the Constitution a phenomenon, representing a concrete constitutional idea.

Summarizing the above, it may be stated that the society will always look for symbols for shaping its constitutional identity, and in case of

[38] See J. Gerkrath, *The Constitution of Luxembourg in the Context of EU and International Law as 'Higher Law'*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, p. 222.

[39] See T. Ojanen, J. Salminen, *Finland: European Integration and International Human Rights Treaties as Sources of Domestic Constitutional Change and Dynamism*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 360–361.

[40] While speaking about Constitutions in the mentioned context we consider also the uncodified Constitutions and constitutional values enshrined therein.

choosing wrong shapers the whole constitutional system and identity will be distorted. It is obvious that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values.

It should be emphasized that during the last centuries the role of the guarantor of systemic stability has been mainly provided to the Basic Law of the state – "written" Constitution. The reason is that just the latter defines the aims, emanating from the integrity of civilizational values of the concrete society, the basic principles of social existence, prescribes the main rules of social behavior, the nature of interrelations between an individual and the state, the order and limits of exercise of the power, creating by social agreement a necessary environment for the thorough expression and progress of the creative nature of an individual[41]. The Constitution is a unique attribute of statehood, which expresses the level and trends of development of not just the world community, but also a concrete society and the state, the principles and rules, underlying the social relations, order and limits of exercise of power, as well as the nature of interrelations between an individual and the state. Hence, "Constitution is a social agreement on the *main rules of social existence*"[42], and as such, prescribes the fundamental legal values and principles, which are typical for the given historical stage of the social society and are the *"kernel", essence of the relations within the frames of the latter*[43].

The above leads to a conclusion that the role of the Constitution cannot be limited just by the circumstance of regulating the social relations as a legal act, and its symbolic role should also be paid enough attention. The significance of the mentioned idea can be viewed also in the course of the world development of constitutional law.

German former constitutional judge Udo Di Fabio argues that "Germans are fond of their constitution and value it as a document setting out the nation's key values. While written constitutions in many European states are gradually losing significance, great importance is still afforded to Germany's Constitutional Court. Its rulings not only carry great weight, but also provide a sense of national reassurance while also strengthening Germany's sense of national identity. The horrors of the

41 See G. Harutyunyan, *Constitutional Culture: the Lessons of History and the Challenges of Time*, Yerevan 2017, pp. 20–21.

42 See ibidem, p. 28.

43 See A. Manasyan, *Constitutional Stability as an Important Prerequisite for Stable Democracy*, Yerevan 2020, pp. 28–29.

German past mean national pride no longer feels appropriate as the basis of a shared German identity. So unlike other, older democracies, Germany instead relies on its Basic Law to foster such an identity. This key document, and the Constitutional Court it established, allowed for an acceptable – even desirable – form of 'Verfassungspatriotismus' (constitutional patriotism) to arise, which ensured national cohesion. At the end of the day, the Basic Law is a valuable, yet abstract catalog of values, establishing a set of tried-and-tested rules. The real decision-making occurs elsewhere. Germany's Basic Law was written to create a tolerant, European and peaceful country. This is where we must now invest our energy"[44].

Another former judge of the Federal Constitutional Court of Germany emphasized that Germans do like their constitution. In a sense, they have embraced what political scientist Dolf Sternberger had recommended in the late 1970s as an alternative to other types of affirmative national feelings that recent history had made unavailable: constitutional patriotism[45].

Despite its originally provisional character, the Basic Law can be described as one of the most important success stories of German post-war history. Not only has the Basic Law provided a normative framework for the effective protection of individual rights and stable political institutions, but there is also a high degree of identification among the citizens with its basic values, institutions and procedures – a civic approach referred to as "constitutional patriotism" (*Verfassungspatriotismus*) by Sternberger and Habermas[46].

It should be emphasized that the most interesting and effective group of Constitutions are the ones, having both symbolic significance and a role of a document with a highest legal force. The Latvian Constitution should be emphasized in this context. The role of the Satversme (the Constitution; the Latvian word for the Constitution) in the Latvian legal order is twofold. First, it has a strong symbolic role. It was adopted in 1922 and regained de facto force upon the restoration of independence. The backbone of the Satversme has had only minor

[44] See U. Di Fabio, *Opinion: The significance of Germany's Basic Law*, https://www.dw.com/en/opinion-the-significance-of-germanys-basic-law/a-48841328 (3 April 2020).

[45] See G. Lübbe-Wolff, *The Basic Law – Germany's constitution – at 70*, http://www.german-times.com/the-basic-law-germanys-constitution-at-70/ (3 April 2020).

[46] See D. Grimm et al., *European Constitutionalism and the German Basic Law*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 408–409.

amendments. However, it has been supplemented with several important articles. For instance, in 1996, a provision on the Constitutional Court; in 1998, Chapter 8 which includes human rights and freedoms; and in 2003, amendments on EU membership were inserted in the Satversme. Secondly, the Satversme is the fundamental document that addresses primary institutional and procedural issues[47].

The above leads to a conclusion that the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance. Hence, the Constitution should in reality be perceived by the society as a fundamental document, symbol of the constitutional system, should create a feeling of the factually existing constitutionalism, and not of a political declaration accidentally adopted or amended parallel to each political event. The Constitution has a fundamental role from the aspect of regulating social relations and can't be used just as a tool for solving ongoing political problems. The Constitution is a symbol and not an instrument in the hands of people and the state power, hence, it should be perceived as such by the latter.

Constitutional Symbolism, Constitutional Policy and Democratic Ethics

The symbolic significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system.

As mentioned above the most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power. No matter when and by whom the Constitution was enacted or amended, our attitude toward the Constitution should be an attitude toward a symbol itself and not toward political circumstances and political forces. Hence, the whole constitutional policy of the state should be based on the discussed essential idea.

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[47] See K. Krūma, S. Statkus, *The Constitution of Latvia – A Bridge Between Traditions and Modernity*, [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 951–953.

This is the reason that in our opinion, in order to guarantee the value-establishing significance of the Constitution it should be endowed with a twofold value – symbolic role; and role of the legal act with a highest legal force, regulating concrete relations.

Noting the above, we consider necessary to discuss the issue how the constitutional developments should be implemented in order to ensure and maintain the symbolic significance of the Constitution in the context of this. Otherwise, what kind of constitutional policy for constitutional developments should we adopt in order to demonstrate our attitude towards the Constitution as a symbol?

The first issue we are going to discuss in the mentioned context is the interrelations between the frequency of constitutional replacements or amendments and constitutional symbolism. The main question, arising in the mentioned context, is whether the frequent constitutional replacements or amendments endanger constitutional symbolism and the perception of the Constitution as a symbol or there is no direct connection between these two phenomena.

With this regard we consider necessary to analyze the frequency of constitutional replacements and amendments in various states, regions and the factors, underlying them.

It should be noted that a very important group of value-establishing Constitutions are, so called, "Constitutions born from the Resistance", the clear intent of which is to deny and overcome some concrete "values" (or anti-values), for instance, the anti-values that had characterized the Fascist (or, totalitarian) era. The German, Italian, French, Spanish, Greece Constitutions are included in the mentioned group[48]. In such countries the amendment of the Constitution is considered to be a risk for a democratic regime. In Spain, for instance, which has undergone just two constitutional amendments since 1978, for a long time, the amendment of the Constitution was regarded as a "taboo" since the priority was to secure the stability of the democratic system. The fear was that any attempts to modify the Constitution would put the achievements of the democratic regime at risk, and the shadow of the dictatorship still loomed large[49]. At the same time, the Constitution has been develop-

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[48] See G. Martinico et al., *The Constitution of Italy: Axiological Continuity Between the Domestic and International Levels of Governance?* [in:] A. Albi, S. Bardutzky (eds.), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press 2019, pp. 494–495.

[49] See J. S. Mullor, A. T. Pérez, *The Constitution of Spain: The Challenges for the Constitutional Order Under European and Global Governance,* [in:] A. Albi, S. Bardutzky (eds.), *National*

ing via other means different from textual amendments, for instance, interpretation[50].

It should be emphasized that with regard to the mentioned Constitutions we speak just about constitutional amendments and not constitutional replacement. Otherwise, the discussed Constitutions were enacted decades ago (Basic Law of Germany in 1949, Constitution of Spain in 1978, Constitution of Italy in 1948, Constitution of Greece in 1975, Constitution of France in 1958), have not been replaced yet, but developed via textual amendments or constitutional interpretation.

As mentioned above, 1922 Latvian Constitution regained its force in the beginning of 90s, hasn't been replaced yet, and its backbone has also had just some amendments.

1787 US Constitution hasn't been replaced either and has been subject just to 27 textual amendments during more than 200 years of its application[51].

What about textual constitutional amendments, it should be noted that, for instance, there has been just one amendment in the Constitution of Romania of 1991 in 2003 during 27 years of its effect. The issue of the necessity of the second amendment was raised after the political crisis of 2012, public discussions started in 2013[52]. The constitutional referenda on the mentioned issue would take place in 2015, but the government, which initiated it, resigned. In the result the referenda didn't take place. The Constitution of the Republic of Belarus of 1994 was subject to amendments just 2 times during 24 years of its force. First amendments were made in the constitutional text just two years after the adoption of the Constitution – in 1996. By the way, the amendments were so essential that literature very often emphasizes existence of two different Belarus constitutions – 1994 and 1996 Constitutions. In the result of the noted amendments the system of separation and balance of powers was changed, the authorities of the President of the Republic were essentially widened, bicameral parliament was established, President was granted with authorities to dissolve the parliament, to adopt

Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law, Asser Press 2019, pp. 544–545.

50 See D. Oliver, C. Fusaro (eds.), *How Constitutions Change (A Comparative Study)*, Oxford and Portland, Oregon 2011, pp. 282–283.

51 It should be noted that there are various disputes with regard to the last amendment, as there is a view that the mentioned amendment hasn't been ratified in a prescribed manner.

52 See M. Enache, *The Constitutional Reform in Romania*, «US-China Law Review» 2015, no. 12 (8), pp. 633–646.

decrees with the force of law, etc.[53]. In conditions of the political conflict between the President and the Parliament during that period the political reasons for the mentioned constitutional amendments were obvious[54]. The political context of the second constitutional amendment was also obvious, when in 2004 the prohibition of holding office of the President of the Republic by the same person more than two times was abolished from the Constitution. We consider that in case of the Republic of Belarus the reason for the durable unchangeable constitutional text is not the authority of the Constitution, but the political situation in the state and various social and economic factors, emanating from this. The Constitution of Columbia of 1886 was replaced just in 1991, being in force for 105 years. Nevertheless, the main reason for this was not its authority, but unsuccessful attempts to convene constituent assembly, which were simultaneously accompanied by severe criticism of the main ideas of the Constitution.

In addition it should also be noted that in some cases the differences in the frequency of constitutional amendments are just prima facie conditioned by concrete objective circumstances. For instance, in states, where constitutional amendments may be done mainly via referenda, usually one general package of necessary amendments is developed and constitutional reform is implemented in the form of one package, including the whole constitutional text. For instance, the Constitution of the Republic of Armenia of 1995, in which amendments were possible just via referenda, was subject to textual amendments two times – in 2005 and 2015. In both cases amendments were presented in the form of one unified package, including the whole constitutional text. The same is applicable in the case of 1991 Constitution of Romania, which was amended once – in 2003.

Meanwhile, in the states, where the Constitution may be amended also by the Parliament, the amendments are, as a rule, made, depending on the necessity in each concrete sphere, independently for each issue. In these cases, as a rule, there is no unified general package, including the whole constitutional text, and from the first glance there is an impression that in these states amendments are more frequent.

For instance, according to Article 138 of the Constitution of the Republic of Croatia a decision to amend the Constitution shall be made

[53] See Л. Левская, *Конституционнное развитие Республики Беларусь* [L. Levskaya, *Constitutional Development of the Republic of Belarus*], http://mogilev-region.gov.by/files/konstitucionnnoe_razvitie_respubliki_belarus.doc (16.06.2018).

[54] See Human Rights Watch Recommendations, https://www.hrw.org/reports/1999/belarus/Belrus99-04.htm (16.06.2018).

by a two-thirds majority of all the members of the Croatian Parliament. 1990 Constitution of the Republic of Croatia was amended in 1997, 2000, 2001, 2010, and once – in 2013 – there was an amendment in the constitutional text by civil initiative[55]. There were two amendments in 1996, an amendment in 2002, two amendments in 2003, an amendment in 2004, and an amendment in 2006 in 1992 Constitution of the Republic of Lithuania. According to Article 148 of the Constitution of Lithuania amendments to the Constitution, except Article 1, Chapters 1 and 14 (which can be amended just via a referenda), must be considered and voted at the Seimas twice by not less than 2/3 of all the Members of the Seimas vote in favor thereof[56]. 1993 Constitution of the Czech Republic was amended in 1997, 2000, 2001 (twice), 2002, 2009, 2012, 2013[57].

It should be noted that all the presented amendments concerned concrete separate issues and not the general logic and the whole text of the Constitution. For instance, 2009 constitutional amendments in Czech Republic concerned definition of possibility of self-dissolution of the Chamber of Deputies, 2002 constitutional amendments in Lithuania concerned the right to local self-governance, etc.

With regard to the above it should also be noted that in several states the Constitutions develop not so much via textual constitutional amendments, as via other means of constitutional developments, for instance, interpretation. 1787 US Constitution, for instance, during more than 200 years of its application has been subject just to 27 textual amendments. According to Article 5 of the US Constitution the Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to the Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of the Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress. This is the reason why the US Constitution is considered to be one of the most rigid constitutions in the world,

[55] See 1990 Constitution of the Republic of Croatia, https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf (16.06.2018).

[56] See 1992 Constitution of the Republic of Lithuania, http://www.lrkt.lt/en/about-the-court/legal-information/the-constitution/192 (16.06.2018).

[57] See 1993 Constitution of the Czech Republic, http://www.psp.cz/en/docs/ laws/constitution.html (16.06.2018).

which is very difficult to textually amend. At the same time, notwithstanding the small number of textual amendments, the US Constitution has been subject to various changes during its application, continuously developing via interpretation[58].

Various research show that in general, Constitutions doesn't stay in force for a long period of time. Their average period of application has been 17 years since 1789. Half of the constitutions usually stay in force for 18 years and just 19% – for 50 years. There are rather many constitutions with very short period of application: 7% of them don't stay unchangeable even till the second year of application. The average period of effect of the Basic Law in Latin American and African states is correspondingly 12.4 and 10.2 years, and this is in conditions when almost 15% of constitutions of the mentioned regions are abolished during the first year of their effect. Constitutions of Western European and Asian states act correspondingly 32 and 19 years. It should also be noted that the average period of effect of constitutions during the last 200 years hasn't increased, but vice versa – decreased. Till the first World War it was 21 years, whereas after that it became 12 years[59].

The frequency of constitutional amendments after 1991 is also interesting. For instance, in 1991–2014 two constitutions were adopted and three constitutional amendments were made in Albania, one Constitution was adopted, two constitutional amendments were made in Belarus, one Constitution was adopted and one constitutonal amendment was made in Bosnia and Herzegovina, one Constitution was adopted and four constitutional amendments were made in Croatia, one Constitution was adopted and seven constitutional amendments were made in Czech Republic, one Constitution was adopted and five constitutional amendments were made in Lithuania, one Constitution was adopted and eight constitutional amendments were made in Moldova, one Constitution was adopted and five constitutional amendments were made in the Russian Federation, one Constitution was adopted and one constitutional amendment was made in Romania, etc.[60].

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58 See J. M. Balkin, *Constitutional Interpretation and Change in the United States: The Official and the Unofficial*, http://juspoliticum.com/article/Constitutional-Interpretation-and-Change-in-the-United-States-The-Official-and-the-Unofficial-1088.html (16.06.2018).

59 See T. Ginsburg et al., *The Lifespan of Written Constitutions/ American Law & Economics Association Annual Meetings*, http://law.bepress.com/cgi/viewcontent.cgi?article= 1934&context=alea (15.04.2016).

60 See T. Ginsburg et al., *Chronology of Constitutional Events, Version 1.2*, [in:] *Comparative Constitutions Project*, http://comparativeconstitutionsproject.org/ download-data/ (16.06.2018), Գ. Հարությունյան, Հ. Սարգսյան, Ռ. Գևորգյան, Սահմանադրականություն. Ախտորոշման,

The above leads to a conclusion that the frequency of constitutional amendments is different in various constitutional systems. Notwithstanding the average sociological data, there is no general approach and model with regard to this, noting various factors, conditioning the frequency of the discussed amendments.

At the same time, in our opinion, the same cannot be stated with regard to constitutional replacements. There is a wide number of states, in which the old Constitutions, notwithstanding various amendments, haven't been replaced for a long time or even till now. For instance, the US Constitution (1787), the Danish Constitution (1849), the Constitution of Luxembourg (1868), the Constitution of Malta (1964), the German Basic Law (1949), the Italian Constitution (1948), the Spanish Constitution (1978), the Portuguese Constitution (1976), the Constitution of Greece (1975), the Constitution of Latvia (1922), the Constitution of France (1958), the Belgian Constitution (1830), the Constitution of Austria (1920), the Constitution of Ireland (1937), the Finnish Constitution Act of 1919 and three other enactments enjoying constitutional status were replaced by the Constitution of Finland entered into force on 2000, the Constitution of Columbia of 1886 was replaced just in 1991, etc.

Even if we study the constitutional developments of Post-Soviet states or Former Soviet bloc states, it is obvious that their vast majority adopted new Constitutions, but the further developments have gone in the direction of making constitutional amendments and not constitutional replacements in the majority of cases.

In our opinion, this is one of the most important preconditions for ensuring the symbolic significance of the Constitution. It is emphasized in literature that symbols are about sense making. We generate and make use of symbols in order to orient ourselves, cognitively as well as emotionally. They are a part of our culture and psychology, constituting a socially constructed filter which mediates between the social conditions of life and sensuous-emotional psychic structures[61]. Hence, it is obvious that in case we are continuously replacing one phenomenon with the other or changing its fundamental characteristics, it is impos-

մշտադիտարկման և կառավարման խնդիրներ, Երևան, Զանգակ 2017, pp. 16–19 [G. Harutyunyan H. Sargsyan, R. Gevorgyan, *Constitutionalism: Issues of Diagnostics, Monitoring and Administration*, Yerevan 2017].

61 See G. Ger et al., *Symbolic Meanings of High and Low Impact Consumption in Different Cultures*, https://www.lancaster.ac.uk/fass/projects/esf/symbolicmeaning.htm?fbclid=IwAR3oEWaYOCn3sJpMaKCWiqjP_jcC-6EEsunBjb5kd5ZjrSaS-xTRr1OiOa8 (7.04.2020).

sible to consider the phenomenon as a symbol, establish and maintain its symbolic significance. Moreover, the political and constitutional history of all the states, which perceive the Constitution not just as a legal document with highest legal force, but endow it also with a symbolic, historical significance, shows that these states, as a rule, don't replace the Constitution for decades, even for centuries. This is important also because of the fact that in order to have a development of a system accumulative connections between the past and the future should be ensured. Having this as a basis and noting the ideological significance of constitutional preambles, majority of states even doesn't amend the preamble of the Constitution.

There are almost no states, which prescribe special regulations on amendment or unchangeability of the constitutional preamble[62]. The Republic of Serbia can be mentioned among the states studied by us, the Constitution of which prescribes special regulations on the amendment of the preamble. Article 203 of the Serbian Constitution, particularly, states that the National Assembly shall be obliged to put forward the act on amending the Constitution in the republic referendum to have it endorsed, in cases when the amendment of the Constitution pertains to the preamble of the Constitution, principles of the Constitution, human and minority rights and freedoms, the system of authority, proclamation the state of war and emergency, derogation from human and minority rights in the state of emergency or war or the proceedings of amending the Constitution[63].

Preambles differ from the viewpoint of their content. Researchers emphasize 15 constitutional preambles, which contain just a solemn text without any intrinsic meaning, for instance, preambles of Constitutions of Greece, Monaco, Lebanon, Lichtenstein. At the same time, the majority of constitutional preambles have more concrete content, and, as a rule, contain information on the following main elements: goals, values, history, national identity, God and religion, references to other acts[64].

[62] See European Commission for Democracy through Law (Venice Commission), *CDL-DEM(2008)002add, Constitutional Provisions for Amending the Constitution: Limits to Constitutional Amendments* (Strasbourg, 9 October 2008), http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-DEM(2008)002add-e (16.06.2018).

[63] See *Constitution of the Republic of Serbia*, http://www.ustavni.sud.rs/ page/view/en-GB/235-100028/constitution (16.06.2018).

[64] See V. Kutlesic, https://constitutional-change.com/preambles-of-constitutions-a-comparative-study-of-194-current-constitutions/ (16.06.2018), O. J. Frosini, *Constitutional Preambles at a Crossroads between Politics and Law* (Titanlito S.p.A. Dogana (Repubblica di San Marino 2012), p. 47.

It is considerable that in international practice there are cases of amendments of constitutional preambles just in separate exceptional situations. As an example, the amendment made in the preamble of the Latvian Constitution can be mentioned[65]. It should be noted that the Constitution adopted in 1922 and restored in 1993 is now in force in the Republic of Latvia. The preamble of the Constitution of India was also amended in 1976, when words "socialist" and "secular" were added between the words "sovereign" and "democratic". The preamble of 1958 French Constitution was also amended, when a reference was added in it to the rights and duties as defined in the Charter for the Environment of 2004[66].

Summing up the above, it should be noted that it is impossible to ensure the symbolic role of the Constitution in case of frequent replacements of the latter.

What about the amendments in the constitutional text, it should be noted that the circumstance that the reality continuously changes and develops is beyond any doubt. Hence, the mechanisms intended for regulation of social relations, firstly, the Constitution, should be able to adequately react to the mentioned progress of social relations. This is the reason that the idea of not static, but dynamic stability underlies constitutional stability, presupposing ability to react to developing social relations and their conditions. Hence, in order to be stable the Constitution, inter alia, should be able to develop. Just in these conditions it can be a "living document" and an initial regulator of social relations. Otherwise it will turn into a "died legal act", just a documental solution, acting independently from the factual relations, which in reality isn't able to implement its functions and regulate social relations[67].

Therefore, it is obvious that constitutional development is unavoidable, is necessary also for constitutional stability, at the same time, is important for maintaining the symbolic role of the Constitution.

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65 See *Constitution of the Republic of Latvia*, http://www.satv.tiesa.gov.lv/ en/2016/02/04/the-constitution-of-the-republic-of-latvia/ (16.06.2018).

66 See *Constitution of the French Republic*, https://www.constituteproject.org/constitution/France_2008.pdf?lang=en (16.06.2018).

67 See А. Манасян, *Развитие Конституции Республики Армения как важнейшая предпосылка укрепления армянского конституционализма*, «Сравнительное конституционное обозрение» 2012, no. 3 (88) [A. Manasyan, *Development of the Constitution as an Important Prerequisite for Strengthening the Armenian Constitutionalism*, «Comparative Constitutional Review» 2012, no. 3 (88)], p. 141.

Hence, the main issue in this context is how constitutional development should be implemented in order not to distort the symbolic role of the Constitution.

Firstly, as mentioned above, the term "stability of the Constitution" presupposes a possibility of changes, but such changes, within the frames of which the main quality of the system, the "core" of the Constitution is held. The reason is that each system has a concrete integrative quality, which forms the mentioned whole system and the initial condition, from which the transition to new positions takes place. Hence, in case of the absence of the noted features the object ceases to be the mentioned concrete system, in which conditions there is also no possibility to speak about its stability and development. Analogically, constitutional stability also presupposes that the main rules and values of social existence cannot be subject to fundamental changes, as the latter will lead to the distortion of constitutionalism.

In this regard Article 203 of the Constitution of the Republic of Armenia can be noted, according to which Articles 1, 2, 3 and 203 of the Constitution shall not be subject to amendment. Therefore, constitutional legislator considers these provisions as the basis for social relations and the fundamental elements, constituting the constitutional identity of the concrete constitutional system, hence also, prohibiting their amendment.

Secondly, it should be noted that while analyzing the issues of constitutional developments legal literature more often speaks about making amendments in the constitutional text. Whereas, it is not necessary that the change is made within the frames of the text in order to be considered as a development, and it can also concern the perception of the norm. Hence, making amendments in the text of the Constitution isn't the only way and can't effectively ensure the proper constitutional development. There are also alternative ways for developing the Fundamental Law and the official interpretation of the Constitution is one of these important techniques[68]. Hence, it is important to combine the possibilities of all the ways for constitutional developments and effectively balance them while developing the Constitution.

Thirdly, as shown above, the Constitution should be able to adapt to changing social relations. Besides, notwithstanding the presented average sociological data with regard to the frequency of constitutional amend-

68 See A. Manasyan, *Constitutional Stability as an Important Prerequisite for Stable Democracy*, Yerevan 2020, pp. 101–107.

ments, the latter is different in various constitutional systems, there is no general approach and model with regard to this, noting various factors, conditioning the frequency of the discussed amendments.

Hence, in our opinion, it is not expedient to consider a concrete time period, in the frames of which the constitutional text should be untouched, in order to preserve the symbolic role of the Constitution. For instance, Article 110 of the Constitution of Greece prescribes that revision of the Constitution is not permitted before the lapse of five years from the completion of the previous revision[69].

At the same time, the presented analysis shows that too frequent constitutional amendments can also distort constitutional stability and the symbolic role of the Constitution. The European Commission for Democracy Through Law (Venice Commission) has continuously stated regarding the discussed issue that too frequent changes of the Constitution have negative impact from the viewpoint of constitutional and political stability[70]. Moreover, the Commission regrettably emphasized on the constitutional amendments in Croatia that during a very short timeframe[71] the Constitution was amended two times, not giving an opportunity to use the possibilities provided by the first amendment[72].

Therefore, the main point here should be the following: the Constitution should be able to adapt to changing social relations; too frequent constitutional amendments can endanger constitutional stability and constitutional symbolism; a proper balance should always be found in each concrete situation between the need of a constitutional development and the values, underlying constitutional stability and symbolism; a proper balance should always be found in each concrete situation between various ways of constitutional development and they should be effectively combined.

Fourthly, in our opinion, the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the men-

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69 See Constitution of Greece, mhttps://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/001-156%20aggliko.pdf (16.06.2018).

70 See European Commission for Democracy through Law (Venice Commission), *CDL-AD(2010)001, Report on Constitutional Amendment* (Venice, 11–12 December 2009), http://www.venice.coe.int/docs/2010/CDL-AD%282010%29001-e.pdf (20.01.2018).

71 The point is on 2000 and 2001 constitutional amendments.

72 See European Commission for Democracy through Law (Venice Commission), *CDL-PI(2015)023, Compilation of Venice Commission Opinions concerning Constitutional Provisions for Amending the Constitution* (Strasbourg, 22 December 2015), http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)023-e (16.06.2018).

tioned changes. The Constitution has a fundamental role from the aspect of regulating social relations and can't be used just as a tool for solving ongoing political problems. The Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance. Hence, the Constitution should in reality be perceived by the society as a fundamental document, symbol of the constitutional system, should create a feeling of the factually existing constitutionalism, and not of a political declaration accidentally adopted or amended parallel to each political event. Hence, the frequency of constitutional amendments can't be conditioned just by the balance of political forces and its mathematical calculation. The ways of constitutional amendments and the process of their realization should form such a public perception that the Constitution is a stable document, symbol of a concrete constitutional system and cannot be amended just based on the political will of the political majority of the day. The opposite situation can make the proper realization of constitutional norms impossible and lead to the distortion of values, underlying constitutional stability, as well as of such values typical for the Rule-of-Law State, as predictability and legal certainty, excluding also the perception of the Constitution as a symbol of a concrete constitutional system. It should also be noted that in all the situations, when political elites have been trying to use the Constitution with the aim to gain political dominance, the final result has been the paradox "Constitution without constitutionalism".

Conclusions

Summarizing the above, we need to understand that contemporary societies face unpredictable and unforeseen changes and challenges that sometimes shake the very foundations and the essence of common human life. The social norms (law, morality, etc.), which are the *gluons* of human coexistence in the same system or nets, sometimes are forced to resist the accelerating nature of social changes, and they cannot resist them separately. Moreover, it is very dangerous for them to resist separately, as they will do it at the expense of the other system of rules, which will lead not to the cooperation of social norms but to contradictions and thus – to negative synergy.

That is why the new reality make them find the equilibrium of interactions with each other and with the social environment in the condi-

tion of constant and accelerating changes. When they find the positive synergy of interactions with a clear vision to the admired future of social coexistence they appear to set an 'ethical state'. This focal point of optimal interactions between law, morality and political will is able to stipulate the *attractor*, a symbol of the admired developments for that very society. And when that attractor is able to express itself as a symbol of bridge of the past, present and the future of the society and a nation, a connecting expression of law, morality and politics, it expresses itself via the constitution.

Moreover, it should be noted that the society will always look for symbols for shaping its constitutional identity, and in case of choosing wrong shapers the whole constitutional system and identity will be distorted. It is obvious that the Constitution is the phenomenon, representing a concrete constitutional idea and constitutional identity, and should be the one to be considered as such in a lot of people's minds if we intend to have a proper constitutional system and values. Hence, the Constitution is not just a document with a highest legal force, but also a symbol of a concrete constitutional system, and from this viewpoint the Basic Law has a symbolic significance.

The mentioned significance of the Constitution makes it clear that constitutional policy in any state should be established and implemented in a manner, obviously demonstrating an attitude towards the Constitution, in the frames of which it is considered as a symbol of a concrete constitutional system. The most important circumstance in this context is to never transform the Constitution (directly or indirectly) from a symbol to an instrument in the hands of both the people and the state power and the whole constitutional policy of the state should be based on the discussed essential idea.

In our opinion, it is impossible to ensure the symbolic role of the Constitution in case of frequent replacements of the latter. It is obvious that in case we are continuously replacing one phenomenon with the other or changing its fundamental characteristics, it is impossible to consider the phenomenon as a symbol, establish and maintain its symbolic significance.

At the same time, the Constitution should be able to adapt to changing social relations. Hence, here we should be based on the following essential ideas: too frequent constitutional amendments can endanger constitutional stability and constitutional symbolism; a proper balance should always be found in each concrete situation between the need of a constitutional development and the values, underlying constitutional

stability and symbolism; a proper balance should always be found in each concrete situation between various ways of constitutional development and they should be effectively combined.

Moreover, the Constitution should not be subject to amendment parallel to every change of political situation of the state or formation of a new political majority merely conditioned by the mentioned changes. The Constitution has a fundamental role from the aspect of regulating social relations, has symbolic significance and can't be used just as a tool for solving ongoing political problems.

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