

РОЗДІЛ 1

ТЕОРІЯ ТА ІСТОРІЯ ДЕРЖАВИ І ПРАВА; ІСТОРІЯ ПОЛІТИЧНИХ І ПРАВОВИХ УЧЕНЬ

UDC 130.2+141:340.112(17.2)

CULTURAL-HISTORICAL AND PHILOSOPHICAL LEGITIMIZATION OF THE CONCEPT OF JUSTICE

КУЛЬТУРНО-ІСТОРИЧНА ТА ФІЛОСОФСЬКА ЛЕГІТИМІЗАЦІЯ ПОНЯТТЯ СПРАВЕДЛИВОСТІ

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Justice without wisdom means a lot, wisdom without justice means nothing.
Marcus Tullius Cicero

The purpose of the research is to analyse transformation of cultural-historical approaches for understanding justice as a cultural and legal value in the philosophical and legal thought and study out the process of justice transformation in to a basic legal value (legitimization). The methodology of the research consists of the formal-logical, cultural, comparative and historical legal method. The scientific novelty of the work lies at the analysis cultural-historical approaches for understanding justice as a cultural and legal value in connection with the legitimization process. The author states, that the value of justice for society remains immutable at any cultural and historical period. It serves as the benchmark for assessing the actions of a person from a view angle on good or evil, harm or benefit to society. The vector of this socio-cultural regulation is continued by the law. It evaluates the behavior of a person from the standpoint of desirability for a society based on an understanding of justice. Thus, the process of legitimizing of justice takes place. During which justice turns into a fundamental principle of law and becomes the basis for the formation of modern legislation. Justice as a legal principle is manifested as accordance with the legally established rights, freedoms, duties, responsibility for the committed offenses. It has particular importance for the regulation of social relations. The most dreadful social consequences are caused by injustice, enshrined in the law. Thus, the law, as the fundamental social regulator, should be based on the idea of justice, equality, freedom and humanism.

Key words: justice, cultural-historical transformation of justice, legitimization, legal principle, socio-cultural value of justice.

Стаття присвячена аналізу трансформації культурно-історичних підходів до розуміння справедливості як культурно-правової цінності у світовій філософській і правовій думці й з'ясування процесу перетворення справедливості на основоположний принцип права, її легітимізації. Цінність справедливості для суспільства залишається непорушною в будь-який культурний та історичний період, оскільки вона є тим орієнтиром, на який рівняються під час оцінювання вчинків особи під кутом зору добра і зла, шкоди або користі для суспільства. Вектор цієї соціокультурної регуляції продовжує право, оскільки оцінює поведінку особи з позицій бажаності чи небажаності для суспільства з урахуванням розуміння справедливості. Отже, справедливість перетворюється на основоположний принцип права і стає базою для формування сучасного законодавства.

Ключові слова: справедливість, культурно-історична трансформація справедливості, легітимізація, правовий принцип, соціокультурна цінність справедливості.

В статье проведен анализ трансформации культурно-исторических подходов к пониманию справедливости как культурно-правовой ценности в мировой философской и правовой мысли и изучению процесса преобразования справедливости на основополагающий принцип права, ее легитимизации. Ценность справедливости для общества остается неизменной в любой культурный и исторический период, поскольку она выступает тем ориентиром, на который равняются при оценке поступков человека с точки зрения добра и зла, вреда или пользы для общества. Вектор данной социокультурной регуляции продолжает право, поскольку оценивает поведение человека с позиций пользы для общества на основе понимания справедливости. Таким образом, справедливость превращается в основополагающий принцип права и становится базой для формирования современного законодательства.

Ключевые слова: справедливость, культурно-историческая трансформация справедливости, легитимизация, правовой принцип, социокультурная ценность справедливости.

Actuality of Scientific Research. Justice is one of the most important moral, cultural and legal categories that take a special place in socio-cultural regulation. Its importance particularly grows during the crisis periods of the society development. When the old foundations are destroyed and there is a need for rebuilding a new world and establishment of new cultural values at the basis of justice arises.

Culture as a "second nature" of men is a program of its activity in creating a "world of life". The offensive of interactive communicative technologies makes its adjustments, defining new priority directions that form a "cyberspace" of culture. Globalization, media, multiculturalism are prevailing tendencies, which simulate cultural space of modern life. The dominant cultural processes in the modern world are determined by the pan-eclectic aesthetics of postmodernism. The cultural

space dynamics is not aimed at preserving and broadcasting the cultural experience of previous generations [1, p. 103]. However, even with such a significant transformation, the value of justice for society remains immutable. It serves as the benchmark for assessing the actions of a person from a view angle on good or evil, harm or benefit to society. The vector of this socio-cultural regulation is continued by the law. It evaluates the behavior of a person from the standpoint of desirability for a society based on an understanding of justice. Thus, the process of legitimizing of justice takes place. During which justice turns into a fundamental principle of law and becomes the basis for the formation of modern legislation. It is inextricably linked with the application of law, the forms of its implementation, as well as the protection of rights and legitimate interests of the individual.

The purpose of the research is to analyse transformation of cultural-historical approaches for understanding justice as a cultural and legal value in the philosophical and legal thought and to study out the process of justice transformation in to a basic legal value (legitimization).

Analysis of the latest researches and publications. The phenomenon of justice in all its complexity and diversity has always been attracting the attention of researchers. This category was considered by Heraclitus, Socrates, Plato, Aristotle, Epicurus, Stoics (Zeno, Chrysippus, Diogenes Laertes, Marcus Aurelius), Sophists (Protagoras, Gorgias, etc.); medieval thinkers (in particular, Thomas Aquinas), philosophers of the New Age (F. Bacon, G. Grotius, T. Hobbes, Montesquieu, J.-J. Russo, J. Locke, I. Kant, G.W.F. Hegel); the newest philosophical schools (neopositivism (G. Hart, O. Weinberg), Neo-Kantianism (R. Stammler, G. Radburh) Neo-Hegelianism (J. Binder, K. Larents, D. Gentile, Benedetto Croce, J. Hippolyte), existential philosophy (M. Heidegger, K. Jaspers, J.-P. Sartre, E. Fechner, A. Comte) "revived" natural law (J. Mariten, J. Daben, J. Messner), "the pure doctrine of the right" (H. Kelsen), etc.).

The correlation between justice and law was studied by H. Shershenevych, R. Jhering, P. Ricker, G. Jonas, F. Gaek, G. Hart, O. Gioffe, R. Dvorkin, T. Onore, R. Tocharchik, L. Fuller, R. Tspelius, B. Kistyakivskyi, A. Leist, G. Maltsev, I. Sabo, A. Ekimov, S. Alekseev, A. Bonner, S. Gusarev, A. Grischuk, S. Dobrov, V. Dudchenko, A. Zhalinsky, V. Kartashov, A. Koni, O. Martyshyn, V. Nersesyants, Yu. Oborotov, A. Ovchinnikov, V. Pisotskyi, N. Porubov, M. Koziubra, O. Kopylenko, P. Rabinovych, O. Skakun, Z. Sivers, Yu. Tikhomirov, M. Fritskhand.

The problem of justice in contemporary Ukrainian philosophical and social-legal researches also analyzed by A. Bychko, I. Bychko, V. Volovik, M. Dmitrieva, A. Dobroliubskyi who discover the problems of establishing justice through analysis of the phenomenon of historical consciousness. A. Yermolenko and O. Moskalenko study justice within the ontological and value paradigm of social discourse. Some aspects of justice are analyzed through the value system of the society in the works of A. Bashuk, O. Hrytsenko, N. Zrazhevskaya, V. Ivanov, V. Korneev, N. Kostenko, O. Kuznetsova, V. Lizanchuk, V. Rizun, K. Serazhim, O. Serbenskaya, N. Shumarova, V. Berezin, Y. Miroshnikov, T. Naumenko, L. Svichach, G. Solganik, V. Tkachenko. The connection between categories of justice and legality is considered in the studies of V. Samokhvalov, I. Strokov and others.

The Main Part. The category of justice is a moral awareness of equality, the correct correspondence between actions and their consequences, rights and obligations, misconduct and punishment for it, work and salary, etc.

Law and moral guidance have been interconnected for centuries. The first justice ideas were formed in the primitive society. But this justice concerned only members of the family (tribe, village) and did not apply to the other tribes. The contemporary ideas basis about the fair punishment was the law of talion (from the Latin "talis" – the same, equal: "an eye for an eye, a tooth for a tooth"). This principle provided equivalent reparations, causing the offender the same fact that he caused to the victim. With the development of culture and civilization, the law of talion was replaced by the equivalence of punishment principle (fines, confiscation of property, restrictions of some rights, etc.) [2, p. 7, 24].

The first mention of justice in the law that has come to our days – refers to the XVIII century B.C. and is contained in the text of an ancient source of law, the Laws of Hammurabi, as one of the motives for their adoption: "... that the justice of the country should shine to destroy the criminals, so that the stronger does not oppress the weaker..." [3].

Further formation of ideas about justice took place in Ancient Greece. At the epics of Homer and Hesiod certain

legal and political ideas about justice have evolved. In the poems of Homer "Iliad" and "Odyssey" (whose life and work are related to the VIII century B.C., and described events – until the XIII century B.C.), Zeus appears in the moral and legal view as the supreme appointee of universal justice, which severely punishes those who commit violence and the wrong court.

According to Homer, justice has divine nature and acts as a criterion of legal. In his poems the disturbance of justice is not just antisocial, but an anti-divine act, for which God's punishment comes.

During the reign of mythological consciousness in culture of ancient Greeks, right and justice, were differed even terminologically. Justice was understood as a basis and principle of law; the custom law was a definite specification of eternal justice, its presence, manifestation and observance among people.

Later the idea of law and just social and political system was developed in the poems of Hesiod (VII century B.C.): "Theogonia" ("The Origin of the Gods") and "Works and Days". In his interpretation the gods acted as bearers of moral and legal principles and forces. The reign of Zeus was marked by establishment of the justice foundations, the rule of law and public welfare. A justice was opposed to violence.

Hesiod in his poems put forward provisions on the common roots and foundations of justice and law. He first used the "right in nature" concept (natural law) and the "right established by people" concept (positive law) [4].

New impetus for the development of the concept of "justice" was received in ancient Rome. This was due to the activity of the praetors, when examination of legislation about fair correlation between the interests of citizens and foreigners appeared. A few centuries later, such legislation examination about matching with the requirements of religion, culture, morals and justice was held in the Ottoman Empire [5, 17].

Philosophers' of the Enlightenment views analysis proves that they have common concepts about formation of the private property institute. This led to certain changes in the human consciousness. People were forced, on the one hand, to give up medieval ideas about property, and on the other hand, – obey norms and laws. However, there are some differences in their views. T. Hobbes focuses on the study of justice, which was based on the property exchange.

J. Locke linked a problem of justice with a special ability of a person that can adhere justice, and, on the other hand, with the problem of morality. T. Hobbes and J. Locke argued that justice was a natural necessity. D. Hume did not agree with them and developed the views of Plato for fairness as an artificial formation as the result of the implementation of ethical norms. J. Locke and D. Hume tried to find moral and legal mechanisms for regulating of property based on equity. D. Hume is logically completed their reflections. He formulated laws of justice that lies at the heart of the civil society and its culture and the state must act as its guarantor.

J. Locke and K. Helvetius came to one conclusion, that justice must be based not only on the laws of morality, culture or state, but also on education. J. Locke and D. Hume emphasized the need of moral norms to supplement the problem of justice. The problem of justice becomes more integral comprehension in the unity of law and morality. The need for such integrity arises later and was realized by D. Diderot. He denied justice based on the Christian values, and tried to find its foundation in the human mind [6, p. 119].

The philosophical development of justice, law and state is connected with the work of the German classical philosophy I. Kant. He used the dialectical approach to their solution. According to I. Kant, "A person is very early becoming a sense of justice, however, very late, or does not at all acquire the notion of justice. Contrary to feeling, the concept of justice cannot be acquired by a person based on an individual experience alone".

The philosopher considered the lack of a sense of justice as a minority state. He stated: “Juvenile means the inability to use their own mind without the guidance of someone else”. Therefore, only the mind is able to overcome the minority state. According to I. Kant “the age of enlightenment” – is able to bring a person out of a minority state [7, p. 256].

Among contemporary researchers the greatest analysis of justice was made by G. Rawls at his monograph “A Theory of Justice”. The author tries to summarize and analyze the justice principles that “for the basic structure of society are the objects of the original agreement”. The author himself calls his concept – a new level of abstraction of the famous theory of social contract (Locke, Russo, Kant, etc.) [8, p. 5].

G. Rawls determines justice as category that defines the basic social institutions, provides a way to implement the rights and obligations characterizes social structure and determines the distribution of social cooperation. Therefore, all political and judicial decisions must be in line with it [8, p. 104]. Such conception of justice can serve as a legal and moral basis for the stabilization and development of a democratic society; a criterion for choosing not just the principles of individual life, but the social system as a whole, cultural foundations and new civilizational perspectives.

At works of P. Rabinovych the tendency of recognition of the justice as the principle of law continues. He predicted future social democratic type of law and defines it as a system of formal rules that authorized by socio-democratic state expressing the will of the majority of the population in

accordance with it will and the general social needs on the basis of freedom, justice and solidarity [9, p. 120].

Conclusions. Based on a variety of approaches to understand the categories of justice and the essence of justice as a cultural and legal value, it can be argued that it is a leading category throughout the socio-historical development of mankind. At different times problem of justice was interpreted in different ways. Today the problem of changing socio-cultural paradigm of modernity is significantly updated in the field of philosophical and cultural studies. On this basis the new coordinates of the culture are stretched out as the value-semantic reality. However, the justice value for society remains immutable. It serves as the benchmark for assessing the actions of a person from a view angle on good or evil, harm or benefit to society. The vector of this socio-cultural regulation is continued by the law. It evaluates the behavior of a person from the standpoint of desirability for a society based on an understanding of justice. Thus, the process of legitimizing of justice takes place. During which justice turns into a fundamental principle of law and becomes the basis for the formation of modern legislation.

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ЛІТЕРАТУРА

1. Федорова І.І. Інформаційна ера: глобальні трансформації культурного простору. Вісник НТУУ «КПІ». Серія «Філософія. Психологія. Педагогіка». 2015. Вип. 2. С. 98–104.
2. Чечельницький І.В. Справедливість и правотворчество: монографія. Москва: Проспект, 2017. 176 с.
3. История Древнего Востока. Тексты и документы / под ред.: В.И. Кузицина. Москва: Высшая школа, 2002. 719 с.
4. Філософія права / О.О. Бандура, В.М. Вовк, О.І. Гвоздзік та ін.; Національна академія внутрішніх справ. URL: https://www.naiu.kiev.ua/books/mnp_fil_prava/index.htm.
5. Муромцев Г.И. О некоторых особенностях и закономерностях развития правовых культур. *Правовые культуры. Жидковские чтения*: материалы Всероссийской научной конференции. Москва, 25 марта 2011 г. / под ред.: Г.И. Муромцева, М.В. Немытина. Москва: РУДН, 2012. 438 с.
6. Сабадуха М.В. Проблема справедливості у філософії Просвітництва в контексті розбудови європейських держав та формування громадянського суспільства. *Вісник Національного авіаційного університету. Серія «Філософія. Культурологія»*. 2016. № 1. С. 116–120. URL: http://nbuv.gov.ua/UJRN/Vnau_f_2016_1_30.
7. Кант И. Критика практического разума. Кант И. Соч.: в 6 т. Москва, 1965. Т. 4. Ч. 1. 544 с.
8. Ролз Дж. Теория справедливости / пер с англ.; науч. ред. и пред. В.В. Целищева. 2-е изд. Москва: Изд-во ЛКИ, 2010. 536 с.
9. Рабінович П.М. Основи загальної теорії права та держави. 10-е вид., доп. Львів: Край, 2008. 224 с.
10. Ткаченко В.І. Ідеал, ідея, ідеологія в діалектиці права. *Юридичний науковий електронний журнал*. 2018. № 6. С. 419–423.