General Aspects of Financial Law

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The aim of this article is to outline the general parts of the legal branch called financial law. It is intended as the first part of a series of articles outlining the topic in detail. The aim of the submitted contribution is to demonstrate that the financial and legal aspects created the basis of economic development of the regions from the early beginnings of human society. Social relations constituting the subject-matter of the financial law had been developing, changing, and had become established before the financial law itself has been constituted. These relations seem to have been present from the very beginning of the existence of the human society. Regulatory acts associated with regulation of these relationships embodied solidarity and methodological specificities. The specificity of the subject-matter of regulation, solidarity and methodological specificities of the financial, and legal standards sufficiently define superstructure with a natural law character. The superstructure is based on constitutional system of national states after the EU integration has been completed on the EU law. As we can evaluate retrospectively, the transfer of financial law competencies in Brussels was a failure. Since the political union was established through the Lisbon treaty in 2009 the European sovereign debt crisis emerged and ravaged the EU until today.

Keywords: financial law, public finances, history, development, economy, hegemony, sovereign debt crisis

Introduction

The events of World War II have had an extraordinarily significant influence on the theoretical legal thinking. The change mainly occurred in awareness of non-human nature of positive law. A theoretical concept has been formulated which forces, in certain circumstances, the law to be considered a non-law (Holländler, 2012). The Radbruch Formula found its way to the judicature of the Federal Constitutional Court of Germany through philosophical and legal debate.

Historians believe the disgusting behaviour of Nazis is linked to the Great Depression that occurred in the 1930s of the 20th century. Europe is currently recovering from an unprecedented crisis shock. The crisis showed that the positions of the positive law and justice in the economic area have drawn apart from each other. New financial regime is supposed to bring a solution to this in the EU. It is mainly focused on economic.

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1 In reaction to the crimes of National Socialism, Radbruch formulated his thesis that later on became famous as the “Radbruch formula”: “The conflict between justice and the reliability of the law should be solved in favour of the positive law, law enacted by proper authority and power, even in cases where it is unjust in terms of content and purpose, except for cases where the discrepancy between the positive law and justice reaches a level so unbearable that the statute has to make way for justice because it has to be considered “erroneous law” (“unrichtigesRecht”). CF: RADBRUCH, G.: Der Mensch imRecht (Man in Law), 3rd ed., Göttingen: Vandenhoeck & Ruprecht, 1957, as referenced in: Holländler 2012.
development of the Union’s regions and the EU\textsuperscript{2} region on the globalised market. The strategy Europe 2020 and European semester is supposed to bring qualitative changes in the co-operation of nations.

Injustice and inequality between “persons” have increased enormously in the EU member countries of the 21st century. Exclusion of a significant part of inhabitants occurred. People become slaves who are forced to pay lifelong mortgages to secure their basic needs. Real salaries hardly achieve the level from the end of the 80th of the last century though banks and financial institutions make use of the most extensive forms of debt recovery. The interests of the creditors are secured harshly through relentless exercise of mortgage rights or through “voluntary” auction sales. Significant legal aspects, such as the interest of minor children, become irrelevant to the public exactors of bank usurers. On the other hand, the same banks are uncapable of meeting their obligations. They beg the State not only to forgive them their debts but to provide them with financial packages with a view to preventing their collapse as well.\textsuperscript{3} Where did the problem lie? What’s happened to cause the living standards in the EU regions to stagnate and the debts of inhabitants and those of the public sector continually increase?

Question of choice is either revolutionary or legislative (evolutionary) method of carrying out fundamental reforms in the society re-emerges at present in an effort to cope with the persisting recession of the financial crisis. Enforced choice between the positivistic or natural methods application occurs again like many times before (Holländer, 2012). However, other questions emerge: Is it really impossible to find social interaction patters which would allow building a crisis-proof regulatory system? Can the economic development be predicted at least to such a degree that we would be able to resist crisis shocks? Answers can be found in Engliš’s (1924) thoughts:

All sciences are beautiful regardless of their practical use. The thought control of own forms of thought and the outside world brings satisfaction and uplifting. Some sciences are proud to have beautiful subject-matters, such as astronomy. What can be said about national economy as a science? It is not an instruction, like it is sometimes presented. It is not an instruction for people how to get rich, but discovers the laws of human behaviour which are no less surprising and interesting than the laws describing circulation of suns. Wealth of nations, however, is not its only subject-matter, as Adam Smith said in the header of his book, but their hardship, poverty, work and self-denial. (Introduction. p. 5)

Engliš compares the science that studies the national economy to astronomy. Celestial mechanics patterns are still valid. It is impossible to hinder the sun from rising in the morning or the seasons of the year from alternating. Nevertheless, we can adjust our behaviour or social structures to periodically cyclical phenomena which are caught using scientific tools.

The paper’s hypothesis is based on such notion. The outcomes of scientific exploration suggest that the financial and legal aspects which have been present during the entire period of development of human society have set the limits for economic development of the historical regions. In this respect, the pronouncements, which will be verified through the historical example method, can be summarised as follows:

Social relations constituting the subject-matter of the financial law were developing, changing, and became established before the financial law has been constituted. These relations seem to have been present\textsuperscript{2}\textsuperscript{3}

\textsuperscript{2} The EU constitutes a so-called “centre of the world economy”. The concept of a global economy’s centre comprises a group of economically advanced regions promoting innovations in science and technology. A significant part of world economic potential is concentrated in these centres. The development of global economy after the World War II resulted in the formation of three major centres: the USA, Japan, and the European Union. Cf.: Cihelková, 2007.

\textsuperscript{3} Whereas they take “rank and file” citizens and their savings hostage in the negotiations. “The Slovak Banking Association believes that the draft on bank levy of 0.4% not only endangers the stability of the Slovak banking industry, but will also result in more expensive products and services for the clients” said Monika Kuhajdová from the Slovak Banking Association.
from the very beginning of the existence of the human civilisation. Regulatory acts associated with regulation
of these relationships embodied solidarity and methodological specificities. The specificity of the
subject-matter of regulation, solidarity, methodological specificities of the financial, and legal standards
sufficiently define superstructure what has the nature of natural law. The superstructure is based on
constitutional system of national states.

**Current State of the Matter**

"Divinarum atque humanarum rerum notitia, iusti atque iniusti scientia"\(^4\)

Financial law as a branch of science strives to describe the reality at issue as closely as possible through
the tools at its disposal. The problem of the general part of the financial law would ideally be solved by
formulating universal pronouncements related to time- and space-free boundless and unlimited fields and
infinite number of cases (Černík & Viceník, 2005).

Popper says that social laws must be structured differently from mere uniform-based generalisations. The
actual social laws must universally be valid which, however, can only mean that they cover the entire history of
mankind being present in all historical phases of mankind’s history (Popper, 2000).

The natural law theory suggests that the positive law origin was preceded by the existence of
super-positive natural law. The positive law as a certain type of derivate should therefore be consistent with the
natural law. In this sense, the iusnaturalists have been trying to get to know the natural law from ancient times.
On this understanding of law or legal science, in a way it is a tool for knowing the facts of natural law.

As far as financial law is concerned it holds theoretical attempts to define it, as an independent branch of
law, or attempts of definition of its institutions, positive legal approach prevails over the natural law one.
Theoretical considerations about the natural and legal character of the financial law cannot be found in
professional literature sufficiently, as it deserves.

Of course, financial law institutions exist which do not admit such efforts. It is a matter, for example, of
the law on the state budget; it hardly can be considered to be super-positive and constant if new law is
established on an annual basis based on a social consensus. This, however, it does not mean that the financial
and legal regulation method cannot have a natural legal origin.

Nowadays, when analysing particular legal standards, it is completely impossible to specify whether it is a
matter of:

1. initial effort to discover some natural legal patterns.
2. or it is a matter of a standard set forth on the basis of, or through modification of a legal standard (or
   positive legal phenomenon) existing beforehand.

If it is a matter of initial attempts to create law and legal system, the latter is practically out of the question.
If there was no standard which could inspire the legislator in creating standards, then it must be a matter of
initial (sincere) endeavour to discover a natural legal pattern.

If people living at the end of the Neolithic period, in the pre-state social system, unaffected by legal
knowledge or knowledge of law, not attempting to create a legal system, then it must have been a whole bunch
of sincere attempts to discover something natural. In all likelihood, they were based on ethical and religious
regulatory systems.

\(^4\) Ancient definition of jurisprudence “the knowledge of matters divine and human, and the comprehension of what is just and
what is unjust”.
On this view, it can be eye-opening to search into the oldest law codes. It can be said that if an institute appears in those laws, it is more likely of the nature of natural law. Vice versa, if an institute does not appear in the oldest codes of law, it more likely to have a positive legal origin.

In an effort to discover strictly universal declarations on general part of financial law, all stages of human development are being examined. From ancient times the legal science is an attempt to get to know the natural law. Given this, law or legal science is in a way a tool for getting to know the natural legal facts. The endeavour to discover so-far-unknown, generally valid patterns can result in development of new legal techniques.

The financial and legal regulatory system is not only an artificial system purposefully created by people, but something natural which is essential for the existence of the society. Quite a number of non-ommitable patterns, where the financial and legal regulatory system is managed, are independent from people and existed without the necessity to be discovered by people and not depending on that. This can be substantiated by the fact that state systems were created and successfully continued at various places of the ancient world, isolated from each other, approximately in the same period. The whole point is that it is a system whose internal patterns are given (by God) or can be known.

The findings of solution to the issue of general part of the financial law help to build strictly general social laws. The presence of financial and legal regulation method of human society in various historical forms is a general and strictly universal phenomenon.

The fact is that the financial and legal relations are not established and changed and do not cease to exist exclusively based on acts done by public authorities, but sooner it will be through fulfilling the legally set conditions which are decisive for the origination, changeover, or disappearance of the particular relationship (Mrkývka, 2004). The above-said implies that the financial and legal facts have a special meaning in the financial law conception and in comprehending of those patterns which manage the financial and legal relationships.

The financial and legal regulation method is characterised by special perceivable specificities which have to be taken into account when the financial and legal relations are being established. The financial and legal system of the region is to be set in such a manner that the specificities could concurrently become apparent at one time.

**Scientific Method**

According to Rokeach (1973), “The conception of values is also capable of unifying (under standard circumstances) obviously different interests of scientific disciplines dealing with human behaviour” (p. 13).

Facilitating the transition from the unknown to known constitutes a fundamental purpose of the scientific exploration. In other words, predicting the unknown is based on known facts. The transition is usually classified as prediction. For the sake of simplicity, it can be said that the fundamental purpose of the science consists in creation of such pieces of knowledge which enables explanation of processes and phenomena that occur in the world. To be able to predict something we need to know necessary correlations between facts. The

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5 Physics can be used as an analogy. Physics is a science that involves the laws of structure, qualities and movement of non-living forms of the matter. Based on observation and quantity measurements, it leads to discovery, mathematical formulation and practical technical application of basic laws of nature. In this respect, the research on the rules of natural law in law or legal science results in practical, technical application of these relations. (Open Encyclopaedia of Philosophy: The Subject-matter of Physics (online)).

6 In the broadest sense of the term.
term for such proceedings in the scientific exploration terminology is explanation. Apart from the ability to predict phenomena, the nature of science consists in providing us with instructions how to successfully bring one’s intentions to life, and whether it is a matter of invoking desired phenomena or managing them. In order that the scientific exploration would make sense, it should fulfil the following functions:

1. Description—consists in description and classification of processes and phenomena;
2. Explanation—consists in explanation of occurrence of matters, processes, and phenomena;
3. Prediction—or forecasting of occurrence of matters, processes, and phenomena;
4. Comprehension—of the context of the occurrence of matters, processes, and phenomena;
5. Providing the possibility—management of the occurrence of matters, processes, and phenomena.

It must be noted that, in this respect, the ancient states had a vast knowledge of market economy, on which they could not only predict the occurrence of financial phenomena, but invoked and managed them. The artificially invoked allocation waves, that is, through declaration of Amagi (general debt cancellation) were an analogy with artificially invoked contraction of economy during the economic cycle.

Ostracism which was applied in Greek city-states served similar purposes. Voting was held about who is the enemy of the state (city). In January or February, the Greek Popular Assembly decided whether or not such a voting should be held, on an annual basis.7

Financial administration as an enlivening mechanism of the state must necessarily not only strive for “keeping the state alive”, but—like the efforts of man are not targeted to mere existence—the state must advance and satisfy thereby the needs of its inhabitants. (Mrkývka, 2012, p. 98)

The ancient Egyptians believed that the human soul consists of three components. The first component “KA” represented vital essence distinguishing the living substance from the dead one. Vital functions which we are not able to directly control were attributed to this component. It includes the digestion process, heart beating, activities of glands, and passive nervous system. The “KA” maintenance requires that men’s physiological needs would be satisfied.

“BA” is another component of the human soul; it corresponds to today’s notion of personality. This component represented an active part of the soul. Human body activities which we are able to directly control, or are controlled by our mind, were attributed to this component. It comprehends the activities of striated muscles, eye control, and the ability to think. Active presentation of the individuals in the world was the main function of “BA”.

“ACH” is the third component. It came to existence as a result of connection of “KA” and “BA”. Now it could be intellect. The task of “ACH” was to maintain “KA”, which in fact meant gaining of physiological needs to maintain life through “BA”. “ACH” was further to provide opportunities for reproduction (gaining of partner’s favour, education and protection of children, and the like).

The Egyptians applied their ideas of human soul to state organisation. They perceived their state as a living organism having metaphysical attributes of living creatures. Based on the above-said, “KA” represented

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7 If the decision was positive, ostracism would be held two months later, upon which every citizen could write a name of the person they deemed to be the highest danger to the community on a pottery shard (ostrakon). The shards would be deposited into vessels prepared in a reserved section of the agora. In the first round, the number of voting shards would be counted and if it exceeded the quorum of 6,000, the voting would be valid. In the second round, votes for individual names on the shards would be counted and the citizen whose name was mentioned the most frequently would have to leave Athens within two days for 10 years. They could not return under the threat of death. Ostracism was adopted as protection against tyranny and it was a means used in political fighting. It was not a penalty, the property of the ostracised citizen was not confiscated and they could find an intermediary to manage the property. After 10 years, they were allowed to return without prejudice. Cf.: (Bleicken, 2002).
working people (unprivileged layer of the society) constituting, as a passive element of the state, its basis. “BA”,
being able to perform activities aimed at protecting or ensuring stability of special situation, represented state
apparatus inclusive of army, scribes, and clergymen. Pharaoh represented “ACH” of the state which
interconnected “KA” and “BA”. In other words, pharaoh was a link which coordinated the activities done
by the state administration for the sake of maintaining the status when the people are able to advance. It
thereby created conditions for the society not only to survive from day to day, but conditions for extended
reproduction.

The inspiring example of people who have established the longest existing realm in human history simply
requires analogy in today’s world. The financial and legal regulatory activities including financial
administration represent an enlivening mechanism of the state which has and continues to have the potential,
along with establishing conditions of supporting the society, to provide opportunities for extended reproduction
of the society.

Financial administration has a broader meaning than the public administration of public financial means.
From the aspect of subject-matter in which it spans administrative control (administration) of public finance
and financial system. From the aspect of organisation the financial administration means a conglomerate
of institutions empowered to carry out the financial administration (Mrkývka, 2008).

Wiener, the author of the modern definition of cybernetics, defined it as the scientific study of control and
communication in the animal and machine. The word “cybernetics” comes from the Greek word “kybernetes”,
that is, helmsman. The word “cybernetics” corresponds to Plato’s classic idea of governance and governor—a
helmsman taking out a ship (municipality) from tempestuous waters to a safe place (Meyers, 2002).

In fact, many of the belief systems of different cultures and civilizations show an interesting similarity
regarding the nouns, with which they describe the parts of the soul. The hebrew contains a similar teaching
regarding the three parts of the soul. According to hebrew scholars the soul of a living person consists of three
parts. Kaplan (1992) summarizes the teaching in the handbook of Jewish thought followingly. The neshama is
affected only by thought, the ruach by speech, and the nefesh by action (Aryeh, 1992). Plato expresses a
similar view, by categorizing the parts of the soul. The parts are located in different regions of the body: the
logos is located in the head, the thymos is located near the chest region, and the eros is located in the stomach.
In Plato’s works the three parts of soul represent the castes of the society. Each part of the whole has to work
together to form a complete society.

<table>
<thead>
<tr>
<th>Egyptian names of the parts of the (living) soul</th>
<th>Ach</th>
<th>Ba</th>
<th>Ka</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hebrew names of the parts of (human) soul</td>
<td>נשמה</td>
<td>רוח</td>
<td>נפש</td>
</tr>
<tr>
<td>Greek names of the parts of the soul (Platonic)</td>
<td>Λόγος</td>
<td>πνεῦμα</td>
<td>ἔρως</td>
</tr>
<tr>
<td>As used today</td>
<td>Mind</td>
<td>Soul</td>
<td>Hearth</td>
</tr>
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*Figure 1. Different symbols—same concepts.*
the system. The target behaviour of the individual elements of the system must be in compliance with the total arrangement of links and relationships among them so as to ensure the desirable target behaviour of the system as a whole (Grúň, 2009).

From the aspect of systems theory, given the ambient area, the system is a relatively closed unit consisting of elements. The system is further defined by its structure and functions of its elements. It works based on patterns which differ from the patterns pertaining to the work of the single elements of the system. Structure means interrelated network of links and relations between the elements (Grúň, 2009).

The public financial activities, in a larger sense, comprehend financial and legal standards modulating the social relations associated with generating, redistribution, and use of public goods. The financial and legal regulation is to first of all ensure sources for functioning of the state apparatus. In principle, the state cannot exist without having such a component.

On the other hand, the public financial activities encompass mechanisms regulating the fundamentals of the monetary system existence and provision of functioning of the financial market (Mrkývka, 2012).

Basic categories appearing in the public financial activities area are: public authority, public interest, and public finance. The up-to-date results of social sciences, historical and empiric approach outline the origin and development of these fundamental, related, and national economy terms.

It can be said that people were longing for the existence of public finance and fulfilment of its functions. In case of lack of these assumptions, state could not be established, or overcome time periods of the poor as a group. Given these facts, it is interesting to compare the facts where the scripts originated and why it counted in general.

The notion “public finance” has two basic meanings: practical activity of the public administration and theory (Hamerníková & Kubátová, 2004). The duo Hamerníková and Kubátová have elaborated a definition which will further serve as a theoretical basis.

The term “public finance” denotes specific financial relations and operations running in the economic system between the public administration authorities and institutions on one hand and the other entities on the other hand (that is, citizens, households, companies, not-for-profit organisations, and the like). (p. 16)

The above-mentioned definition assumes knowledge of terms, such as public administration, financial relations, and economic system. At first glance, it seems to be obvious that it is a matter of an abstract global term, artificially originated as a theoretic instrument or a scientific discipline. However, just the opposite is true. The term public finance is now used to denote system which in a manner was a prerequisite of establishment of society along with patterns regulating the relationships existing inside it; the patterns works strictly logically subjected to physical-like patterns.

Functions of public finance are as follows:

1. Allocation function;
2. Redistribution function;
3. Stabilisation function.

Allocation function represents an effort to secure material needs necessary for the individuals of the society to survive. Redistribution function means an effort to reduce social inequalities and to increase solidarity in the society. Stabilisation function represents an effort to conserve the status of the society and an effort for a status quo, which means preservation of the society in general. The work of Uhlig (1992) says:
Writing and counting have identical origin. The symbols which marked things have been fixed with a number; whereby their amounts were stated are close to each other. This, of course, means that culture was based on economic thinking. Those who consider materiality to be an enemy of culture in general will not like this sentence. The inscribed, clay, Sumerian tablets prove just the opposite. Many of the earliest texts are sales and purchase agreements, delivery notes, and accounts. (p. 2)

Economic thinking was most necessary in order to overcome the poor or unfavourable time periods. Those periods (seasons of the year) occurred in various parts of the country at irregular time intervals, duration, and probability, but repeatedly, which is typical for nature.

Awareness of those repetition patterns of nature was the first step for mankind towards colonisation of territories which are not equally favourable for human body during the entire year. Knowledge of duration of the poor season of the year (winter) and quantification of supplies made people possible to manage the supplies (goods) in such a manner in which the group would survive until the next favourable time period.

Man as a creature has not in fact changed since the beginning of human history, which means that our genetic structure in principle is the same like that of Neolithic people or before the Neolithic revolution happened. For our physical welfare we need quite small amount of food and can bear, or even need—from today’s point of view—extremely much physical movement so as to remain healthy.

Welfare-related psychological needs have not probably changed markedly in the course of history though it can seem that the opposite is true. Despite the occurring of ideological struggles and the basic psychical values, typical for people, have remained more or less unchanged. Schwartz (1994) mentions the “universal conditions of human existence”, which includes:

1. needs of persons as biological organisms;
2. conditions unavoidably necessary for coordinated social interaction;
3. survival and welfare of the society;

Schwartz (1994) derived 10 types of values from three universal conditions of human existence different from the aspect of motivation. The three basic assumptions of human existence, however, apparently correspond with the functions of public finance.

It is hence possible that aside from the stable physical needs man also has more or less stable psychological needs. In order to ensure continuous development of the society, it is necessary to secure that not only the economic goods, but mental values, as described by psychology experts, would be made to be subject to the public finance system.

**Results**

Egoists cannot voluntarily create collective economic system. If it is requisite necessary and if it lasts, then it is only if there is no other alternative. Egoists must be member compelled to solidarity through a legal standard. Public economy is then a compelled economy. Management of public relations falls under financial science. Standards regulating financial economy are subject-matter of legal science. (Engliš, 1929, p. 397)

Engliš (1929), a great thinker and theoretician, went down in history as a man pushing through his own special teleological and national and economic theory. Engliš’s theory is built on the resolution where economic phenomena can only be completely known and comprehended if we will follow certain purpose and aim in the behaviour of subjects of economy which the individual subjects want to achieve. The subject-matter of investigation of the teleological method is motives of all subjects of economy inclusive of the state itself, companies, banks, individuals, and households. Engliš criticised Marxist theory and he held an opinion that
economic laws are given just like the physical laws (Zemánek, 2010).

The idea of a natural status of the society was formulated by several thinkers\(^8\). Their ideas are now harmonised based on knowledge from biology in the effort to achieve the most precise idea of the natural status of the society possible (Graham & Haidt, 2006).

Graham and Haidt say many research works have confirmed that despite of apparent cultural variability of standards and practices, a small group of ethical intuitions exists which can easily be found in all societies and even in other animal kinds. It namely is a matter of emotional reactions or answers which are automatically launched in situation associated with:

1. harm/care (such as sensibility and/or dislike towards signs of pain and hardship of others, mainly those young and vulnerable);
2. fairness/reciprocity (for example, negative reactions to those who fail to reciprocate goodness);
3. authority/respect (for example, anger toward those who fail to show due signs of respect and esteem).

Along with these three universal intuitions, two further intuitions are mentioned by them, widely spread, which span:

1. purity (holiness) (for example, disgust toward spoiled food, some sexual acts, and menses);
2. interest in/fears for one’s group (for example, mutual help when attacked by a predator).

The fundamental existential problems which all human societies must cope with are solved through human culture. The specific human method of cultural behaviour stems from certain predispositions, but it has been solely changed into a form of a cultural system in case of human beings and thus it has become a reliable distinguishing sign of all human races compared with other animal kinds. Keller (2005) believes these are the most significant elements of human culture:

1. ability of symbolical communication;
2. ability to institutionise one’s behaviour;
3. ability to create legitimate structures of organised authority (Graham & Haidt, 2006).

All abilities mentioned above help people find solutions to a number of problems and enable a group to survive collectively in certain environment in a cultural way. Ritualism of human communication, ritualism of organisation, and ritualism of human behaviour significantly reduce the rate of rationality in behaviour of homo sapiens (Keller, 2005).

Ritualism was a milestone in the development of human society. The human culture which was formed step-by-step embodied the stems of regulatory systems. Regulatory systems of ethics, law, and religion have gradually been split from this entity of regulatory and ritualised behaviour.

Let’s imagine the life before the Neolithic revolution. The main source of nourishment in the hunter-gatherer society was commodities that required mutual cooperation to secure.

This can be exemplified by the fact that hunting was participated by more hunters and women were keeping the home fires burning in the meantime. It goes without saying that the food supply gained by hunting had to be split in an admissible manner among the group members. Hence, something similar to “social consensus” had to be created.

It most likely happened in the similar form as one can witness in the animal realm. The catch mostly has to be divided at the presence of the group members in order to prevent controversies and violence in the group. A

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\(^8\) For example: Hobbes, T., Rousseau, J. and Locke, J.
dominant individual divided the catch in a high place or in a big and well visible stone according to the needs and merits of the individual group members.

The ceremonies, social functions, and ethical conceptions have their origins in the early phase of the development of the society.

It is noticeable that the development happened in a number of remote locations of the world at one time and independently from each other, whereas the individual groups came to very similar method of organisation of the society: the state. The reasons why the state forms were similar lie in the basic physiological and psychological presumptions of man as a biological creature (Popper, 2010).

**Discussion**

“When Marduk commanded me to guide the people rightly and to direct the land, I established law and justice in the language of the land in order to promote the welfare of the people.”

Hammurabi became a king of Babylon in 1792 BC and has reigned for more than 10 years. During his reign, he turned the city into a busy trading and economic center. Historians attribute Hammurabi’s success to his belief in the idea of a fair government. He also expressed his conviction through adoring Marduk, God of justice, from whom Hammurabi derived his power. He is known for his laws regulating the personal legal situations based on the principle—an eye for an eye and a tooth for a tooth.

Things less known, though not less important, are on the contrary his actions in the public administration area. He divided the empire in administrative regions in which he installed trusted commanders who could act autonomously to certain degree.

It is beyond imagination that “know-how” of organization of a society could be conceived during the lifetime of one man. We do not know much about his ancestors, who certainly also took part in creating a successful method of the public administration regulation, since they have not left so many footprints in the history like Hammurabi.

The notion of public administration itself is used to denote public authority in the sense of organization. In such a case it denotes the public administration bodies or more precisely, administration bodies. Further, the notion of public administration is also used from a functional aspect. In such a case it denotes the execution of the public administration through performing sub-legal and prescriptive activities of the said bodies. In a sense, it embodies specific position of the public authority of local administration bodies. In other words, public administration can be defined as an administration of public affairs which are primarily ensured by the public administration bodies on one hand, and as a set of administrative activities associated with the execution of public authority in the state on the other hand.

A need thus arose to define the notion of authority and, narrowly constructed, the notion of public authority. The primary function of the state was to foster the public authority in the society. On general level, the public authority also embodies notions as authority does; authority basically is an ability to force somebody to behave in a certain manner and—should the manner of behavior be breached—to enforce the desired behavior and, as the case may be, also to punish the violator.

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This indicates that in principle every individual has the power of authority. It is a typical feature of the public authority that commonly called subjects of public authority dispose of the public authority and execute it in the public interest and with a view to ensuring it. The public authority serves for arranging for the desired status of relations in the society.\textsuperscript{12}

The organization in which people exist is regulated through the relations of dominance and sub-dominance among the individuals and groups. Power inequality demonstrated in the division to dominant and subordinated groups not only occurs across all forms of human coexistence, but is also typical for the other creatures existing within a social system. The animal world knows hierarchy of authority which is clear and functional from a social aspect; thanks to it the animals living in groups are able to suppress aggressive behavior in mutual contacts. Social hierarchy lies in the proportion of physical force respected by the other members of the group. Menacing behavior and behavior express subordination serve for reproduction of the hierarchy. Rituals of menace and subordination organize the life of the group without the necessity to use open aggression or to be exposed to such aggression. Power inequality in its most apparent form is not hence an invention of human society. In the human society, the power inequality (social hierarchy) does not hinder but from far open violence so reliably like it is in case of animals living in social systems. The history, on the contrary, shows that it is just casting of doubts on the role of the existing hierarchy which initiates many conflicts (civil wars, social struggles, and the like). Skills in using the symbols enabled the man to try to strengthen the existing relationships of dominance and subordination through changing it into the form of authority and obedience. The systems of veracious symbolic legitimacy render possible to obey the commands of the authority which are a combination of a public authority and lawful authority.\textsuperscript{13}

Keller believes that the ethnological researches have proven that the power regulation of the interpersonal relationships is present in all types of societies, inclusive of power inequality which is an inevitable part of it. No human group can survive without similar regulation in the long term. As far as the development of the political and regulation system is concerned, some stages can be distinguished there they are not, however, interlinked through any historical inevitability.\textsuperscript{14}

(1) At the time when the political authority was being developed, no government existed in the society, no special groups or individuals specialized in surveillance over the application of obligatory rules and standards of behavior. Standards regulating collective action were handed over along with the other knowledge through traditional wisdom of old people and religious myths of supernatural sanctions. Exclusion from the group was the major punishment in case they were breached. Right of revenge was another sanction; it was also embodied in traditions. Though political authority is extremely diffusional, it does not dispose of any special staff, and it has compulsory nature. This most simple state of organization was typical for the Eskimos, the Semangs of Malaysia, Pygmy peoples, the Mbuti of Zaire, and the like.

(2) Role of a permanent mediator of disputes as a part of the group was typical for the next stage of the power constitution. In most cases, agriculture appears, though in a very ineffective form. The attitude towards other groups is in principle hostile.

(3) This constitutional phase has instituted a rule saying that some individuals, members of the society, take decisions to affect the entire group. The leaders, however, are not subject to a hierarchical structure.


Raising small animals appears and productivity of cultivation of soil increases.

(4) Nevertheless, for the first time, it was the role of a leader that changed into a real flesh and blood man. This is the stage of evolution where specialized political roles could be found for the first time. There were persons who permanently wanted to decide for the others, but their power remained divided into various areas (for example, head-chief in peace and war) where their competence was strictly specified. A half-savage mode of agriculture was transformed into permanent soil cultivation and raising of small animals. The entire cultural ethnicum formed a whole which was politically unified and had hostile relations to the whole neighboring. The competencies of the leaders were strictly specified. A cultural group came into being.

(5) Ruler becomes an independent entity whose commands were obligatory for all people; he, however, still could not dispose of specialized bodies in order to enforce his commands. He governs and applies the same mechanisms like those which regulated the obligatory actions at the previous stages: pressure of the opinion, fear of supernatural sanctions, and thread of exclusion from the group. The ruler and the ruled, however, can easily be distinguished in this stage (and we still cannot talk about a state). There is no significant economic inequality there, the rulers still work. Ceremonies of exchanges are made between different tribal entities on a regular basis in which the economic and purely ceremonial features are mingled and closely overlapped with each other.

(6) More possessors of delegated power appear who begin to be organized in a hierarchical structure. Exploitation of other people’s work appears in this stage for the first time, which however, has more military-related than economic reasons. Military aristocracy is a pre-stage of later class stratification. On top of that, cultural and ethnic heterogeneity has developed in the group. The different ethnic groups often become the basis for stratification of a caste-like type.

(7) Rulers gain monopoly power to legitimately commit violence. At this stage of evolution, those who believed to have been injured stopped taking law (right to revenge) into their own hands. The definite rise of the monopoly on violence laid down assumptions for constituting the public authority. The rulers can dispose of a specialized instrument for the execution of the authority, which was the military aristocracy. This stage of pre-state evolution or an early state was typical for the Etruscans, Scythians, or Greek society in the 12th-9th century before Christ. Massive exploitation has taken the form of slavery or draining off the foreign population through a tribute. The political structure helmed various cultural and language sub-groups, often in the form of caste differentiation.

(8) Further development can be characterized by the development of a specialized apparatus of public authority. The possessors of political power differ markedly from the rest of the society. They make a claim to dispose of the entire society’s sources, as a rule, on behalf of all people.15

Keller substantiates the development by several hypotheses, of which the most compelling one is the economic hypothesis stemming from the thesis saying that the political (power) superstructure depends on the condition of the economic base. The existence of specialized full-time rulers just like the existence of professional administrative and military apparatus is impossible without producing surplus product which these strata ensure from an economic point of view. The public (political) authority requests the economically active majority of population to pay indirect allowances (taxes) and direct ones (tribute, robot, and military service).

Conclusion

When analyzing the single stages of establishing of the public authority, the following facts must be highlighted:

The power regulation of relationships is a must for creatures existing within a social system inclusive of people. The existence of (public) authority is independent from the existence of the coercive apparatus. Diffusional political power without a specialized (coercive) staff can have the same coercive nature. From this it follows that the activities of the possessors of power are not directly linked to people’s behavior in the society. People behave the way like they do because they consider it to be correct. People’s behavior is predominantly determined by their own conviction and concept of world which they support. This is proven by the fact that no coercive apparatus was in existence during the first six phases of the development of the power regulation system.

As a matter of fact, the formation of the coercive apparatus did not mean an important turning point in the possibilities of the ruling elite to exert influence on the means of people’s behavior. The interventions of the coercive apparatus were sporadic at the beginning and the threat it disposed of was not, from the point of view of the individual’s subjective experience, much worse than the mechanisms which regulated the obligatory acting before.

The creation of the coercive apparatus did not mean suspension of the activity of the regulatory mechanisms which were the determinative factors before. Fear of the supernatural or more precisely, belief in supernatural and the pressure of the (public) opinion are determining factors in forming internal conviction of people. Internal conviction, that is, belief in one’s ability to distinguish between good and evil and interpretation of (natural) world associated with it constitute primary influences determining the behavior of individuals and the social interactions among them until today.

The ruling elite had to understand these correlations existing during the early phases of the human evolution. Medicine men and rulers derived their authorities from higher powers (Gods). While most of the group could indeed be convinced that medicine man communicated with the supernatural beings, at least the medicine man himself must have known that it was far from the truth. It is highly unlikely that somebody, relying on interventions of gods could rule efficiently and effectively. In reality, the rulers relied on their own knowledge and abilities when determining the running of the society. If they really could have relied on the help of gods, the coercive apparatus, that is, army and military aristocracy, would have never been established.

There were just the imperfections in the mechanism of exerting influence on people through the fear of the supernatural which leads to creation of a structure in the society capable of maintaining the circumstances under which exploitation of labor of significant part of population occurred. The ruling elite presented itself as having a position where they could identify themselves with the will of God justifying thereby their actions. In case an individual acted against this will, he or she was then punished in the name of God.

For example, Hammurabi did not obtain authorization by God named Marduk in real sense of the term, but he built his empire through diplomacy, treachery, and wars. He did not rely on “divine justice”, but prepared the most well-preserved and comprehensive code of laws in existence from that period engraved in stone. He did not rely on “divine care”, but laboriously developed the centralized state administration system consisting of real flesh and blood people.

It is very similarly improbable that the duke Hungarian Vajk, would have decided to get christened merely upon God’s command. The theory that he realized the power and political situation and on this understanding
of the matters tried to integrate his country into the structures of Christian kingdoms seems to most closely approximate the truth. The Nomad economy based on burglarious quests to Western Europe was not sustainable anymore and therefore he put an end to the pagan customs and thus he moved forward. It was a rational decision taken on the strengths of assessment of the situation; it was not taken by inspiration of God.

The public authority hence lies in the fact that people are willing to listen to it. Authority of a ruler was built on his ability to exert influence on the prevailing interpretation of world. Man as a social being feels a need to become a part of something bigger, something “superhuman”. He is therefore willing to accept the conceptions of supernatural punishment as a part of the interpretation of world. Biological assumptions are also the reason why we consider the public opinion important for us and why we do not want to find ourselves outside the group.

Man has a free will and acts according to his internal conviction. He is willing to submit to the will of a group or more precisely, accept the social role but only in so far as it is not in contradiction with his internal convenience to an unbearable extent. The ruler had never so much power to be able to force people individually to do or to suffer something. In case the government failed to correspond with the values which people promoted to a bearable extent, then the “application of Radbruch’s formula” necessarily came about. The events, such as overthrow of Achnaton, Spartakus insurrection, the Hussite movement, bourgeois revolution, or events which happened in Hungary in 1956 are situations when the system was inequitable to such an extent and so much estranged from the real values that the discrepancies became insupportable. In those moments, regardless of their own safety, people took up the cudgels and set face against their rulers. Man is not merely an animal that can variously be terrified, which renders possible to exploit his labor. Man is a being which was the reason of the origin of the power and economic superstructure. The power comes from the people; it is executed by the people and the people have the right and legitimacy to object to or take down its executors at any time.

In today’s world, it could be expected that the creation of the legal framework would match the values that are professed earlier than the social unbearable injustice. This is executed in real life, or all remains at the level of mere considerations as de lege ferenda.

Shortly, stable systems existed in the antiquity to eliminate the contradiction between justice and positive law. Before the system would become unbearable, the leaders made changes which reduced the inhabitants’ dissatisfaction level. The aim and contents of the power and regulation system are to ensure the material basis of existence of the society. The power superstructure depends on the condition of the economic basis in society. The existence of specialized rulers ruling in full time just like the existence of the professional administrative, military or coercive apparatus, respectively is not possible without producing the surplus product which economically ensures these strata. The public power requests to pay due payments from the economically active majority of population.

The investigation of the world’s historical regions shows that independently on the degree of development of productive forces and technologies, the successful developments in various periods and localities were based on certain more or less similar organizing principles. In the introductory parts, in the context of the life of historical regions and advanced results of social and economic sciences, there is offered an analysis of financial and legal aspects of development of these regions as well as the development of various historical forms of financial and legal regulation. Here is an enumeration of elementarily organizationary, financial, and legal regulations from Ancient Egypt, Old Babylonian Empire, Old and New Testament as well as from The Middle
Ages. The three entities of individual and collective being of KA-BA-ACH in Ancient Egypt: contracts of purchase and sale, delivery notes, and accounts on clay tablets of the Sumerian Empire, the creation of economic cycles abolishing debts (Jubilea) in each seventh year of the Sabbath—all this shows the elementary financial and legal instruments of constituting prosperity of the said region in the early phase of development of human civilization. The development through medieval forms of public finances gradually led to the constitution of a complex system of financial law.

It is clear that the correllance found throughout the whole stretch of scientific disciplines is the foundation on which financial law as regulatory system stands. These key-concepts are showed in Table 1.

Table 1

<table>
<thead>
<tr>
<th>General Aspects of Financial Law</th>
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<tbody>
<tr>
<td>Needs of individuals as biological organisms. (Securing of material needs necessary for the goods producers to be able to work)</td>
</tr>
<tr>
<td>Conditions unavoidably necessary for coordinated social interaction</td>
</tr>
<tr>
<td>Survival and welfare of the society</td>
</tr>
</tbody>
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References


The first column contains basic preconditions of human existence; the second column contains the functions of public finance; the third column contains the extension functions “Államháztartás”; the fourth column contains categories associated with the term “Skarbowość”; the fifth column contains the purposes of the existence of law and the sixth column contains the role of the government. In lines 1-3, categories and notions from various scientific disciplines that are associated with the same social phenomenon are stated and distinguished by colour.


