Natural law in religious doctrines of the 20th century

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Опубліковано	Секція	УДК
19.10.2023	Право	14:340.12] (100+477)“18”

DOI: http://dx.doi.org/10.5281/zenodo.10035056

Abstract. The article examines the historical path of formation of the concept of natural human rights. Special attention is paid to the influence of religious sources of formation of this category. The author examines the problem through the prism of Christian sources and their interpretation.

Natural law views are considered in the context of theological doctrines in historical retrospect and modernity. With the help of the analysis, the events, material and ideological prerequisites of the Christian understanding of natural law are studied, the interpretations of natural law of the early and late Middle Ages are considered, and modern ideas of "revived" natural law are studied. The relationship between legal and religious regulations topic multidimensional. The connection between law and moral precepts, and through them with religious norms is noted by many scientists.

The article presents scientific and metaphysical arguments in favor of the theological natural-law legal understanding. Law, like any social phenomenon, undergoes a long process of evolution and transformation, which has not been completed to this day. And continuity is natural for this process. It can be said that law, like other sciences, should follow the path of identifying existing patterns, the essence of events and phenomena. Legal relations must be discovered, not invented. And this will allow to avoid mistakes and negative consequences of the implementation of legal norms. We will dwell only on the Christian tradition of the 20th century, which in no case does not speak about the lack of influence of other denominations on legal norms.

The article is based on modern methodological attitudes that determine the need to include the subject and subjectivity in the process of cognition, the "principle of trust in the knowing subject", epistemological relativism, the principle of "historicism". A comparative analysis of natural and legal views is carried out.

Keywords: natural law, human rights, theology, religion, neo-Thomism, theocentrism, dogmatism.

Природне право у релігійних доктринах хх століття

Анотація. У статті розглядається історичний шлях формування поняття природних прав людини. Особливу увагу приділено впливу релігійних джерел формування даної категорії. Автор досліджує проблему крізь призму християнських джерел та їх тлумачення.

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Розглядаються природно-правові погляди в контексті теологічних доктрин в історичній ретроспективі та сучасності. За допомогою аналізу досліджуються події, буттєві та ідеологічні передумови християнського розуміння природного права, розглядаються інтерпретації природного права раннього та пізнього Середньовіччя, досліджуються сучасні ідеї «відродженого» природного права. У статті наводяться наукові та метафізичні аргументи на користь теологічного природно-правового праворозуміння. Право, як і будь-який суспільний феномен проходить тривалий процес еволюції та перетворень, не завершений і до теперішнього часу.

І природним для цього процесу є спадкоємність. Можна сказати, що право, як і інші науки має йти шляхом виявлення існуючих закономірностей, суті подій та явищ. Правові відносини необхідно виявляти, а чи не вигадувати. І саме це дозволить уникнути помилок та негативних наслідків реалізації правових норм. Ми зупинимося лише на християнській традиції, що в жодному разі не говорить про відсутність впливу інших конфесій на правові норми.

Право, як і будь-який суспільний феномен проходить тривалий процес еволюції та перетворень, не завершений і до теперішнього часу. І природним для цього процесу є спадкоємність. Можна сказати, що право, як і інші науки має йти шляхом виявлення існуючих закономірностей, суті подій та явищ. Правові відносини необхідно виявляти, а не вигадувати. І саме це дозволить уникнути помилок та негативних наслідків реалізації правових норм. В основі статті лежать сучасні методологічні установки, що зумовлюють необхідність включення суб'єкта та суб'єктивності в процес пізнання, «принципу довіри суб'єкту, що пізнає», епістемологічного релятивізму, принципу «історизму». Проводиться порівняльний аналіз природно-правових поглядів.

Ключові слова: природне право, права людини, теологія, релігія, неотомізм, теоцентризм, догматизм.

Introduction

Increasingly, scientific discussions discuss the influence of religion, morality, and morality on the formation of legal norms. This is connected with the repeatedly arising disputes about the ethical aspects of some proclaimed human rights and the discussion of the limits of these rights. The relevance of human rights research is related to the active activity of the European Court of Human Rights, as well as other international organizations operating in this field.The doctrine of natural law belongs to philosophical science as a whole, because it must give an answer to the question whether nature imposes any obligations on man in contrast to the obligations that have arisen as a result of the development of society, and because it puts the question of the general order of the universe. The task is to bring human behavior in society in line with its nature.

Human activity is subject to the laws of physics, the laws of logic, and often to something higher that the person himself is unable to explain. A moral law is a law that expresses a moral need. Natural law - expresses a set of rights and values dictated by the natural nature of man and, therefore, independent of a specific state or ruler. These rights and freedoms cannot be given or taken away, they belong to a person by birth.

Results

The relationship between legal and religious prescriptions is a multifaceted topic. The connection of law with moral precepts, and through them with religious norms, is noted by many scientists. Even ancient authors appreciate the law as an expression of truth and justice. In the Institution of Guy, it is said that law, as the basis of legislation, "was established by natural reason among all people" [2, p.17]. And already in the Christian period of the development of

Roman law in the Digests of Justinian, we see: "Law got its name from "justice" (iustitia), because, according to the excellent definition of Celsus, law is the science of good and just" [2, p.157]. And it is quite natural that with the spread of Christianity, the concepts of goodness and justice began to be directly deduced and interpreted as divine concepts.

Goodness and justice were put above the law by representatives of legal schools in the X-XI centuries, who believed that any legal norm should be evaluated from the point of view of justice.

Representatives put goodness and justice above the law legal schools in the X-XI centuries, which believed that any legal norm has be evaluated from the point of view of justice. Modern authors often associate the formation of origin later theories of natural rights with Christian jurisprudence XII century. This is the age of two divergent trends. On the one hand, it is revival of classical Roman law, on the other – codification of canon law. In Tomas Aquinas, the categories of the Eternal and human law, which, in fact, can be recognized, according to the qualification of Art. [8, p.43]. What is new is fundamentally important to us the personal beginning penetrates the language of the canonists when they began to discuss the concept of "natural law" (ius naturale).

First of all, the phrase ius naturale was understood in an objective sense as natural law or "what is naturally right" however canonists writing around 1200 read ancient texts in the context of its more humanistic, more individualistic culture, adding a new definition. Now in their writings ius naturale sometimes was defined in a subjective sense as an ability, power, inherent individual person Accepting this initial subjective definition, canonists developed many types of natural rights. About 1250, Pope Innocent IV wrote that the right to property originates in natural law and that even unbelievers enjoy this right along with the right to form their governments [5, p.35].

At the beginning of the 14th century, along with the development of the legal language, there is penetration of the doctrine of natural rights into political philosophy. A vivid example here can be the works of William Occam, who relied to the early canonical tradition. He has a transformation the concept of biblical, evangelical freedom into freedom from the tyrannical rule. Later, Occam's ideas were developed by Jean Gerson, an outstanding French theologian who develops the idea that the law Christ is the law of freedom.

The most revealing illustration of what has been said can be the expression of H. Grotius: "The mother of natural law is the very nature of man" [6, p.157]. The content of the concept of "natural law" changed depending on historical conditions, as well as the socio-political positions of its exponents. Relatively close in historical terms are the considerations of Herbert Hart regarding the "minimum content of natural law", which cannot but be recognized as controversial. According to the author, this aspect of law will be the norms that allow the survival of the human community, since "we must proceed from the fact that their goal in general is to live", "survival ... is understood by us as a goal." At the same time, according to H. Hart, people are ready to live in poverty and at the cost of terrible suffering just for the sake of living [1, p.122].These conclusions lead us to the Idea of the possibility of cloning people for the purpose of creating slaves. After all, these people live, despite the torment and terrible existence.

In contrast to H. Hart, Lon Fuller points to the statement of Thomas Aquinas that if the main purpose of the captain was to save the ship, he would always remain in port. According to L. Fuller, the sphere of natural law includes not only the minimal content of natural law, which L. Fuller himself calls the morality of debt, but also norms that promote communication among citizens [3, p.218-221]. However, the latter are not mandatory in the true sense of the word, they can be attributed to the morality of aspiration - "the morality of living in accordance with the Good, striving for perfection, the fullest realization of human powers" [3, p.15].

It is necessary to understand that the law is only a conditional scheme of people's behavior, following which society will be able to function normally. We believe that the law does not answer the question of what rights a person has, but it should answer the question of how it is necessary to act in order not to harm other members of society and what actions to take if harm is done. If the first indicates that a person has a certain inalienable list of rights and freedoms, then the second indicates that a person, being a member of society, has no right to harm other members of society by his actions.

Thus, society is at the center of legal regulation. The integrity of society can only be ensured by the presence in it of security and justice in resolving disputes. The individual, being part of society, wants to benefit from the interaction with other members. If productive interaction is impossible, the benefit is too small, or the safety of members is not ensured, then the individual no longer aspires to be a member of the social organism.It will disintegrate [10, p.104].

There is no doubt that at this stage of historical development, the observance of all those natural rights, which the classics of natural law theory spoke about, is a guarantee of the stability of the integrity of the social organism. Legal theory textbooks indicate justice as one of the principles of law. But justice is the principle of law, it is its goal. We believe that justice can be called a natural rule of law. It must be established as the material content of the law. Otherwise in this case, the law will not be able to fulfill its function and, together with the disintegration of society, will turn into a fiction.

Natural law has an objective existence arising from the characteristics of a person as a socio-biological being. A vivid example can be the human right to life. A person from birth realizes this right given to him by nature, regardless of whether something about it is written in any other laws. Here, natural instincts come to the fore, since the declaration of life is natural and biological.

Having studied the existing concepts of natural law, one can come to the conclusion that they are built from three approaches. Natural law is understood as divine decree, morality or laws of nature. The divine law is not the same for everyone, and its wording needs interpretation.

In the middle of the 20th century, interest in natural and legal views was awakened in legal science and philosophy. marked the beginning of restoration, or the idea of "revived" natural law. Despite the fact that natural law never "died" and developed within the framework of the bourgeois philosophy of the New Age, in this period it was already possible to talk about the theoretical understanding of Thomistic and Protestant legal views. During the period of the "revival" of the idea of natural law, one of the leading trends was neo-Thomism - a significantly updated version of the rationalist theological teaching of F. Aquinas, as well as neo-Protestantism, which goes back to the fundamentalism of St. Augustine and the position about the will of God reflected in the Holy Scriptures. The Austrian theologian J. Messner (1891–1984) and the French religious thinker, one of the authors of the project of the Universal Declaration of Human Rights J. Maritain (1882–1973) made a particularly significant contribution to the development of the modern theological concept of legal understanding [7].

The methodological basis of neo-Thomism, as well as Thomism, remains a transcendental objective-idealist approach that goes back to the idea of Christian creationism - the creation of human existence and the derivation of human laws from "eternal" laws.The peculiarity of neo-Thomism is that many of the principles of Thomism were either rejected or put aside in the teachings of most modern theological thinkers, since the religious way of life was largely suppressed by secular ethics.

In 1948, the Universal Declaration of Human Rights was adopted, one of whose authors was the neo-Thomist philosopher J. Maritain. This international document was supposed to become a truly valid "international law", and in the Christian world, but also in other legal

systems of the world. J. Maritain, motivating universalism in the approach to the text of the Declaration, noted that "people who oppose each other based on their theoretical views can reach a practical agreement on the list of human rights" [7, p.56]. The philosopher examines some epistemological problems that arise in the process of learning about natural law. J. Maritain is convinced that the abstractness of this concept leads to many different interpretations of natural law.

On the other hand, the theologian emphasizes the impossibility of reducing natural law to a strict hierarchy of norms. Any, even official, interpretation is only one of the possible ones, since natural law is embedded "in itself", originates in the "eternal law", in the process of knowledge, any attempt at rationalization and standardization is doomed to become only a private version of the representation of the idea of natural law . In this context, an agnostic paradox arises related to the impossibility of knowing natural law and approaching the "absolute truth" of the "eternal law" with the help of private representations and interpretations.Mariten proposes to solve this dilemma based on the fact that man is a rational being, which is a synthesis of the spiritual and the physical.

The dualism of the eternal divine and earthly human beings is due to the combination of the ideal and the material in unity. The central and connecting link here is the purpose of human existence. "This means," writes Maritain, "that precisely because of human nature there is a certain order or sequence which the human mind is able to discover and according to which the human will must act in order to bring itself into conformity with the essential and necessary ends of human existence. This is nothing more than an unwritten law or natural law" [7, p.118]. Reflecting on the purpose of human existence, the philosopher derives it from the essence of man, which is characterized by order. However, his claim that if life has a purpose, then we must recognize the existence of natural law, seems to us logically untenable.

The teleological (expedient) interpretation of natural law was also developed by the Austrian theologian J. Messner, according to whose position the measure of social order is laid in man himself: his own nature of drives tells him in which values true human existence is embodied, and the power of reason prompts him to value knowledge. Messner significantly complements Mariten's ideas, correlating the natural right of a person with the needs inherent in his nature: in housing, in clothing, in personal integrity, in property, etc. natural-legal theory with existential-phenomenological, but here the concept of conscience as a "natural filter" for legal acts is derived not by appealing to irrational motives and experiences of the subject, but from teleological principles.It is important to note that "existence" (existence) in Messner's neo-Thomist doctrine is not considered in isolation from "essence" (essence) and is not opposed to it.

On the contrary, the existence, the earthly existence of a person is not a spontaneous process directed to "nothingness", but the process of the individual's realization of the divine plan, the realization in the process of life of the divine plan, the embodiment of the eternal law in nature. The reflective epistemological role of the subject should also be recognized as a criterion for demarcation of the mentioned doctrine from the existential-phenomenological one. In existential natural-law interpretations, the subject of legal reflection is governed by irrational motives, personal experiences under the conditions of "border situations" [5, p.107]. As for theological interpretations, even Thomas Aquinas recognized the leading role of reason in understanding the essence of natural law. In modern theological theories, there is also the concept of a guiding goal as a kind of testimony in favor of natural law.

The doctrine of neo-Protestantism (H. Dombois, E. Wolff, F. Horst), based on evangelical ethics, interprets natural law somewhat differently. According to the tradition that goes back to St. Augustine, supporters of this direction in theology operate directly to the will of God, which is understood through faith. Natural law is derived deductively from biblical texts. Some commandments are interpreted literally, similar to the interpretation of a constitutional act. A

characteristic feature of the neo-Protestant concepts of natural law is the lack of dualism between divine and natural order. The human being is directly connected with God, so the expression of natural law does not require any earthly or bodily mediation. The process of forming society does not take place according to the laws of society, but according to the divine plan. In this regard, the Holy Scriptures are recognized as the only significant law, while other normative acts are only acts of interpretation of the Bible. F. Horst, who believes that the Old Testament is nothing more than a state constitution.

Of epistemological interest among neo-Protestant doctrines that discredit human reason and any attempt at rationalization as a departure from the true meaning of the Bible, only some natural law theories represent. For example, Ege. Wolf derives from the commandment "to love one's neighbor" "the right of one's neighbor."

Neo-Protestant concepts, in contrast to neo-Thomist ones, negate the role of human cognitive abilities. The priority of faith over reason and religious fundamentalism largely diminishes or even excludes the epistemological possibilities of the subject of knowledge, as well as any reflection on the concepts developed by Protestants [3, p.302].

The theological concepts of "eternal" law should not be considered meaningless, since they played a decisive role in the Middle Ages: religious faith was a consolation and a guide for a society aware of the impermanence of everyday life. Earthly life was considered only a degree, an intermediate stage in relation to eternal life after the death of the human body [10, p.68].

Conclusions

Taking into account the Bible, theology formulated new moral guidelines, contributed to the consolidation of medieval society in the form of a single monotheistic religion. Today, it is important to recognize the fact that the application of the criterion of truth or the criterion of usefulness of scientific knowledge (as it was customary to do in the modern era) in relation to religious dogmas and legal theories of the medieval era is very incorrect, especially in the field of humanitarian knowledge. The scientific centrism of the modern era, which determined the orientation of science on production practice or on the requirement of instrumental usefulness of knowledge, called into question theology and metaphysics, in the context of which ideas about law were developed for a long time.

It is necessary, firstly, to approach from the position of the meaning of this knowledge, that is, to take into account the original content laid down by the author of the text (of the Holy Scriptures, doctrine or law), and secondly, it is necessary to proceed from the principle of trust in the knowing subject, which is based on the following a priori requirements: taking into account the historical concreteness of the subject of knowledge, treating him as responsible for obtaining true knowledge and overcoming delusions.

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