

**Valentyna Khriapchenko**

*National University «Odesa Law Academy», Ukraine*

## **THE RHIZOME MODEL OF THE SYSTEM OF LAW AS THE MANIFESTATION OF CREATIVITY IN THE CONTEMPORARY JURISPRUDENCE**

The article summarizes existing approaches of understanding the model of system of law as a linear phenomenon as well as characterizes the efforts of many domestic and foreign scholars to justify it as a perfect geometrical shapes (triangle, circle). Underlined that the contemporary jurisprudence strives to expand its categorical apparatus and to use methodological tools, templates and forms borrowed from natural and exact sciences. It is shown that "fresh look" at the system of law can be obtained by modeling it as a "rhizome" – disordered, but coherent set of interrelated branches of law, institutions of law, rules (norms?) and principles of law, development of which depends on an unlimited number of objective and subjective factors. Such a paradigm of modern system of Ukrainian law is really responses to the spirit of postmodern and allows to focus on the study of general characteristics of the complex branches of law, not on explaining their location in a linear model of system of law.

**Key words:** branch of law, complex branch of law, system of law, model of system of law, rhizome model of system of law, contemporary jurisprudence, postmodern.

The debate about the concept and essence of complex branches of law among the Ukrainian scientists that represent general theoretical jurisprudence as well as scholars from different branches of law continues for many years. Such discussions are developing in the frame of more fundamental research of the modern system of law and its branch structure. Any branch of law is the legal phenomenon and its definition in the system of Ukrainian law is meeting with a number of methodological difficulties. Such problems reduced to the need to solve conceptual issues relating to the construction of the system of law, its structure and components.

Quite often debates about the possibility to recognise the emergence of a new branch in contemporary Ukrainian law boils down to "aesthetic" issues (such as "Where (or close to what branch of law) can be located this or other branch of law in the system of law?"). Especially difficult to answer this question as it relates to new branches of Ukrainian law, the existence of which was publicly proved on a scientific level by the way of successful fulfilling of relevant dissertation researches (e.g., juvenile law, military law, gender law, energy law).

The reason for the existence of such questions is that since the Soviet period of national jurisprudence most scientists tried to "adjust" all-union system of law in the framework of a geometric figure (usually it was a triangle). Almost without any reservation at the heart of this "ideal" model of law scholars of that period saw the constitutional (state) law as a fundamental branch of law. Administrative, civil, criminal and labor branches of law as the basic (primary) branches of law were located on the base of this branch of law. In turn, above them and based on them could place secondary branches of law (such as procedural and other specialized branches of law) as derivatives from the primary branches of law. Even today some scholars, considering the sectoral division of law from the hierarchical positions, note that subordination of branches of law can be vividly depicted as a pyramid whose base is a constitutional law. The administrative, civil and criminal law put out from it. Further division of law on all other branches of law has secondary (derived) character<sup>1</sup>.

Such "geometric approach" to understanding the model of system of law is preserved to this day and is quite popular among domestic scientists. For example, the difference between the "triangular" model of system of law of the Ukrainian Soviet republic in the 70th years of 20th century and the system of law of modern Ukraine is only that triangle of the Soviet system of law contained near 10-12 derivative branches of law instead more than 30 secondary branches of national law today. That is, with every period of

<sup>1</sup> Азми, Д.М. (2011). *Историко-теоретический и методологический анализ структуры права*: автореф. дисс. на соиск. уч. степ. докт. юрид. наук. Москва, 33.

qualitative changes in the law caused by the emergence of new relations in society, the look of the system of law in the form of a triangle was unchanging. From time to time only the area of triangle was being increased, because for the new branches of law, that were formed and recognized at a scientific level, it was necessary to find a place in the middle of this figure.

Well known Russian theorist of law Sergiy Alekseyev, when considering the system of modern law, also "idealized" the structure of law, because he modeled system of law as another geometric figure – circle. In the core of such model are three substantive branches of law (administrative, criminal, civil branches of law) with center – constitutional law<sup>1</sup>. The basic procedural branches of law (administrative procedural, criminal procedural and civil procedural law), on the logic of this scientist, can be placed on the ground of relevant substantive branches of law. They create a new layer in architectonics of circular model of system of law. Next layers of circular model of system of law were formed by the emergence of specialized and complex branches of law.

The above-mentioned approaches to the construction of system of law are acceptable under the "neonormative" concept of legal understanding for which the law is a system of norms that are recognized, formally defined, established and protected by the state and expressing the degree of freedom and justice that were reached in the certain society, and serving for regulation of social relations<sup>2</sup>. The law is considered as the integral unit consisting of a set of clearly ordered and coherent regulatory prescriptions, which are interconnected and hierarchically integrated into certain structural units. It is believed that the consistency of law is its inherent property<sup>3</sup>.

However, in view of a classical approach to understanding the legal system as a kind of "ideal" geometric figure it is rather difficult to justify the emergence of new branches of Ukrainian law which are existing entirely objectively, but simply "do not fit" in the chosen model of law. Very often the similar explanation can be heard during defending of thesis that justifying the emergence of new and independent branch of law.

The breakaway from the classical understanding of the structure of modern law is based on a special (non-traditional) paradigm of modern understanding of law. It is the value-normative legal understanding in the postmodern era. Actually in the spirit of postmodernism and within this value-normative legal understanding other well known scholar of Odesa General Theoretical Jurisprudence Law School prof. Yurii Oborotov offered a very different approach to the interpretation of legal reality as an environment that looks like as "rhizome" and has its own inherent creative potential of self organization<sup>4</sup>. According to scientist, the consideration of law as integrity is perspective with using for such consideration of the notion "rhizome" that just captures nonstructural and nonlinear way of integrity organization. Such desire of scientist to understand the new characteristics of the existence of modern legal space leads to the formation and using of notions, which is not written in the categorical apparatus of the contemporary jurisprudence yet.

In this regard the term "rhizome", today is worthy of lawyers' attention. It was borrowed from botany and moved to modern science through the same-named work of two well-known postmodernists as Gilles Deleuze and Félix Guattari. In Biology under the notion "rhizome" is understood the particular way of life of perennial herbaceous plants whose roots under the ground constantly and irregularly branched into many new parts and those branching intertwined. In the philosophy of postmodernism the comparison of wood and rhizome as two different ways of thinking is considered as classical: first as something stable, hierarchical, systematical, coherent and predictable, and the second as a large number of randomly interlaced shoots that are growing in all directions, which haven't a single root as a connecting center<sup>5</sup>.

For better understanding of the phenomenon "rhizome", it is firstly needed to imagine the root system

<sup>1</sup> Алексеев, С.С. (1998). *Право. Азбука. Теория. Философия. Опыт комплексного исследования*. Москва: Издательская группа «НОРМА – ИНФРА», 112.

<sup>2</sup> Крестовська, Н.М., Матвеева, Л.Г. (2007). *Теорія держави і права. Елементарний курс*: навч. посіб. Харків: Одиссей, 167.

<sup>3</sup> Заморська, Л.І. (2014). *Правова нормативність в умовах становлення та розвитку українського права: загальнотеоретичне дослідження*: автореф. дис. на здоб. наук. ступ. докт. юрид. наук. Одеса: НУОЮА, 16.

<sup>4</sup> Оборотов, Ю.М., Завальнюк, В.В., Дудченко, В.В. та ін. (2015). *Креативність загальнотеоретичної юриспруденції: монографія*. Одеса: Фенікс, 15-16.

<sup>5</sup> Гречко, П.К. (1995). *Концептуальные модели истории: пособие для студентов*. Москва: Изд. корп. «Логос», 98.

of plants. For example, let's compare roots of dug monocots and dicotyledonous plants like wheat and a dandelion. A dandelion has a clearly visible primary root that develops from embryonic root. From the primary root small lateral roots walk away. The primary root called "taproot" (rod) and it is similar to the core. Therefore, plants with well-developed root system are called "taproot system". Wheat has many roots, almost all of them are the same length and thickness and rising as bunches. These roots grow from the stem and they are called additional. The primary root of wheat is similar as additional wheat roots. If the primary root does not develop or is not different from numerous additional roots, such root system called "fibrous root system". When fibrous root system is developing, the primary root grows not long and becomes invisible among the many additional roots which grow as bunch from underground part of the stem. Actually last one (fibrous) type of root system may be regarded as "rhizome". The main feature of this system is that undefined number of additionally (auxiliary) roots is developing from aborted (destroyed) roots of the fibrous root system.

Taking into account that the above-mentioned rhizome model of system of law is opposed to linear organization of law space that excludes chaos and does not recognizes its achievement in the process of legal matter creation. Nonlinear processes of development (such which in certain conditions, some internal or external disturbance may lead the system to fundamentally new conditions for the appearance of new resistant structures) as well as unbalanced systems (those that are far from the balance) systems are explored in the frame of such direction of research as "Synergetics". The notion "nonlinearity" is a fundamental concept in the synergetics of legal understanding as a relatively new area of research in contemporary general theoretical jurisprudence on the base of which the paradigm of legal nonlinearity was developed. The nonlinearity in synergetics of law indicates the possibility of regulatory unexpected (but quite predicted and foreseen) fast or operational changes of directions of actual and non-actual law-making processes, their plurality, the plurality of paths of regulatory deployment, random selection of one of them as a priority in the frames of the normatively determined field of regulative capabilities of valid law<sup>1</sup>.

At first glance in the rhizome model of system of law is difficult to see any "system" in a chaotic branching areas of law that have not only clear visible primary root (rod), but sometimes are intertwined (besides more than once), splited off one from each other and are developing with new force. On the other hand, each system must form so-called relational substrate, under which understood as the structure of its elements. The presence of such substrate is an obligatory requirement of existence of the system. This substrate should include all elements of the system, even if that is only one element. Obviously, in the case of a system of law that has the form of fibrous root plants, these disordered "branches-roots" of law is a relational substrate. In the modeling of the legal reality as a rhizome environment the modern system of Ukrainian law does not have to be regarded as a centered system in which all the relationship between the individual elements discussed in the context of the parameters of a particular element – the center. The center of the system is not only the part of the system, but also serves the quality of communication between all other elements and the lack of center in such systems lead to the collapse of the system.

As it noticed above, in the fibrous root system of plants the main root grows not long and becomes invisible among the many additional roots which grow as bunch from the underground part of the stem. By the same principle in the development process of modern Ukrainian law and the emergence process of a large number of new independent branches of law its main branches (administrative law, civil law and criminal law), which at first stage were the only components of the legal system, gradually lost its privileged status. But such basic branches of law are remaining primary in the temporal context in relation to other new branches of law. Due to the growth of volume of regulatory material for new branches of domestic law, it is difficult to discern the basic (primary) branches of law among other "branches-roots" of law.

Nevertheless, the system of modern law, not being the centered system, has some primary root on which foundation (like the underground part of a stem) are being originated most branches of law. For example, such root foundation from which is growing a bunch of branches of law is a constitutional branch of law. As noted Mark Orzih, the fundamental meaning of constitutional branch of law is manifested in the following: 1) constitutional provisions regulate and protect important public relations arising in the implementation of state government and local self government and their relationship with civil society and the population of the state; 2) rules of constitutional law enshrine the basics of legal organization of the state and its relationship with the person in a variety of civil status, contains the general principles of law

<sup>1</sup> Дмитрієнко, Ю.М. (2006). Сучасна академічна думка про правосвідомість. *Право і Безпека*, 5, 15.

that are specified in the principles of all branches of law and acquire regulatory and jurisdictional meanings, and constitutional legal relationships have tendency to "admix" relationships from "foreign" branches of law; 3) constitutional law performs an integrative function in relation to other branches of law that do not integrate but differentiate legal material; 4) constitutional law is not limited by its own normative content because it organically includes constitutional practice not only as a state-legal experience of higher level, but also as an indicator of the constitutionality and legality of legal practice at all levels of law-making and application of law, etc.<sup>1</sup>

Recognizing that the constitutional branch of law plays the role of root foundation of modern law, as well as temporal primacy for basic (three substantive – administrative, civil and criminal) branches of law, other "branches-roots" of law wherever they started their existence may be characterized as complex formations. The disclaimer of further dividing of the law on other types of branches immediately allows to remove the debate about whether this or other branch of law is special, secondary, derivative or some another kind of branches of law, and to focus on such its feature as "complexity".

Such feature ("complexity") of the branch of law within rhizome model of law shows not on the transitive status of appropriate institution of law or sub-branch of law in the way of their formation as new independent branch of law, but expresses the complexity (multidimensionality) of the branch legal regime of this branch of law compared to the branch legal regimes of basic (primary) branches of law. The main feature of the complex branches of law is the entry of social relations from various basic (primary) branches of law to the subject of its regulation range, but they have their own specificity, which determines their autonomy.

Such complex branches of law is neither "under-branches" nor "super-branches" of law because at any stage of development they can be divided into the several new branches of law, partially intersected with another branch of law or fully accede to it, or even to stop further development. The intersection of branches of law together is the process of using the same institutions of law by different branches of law.

Taking the rhizome model of the system of law as basic, we can underline, that a complex branch of law is a set of legal rules and principles which govern as public legal relations as well as private legal relations which are impossible to regulate by one of the basic (primary) branches of law<sup>2</sup>. For instance, the main feature of conception of commercial law is that this complex branch of law is focusing on tying private interests with public interests<sup>3</sup>.

As complex branches of law can be considered those branches of law that seamlessly combine public and private institutions of law that have different subjects of legal regulation, but a common goal and methods of legal regulation (i.e., homogeneous functional characteristics). An example of such a complex branch of Ukrainian law is gender law that at the present stage of its development consists of institutions of law (both public and private) borrowed from other branches of law, with a small number of its' "own" branch institutes of law<sup>4</sup>.

Also at the points of contact of different branches of law is the formation of "intersectoral" institutions of law that are derived from the regulatory component of several branches of law. For instance, such intersectoral institutions in the structure of military law as a military-administrative law, military-social law, military-commercial law, military-criminal law and military-humanitarian law formed when this branch of military law closely intertwined with such branches of law as administrative law, social law, commercial law, criminal law and humanitarian law respectively<sup>5</sup>.

The substantive branches of law, which in its structure contain procedural institutions of law, also

<sup>1</sup> Орзих, М.Ф. (2009). Конституционное право как фундаментальная отрасль украинского права. *Введение в украинское право*. Одесса: Юридична література, 258.

<sup>2</sup> Добробог, Л.М. (2015). *Закономірності виникнення, розвитку та функціонування комплексної галузі права як елемента системи права*: автореф. дис. на здоб. наук. ступ. докт. юрид. наук. Дніпропетровськ: ДДУВС, 11.

<sup>3</sup> Знаменський, Г. (2016). Господарське право України: сучасний стан та перспективи. *Юридичний вісник України*, 6, 7.

<sup>4</sup> Аніщук, Н.В. (2010). Система гендерного права: поняття та основні структурні елементи. *Наукові праці Національного університету «Одеська юридична академія»*, 9, 379-380.

<sup>5</sup> Богуцький, П.П. (2009). *Військове право у системі права України*: автореф. дис. на здоб. наук. ступ. канд. юрид. наук. Одеса: ОНЮА, 17.



have the feature of complexity in legal regulation<sup>1</sup>. As an example of such complex branches of law in the system of Ukrainian law can be regarded the judiciary branch of law, the necessity of creation of which is expressed by a number of domestic legal scholars and practitioners for a long time. The scientists underline that the judiciary law as a branch of law is a set of regulations which regulate the social relations in the organization and activity of the judiciary power, the judicature, the courts' proceedings, define the role and place in the state and society; basic principles and procedures of selection and placement of judges, their training and retraining; judicial authorities, as well as their interaction and relations with other government agencies, community organizations and individuals. Judiciary branch of law defines the basic principles of interaction of the judiciary with various international courts, as well as with the judicial authorities of Europe and around the world<sup>2</sup>.

An other interesting example of such complex branch of law is Ukrainian labor law, which includes both substantive rules of law, as well as procedural, organizational, law rules to regulate the activities of the settlement of labor disputes. Some domestic scholars point out the existence of the factors that cause to the formation of labor procedural law as an independent branch of law in the Ukrainian law<sup>3</sup>. The same statement is relevant to constitutional procedural law as a separate branch of procedural law. Within the rhizome model of system of law the emergence of new procedural branches of law is also explained as the process of new root separation of the relevant substantive branch of law and the growing of this new procedural root to the size of other "branches-roots".

Being alternative to the linear system of modern Ukrainian law, the rhizome model of system of domestic law allows us to immediately remove from the agenda the question of the place of complex branches of law among basic (primary) branches of law. A long and smooth growth of the new branch of law from other sub-branch of law or from the institute of law (small gradual maturation of the "branch-root") as well as sharp splitting of the existing branch of law in the new "branches-roots" can be described within the rhizome model of system of law. Customs law as a complex branch of Ukrainian law, which was regarded by Soviet scientists as an institution or sub-branch of administrative law, passed the first way of formation<sup>4</sup>. The informational law may also had a transformation from inter-branch institution into a separate complex branch of law, and today its institutions of law such as the educational law, archival law and library law are passing the same way<sup>5</sup>.

As an example of the complex branch of law in the system of Ukrainian law, which passed through a process of partial growth with other branches of law, is natural resources law. This branch of law emerged in the 80's of XX century and in the mid of 1990's transformed into another complex branch of law – environmental law, as the last included a natural resources relations in its subject of legal regulation. Today Ilya Karakash notes the existence of both natural resources law and environmental law as two separate branches of law in a contemporary Ukrainian legal system<sup>6</sup>.

So taking the above-mentioned into account, comparing of the system of modern Ukrainian law (the most part of which consists from complex branches of law) with the specific biological phenomenon as "rhizome" is a good example of how modern (neoclassical and post-classical) methodology is used in contemporary jurisprudence. The characteristic features of this methodology in the postmodern era are, in particular, the recognition of the possibility and the necessity for using the different research paradigms, approaches, methods and techniques, terminology apparatus and other instruments from other Humanities (non-legal), Natural and Physical Sciences<sup>7</sup>.

Moreover, this approach reflects a postmodern fundamental setting on the presumption of destruction

<sup>1</sup> Оборотов Ю.Н. (2011). *Общетеоретическая юриспруденция: учебный курс*: учебник. Одесса: Феникс, 134.

<sup>2</sup> Біленчук, П., Барилюк, В. (2015). Судове право України. Історія виникнення, реалії становлення та перспективи розвитку: сучасні інновації стосовно реформування судової системи і судового права України. *Юридичний вісник України*, 51-52, 20.

<sup>3</sup> Скіпенко, Р. (2007). Становлення трудового процесуального права як самостійної галузі українського права. *Право України*, 7, 43.

<sup>4</sup> Ківалов, С.В., Кормич, Б.А. (2002). Митне право: система та динаміка розвитку. *Митна справа*, 1, 3.

<sup>5</sup> Дімчогло, М.І. (2012). Консолідація як вид систематизації інформаційного законодавства. *Правова інформатика*, 33, 16.

<sup>6</sup> Каракаш, І. (2014). Природноресурсове право як комплексна галузь права в українській правовій системі. *Юридичний вісник*, 5, 84.

<sup>7</sup> Оборотов, Ю. (2002). Методология юридической науки в эпоху постмодерна. *Юридический вестник: Научно-публицистический журнал*, 4, 85.

of traditional ideas about the system of law and its structure as something ideal, stable or nearly permanent, hierarchical and centralized. Using of the rhizome paradigm with further study of domestic system of law will let not only remove the issue of the presence or absence of complex branches of law from scientific discourse, but also will let to take a new look at the conceptual basis of the construction and functioning of the system of Ukrainian law in its nonlinear organization.

Finally, the research of the legal reality as the rhizome environment is one of the manifestations of creativity of general theoretical jurisprudence that is represented in contemporary researches of theorists of Odesa legal school.

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