UNDERSTANDING OF RIGHT IN ANCIENT PHILOSOPHY

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Abstract

The paper deals with the basic values of ancient law. It is emphasized that the cosmocentric paradigm of the ancient culture, focused on the coordination of the cosmic (divine) and human worlds, determined the formation of the basic ideas of ancient law: order, harmony, justice, equality. This methodological dualism thus highlights the ways in separating the natural and the human and connecting them through a reasonable beginning in nature. It points toward an idea of natural and positive law. It is noted that the opposition of physis and nomos has been covered in Epicureanism, which recognized the importance of the justification of the law as the agreement, necessary for the obligation of legal norms. In the ancient philosophy law was considered outside the context of personal freedom, so its understanding included punitive violence This statement is proved in the paper on the basis of the analysis of the main schools of ancient philosophy – natural philosophy, the schools of the sophists and Socrates, the philosophical systems of Plato and Aristotle and the Hellenistic schools – Epicureanism and stoicism.

Keywords: cosmocentric paradigm, polis, the divine law, nomos, justice, equality, legality, the legal existence

MAIN TEXT

The emergence of theoretical ideas about the need for a reasonable organization of political and private life was connected with the rationalization of ideas about the life in society and the development of personality in the ancient world. Thus, the school of the Pythagoreans defended the thesis of subordination of the life of the polis to the ideals of rationality, which required true knowledge to establish the ideal structure of the polis (Nersesyants 1979, 17 – 71; see: The Philosophy of Law: An Encyclopedia 1999, 357-366). The cosmocentric paradigm of ancient culture focused on the coordination of the cosmic (divine) and the human world. Therefore, the ideas of "order and harmony", justice were recognized as basic ones. Justice, understood as equal reward for equal (the school of the Pythagoreans), implicitly included the notion of equality, which was significant for understanding the right as an equal measure. The idea of justice as a universal interaction among entities was already found in the philosophical Pythagorean tradition along with the ideas of order and measure. The idea of justice becomes key one in the connection of the cosmic and the human.

Representatives of the natural philosophy – Anaximander, for example, base the construction of their

cosmology on the concept of "justice". Anaximander noted that arche stemmed from the indefinite and it was in the indefinite everything turned, according to necessity, since everything was subject to punishment (dike) and vengeance (tisis). It corresponds to injustice (adikia). Here, justice is cosmic in its nature, because everything that exists is subject to punishment and vengeance. Justice is ontologized. Thus, the idea of natural law is being formed.

Another representative of the natural philosophical trend in ancient Greek philosophy was Heraclitus. He borrowed from Anaximander's ideas and no doubt from other representatives of the natural philosophy the idea of law as the main embodiment of the cosmic order and developed this idea in several directions. He distributed the cosmic laws on the polis. The laws of the polis are a reflection of the cosmic laws. The cosmic role of justice in the Heraclitus sense can be clearly expressed in excerpts from his works about the cosmos as an "ordered universe", "world order"(Materialists of Ancient Greece // Fragments of Heraclitus 1955, 41-52). The existence of cosmos depends on the changing measure of fire embodied in the eternal logos, the universal law underlying the world. Justice is to adhere to the divine logos. On his view, the divine, cosmic law also determines human laws. Without knowledge of this law people would have no idea of justice, "they would not know the name of the Truth, if it were not". Although the divine law is self-sufficient, nevertheless, people must fight for nomos as they fight for the walls of the polis. In political regard, nomos represents justice in any Constitution, including the monarchy: "it is the nomos desire of each must obey"(B 23) (Materialists of Ancient Greece // Fragments of Heraclitus 1955, 43,51)   Parmenides, the founder of the school of Elea, in his ontology (cosmology) used metaphorical figures Dike & Themis for understanding of the concepts of "justice" and "legitimacy". In this sense being has not only a logical basis, but also a mythological one. The Goddess Dike never lost the "shackles of being" to allow it in becoming or to collapse She held it firmly. Empedocles also used these concepts, "Dike" and "Themis" in a poetic and metaphorical context.

In the ontology of Democritus one can find the methodological dualism. On the one hand, his ontological theory is the theory of atomism: everything consists of atoms. All sense properties are conventional and subject to opinion. He used the concept of " nomos" to express this idea. According to doxa (sensory knowledge), the concepts of "sweet", "bitter" are being formed, but in reality there are atoms and emptiness. On the other hand, Democritus applied moral evaluations without rejecting atomism. He reasoned: people who were controlled by money could not be fair. The conventionalism of his position is deeply impressed. "It is necessary to punish those who make injustice possible and not to allow them to be unpunished; it is a just and good thing, and not to do it – unjust and bad" (The Philosophy of Law: An Encyclopedia 1999, 368).

The epistemology of Democritus allowed existing untrue notions of justice, unenlightening "public opinion" (doxa). Therefore, it is possible the existence of laws in accordance with the "public opinion", divergent from the requirements of natural justice, natural truth. In this regard, it is possible to contrast the natural and artificially created. It is not surprising that Democritus claims that laws are "a bad invention and that the wise man should not obey the laws, but live freely". Therefore, the interest of Democritus focused on the psychological motives of lawful behavior. He was interested in means of combating anti-social attitudes, the psychological basis of which, he believed, was envy. It is this feeling that can destroy the integrity of the polis.

Thus, in the natural theory of law adjustments has been made: the laws of the state were recognized as an artificial formation, determined, ultimately**,** by a single natural basis.

In the V century BC the term " nomos" became the designation of the law. The basis for the formation of this concept is the metaphysical opposition of nature (phusis) and nomos (law). But there is one thing that unites them – nature as a reasonable beginning. There is diversity in language, in human belief only. The law acquired an ontological basis and had to find a justification in justice, rationally founded. These problems were brilliantly justified and formulated by the sophists (V-IV centuries BC).   Protagoras in his famous aphorism affirmed that "a man was the measure of all things". The sophists divided the area of nature and the area of human relations, which were conditional, conventional in its nature. Later, these ideas will be reflected and developed by the Stoics and the Epicureans. The stoic doctrine of natural law and the epicurean doctrine of valid law have not lost their relevance and influence in our days. Sophists considered written laws (graph) as something artificial and attributed them to inventions in the social sphere, different from the unwritten natural justice, "divine and universal law". The written laws of a society are conditional, changeable, of a temporary contractual character of the polis laws, depending on the legislators. "... prescriptions of laws are the result of an agreement (contract of people), and not emerged by themselves (the products of nature); the dictates of nature emerge by themselves (innate principles), and are not the product of an agreement (between people)" (Anthology of World Philosophy 1969, Vol.1. Part 1, 320).

Therefore, the inequality of people stems from the polis laws, not from natural ones; because people are united by the same natural needs and requirements, "the dictates of the laws" bring freedom to people. "Many prescriptions recognized as fair according to the law, are hostile to human nature" (Anthology of World Philosophy 1969, Vol.1. Part 1, 321)

The sophist Alcidamas and Socrates substantiated the idea of natural human equality and freedom. Socrates connected the concept of "justice" with the natural law, with morality. Justice is a virtue. Justice, like any virtue, is determined by knowledge. Unwritten divine laws and written human ones have the same justice, which is the criterion of legality; moreover, justice is identical to the rule of law. Socrates ' ideas of justice, right, and law were further developed by his disciple Plato. His point of view on the law was interpreted by researchers as a commitment of the ancient thinker to the natural legal theory. The metaphysical basis of the polis laws is the moral essence, which is embodied in the intelligible sphere. Justice in this context is one of the most important categories. Plato's ideal state is a realization in political and legal life of reasonable and fair laws. Natural laws are mandatory standards that function in the world and serve as the basis for the laws of the people in the polis. The latter requirement provokes a problem of the following nature: how cans this natural law is embodied by itself? Its implementation requires agents of action, human beings with free will. Some scholars have identified Plato's views on law and the state as a dualistic doctrine of law (The Philosophy of Law: An Encyclopedia 1999, 648), affecting both natural laws and the laws of human coexistence. The dualistic interpretation is seen in Plato's laws in the "Republic" when he goes beyond his culture and prefers the intellectualization of natural law. But the laws in Plato's "Laws" remain at the level of agreements made between human beings. The purpose of philosophers-legislators is to preserve justice, guarantee the safety of citizens. Through the musical and religious education of souls the philosophers-legislators exercise legal control over human passions through a rigid system of obligation towards those who embody the "Iron Hoop", and citizens sadly count the shame and pain of disobedience; the nobles, representing the "Golden Hoop" of obedience, count the pleasure of the honors and prestige of obedience. Harmony of passions is located in the souls of citizens thanks to the harmony of music and myth, rising to the level of divinity. Consent is embedded in the tradition and maintains the state forever. The law as a human habit becomes natural. Human laws must imitate natural laws.

Justice, according to Plato, should consist in that each estate in the state was engaged in the business of its own and didn't interfere in affairs of others. In Plato's ideal state, " it is necessary to do each his own thing, it is, perhaps, and will be justice" (State, 433 e) (Plato 1998, 193) The analysis of various interpretations of Plato's doctrine of an ideal state is not our task, it is important to note that Plato believed that social laws had divine, reasonable foundations.

Aristotle continues to develop the same ideas. His name is associated with a detailed doctrine of justice, as well as criticism of various forms of constitutional systems, studied on the basis of extensive historical studies of public life in different states. These studies are reflected in the "Nicomachean ethics", "Politics" (the problem of justice) and "Poetics" (in chapters relating to legal procedures). Aristotle's doctrine of justice had a huge impact on the medieval doctrine of law (F. Aquinas, R. Bacon). And modern thinkers (A. McIntyre, for example) developed their conceptions of justice not without the influence of Aristotle. There are, of course, some differences in the interpretation of Aristotle's texts, but some statements of his doctrine of law are not controversial. Aristotle's state is legal, based on the system of public law. What the law commands is called just (Aristotle 1984, 324). Justice is regarded as equitability and there are two types of it: distributive and equalizing. Both of them constitute the content of the natural law doctrine of Aristotle. The distributive justice is manifested in the distribution of benefits (honors, power, etc.) in society among citizens. This type of justice takes into account the contribution of each citizen to the common good of the state and it is interpreted by Aristotle as equality in geometric proportions (Radbruch 2004, 40-45). The equalizing justice functions in the sphere of exchange, in the legal sphere. Justice of this type is implemented in civil law transactions for damages. It contains an arithmetic equality. Fair treatment towards other is an equality.

Aristotle understood law as political justice, embodied between free and equal humans**,** relations between them were built on the basis of law. The constitutionality of laws must correspond to rational requirements.

Political law, according to Aristotle, is natural and will-established (positive). Natural law is of equal meaning and does not depend on its recognition. Conditional law depends on its definition. The basis of the legal provision (statute) is justice and law. Without it, the law can be transformed into an excuse for despotism. Different forms of political (state) structure should correspond to the principle of justice and the idea of law, i.e. the common good of the state is meant. The highest principle of justice required that the state system served the interests of all citizens, not the interests of the ruling faction (group)**,** whether the latter was a majority or a minority. In his view, the majority, which under democracy subordinates a minority, serves its

own interests, leading to unjust populist (popular) despotism. If the interests of all citizens are taken into account, then the law implements justice, and the state is right. The recognition of the common good as the supreme value distinguishes the right state from the wrong one.

If political forms are oriented towards the "personal good of the rulers", they are based on the despotic principle and are wrong.

Aristotle ultimately relies on the recognition of the priority of natural law. There is no agreement among researchers on the definition of the concept of "natural law": what has the same meaning everywhere, or unwritten divine laws, or the requirements of the common good (J. Rolls, 2004, 371) . Despite different interpretations of Aristotle's concept of "natural law», it was obvious that he claimed the priority of the whole (state) over its parts (individuals or groups of individuals), but only in this sense that the preservation of the whole was the only guarantee of the prosperity of its parts. This thesis would not have been possibl**e** if the cosmocentric model of the world had not prevailed. This means that implicit recognition of the natural law, recognizing the order of the universe, is projected on the life of the polis.

The ancient Greek school of Stoics has gone through several stages of its development. The first period lasted from the founding of the school to the first half of the second century BC, the other – to the first century BC; and the third period is associated with the late Stoics who lived at the Roman Empire. Stoics were systematizers of philosophy, dividing it into logic, containing and knowledge of rhetoric, physics, including theology and ontology, and ethics, containing economics and politics. In the context of the ethics representatives of the early stoicism (Zeno and Chrysippus) analyzed the problems of jurisprudence. It is no accident that one of the works of Stoics is called "On the law". The Stoics tried to combine a natural necessity with the justification of legality, proposed by the sophists. The first way – metaphysical one, associated with the deprivation of the human mind from nature, and the second, anthropological approach, involving the development of the concept of kinship (oikeiosis). The ontology of Stoics comprehended the world (nature) "as a separate quality of all things", including heaven and earth, God by Himself. The world is governed by reason and providence; it contains the divine principles of organic wholeness, animated by the constant presence of the foundations of life in the form of seed. These rational foundations of life are manifested by themselves as an element of fire, an active principle of movement and thought. Stoic philosophy accepts a threefold interpretation of reality: it is nature or divine providence; fire or the principle of movement and thought; animation or the principle of life. People are part of the divine mind through hegemonikon, the controlling part of the human soul. The human reason is an integral part of the world reason, the totality of which is guaranteed by the divine predestination by itself. Under the totality the Stoics meant the identification of each part with the whole.

Stoic philosophy takes the human reason out of nature. Thanks to the doctrine of the organic animation of the world, the Stoics comprehend the relationship between the divine and human orders as direct and special in contrast to the general and remote in early Greek philosophy. In contrast to the mechanistic model of power and standard, the Stoics proposed a community of body and soul, a direct union of parts and parts with the whole. This led to the following fundamental conclusions: recognition of the objectivity of knowledge and individualism. Thanks to the concept of "divine Providence" Stoics exalted the ontological basis of the normativity of law in contrast to the representatives of early Greek philosophy, who perceived Providence in anthropomorphic and especially deserving of punishment (vengeance) terms.   Previously, as has been noted, ancient Greek philosophers distinguished between phusis and nomos. The Stoics removed this opposition, having recognized the concept of equality, formal and material. Formal equality is based on the existence and prescriptiveness of a written law found in the classification of different types of laws: civil law, criminal law, administrative law, etc.

Within this classification, a full set of legal prescriptions can be noted: procedure, positive structure, sanctions. Material equality was reduced to the deduction of human norms from the existence of natural laws. In stoic philosophy, the world is made up of individuals who are not alike. Each is a bearer of properties that express his/her essence. "The ways to freedom are everywhere open" and "unwritten laws are stronger than all written laws" (Seneca 2002, 9,16) so natural rights are inalienable (impossible to attribute) and unsigned (impossible to deprive according to the law or legal order). In contrast to the determinism of providence stoic philosophy asserted the dignity and freedom of the individual, based on the concept of true equality, the material expression of which justified the legitimate rights of the individual. Stoics pointed out the educational value of the law.

The use of the concept of kinship allowed the representatives of stoic philosophy to turn to the empirical field. The term oikeiosis meant kinship, communal-tribal and family relations. Later this concept was rationalized and implied a number of subjects, including city-state and citizenship. As a result, in a broad

sense, kinship extended to every person known as a member of a region, race, or faith. This presupposed the priority of inner experience over the comprehension of the whole. The Stoics reduced the importance of the ancient Greek city-state as a concentration of special laws and ethical norms. For them, the ideal world of the universal was important, from which attachment to the city-state has been removed. Polis, the substantive basis of ancient Greek jurisprudence, transfers its rights to the concept of "legal existence". The Stoics emphasized the evolutionary aspect of legal reasoning, its causal dependence on the rules of parenthood to the rules of rational liberation, both formal and material. The Stoics continued the tradition of rationalism and objectivity inherent in early Greek philosophy of law, but introduced a new concept of normativity, which solved the antinomy of the physis - nomos coming from the school of Elea. Thus, the Stoic philosophy emphasized the importance of the absolute power of natural laws at the expense of a separate political form of statehood.

Epicureanism differs from a prescriptive theology of the Stoics. This difference was marked by the physics of Epicurus. He rehabilitated the ionic atomism, opposed the fatalism and the providentialism of the Stoics. He proposed the doctrine of multiple causes: one event can be defined by multiple causes. Epicurus rejected the stoic necessity (necessitarianism), which recognized the universal antecedent causes as determining a human action.

As a result, Epicurus opposed the eschatological view of life. The stoic normativity of the laws of nature, the inviolable principles governing reality, was expelled from the philosophy of Epicurus. The Epicurean philosophy wanted to free humanity from the fears of death, vengeance of the gods and natural disasters. Thus, Epicurus exalted the positive philosophy of law, separating the norms of justice from the norms of law. Unlike the natural law of the Stoics, which subordinates the human order to the divine one, the Epicurean jurisprudence is humanistic. Its discourse depends on human activity.

To explain human activity Epicurus turns to the lustful and instinctive parts of the human soul. In the natural state the human existence is characterized by selfishness, cruelty and susceptibility to errors. The law corrects human nature, because it regulates the life of the community, provides security. A positive reality based on laws softens human nature, which is inherently cruel. This is an anthropological foundation of the Epicurean jurisprudence. Thus, Epicurus recognized the "healing" role of laws (pharmakon), contributing to the softening of mores. Justice, which comes from nature, is a treaty on the useful – in order not to harm each other and not to suffer harm (XXXI) (Materialists of Ancient Greece. Letters and Fragments of Epicurus 1955, 217)

Epicureanism is the first school of philosophy to make a conceptual distinction between a law that is natural and a positive act of law (a law that affirms the rational calculation of useful and harmful).

Epicurus overcame the traditional opposition of phusis and nomos , introducing a new concept of "validity of the law", whose basis lies in the objective content and calculation of utility. In addition, the epicurean doctrine of law is characterized by instrumentalism. Instrumentalism allowed taking different and even competing interpretations of the law based on circumstances. This epistemological premise corresponded to the epicurean doctrine of many causes. In accordance with it, the relativism of Greek jurisprudence was strengthened. Epicurus used the term "social contract" ("syntheke"), which signified the establishment of a city-state based more on mutual agreement than on force.

The Epicurean jurisprudence, conciliatory in its basis, did not include a conflict between collective and individual interests, did not offer subordination to the supreme power nor the rule of libertarianism (the doctrine of free will), nor an arbitrary agreement, nor the necessary deduction from the norms of nature. The contract in Epicureanism was a psychological act, implementing where there is an interaction of thinking, embodied in a number of joint legal acts. The epicurean genealogy of law comprehended the agreement as an original principle, the existence of which substantiates stability, obligation of legal norms.

Understanding of right, law within the cosmocentric paradigm of ancient culture and its reflection in ancient philosophy had its origins in myths, religious beliefs, giving a sacred perception of order, law, justice and vengeance. In its original content, the right acted as a legalist, demanding under the threat of strict sanctions unquestioning obedience to the sacred – the gods, ancestors, kings. Rationalization of philosophical thinking contributed to the formation of a rational presentation of the basic ideas of legal consciousness - justice, order, the laws of polis life. Empirical (Aristotle, Epicurus), historical, and political studies of the state and law (Polybius) are formed in the rudimentary form; the teachings of natural and positive law are being shaped. The consolidation of legal ideas contributed to their separation from the legal consciousness (Epicurus). At the same time the cosmocentric paradigm of the world provoked the predominance of the whole over the part, which did not contribute to the recognition of freedom and equality as universal ideas of justice (Plato,

Aristotle). And even the presence of the concept of "universal equality" in Stoics philosophy in the context of universal value and the unconditional power of natural law in terms of wholeness devalues the meaning and role of the individual, polis laws and order.

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