

Postmodern phenomena in law

Abstract

This thesis examines postmodernity and its manifestation in law and legal science. The first part is dedicated to achieving as precise definition of the term postmodernity as possible, as there is no general consensus, due to the fragmentary nature and instability of postmodern philosophy. Because of a limited quantity of comprehensive resources, describing postmodernity, available the historical perspective was applied in order to build a clear and compact narrative.

The modernity movement is defined as it precedes postmodernity historically and philosophically. Postmodernity arose in reaction to the historical events which shaped the world of the twentieth century. From the detailed historical narrative are then synthesized the main defining characteristics of postmodernity. Those characteristics are: erosion, plurality, globalization, the fragmentary and liquid nature of society.

The second part is predominantly dedicated to the topic of plurality as it is the basic element of postmodern thought. The comparative approach was chosen due to the ongoing globalization. Plurality as a postmodern phenomenon manifests itself significantly in the form of legal pluralism. The emphasis is put on defining legal pluralism, the additional meta-questions that head towards pondering the definition of the law itself are also explored. Multiple nowadays strategies that are being used to resolve the ongoing human and cultural conflict as well as the migration crisis are analyzed. Corresponding issues such as the weakening of public order and the proliferation of foreign legal attributes into the national legal systems are also discussed. Legal systems that are compared the most are the British and French legal systems. An original proposition, suitable to resolve the adverse effects of the clash of cultures and migration crisis is formulated. It is based upon the results of the aforementioned comparative research.

Another postmodern phenomenon in law that is discussed is the judicialization of politics as well as its possible transformation into the governance of courts also known as juristocracy. The primary used research technique is the comparative method in the sense of searching for aspects of judicialization amongst multiple legal systems, for example the legal systems of the Russian federation, Latin American countries and the United States of America. As for the roots of the judicialization, democratic deficits and the inability of postmodern society to generate general consensus were revealed as the dominant causes. Subsequently, this thesis focuses on the recent development of juristocracy in the Czech Republic including a detailed analysis of the relevant Czech constitutional court's decisions. Considering the findings, we can safely assume not only the existence of judicialization of politics, but also its necessity as an integral part of the system of checks and balances. Its use lies in counterbalancing authoritarian tendencies that are created as a byproduct of the political subject's battles for power.

The last part of the thesis ponders upon the liaison between the contemporary legislation, objective law and postmodern thought. The changes in statute law as well as the risks caused by the postmodern influence are defined. The methods of dealing with the dynamics of postmodern influence are analyzed while weighting their individual risks and benefits. The fourth part ends with the summary of postmodern influences on legal systems and makes a projection concerning the future development of statute law in response to the postmodern phenomena.

Key words: postmodernity, pluralism, juristocracy