UNIVERSITÉ LAVAL
Faculté de droit
Law Faculty

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Professor Bjarne Melkevik's Evaluation of doctoral candidate Vladislav Valeryevich Denisenko dissertation entitled "Legitimacy of law (Legal Theoretical Research)"; thesis submitted to Saint-Petersburg State University – automne 2020.

The dissertation thesis is submitted in conformity with Requirements for the Candidate degree in Legal Science, speciality 12.00.01: Theory and History of Law and State: History of Legal and Political Teaching.

As a Member of the dissertation Committee for candidate Vladislav Valeryevich Denisenko, I have read and evaluated the proposed dissertation entitled "Legitimacy of law (Legal Theoretical Research)."

The dissertation submitted to our attention is 605 pages (two biographies included). The dissertation is composed of a section in the Russian language of 323 pages, and a section in English of 282 pages. The English section presents itself as a translation effectuated by the candidate himself. It is the English version which has been evaluated by me.

The proposed dissertation – in its English version - is composed of four main chapters, preceded by a Forward and completed by a Conclusion. The four chapters are entitled: 1. Legitimacy of Law and Legal Methodology; 2. Legitimacy as a characteristic of Law; 3. Legitimacy of Law in Modern Society; 4. Legitimacy of Modern Law and Modern Regulation.

The "goal", the "objective", justifying the thesis is correctly and adequately defined. The thesis defends that legitimacy is an essential property of "law".

"(....) the theoretical aspect of the problem discussed in this paper is this. It is well known that the scientific knowledge of a phenomenon is moving towards finding (and then fixing in the theory) deeper laws in a particular area of existence. To delve into the subject under study means, in particular, to identify new properties of it, and those that do not exist by chance (i.e., may or may not be), but are present and manifest themselves with necessity, without exceptions. From our point of view, legitimacy is nothing more than an essential property of law, and in this capacity it should be studied." (Page 5).

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It's a very "strong" assertion because all affirmations about an "essential property" could turn up metaphysical or also be too "loose".

It should so be strongly underlined that the candidate restrain the sense of this "essential property" in using the concept of law proposed by Professor A. V. Polyakov. Page 23, the candidate associates his proposals for an "essential property" with saying: " At the same time, we prefer to see the same meaning in the concept of "law" as Prof. A. V. Polyakov sees in it". In this sense, it is not "law" that have an essential property, but a "system theory of law" that have one, have the "essential property" as permitted by this concept. It should also be underlined that the candidate is not far away from the phenomenological and communicative aspects of law defended by Prof. Andrey V Polyakov.

The candidate mention the methodology (methodologies) that have permitted him to write his dissertation on the pages 9 to 10. He gives us an impressive list of methodologies, and it is good and appreciable. As the dissertation is a theoretical legal research, the methodology is a philosophical understanding and articulation of research positions. In this sense he says more accurately, page 23:

> "The methods that the author claims to apply, the basic categories, the connections between abstract objects, as well as the value attitudes that somehow find their place in judgements should be subjected to reflection. The purpose of reflection is to make explicit the ontological and methodological components of the theory. Arguments about the legitimacy of the law in this regard are not an exception."

It's accurate! But it should equally be underlined that in understanding the "make explicit" as depended on a given and chosen theory, the understanding of "legitimacy" is also bound to this theory and to it alone.

As to the "novelty criterium", the candidate examine it on page 11. He says that his dissertation proposes three theoretical (or philosophical) novelties:

1. "the comprehensive study undertaken here of the problem of legitimacy as an essential property of law is based on modern ideas about the structure of social reality, the relationship of its material and ideal components."
2. "the author tried to detect, fix in terms and sharpen the semantic oppositions that are required for the fullest possible understanding of the phenomenon of legitimacy."
3. "the problems of legitimation and delegitimization of law are considered not in isolation from practice, but in organic unity with the most important private and public legal issues."

Well formulated. However, already the first novelty is good enough. The problem of legitimacy as an essential property of law, examined by the candidate, is a novelty in itself (even if he is not alone in the world having struggled with such a topic).

Equally should be noted (and appreciated) that the candidate intends, with his dissertation, give some "policy recommendations". Pages 11 to 19 enumerate a long list of those. Chapter 4, entitled « Legitimacy of Modern Law and Modern Regulation. " is dedicated to this purpose. As it is problematic to go from theory to policy recommendations, it is appreciated that this Chapter 4 so intend to be more practical, even if it is not clear that the candidate is successful in this regard (Se later).

As to the content of the dissertation, it begins in Chapter 1 with a philosophical and theoretical "fondation" about "legitimacy as an essential property of law". All is said, page 60, in the summoning:

> "We should state the need to revise the outdated philosophical paradigm (materialism vs. idealism), which is the basis of the methodology of Russian jurisprudence." (And I agree strongly)
> "The problems of legitimacy that are characteristic of modern post-industrial society must be viewed through the prism of the dichotomy "goal-oriented action" – "communicative action". Consequently, the pragmatic theory of social communication (the "linguistic paradigm") works here".

There is only a little note to be done about that. If, page 54, "The second perspective social-philosophical methodology, in our opinion, can serve as the theory of communicative action (communicative-discursive theory), developed by Jürgen Habermas", then it is this theory that should – and need to – be explained. As I see it, the problem with chapter 1 is that this theory is not explained, the theory is mostly justified. The candidate has a tendency to "adherence" where he should focus on the problem.

Chapter 2 is about "Legitimacy as a characteristic of law". It is about the "essential thesis" concerning "legitimacy" in law. Page 98, the candidate gives us a summon up:

> "Having analysed the origin and evolution of the term in question, in relation to law, we can give it the following definition: the legitimacy of positive law is the recognition of positive law by subjects (individuals, social groups and society) as an acceptable basis for behaviour."

But that's a troublesome definition. Who will disagree? Or will everybody agree? Could such a definition be really "legal systematic"? Or is it a sociological description with a psychological undertone that only the "researcher" master?

Chapter 3 follow up with a "psycho-sociological" description of "law" (miles away from the "concept of law" that he proclaimed page 23). This is described, page 154, as:

> "It is now necessary to illustrate how the legitimacy of positive law has changed in the course of social evolution."

Follow pages and pages with mostly anthropology and sociology. We so notice the pages of « symbolic interactionism » of George Herbert Mead and of others.

> Page 183: "Therefore, analysing the issues of legitimacy of law in modern society, we can say that in the conditions of information globalizing society, there is a constant process of forming a single socionormative space."
>
> Page 198: "It should also be concluded that not all social institutions and practices need to be supported through legal policies."

I must admit that I have some doubts about the way this Chapter 3 is formulated, written.

Chapter 4 is about "policy recommendations". Entitled "Legitimacy of Modern Law and Legal regulation", its main objective is to promote "democratic procedures as the basis of legitimacy". A good objective and in line the theoretical orientation.

From page 199 to page 238, the candidate defends this standpoint. And he intended doing this, if we understood him well, by mobilizing the concept of "trust" and of "social capital". As announced in pages 11 to 19, and reaffirmed pages 234 - 238.

Compared, however, to what the candidate announced in his introduction, the mentioned pages 11 to 19, it seems to me that he falls backward. Pages 11 to 19 announced a very keen approach to "policy" inspired by theory, while pages 199 – 238 is more centred on the crisis of legitimacy (page 199 – 207); on observation that: "Democratic participation must go beyond formal structures and involve civil society institutions," and "The need to overcome the alienation of citizens in modern society, to ensure the recognition of the individual by collective subjects, and explains the widespread use of consensual procedures in the legal system, associated with broad participation of citizens." (page 199); pages 218 to 228 follow-up with the sociological "crisis of legitimacy"; and the pages 229 – 238 concludes about "juridification of society". This is very well in itself. Well written and well formulated, but the theoretical aspect of this "policy" is not so well explained. We just wait for a theoretical analysis how "trust" and "social capital" can – and under which conditions – serve (and fuel) such a policy recommendation.

But "trust" and "social capital" is there! It just comes at the end, slowly from, about, pages 234 to 238, coming out from the opposition to "social pathology". It's like a nice conclusion:

> "Communicative action in society determines the level of such categories as trust and social capital. Research on social capital has proved that interaction in society is a condition for development (R. Putnam, F. Fukuyama). Moreover, social interaction (capital) differs from other types of capital in that it is transmitted through traditions and culture . The level of trust and social capital can be increased with the help of state policy, which should promote public (communicative) interaction by legal means. The elimination of negative consequences of social modernization is possible only if, on the basis of a communicative understanding of law, the procedures necessary to maintain communication links in society between legal entities are functioning. Only in this case will the crisis of legitimacy of laws be overcome, because the recognition of the rights of citizens to participate in lawmaking is a necessary condition for building a modern legal theory and the theory of legal regulation, in particular." (Page 238).

Maybe this should have been the point of departure? Maybe "trust" and "social capital" is what to be explained more in itself and not only to appear as a "conclusion"?

The Conclusion, page 239 – 248, is well written. It's a real conclusion. It summons up and it announces the work still to be undertaken.

The "Concusion", permit equally to me to make my conclusion, to express my final judgement and assessment.

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The dissertation is, as I see it, good scholarship! It shows a new researcher having attained the intellectual and theoretical maturity that we identify with the degree of "doctor of legal science".

The dissertation can surely be criticized. So as to the opportunity and the meaning of theorizing about "an essential property of law" and if this is an adequate way to handle the problem affronting "legitimacy". Equally if the dissertation should have avoided the tendency of "affirming by opposing" (other theories, other standpoints) and have focused more clearly on "the problem" (exemplified, as mentioned before, by the concepts "trust" and "social capital", and the roles that they can eventually play). But this is surely subjects to be discussed on the day of dissertation defence, and do not overshadow the quality of the submitted dissertation. Neither that fact that the dissertation is comprehensive, well structured and articulated, and shows clearly that the candidate has independently written a legal scientific work of high value.

The dissertation is well documented and grounded in real scholarship. The Biography is good and diversified.

The dissertation shows clearly that the candidate has done an excellent work. The dissertation is outstanding, grounded in research, and honour the advancement of legal science. The dissertation is also measured and appropriate, an excellent contribution to legal knowledge.

I will compliment the candidate M. Vladislav Valeryevich Denisenko with a dissertation doing honour to the legal academic community and which, in my assessment, qualify him for the award "Doctor of Legal Science".

For these reasons, I judge that the dissertation meets the requirement established by the Order dated 01.09.2016 No 6821/1 "On the procedure for awarding academic degrees at St. Petersburg State University", and that the candidate M. Vladislav Valeryevich Denisenko deserves the award of the scientific degree, Candidate of Doctor of Legal Science in the Speciality 12. 00.01 - Theory and History of Law and State: History of Legal and Political Teaching.
Clause 11 of the mentioned Order has not been violated by the candidate for the degree.

Signed by the member of the Dissertation committee, Bjarne Melkevik, Dr. juris. Habil (Paris 2), Professor at the Law Faculty of Laval University (Quebec – Canada).

Quebec, April 11, 2021.

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M. Bjarne Melkevik
Dr. juris. Habil.