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Justice as Principle: Aspects of Genesis in Social and Regulatory Systems

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Abstract: In study questions of ratio of law and morals as social regulators of human behavior are considered. The attention is paid to the principle of justice in aspect of its development, substantial filling, comparison to other social norms. Arguments in favor of the fact that law-making acted as the instrument of justice ideas fixing at all times are given.

Key words: Justice, morals, law, morality, norm, law-making

INTRODUCTION

Ratio of law and morals always were and continue to be in the sphere of these categories researchers interests. And it is not casual as in the field of social regulation of human behavior morals and law take generally coinciding valuable positions. The rule is applicable to overwhelming number of the acts made in society: what is good or bad from the moral point of view, the same is good or bad from the point of view of the law (Maltsev, 2008). It is possible to draw a conclusion that" law and morals have a common goal ensuring harmonious development of the person and public order, balance between interests of society and the person".

Law and moral installations throughout centuries made a whole, differing only in external attributes. Maltsev (2008) in his works noted that" justice is the category common for morals and law".

Process of justice knowing and its ratio with law and law-making has to rely on retrospective researches (Habermas, 1986; McNamara, 1979) as well as on modern concepts of justice in law-making (Auerbach, 1983; Barnett, 1998; Tyler, 2003) developed in jurisprudence.

MATERIALS AND METHODS

In the research various general scientific receptions and ways of logical knowledge are used: analysis and synthesis, abstraction, system and structural, functional, formal and logical approaches. Achievement of the stated purpose was promoted by application of historical and legal and comparative and legal methods.

RESULTS AND DISCUSSION

The conducted researches in different years convincingly proved that the first ideas of justice began to be formed in pre-state society. General equality of tribes-people defined ideas of social justice as need to carry out the ceremonies and customs established in the tribe. However, the primitive person cannot be represented as the carrier of high morality. O.G. Drobnitsky reasonably noticed: "Not all standards of behavior but only the special type of these norms other than a great number of others is covered by the concept "morals". Maltsev (2006) fairly claimed: "As, the standard and regulatory system morals arises in human society no earlier, than people develop type of valuable consciousness which cornerstone is: understanding of contrast of the good and evil, as wellas criteria of the choice, more or less uniform for community, among them; emergence of conscious commitment of the person to good and with it the connected moral argument of acts, quite independent in relation to reason of practical expediency and advantage; formation in consciousness of the person of individual and moral qualities (virtues), first of all such as conscience, duty, human dignity".

In process of the human civilization development, with complication of the public relations, emergence professional and as result, social differentiation in primitive society, in the conditions of the tribal relations disintegration the first states appeared. They gave a new impulse of the justice idea as there was a need of the social inequality justification caused by emergence of private ownership and exploitation of one community members by others. Ideas of the good and evil, morals and justice became complicated and gained essentially new value. To replace the leveling justice dominating in primitive-communal system distributive justice came. With development of civilization the principle of talion (equal punishment) was applied more and more seldom was gradually succeeded by equivalence of punishment. There are different forms of equivalent punishment.

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Maltsev (2012) gives the simplest rule "render the same for the same and in the same measure" as an example in which as we see, the requirement equal for equal, "the same pro the same" is put.

The rules of law which succeeded mono-norms established the obligatory rules of conduct accepted by the first states and directed to protection of the existing material and social society stratification, private ownership as well as the solution of the general defense and safety questions. There is a law-making in modern understanding of this term as activities of the state for creation, change, cancellation of obligatory rules of conduct.

The big contribution to developing the justice concept and its realization in law-making was brought by the most ancient sources of law, for example, Compiled laws of the Tsar of Babylonia Hammurapi (18th century BC), in the Antique era of Ancient Greece.

The category of justice received new bright development and understanding in Ancient Rome. The Roman law-making developed in many respects as a result of court practice which was a source of law. Romans made the significant contribution to development of the doctrine about justice in law-making. In Rome in practice of pretors (the highest public official) the model of the legislation examination regarding its justice from the point of view of the rational interests of the Roman citizens oand representatives of other people-peregreens-was for the first time established. The Roman lawyers recognized the fact that justice and law are concepts interdependent and related. Therefore, justice is an initial category of law-making, "starting point" of its development and functioning, its intrinsic characteristic.

Conclusion follows from the above that if the first ideas of justice appear at the stage of primitive-communal society organization, then law and law-making arise later, together with emergence of private ownership and state. Therefore it is possible to say that right and law-making always have secondary character in relation to moral category of justice which originates from the mono-norms existing in pre-state societies. Law-making always acts or has to act as means of reflecting the existing in the society ideas of the good and evil, honor and conscience, truth and lie and if this indispensable touch for any reason is lost, then there are revolutions, civil wars and other social shocks one way or another bringing idea of justice to "surface" and changing the existing laws and orders.

Fall of the Roman Empire and destruction of the slave-holding relations laid the foundation of European civilization formation and transition to feudalism. This process had contradictory character as, on one hand, in the states formed in Europe on fragments of the Roman Empire there was a gap of the saved-up cultural and cultural values. On the other hand, the European culture, law and law-making always came under the strongest influence of antique tradition. It is caused by the most powerful reception of Roman Law and perception of Ancient Greece and Rome philosophical concepts in Medieval Europe. However, it should be noted that ideas of justice in the Middle Ages underwent extremely strong changes in comparison with antique concepts. So, during the Middle Ages era as negative aspect it is possible to consider that law and justice in consciousness of the main part of the population had especially divine and in-cognizable character. At the same time, it is necessary to recognize huge positive influence of Christianity on formation of justice idea and development of law-making. For example, as the main regulator of the public relations in Medieval Europe fundamental moral values and moral imperatives were fixed in law: ban on murder (do not kill) which regenerated later in idea about the supreme value of human life; (do not steal) a ban on misappropriation of someone else's property; perjury ban. Besides, equality of all before the law and court gradually found fixing in rules of law, the principle of individualization of punishment (the son is not responsible for the father), the principle of proof completeness (one witness is no witness).

The Middle Ages were succeeded by a century of the Elightment which brought essentially different understanding of a role of the person in the world and the concept of justice as law-making basis. The liberal concept of justice based on the theory of absolute law and the theory of the social contract was formed.

Researches of such educators as Bacon and Montagu (1857) and Hobbes (1994) became an ideological basis of the French bourgeois revolution of 1789 which marked transition of the European society from feudalism to capitalism. The natural and legal concept "was lifted on a shield" for overthrow of the existing system and the category of justice played the key role in this case.

The idea of justice found reflection in works of the largest representatives of the German classical philosophy Kant and Guyer (1998) and Hegel (2006). For example, Kant believed that "if justice disappears, life of people on earth will not have any value" at the same time the sense of justice consists in following to a categorical imperative: do so that your act could become a sample for all and always treat the person (including yourself) as the purpose and never-as means. Kant saw essence of justice and law-making ratio as the inter-depending and complementary concepts.

Hegel's (2006) merit is huge in development of the concept of justice which is connected with category of

freedom. As well as I. Kant he recognized close connection between law-making and justice, however unlike I. Kant, G.V.F. Hegel shared legal understanding of justice, i.e., considered that justice can be embodied only in law and considered law as a kingdom of the realized freedom.

On the verge of the 19-20th centuries the greatest importance was gained by sociological school of law the representatives of which considered law-making in a broad sense as creation of administrative acts, judgments and sentences, formation of customs and sense of justice for judges, other public officials, legal relationship and law and order as well as school of legal positivism which received a logical conclusion in the normativistic theory of Kelsen.

Feature of this school was that it developed the new concept of understanding of law-making and justice. Thus, Kelsen (2007) was skeptical about justice in law-making, believing that justice is "the value judgment aimed for an ultimate goal and such value judgments by the most nature are subjective on character because are based on emotional elements of our consciousness, on our experiences and desires".

The 20th century was characterized by the fact that it left big scientific inheritance of justice concepts in law-making. It is psychological school of law, the founder Petrazhitsky (1910) who resolving an issue of a ratio of justice and law-making, allocated intuitive law and positive law. The positive law is expressed in the laws established by the state and "justice represents the intuitive right" existing in consciousness of the people. He believed that "justice experiences an essence intuitive ethical experiences of imperative and attributive type, on the terminology established above-the intuitive right" (Petrazhickij, 1910). The significant contribution to research of problems of the society justice, law and law-making brought the following works: G. Radbrukh (1878-1949) his theory of the "revived" absolute law (Lask *et al*., 1950; Hampstead, 1976). "The idea of law" which emphasized that "the idea of law was always associated with idea of justice" and "law has to personify justice and without justice it is a sneer if not a complete negation of itself(himself)"; (Perelman and Berman, 1980) who believed that "justice makes the main value" which should be considered in the context of division into "the fair act, the fair rule and the fair person". "The fair act is a correction, denial of inequality. The fair rule is a rationality, denial of arbitrariness. The fair person is a conscience, brutality denial" (Perelman and Berman, 1980). It is necessary to mention work of Fuller (1958). "The morals are right" in which the author notes that the fair law ("the moral law") demands that "there were rules that these rules were known and that they were observed by those carrying them out in life". At the same time fair law-making, in his opinion, assumes lack of law-making failure, need of law publication, clearness of the legislation, inadmissibility of the return operation of laws, consistency of law precepts, inadmissibility of impracticable requirements establishment, stability of the legislation and lack of contradictions between law-making and right application.

CONCLUSION

Justice was at all times and still remains the basis of state and legal systems legitimacy, morally reasonable justification of their existence and functioning. It has huge value for forming system of world outlook and the social norms regulators is a moral basis of law-making. It is connected with the fact that justice is the deepest moral idea mediating the mankind ideas of good and evil, truth and lie, moral and immoral. By means of assessment of an act or an event as fair or unfair in the concentrated form the attitude of society towards certain forms of life is expressed in general, sometimes in unconscious. All social norms of behavior which are the cornerstone of such complex regulators of the public relations as morals law, religion, eventually are reduced to an assessment of various phenomena from a position of their justice or injustice in relation to society or the specific personality. Origin of justice idea is connected with emergence of mankind and it will exist always while there are relations at least between two individuals. In this nature of justice, objective on source is shown.

However, borders of fair can change in time and space, reflecting realities of public life. Therefore universal justice should not seek to provide for all times and all mankind.

During research the realization of justice in certain public relations was the main question, obviously, it consists not in being fair to a specific phenomenon, but in being fair at the present stage of society development in specific circumstances. To estimate some legal act or process of law-making from a justice position, it is necessary to consider it not abstractly, but in historical and social context. Justice is subjective by nature as it reflects interests and values of mankind. In it the reason of justice ideas variability in law-making as the world is constantly changing size is also covered and other can essentially be given to those events which take place in it eventually (sometimes opposite) a social and legal assessment.

Law-making acted as the instrument of justice ideas fixing at all times. However it is necessary to recognize

that in historical process cases when all-social ideals of justice were reflected in law are rather rare. Ordinary law consolidates ideas of justice of those who created it. For this reason law-making can act as the conductor of both justice injustice depending on the hands in which mechanisms of the power in the state are concentrated (Ehkimov, 2014).

Justice is the active moral ideal connected with human relations. Problems of justice will always exist as society develops new behavior models which inevitability generate their assessment from a justice position.

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