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**ON PLASTICITY OF LAW IN CLASSICAL LEGAL PRAGMATISM**

The classical definition of legal pragmatism is traditionally associated with Oliver Wendell Holmes and other founding members of the Metaphysical Club. Holmes has never officially acknowledged his membership in the Club. But at the start he attended many of its meetings and was deeply influenced by the theories and concepts proposed there. Having participated in various discussions, he developed his own philosophical ideas which made a significant impact on his legal thinking. Though his celebrated book *The Common Law* (1881) and his famous lecture *The Path of Law* (1897) were published long before the public presentation of pragmatism by William James in 1898, he is regarded as the first legal pragmatist. There is good reason for that because many themes of classical pragmatist tradition are found in his legal thinking.

His philosophy represented a departure from the prevailing jurisprudence of the time. It was directed against the legal formalism and fundamentalism which held that law was an orderly system of rules from which decision in particular cases could and should be deduced. Law, Holmes insisted [2], was not a set of basic legal conceptual truths from which correct decisions can simply be deduced as was the practice of his time, based on the model proposed by justice Christopher Columbus Langdell. All through his long professional career Holmes argued that legal concepts could not be conceived automatically.

Influenced by his experience fighting in the American Civil War, Holmes established a life-long belief that laws were result oriented and reflected the evolving mores of the society in which they are used. He writes in the opening pages of *The Common Law* that the life of law has not been logic, it has been experience [1]. Accordingly he argued that legal rules were not deduced from/through formal logic but rather emerge from an active process of human self-government. The laws are the witness and external deposit of peoples' mutual life. Their history is the history of moral development of the race [1]. The common law is not a brooding omnipotence in the sky [2]. Human law does not flow from some mysterious, anonymous source. It is manmade and it reflects situations and collisions of man's life at a given point of his historical and social development. Everywhere legal concepts and legal provisions shift and change over time. Legal systems evolve like plants [1], adapting to circumstances. They develop and change like languages, where the appearance of new senses enriches and modifies the familiar ones. Holmes's ideas about elasticity of legal concepts are correlated with Ch. S. Pierce's theory of meaning. With the development of science and life meanings continually gain new conceptions related to new realities thus adding new interpretations to legal terms. Holmes recognized that laws, like words, had a life history and their meaning could require a different interpretation depending on

their historical and social content. Men make their laws using the language they speak and judges' interpretation of these laws has more to do with the felt necessities of the time, the relevant moral and political themes and theories, even with prejudices which judges share with their fellow-men, than with pristinely logical implications of salutary provisions [1]. Holmes contends that the law is what the court will in fact do and nothing more pretentious – «that's what I mean by the law» [1]. In civilized societies, he believed, legal duty is nothing more than prediction of how the judge will interpret a given legal case.

Such conceptual elasticity is both inevitable and desirable. It enables law to adapt to new knowledge, to new technologies and to the now existing social mores and values [2]. This stance reflects a larger philosophical point, namely that judges are not independent mouthpieces of the infinitive. Judges are no less fallible about moral questions than the rest of the people. It is because what is morally right or wrong is not something that a judge (or anyone else) can know apriori [2] and it is dangerous to imagine otherwise. The judge, according to Holmes, is always faced with a dilemma, for it is up to him to interpret a given case this way or that and to prefer one precedent to another. But it is within his legal capacity to correlate responsibilities under which man's actions fall and his own wisdom in interpreting the law the way he did.

Holmes's contribution to American jurisprudence was both meaningful and long lasting. His view that law is experience, that it is shaped by man and it is changing and changeable deeply affected English and American jurisprudence.

#### **Literature**

1. Holmes O.W. The Common Law. Dover Publications, 1991. -464 p.
2. Holmes O.W, The Path of Law. Martino Fine Books, 2012. -32 p.

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### **ЗДОРОВЫЙ ОБРАЗ ЖИЗНИ: ХРИСТИАНСКИЙ, НРАВСТВЕННЫЙ, СОЦИАЛЬНЫЙ АСПЕКТЫ**

Постулаты здорового образа жизни через систему принятия нравственных ценностей с давних времён были предметом интересов лучших умов человечества. Портрет современного украинского долгожителя, нарисованный социологами, содержит такие черты как: религиозный, занимается крестьянским трудом, без вредных привычек, рано встаёт и рано ложиться, как правило из западных регионов Украины.

Обращает на себя внимание то обстоятельство, что многие из библейских персонажей были долгожителями. В литературе же часто можно встретить понятие «святые старцы».