

Law as a key element of Pamfil Yurkevich's philosophy

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Опубліковано	Секція	УДК
18.09.2023	Право	14:340.12] (100+477) "18"

DOI: <http://dx.doi.org/10.5281/zenodo.8358248>

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Abstract. The features interpretations of natural and positive law in the works of outstanding Ukrainian philosopher Pamfil Yurkevych. We consider the transition from the theory of natural law philosophy of law in the Ukrainian spiritual culture. Demonstrated parallels between the views of Mr. Yurkevich and European thinkers. Analyzed the idea of natural law in the key works of the philosopher.

Reasonable idea of law as a matter of philosophy of law. Indicated that natural law - a positive moral force because it is the idea of the human mind, and the mind always legislature; his idea is always a real problem and the requirement that he has always according to the degree of persuasion. It is a right established by human nature and divine mind.

Natural law is one of the key, fundamental categories, thanks to the existence of which it is possible to create a society in which the very phenomenon of law, human rights, morality, mutual understanding, and unceasing movement in the direction of positive changes and improvement is a priority.

Mr. Yurkevych understand natural law as the basis for any legislation (positive law), which provides its rationality and morality, because "the realm of positive law can not be removed human conscience and reason: they inevitably expressed themselves. Natural law changes the strength of his authority and suspend the positive law as his authority rooted in reasonable nature and reason in their definitions of anything does not. When the idea of a natural (divine) law rooted in public opinion, it will become effective belief, and this affects the positive law. The idea of the law is the law itself, because the natural law is an effective force. It affects the positive law as its moral sense.

Arguing that "the science of natural law is called the science of rational law" and that "reasonable condition, conscious subordination right close to us as intelligent beings." Mr. Yurkevych actually identified with the idea of natural law rights as such, finally securing a Ukrainian philosophy shift from the doctrine of natural law philosophy of law.

Keywords: P. Yurkevich, natural law, positive law, reason, freedom, philosophy of law.

Право як ключовий елемент філософії Памфіла Юркевича

Анотація. Досліджено особливості трактування природного та позитивного права у творчості видатного українського філософа Памфіла Юркевича. Розглянуто перехід від теорії природного права до філософії права в українській духовній культурі. Продемонстровано паралелі між поглядами пана Юркевича та європейських

мислителів. Проаналізовано ідею природного права в ключових працях філософа. Розкрито уявлення про право як предмет філософії права.

Вказується, що природне право - позитивна моральна сила, оскільки воно є ідеєю людського розуму, а розум завжди законодавець; його ідея завжди є справжньою проблемою і вимогою, яку він означає відповідно до ступеня переконання. Природне право, встановлене людською природою та божественним розумом.

Природне право є однією з ключових, фундаментальних категорій, завдяки існуванню яких можливо створити суспільство, в якому сам феномен права, прав людини, моралі, взаєморозуміння, невинного руху в напрямку позитивних змін і покращення є пріоритетом.

П. Юркевич розуміє природне право як основу будь-якого законодавства (позитивного права), яке забезпечує його раціональність і моральність, оскільки «зі сфери позитивного права не можуть бути вилучені людська совість і розум: вони неминуче виражаються. Природне право змінює силу його авторитету та призупинити дію позитивного права, оскільки його авторитет, укорінений у розумній природі, а розум у своїх визначеннях нічого не робить. Коли ідея природного (божественного) закону вкорінена в громадській думці, вона стане дієвим переконанням, і це впливає на позитивне право. Ідея закону — це сам закон, бо природний закон — це дієва сила. Воно впливає на позитивне право як його моральний зміст.

Стверджуючи, що «наука природного права називається наукою раціонального права» і що «розумний стан, свідоме підпорядкування праву близьке нам як розумним істотам». Пан Юркевич фактично ототожнив позитивне право з ідеєю природно-правових прав як таких, остаточно забезпечивши відхід української філософії від доктрини природного права до філософії права.

Ключові слова: П. Юркевич, природне право, позитивне право, розум, свобода, філософія права.

Introduction

A significant contribution to the theory of natural law belongs to the most prominent Ukrainian philosopher of the 19th century. Pamfil Yurkevich (1826–1874). A professor of philosophy at the Kyiv Theological Academy, in 1861 he moved to Moscow, where he headed the department of philosophy at Moscow University, and later (1868–1873) lectured on the philosophy of law. The texts of his lectures were translated into Ukrainian and published already in independent Ukraine. In the preface to one of the editions, the German philosopher Roland Pich believes that P. Yurkevich based his lectures on the legal studies of German scholars who were based on the teachings of Hegel, and thanks to which legal science in Germany reached in the second half of the 19th century. the greatest flourishing. They are Robert von Mol (1799–1875), Heinrich Arens (1808–1874), Johann Caspar Brüngli (1808–1881) and Carl Hildenbrandt (1814–1872). The researcher associates the final transition from the theory of natural law to the philosophy of law with the names of these scientists. Hegel's work "The main features of the philosophy of law or natural law and social and political science in essays" (1821) was of decisive importance for the separation of natural law through the philosophy of law. According to Hegel, R. Pich believes, one of the most important reasons for the transition from natural law to the philosophy of law is that "the concept of natural law inherited from previous eras could not clearly reflect the fact that law is a phenomenon that arose historically, historically develops, and therefore has a real historical positive being" [5, p. 8].

The aim of the study is to disclose interpretations of natural and positive law in the works of outstanding Ukrainian philosopher Pamfil Yurkevych.

Results

The following is an even clearer opinion of the German scientist, the founder of Prussian conservatism, Friedrich Julius Stahl (1802 – 1861): "Law and positive law... are equivalent concepts. There is no other right except positive. What lies in the foundation of the idea of natural law are precisely such thoughts and requirements of the divine world order, legal ideas; however, they... have neither the necessary certainty (accuracy) nor the binding force of law. They are the determining principles for the further development of the normal state, not yet effective norms of this state. Therefore, there are, apparently, requirements of reason for law, but there is no reasonable law. Subjects dare not individually or en masse go against positive law based on natural law, this is a crime of revolution." [2, p. 8]. So, thanks to Hegel's work, the doctrine of positive law, perceived as an analogue of natural law, received the definition of "philosophy of law". It was borrowed by the countries of Europe and Asia, only the Anglo-Saxon ones kept the name "jurisprudence" or "legal philosophy". In this way, P. Yurkevich, "keeping up with the times", made a transition in Ukrainian spiritual culture from the theory of natural law to the philosophy of law.

P. Yurkevich highly appreciated the role of Christianity in the development of the science of law and the state. In his opinion, "Christianity gave man inalienable rights to religion, family, society and property. And when the consciousness of people arose with Christianity, this very belief in the inalienability of human rights turned out to be endowed with such a formidable power that it destroyed the entire ancient world with all its institutions" [7, p. 468]. It was Christianity that developed the idea of society as an organic whole, the members of which, needing each other, mutually help and serve each other, at the same time, so that "weak members are given more care than strong ones" [3, p. 470].

Yurkevich connects the development of the theory of natural law in the further history of Europe with the development of natural sciences. The idea of law and the state, starting from the Renaissance, began to be determined by the universal method of natural sciences, and "from this point of view, the state began to be considered as a product of art, an institution invented in order to help the natural man; just as printing is an artificial means of helping our memory." [7, p. 483 – 484].

The teaching of Hobbes, Spinoza, Locke, even Rousseau Yurkevich derives from the postulate that the state, as a product of art, can undergo restructuring, it can be handled freely, as with an artificial entity. In the "History of the Philosophy of Law", the professor explained in detail the peculiarities of the teachings of the named thinkers of the New Age, assessing their contribution to the science of the state and law from the point of view of the relationship between man and nature. "In this era," Yurkevich emphasizes, "philosophy came to essentially sophistic beliefs about the essence of the state and its attitude to private individuals. But this distance from the truth was at the same time a turn to the awareness of what a moral personality is and how it creates the world in general and the state in particular" [7, p. 506]. I. Kant's philosophy became such a turning point and realization. If before Kant and in his time, following in the footsteps of Hobbes, Locke, Spinoza and Rousseau, thinkers talked about the state of nature, about needs and interests, about the desire for the sources of law and state life, then in Kant and after him we meet the concept of autonomy moral personality, the concept of a person who should be respected as a goal. The professor emphasizes the three main theses of I. Kant's teaching: the mind is independent and independent - it is the law of free action; the autonomy of a human personality is determined by its morality; the only principle of a person's moral dignity is respect for the law, a sense of one's duty. Here arises a contradiction, which Yurkevich depicts as a discrepancy between a rational being endowed with free will and a person as a part of nature: "As much as a person as a rational being is an equal member among his own kind, he is individual and unhappy as a part of nature. The mind strives for universality,

nature for individuality" [4, p. 514]. Therefore, Kant's idea of achieving eternal peace in life turned out to be utopian.

Yurkevich finds the idea of reconciliation of social and natural principles in a person in the teachings of F. Schelling, whose analysis concludes the "History of the Philosophy of Law". He defined the essence of this idea as follows: "The purpose of man - to give birth to divine ideas in his life, to achieve godlikeness - is always carried out by moving along these two contradictory principles, and then the reconciliation of these two contradictions is carried out" [7, p. 521]. Asserting that in Schelling's teachings, man is perceived not only as an autonomously thinking being, but also as a subject of history, Yurkevich noted that "this thinker first drew the attention of our generation to the fact that the essence of world history is necessarily revealed in law. This world history is thought of as a universe, the elements of which are science, art, the state and the church. The state, although organized by man, should act like nature: "The legal system is more important, the closer it is to the mechanism of nature" [7, p. 523]. The philosophy of the identity of the subject and the object developed by Schelling determines the search for a perfect legal system as a goal. This moral belief in the progress of law lies in the moral essence of a person, in moral laws. "Whoever acts in the moral realm is sure that universal moral laws enable a perfect legal system," P. Yurkevich writes about Schelling [7, p. 525]. Universal moral laws can be equated with Divine law, enlightenment, and it is also possible with natural law.

In the first edition of the "Philosophy of Law" (1568), the professor devotes several pages to the description of natural law. Unlike the "Philosophy of Law" of 1872 and 1873., where we are talking mainly about positive law, in the first edition three paragraphs are devoted to natural law: "The primary form of the doctrine of natural law", "The importance of the science of natural law" and "The method of studying and beginning natural law". The idea of natural law permeates other points of this course, as Yurkevich clearly defined that "the truly natural state and natural law always exist where the relations of members of society are not coerced by the government, but where the very idea of law is authoritative" [8, p. 169]. If the natural right is given and a person perceives it, then he interprets the positive right, "thinks about its advantages and disadvantages with his mind."

Justifying the idea of law as a subject of the philosophy of law, the professor first of all turns to the teachings of Hugo Grotius. It was this thinker who first tried to explore the foundations of law, which would reach deeper and further than the positive prescriptions of each written code. He revealed the clearly realized need to "live by reason" in modern times, which led to changes in the social life of Europe. In the teaching of Kant, who developed the idea of pure formal law, Yurkevich sees two points, namely: Roman law acquired the inherent value of natural law, universal law; "the idea of a legal state arose, which would aim only to protect the law" [8, p. 164-165].

As for the primary form of teaching about natural law, the professor finds it in the legacy of Hugo Grotius, who found in human nature a desire for social life. This desire of man differs from animal instinct in that he lives in society according to one law common to all, which is the ability to think. Having the ability to think, a person can listen not only to the urges of animal instinct, but also to his reason and inner sense. Therefore, man obeys the mind, because his nature requires a rational life. The mind tells a person what is characteristic of him. "These intelligent primitives constitute the law of nature. Thus, to live with the mind is a natural right of a person" - conveys the thoughts of H. Grotius P. Yurkevich [8, p. 165-166].

A person does not just want to live in society, but to live peacefully and harmoniously, and such a life ensures the right. The professor draws attention to such a phenomenon of Grotius' teachings as the separation of law and morality. The thinker calls only that which protects society a law, "this principle itself is, in fact, a law in contrast to general morality." "The general moral idea requires that our actions be in accordance with reason, and the private, actually legal

idea requires that this reasonable life supports a peaceful and harmonious coexistence" [8, p. 166]. This is the right.

Natural law has a moral character, it is sacred and binding on a person by its essence, and not by the authority that gave it, even if it was God himself. God is the cause of nature, and therefore of natural law. But natural law arises not because it is of divine origin, but because it meets the requirements of human nature, and, therefore, "it would be suitable even if it was not given by God, if there was no God at all. It is useful, necessary and obligatory even for an atheist, because even he, denying the existence of the Supreme Being, does not deny that which in itself constitutes a reasonable necessity for human nature. In a word, natural law has a source of its sanction not from outside, but in itself" [8, p. 166-167].

Law also differs from morality in that it has a coercive nature. By virtue of its essence, the law demands the elimination and destruction of that which hinders the development of peaceful and harmonious coexistence. Moral rules and regulations are not binding. Everyone can disobey them, and no one has the right to demand their fulfillment, for example, to force them to give alms. But do not harm another - you can force. This is the essential difference between morality and law, the professor concludes. With such a coercive nature, the right still remains a moral quality, but not every moral quality is a right [8, p. 167].

H. Grotius Yurkevich considers the solution of a difficult task to be his merit: he singled out law in the moral realm as a separate idea, the specific purpose of which is to promote peaceful and harmonious coexistence. The idea of law is rooted in reasonable human nature, exists as an immutable law, but can acquire various accidental forms under the influence of positive law. Natural law is eternal, unchanging, universal, always the same, has no history, while positive law is constantly changing, binding only for certain people, arises from random sources, has its own history. They exist together and mutually influence each other. Despite the fact that the concept of natural law was perceived and interpreted differently by European thinkers, Yurkevich is of the opinion that "Hugo Grotius understood by the state of nature exactly unforced legal relations, but such relations, without a doubt, are characteristic of an educated society, and not of a wild man. The higher a person's education is, the easier it is for him to instill the requirements of the idea of law, the more deeply he realizes the need to respect the truth without being forced by the authorities. This is a true natural person" [8, p. 170].

Asserting that "the science of natural law is also called the science of reasonable law," and that "the state of reasonable, conscious submission to law is close to us as reasonable beings" [8, p. 170]. P. Yurkevich actually equated natural law with the idea of law as such, finally cementing the transition from the doctrine of natural law to the philosophy of law in Ukrainian philosophy. This is evidenced by the subsection of his work "The importance of the science of natural law" [8, p. 170-173].

Having analyzed the doctrine of natural law of modern European thinkers, Yurkevich noticed that the very concept of "natural law" is very imprecise, and this caused its "impractical" and "even irrational" developments. First of all, this term "led the philosophers to the fact that they considered even gross animal instincts to be a right, because these instincts are completely independent" [8, p. 169]. But Grotius clearly separated man's animal side from his intelligent, spiritual side, thanks to which man is a member of an intelligent society. Secondly, the use of the concept of "natural law" suggests that the positive law developed in the codes is unnatural. As a result, there is an unfounded bias against positive, valid law, as seen in Rousseau. For him, everything unnatural is positive. Thirdly, Yurkevich notes, the scientific term "natural law" is marked by its consequences. A doctrine appears about the so-called never-existing "status nature" (natural state), which is opposed to "status civilis" (civil state) [8, p.169].

This teaching contradicts the opinions of Grotius, because he believed that the harmonious coexistence of people is a true natural state. After him, philosophers believed that there was a separate state - "status naturae", where the natural direct law of life acted as a right.

Hobbes depicted such a state as a "war of all against all," while Rousseau imagined it as paradise. It was not possible to find people who would live in such a state. Man, as experience shows, can go wild to the state of an animal, but this is not a natural state. "Savage is a consequence of extremely unfavorable conditions of human nature for social relations," says the professor [8, p. 169].

Conclusions

Therefore, the state of nature and natural law are the norm in a civilized society, it is a state of reasonable, conscious submission to the law inherent in people as rational beings. Natural law does not mean the law of savages, but only that which is characteristic of man as a rational being. It clarifies the question: what should be considered the right of a person as a rational being. And this is a question of life: the idea of law is a force that acts in humanity in the form of beliefs, the professor claims. He determines that natural law, although not entirely identical to positive law, is nevertheless of great importance: "Natural law is a positive moral force, because it is an idea of human reason, and reason is always legislative; his idea is always real as a task and as a demand, which he always carries out according to the degree of conviction. It is a right established by human nature and divine reason" [8, p. 170].

This, in Yurkevich's understanding, is a pure idea that does not require external sanction and is binding for intelligent beings due to internal authority. Natural law, by the force of its authority, changes and stops the effect of positive law, since its authority is rooted in reasonable nature, and reason in its definitions does not depend on anything. When the idea of natural (divine) law is rooted in public opinion, it acquires the power of conviction, which affects positive law. The idea of law becomes the law itself, so natural law is an effective force. It affects positive law as its moral sense.

When the idea of reasonable law reaches the power of practical conviction, it gives it the form of positive law. "Through all mankind and through all its history, one fact runs most obviously: as culture improves, positive law becomes more and more open, more accessible to the influence of natural law," P. Yurkevich is convinced [8, p. 172]. He sees the essence of social progress in the fact that natural law is perceived as a positive law, "so that the reasonable becomes more and more easily and quickly real" [8, p.172]. This means that the requirements of natural law become the norm when creating legal codes: personal freedom, free labor, freedom of conscience and beliefs.

The constitutional form is nothing more than the unconditional subordination of positive law to natural law. As long as the ideas of natural law are unclear and confused in universal belief, until then the form of positive law will undergo informal reform, the professor believes. "A clear idea of natural law protects positive law, exposing completely false principles and not allowing them to penetrate into the public environment" [8, p. 173]. This conclusion of the professor allows us to state that he understood natural law as the basis of any legislation (positive law), which ensures its rationality and morality, because "the conscience and human mind cannot be removed from the realm of positive law: they will certainly be expressed by themselves." [8, p. 174].

The concept of natural law in the teachings of P. Yurkevich is closely related to the "philosophy of the heart", which serves as the methodological foundation of the moral justification of law.

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