Dualism of Law: Historical Analysis, Current Trends, a Combination of Private and Public Principles in Civil Law

Mikhail V. Tregubov

PhD in Juridical sciences, Associate Professor, Head of the Department of Jurisprudence, North-West Institute of Management of RANEPA, St. Petersburg, Russian Federation; tregubov-mv@ranepa.ru

ABSTRACT

The article is devoted to the perception of private and public law in the tradition of the Romano-German legal family. With the use of formal-logical, sociological-legal and retrospective methods of research the author studies the transformation of views on the grounds of differentiation of private and public law, analyzes the current trends in the development of scientific thought on the problem of dichotomy of law, the combination of private and public principles in civil law is studied. The conclusion is made about the development of two interrelated processes in the modern legal systems of Russia and Europe — "publicization" of private law and "commercialization" of public law.

Keywords: dichotomy of law, private law, public law, convergence theory of private and public law, combination of private and public principles in civil law

The dualism-of-law doctrine as inherent in the Romano-German (continental) legal family separation of law into private and public law provoked numerous discussions, gave birth to various theories and paradigms, was the subject of academic interest for many jurists throughout its history. Attention to the issue on the most correct, proper, methodologically substantiated criterion of differentiation between private law and public law in different historic periods one day weakened, another day came up with a bang, and now, in addition to getting the balance in combination of private and public fundamentals, it attracts keen interest of the academic community again.

By now, legal science has created plenty of theories, even schools have been formed, but there is still no unanimity of opinions on the necessity and practical relevance of dividing law into private and public, not to say about the criteria of such division.

The idea of dividing law into private and public was born in the structure of Roman law which was formed in the 5th century B.C. in Ancient Rome and is traditionally connected with the works of the ancient Roman lawyer D. Ulpian, who laid the idea of interest in the basis of law division: public law refers to the interests of state as a whole, while private law refers to the interests of an individual as such ("publicum jus est quo-dad statum rei romane spectat privatum quod ad singulorum utilitatem").[1] In our opinion, even though Ulpian's, Aristotle's and Demosthenes' statements contained separate provisions on consideration of law from the two perspectives, division of law into private and public was not systemic and was to be used for convenience in studying law, rather than for practical application.

The unprecedented legal system of ancient Romans was somehow inherited by a number of states which were formed after the breakdown of the Roman Empire. Although the early Middle Ages saw official and customary law of continental European states to drive back the positions of Roman law significantly, starting from the 12th century legal higher education in European countries is practically completely based on research in the Roman legal tradition, where special attention is given to Digests — an extensive collection of statements of Roman lawyers on the legal aspects of property, testaments, contracts, delicts, on crime and punishment as well as city law.[2] Division of law into public and private was also perceived and was based on the following common concept: legal relations occurring in the field of public law and private law are different in their nature and required different ways of rulemaking and regulation. The teaching methods based on the reception of Roman law gradually shaped lawyers' legal consciousness based on the dichotomy-of-law postulate, which became the basis for the Romano-German legal family.

In the period from the end of the 17th to the beginning of the 18th centuries, the doctrine on division of law into private and public was actively studied by scientists from Western Europe, where the dualism of law became a symbol of separation of an emerging civil society from state institutions. Citing of the classical Ulpian's idea did no longer meet the needs of legal thought development caused by the

[1] Golubtsov V. G. Correlation of the Public and Private Law in Russia: the Historical Aspect [Sootnoshenie publichnogo i chastnogo prava v Rossii: istoricheskii aspekt] // Perm University Herald. Juridical Sciences [Vestnik Permskogo universiteta. Yuridicheskie nauki]. 2008. No. 1 (1). P. 59. (In rus.)

[2] Berman G. J. Western rights tradition : the era of the formation. / 2nd ed. M.: Publishing house of Moscow state University, Infra-M — Norma Publ., 1998. PP. 127–128. (trans. from eng.)

influence of the Enlightenment and later the French Revolution. In the 19th century, western civilists positively opposed public law to private law, the state — to the civil society, seeing in private law the source of an individual's freedom from the state dictatorship.

Striving to clearly structure law into private and public subsystems, which was peculiar to German scientists in the 19th–20th centuries, engaged the Russian academic community, which, up to the known events in 1917, actively investigated the doctrine of dividing law into public and private.

In the 20th century, general theory of law developed a considerable number of theoretical structures formulating law division criteria or denying the necessity of such division.

Within the framework of the positivist theory, the ground for demarcation of law into public and private was the subject and method of legal regulation. Private law covered regulation of legal relations in the field of interests of individuals, both natural persons and legal entities, that is, social relations between formally equal subjects expressing their personal interest, with a dominating discretionary method of legal regulation based on the consideration of the initiative coming from the participants of the regulated relations, their independence in the choice of actions.[3] Public law covered regulation of social relations reflecting the interest of the state and society, with a dominating mandative method of legal regulation, being strictly obligatory, which did not allowed for deviations from the legally established requirements. The French lawyer L. Duguit (1859–1928), when regarding the issue of dualism of law through the lens of solidarism, expressed his assuredness in firm, inescapable replacement of private law fundamentals with public law principles and, as a consequence, in turning all law into public law.[4]

The representative of the sociological theory of positivism N. M. Korkunov (1853–1904), while denying the interest as an acceptable criterion for demarcation of law, sees the difference between public law and private law in differentiating their dual legal form — division of an object as differentiating between "mine" and "yours" and adaptation of an object to combined effectuation of differentiated interests. "It is quite easy to prove, — N. M. Korkunov wrote, — that, by building the differentiation of private and public on the differentiation of division and adaptation, we can easily explain the availability of private rights for the state as well. If the state is provided with the authority over an object for its adaptation to the usage, we are speaking of public law: such is the state's right to roads. On the contrary, if an object is provided to the state only to be used by the government itself to get some means out of it for adaptation of other object, we are speaking of private law: such is, for example, the state's right to public property the earnings from which are spent for satisfying these or those state administration tasks".[5] Private law by referring objects to private possession allows the subject to determine the method of their management at free discretion, that is, it regulates only distribution rather than consumption and production, while public law by adapting an object to joint use regulates both consumption and production.

The famous Russian scientist K. D. Kavelin (1818–1885) did not recognized the traditional for the Roman legal thought dualism of law based on private or public interest as he denied the very possibility for clear demarcation between public and private law. "We cannot imagine, — K. D. Kavelin wrote, — any legal relation — however insignificant it may seem, however it appeared to be limited exclusively to one or several individuals, which would, at least indirectly, at least to the smallest possible scale, not deal with public living, not have an impact on it. Private living, private relations reside in the public domain, they do not exist beyond the public domain, and thus, they cannot but have an impact on the public domain; similarly, private relations, as they exist in the society, are inevitably under the influence of public living. This gives rise to continuous interaction between private and public elements, though it rarely reveals itself and stares in the face, but usually is realized quietly, out of the observer's sight, and manifests itself only in its actions and results".[6] Thus, we may speak only about reasonable balance and a well-proportioned combination of these elements. According to K. D. Kavelin, to balance private and public is a non-trivial problem as, at first sight, even a contract between two citizens has private character. However, we cannot but agree that such a deal has always a public side as its subject may be a thing limited for civil circulation or withdrawn from it, which gives public significance to such deal. Thus,

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[3] Vasiliev O. D. Problems of Separation of the Right to Public and Private in the Russian Positivistic Theory of Law in the Late XIX — Early XX centuries [Problemy razdeleniya prava na publichnoe i chastnoe v russkoi pozitivistskoi teorii prava v kontse XIX — nachale XX vv.]: Dissertation of PhD in Juridical sciences. Blagoveshchensk. 1999. 142 p. (In rus.)

[4] Duguit L. General Transformations of Civil Law from the Time of Napoleon's Code / Ed. and with foreword: A. G. Goyhbarg, Trans from fr.: M. M. Sievers. M. : Gos. izdatelstvo Publ., 1919. 110 p.

[5] Korkunov M. N. Course of lectures. [Kurs lektsii]. SPb.: Yuridicheskiy tsentr Press Publ., 2004. P. 162. (In rus.)

[6] Kavelin K. D. Civil Law. History of the Russian judicial system [Grazhdanskoe pravo. Istoriya russkogo sudoustroistva]. M. : Yurayt Publ., 2018. PP. 2, 12, 38. (In rus.)

the border between private and public interests may be disturbed, and "we cannot state with full confidence about the exclusiveness of private or public nature of legal regulation in civil relations, but we can say about their equal combination".[7]

The representative of the historical school of law F. K. Savigny proposed to divide private and public law based on the purpose, though he did not develop the idea of the purpose. In public law a separate individual plays only a subordinate role as the purpose is the whole, while in private law "a separate individual is the purpose in themselves, and any legal relation relates to their existence or special state as a means", Friedrich Carl von Savigny wrote in 1840.[8]

The founder of the imperative theory, well-known German civilist and legal theorist August Thon (1839–1912) proposed to use a legal regulation method as a criterion for demarcation of public and private law: if safeguard is provided exclusively upon request of a person which right was infringed, then this right should be regarded as private; if an infringed right is safeguarded only at the initiative of the state, even beyond the affected person's will, this is the sphere of public law.[9]

The widely known statement of V. I. Lenin about non-recognition of anything private in economy expressed on behalf of the communist party for many years defined the standpoint of Soviet scientists on this problem. However, we cannot say that in the Soviet period there were no theoretical insights into dualism of law. It was as early as in 1920 when, in his studies on the value of private law for the society and individual, the interaction of private law and public law, Professor M. M. Agarkov proposed to classify all the available theories into four groups: theories based on the material criterion, theories based on the formal criterion, theories combining the two first criteria, and theories rejecting dualism of the system of law.[10]

By developing the ideas of M. M. Agarkov, the Soviet civilist B. B. Cherepakhin publishes his work entitled "On the Issue of Private and Public Law" in 1926, where he analyzed the main schools of thought concerning the issue on where is a demarcation line between private and public law and came to the conclusion that the demarcation should be based on the formal criterion — the demarcation should be realized depending on the way legal relations are built and regulated. Thus, as B. B. Cherepakhin thinks, "a private law relation is based on coordination of subjects; private law is a system of decentralized regulation of living relations. A public law relation is based on subordination of subjects; public law is a system of centralized regulation of living relations".[11] The theories based on the material criterion proceed from the premise that the criterion for demarcation of private and public law is, first of all, a response to the question which interest — of the state or of an individual — is the subject of regulation; second, which interests are protected by the rules of law — property or personal interests. Variable content of legal rules and relations caused by social, political, economic changes in the society does not allow for finding such a material criterion that would pass the test from the historical and doctrinal perspective, which, according to B. B. Cherepakhin, makes the ideas of supporters of this criterion baseless.

A rising tide of interest to the considered problem in the Russian scientific community took place in the 90s on the background of perestroika political processes, active development of civic institutions and attempts to intergrate alien western civil rules into the Soviet system of law. On the wave of global social and economic changes, the interaction of private and public law in Russia, starting from the 90s, acquires new facets. Thus, Decree of the President of Russian Federation No. 1473 of July 07, 1994 approves the Program entitled "Development of Private Law in Russia" (hereinafter — the Program), the provisions of which enact measures on restoration and development of private law. The Program underlines that the legal system of the totalitarian past, which was based on the nationalization of economy, is replaced with regulation of relations based on commonly accepted principles of private law: private independence and autonomy, acknowledgment and protection of private property, contractual freedom. As private law has not become common for the legal practice and has not come into the mind of participants of economic relations, it is necessary to take a number of actions to create a legislative basis

[7] Anisimov A. P. Civil Law of Russia. The general part: a textbook for academic bachelor [Grazhdanskoe pravo Rossii. Obshchaya chast': uchebnik dlya akademicheskogo bakalavriata] / A. P. Anisimov, A. Ya. Ryzhenkov, S. A. Charkin; under total ed. A. Ya. Ryzhenkov. 4th ed., revised and enlarged edition. M.: Yurayt Publ., 2016. P. 38. (In rus.)

[8] Duguit L. General Transformations of Civil Law from the Time of Napoleon's Code / Ed. and with foreword: A. G. Goyhbarg, Trans from fr.: M. M. Sievers. M.: Gos. izdatelstvo Publ., 1919. P. 67.

[9] Korshunov N. M. The Convergence of Private and Public Law: Problems of Theory and Practice: a monograph [Konvergentsiya chastnogo i publichnogo prava: problemy teorii i praktiki: monografiya]. M.: Norma: INFRA-M Publ., 2015. 240 p. (In rus.)

[10] Agarkov M. M. The Value of Private Law [Tsennost' chastnogo prava] // Jurisprudence [Pravovedenie]. 1992. No. 1. PP. 25–41. (In rus.)

[11] Tikhomirov Yu. A. Public Law [Publichnoe pravo]. Textbook [Uchebnik]. M. : BEK Publ., 1995. P. 33. (In rus.)

for private law relations. Such actions include: development of a civil code and other acts of civil legislation (laws on the incorporation of legal entities, registration of immovable property and real property transactions, on joint-stock companies, on mortgage, etc.) as the primary source of private law in Russia; training of specialists in private law.

The terms "private" and "civil" law in the Program are used as synonyms. These terms are widely used as synonyms in legal science, but we cannot agree with such an approach as such artificial mixing neutralizes criteria for individualization of law branches and misrepresent the idea of demarcation of private and public law. In our opinion, it is more appropriate to speak of a combination of private and public elements in civil law, where civil law is a branch of private law, including law of persons, natural persons and legal entities (to the extent it regulates their legal capacity), law of obligations and contracts, law of property, law of inheritance as well as personal non-property rights.

Going back to the schools of legal thought in Russia from the start of the 90s, let us note that reversion to the supremacy of law, the priority of an individual's and a citizen's rights and liberties ramped up interest in private law. Public law being a synonym to state law underwent serious critical re-evaluation. At the origins of studying modern problems of public law and the onset of the public law scientific school in 1995, there stood the Soviet and Russian legal scholar Yu. A. Tikhomirov. The scholar claimed to refuse opposition of private to public law as they are naturally connected and are interrelating with each other. By laying an emphasis on historically proven mobility of border between public and private law, malignancy of clear prevalence of either public or private law, Yu. A. Tikhomirov proposes to perceive the term "public law" on the whole, as the specifics of "law in the socially important sphere, i. e. in the sphere on which the existence, functioning, development of the society, and the state, and organized gangs, corporations, associations, and citizens depend".[12]

"Public law, — the scholar writes, — embraces a lot of spheres. This is the mechanism of the government and power, the field of governance and arrangement of self-governance, the expression of public interest as an averaged sum of social interest in each of the spheres — economic, social, etc. This is generally accepted goal-setting for actions of all subjects of law, laying the groundwork and maintaining the functioning of the legal system, providing common law-making and law enforcement principles".[13]

By developing the ideas on addition and interaction of private and public law structures, N. M. Korshunov has developed the convergence theory. The essence of the theory lies in the recognition of interaction between independent branches of law — private and public, without their interference and, particularly, without their absorption of one another. By possessing common system attributes and specific peculiarities, private and public laws interact "by means of a combination of private law and public law methods of their regulation", that is, in the domain of public law one may use contractual methods (for example, public private partnership), and for the exercise of certain private subjective legal rights one should establish a special procedure (for example, civil registration of births, deaths and marriages, incorporation, state registration of rights to immovable property and transactions involving such property, licensing of certain types of activities).[14] By interacting, both branches of law completely preserve their specific features, system attributes and legal essence. Tearing into the convergence theory, T. A. Solodovnichenko noted that the use of a single objective criterion for demarcation of the legal regulation method (private law or public law) excluded the possibility for convergence of private and public law. This standpoint is disputable.[15] Of course, it is difficult to deny that as an optimal criterion for demarcation between public law and private law, only the legal regulation method is of little use. N. M. Korshunov himself agrees with this and makes the conclusion that in the modern world, "purely" public or private branches of law do not exist; consequently, it would be logically sound to accept the theory of convergence of private and public law as the one that provides balanced understanding of the private and public borders in law.

Addressing to the issue of convergence of private and public elements in modern civil law, we can see active intrusion of public elements in the field of private law. Although in the period when the Civil Code of the Russian Federation was developed, based on the postulate that civil law is only private law, the necessity to reject the preservation of public interest, i. e. rules considering the interests of the state

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[12] Solodovnichenko T. A. Critical Assessment of the Theory of Convergence of Private and Public Law [Kriticheskaya otsenka teorii konvergentsii chastnogo i publichnogo prava] // Herald of OMSK University. Series: Law [Vestnik OmGU. Seriya: Pravo]. 2018. No. 2 (55). P. 38. (In rus.)

[13] See ibid.

[14] Korkunov M. N. Op. cit.

[15] Bogdanov E. The Correlation of Private and Public in Civil Legislation [Sootnoshenie chastnogo i publichnogo v grazhdanskom zakonodatel'stve] // Russian Justitia [Rossiiskaya yustitsiya]. 2000. No. 4. PP. 23–24. (In rus.)

and the whole society, was repeatedly discussed, and emphatically insisting on the exclusively private law nature of civil law in the current realities is at least naive.

Without disputing the standpoint of S. Alekseev, who thought that "until civil legislation, laws on property, entrepreneurship, all similar laws are not be accepted and constructed in social and legal being as private law, we will not have actual private property, entrepreneurship, private initiative, peasants' right to land",16 let us recall that "publicization" always existed in civil law to a greater or lesser degree in all countries. Originally, such condition was connected with the state's capability to guarantee the very enforcement of private law, and individuals could freely conclude contracts as they wished. In the course of time, the role of public law has been growing. Being the basis of governance in the state, expressing the basic principles of the society organization and the status of an individual and a citizen, it expresses interdependent relations between members of the society and guarantees the viability of the structure as it is not always possible to discern a goal of public nature behind individual, parochial interests.

That is why in civil law both in Russia and in other countries there are provisions of public law nature. This manifests itself as follows: 1) in arresting the principle of contractual freedom — a prohibition against a person's refusal to conclude a public agreement is described as well as the obligatoriness of concluding an agreement for the party to which an offer is sent; obligatory contracts (insurance), regulated contracts (for example, for electricity supply, limiting the rights of natural monopolies), contracts without the right to free choice of a partner (pre-emptive right) are provided; in establishing the procedure for concluding, amending and terminating a contract and its form; 2) in limiting property rights — the requirement about obligatory state registration of title and other proprietary interests in immovable things and the obligatoriness of obtaining permits for construction and building on are enshrined; servitudes are provided as well as possibilities for forcible withdrawal of property from the owner (levy of execution upon collateral, alienation of property, including construction in progress, redemption, seizure, appropriation, court-ordered forfeiture of property, money, valuables and earnings thereon to the Russian Federation, privatization, nationalization), retortions in relation to property rights of citizens and legal entities of foreign states; 3) in limiting types of activities — a prohibition on free (without any license) production (planting) and sale of a number of goods is established, there are obligatory production quotas; 4) in a limited and exhaustive list of entity types; 5) in the right of the state and state formations to be participants of civil relations; 6) in limiting the freedom of testament — there are rules on an obligatory portion, there are certain limitations for inheritance of national awards, badges of honor and memorial signs; 7) in limiting personal non-property and exclusive rights — retortions in relation to personal non-property rights of citizens and legal entities of foreign states, compulsory license; 8) in establishing formal requirements for individuals — participants of civil law relations (age, capacity, requirement for registration of births, deaths and marriages); 9) in establishing boundaries for exercising civil rights — law-skirting actions pursuing illegal purposes, exclusively with the intention to inflict harm on another person, abuse of right, limitation of competition, abuse of market dominance are not acceptable; 10) in the necessity to pay taxes on any economic transactions, even on "absolutely" free ones.

This is by no means an exhaustive list of manifestations of public elements in civil law. "Publicization" of civil law if caused by a number of objective reasons. For example, when performing its social function, the state limits the rights of monopolies, thus supporting citizens—consumers; having established specific significance of certain civil matters (natural resources, land, weapons, toxic substances, drugs and psychotropic agents, currency) for the society, the state establishes special rules for their turnover, thus ensuring economic development and safety in the society; public property is used for implementation of social projects as well. The fact that private, civil, law includes an increasing number of compulsory rules is the result of law socialization as in order to protect universal interest one has to trench on individual freedom.

Introduction of public elements into civil law does not lead it to the loss of private law nature; private law rules, even compulsory ones, do not become rules of public law. Consent remains a fundamental element of the free will doctrine in civil law. A contract as the main source of civil obligations remains a legal instrument based on consensus. Even when a contract is a legal obligation, law cannot replace the consent of the parties completely. Cases when consent is actually not required are very rare and

[16] Vasiliev O. D. Problems of Separation of the Right to Public and Private in the Russian Positivistic Theory of Law in the Late XIX — Early XX centuries [Problemy razdeleniya prava na publichnoe i chastnoe v russkoi pozitivistskoi teorii prava v kontse XIX — nachale XX vv.]: Dissertation of PhD in Juridical sciences. Blagoveshchensk. 1999. P. 15. (In rus.)

are justified by public convenience considerations. However, the opinion that civil law is only private, which can have nothing of public nature, leads to disorientation of both lawmaking and law enforcement activities, causes tension in the society.

Upon completion of the investigation of the issue, we find it possible to draw the following conclusions.

First, from the moment of problem statement by ancient Roman scholars and up to the present moment, science has not worked out clear approaches to any of the aspects within the framework of the dualism-of-law doctrine. There is no unanimity of opinion on the used terminology (for example, whether it is acceptable to use the terms "private" and "civil" law as synonyms); a single approach to the choice of criteria for demarcation of private and public law has not been worked out; a universal, logically consistent system of criteria for division of the dichotomous system of law into branches has not been developed (for instance, such branches as employment law, forest law, mining law, insurance law, international private law are referred to private law by some scholars, while others refer them to public law, still others consider them neutral, not referring to any of the branches); the appropriateness of duple division of law is discussed. It is curious that, irrespective of various approaches, the very division of law into public and private law has been remaining relatively stable in the system of the Romano-German legal family for many years. This effect was noted by G. F. Shershenevich who wrote that "despite the routine character of the said division, from the scientific perspective it is still not completely established where a demarcation line between civil and public law is, what are peculiarities of private law constituting the subject matter of special science.

This differentiation that was established historically and is persistently maintained is perceived instinctively, rather than is based on absolute criteria".[17]

Second, the dualism-of-law doctrine is conceptual only for the Romano-German legal family. The Anglo-Saxon legal system and the Muslim legal family did not adopted the idea of dividing law into private and public. Attempts to find rudiments of doctrinal division of law into private and public in case law and sharia law were taken, but they did not gain widespread as lawyers of Anglo-Saxon and Muslim law do not recognize practical applicability of this approach. Thus, the idea of dichotomy of law is neither universal nor fundamental. As A. M. Mikhailov wittily noted, "if the theoretical Romano-German "problem" concerning division of law into private and public were ontologically rooted in the life of society and had character objectively caused by the needs of legal practice, it would hardly be ignored by some reputed scholars and "pedalled" nec plus ultra by others. Could at least one legal scholar, when stating the theoretical basics of statehood, exclude such an attribute of the state as the state territory from studies, or completely ignore a tax system?" [18]

Third, all array of approaches to dualism of law can be conditionally divided into material approaches, in which the private and public law demarcation criterion is the content of social relations, the subject of regulation of a legal rule; formal approaches, in which the division is based on the combination of techniques and methods of regulating legal relations; nihilistic approaches denying dualism of the law system as an academic category and considering the whole system of law, depending on the author's world view, as either public law or private law; mixed approaches, in which scholars say about the necessity to combine various demarcation criteria to understand the essence of law dualism; and convergence theories, in which interrelation, interdependence of private and public elements are stressed out as well as practical aspects of convergence of private and public law rules with the preservation of their independence.

Fourth, at the moment, in the legal systems in Russia and Europe two interrelated processes are running rampant — "publicization" of private law and "commercialization" of public law. There is an increasing number of compulsory rules in private law because the freedom of an individual has to be limited for the protection of universal interest. Conversely, in some cases relations between the state and individuals are regulated by private law rules. Civil law cannot go without the use of compulsory rules and prohibitions which are established both to the benefit of separate groups and to the universal benefit. Civil law has never been and will not be "purely" private; it is always subject to public limitations. The boundaries of influence of private and public elements in civil law are constantly fluctuating. Fifth, it must be admitted that the search for a universal boundary between private and public law has come

[17] Cherepakhin B. B. On the Issue of Private and Public Law [K voprosu o chastnom i publichnom prave] // Collection of works of professors and lecturers of the Irkutsk State University [X cb. trudov professorov i prepodavatelei Irkutskogo gos. un-ta]. Irkutsk, 1926. P. 9. (In rus.)

[18] Kurbatov A. Ya. The Combination of Private and Public Interests in Legal Regulation of Entrepreneural Activities. [Sochetanie chastnykh i publichnykh interesov pri pravovom regulirovanii predprinimatel'skoi deyatel'nosti]. M. : YurInfoR Publ., 2001. P. 85. (In rus.)

to a deadlock and no longer meets the needs of modern legal science and practice. We think it naive and utopian to speak of the dualism-of-law doctrine as of an obligatory condition for providing the priority of human rights and liberties and democratization of social life. While admitting the need to study the legacy and highly appreciating the contribution made by scholars to the development of insights into the essence of law, for now we think it necessary to concentrate on searching for the most appropriate formula combining private and public elements in civil law and studying public and private law convergence mechanisms to balance the rights of an individual, the society and state.

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