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ПАМФІЛ ЮРКЕВИЧ ПРО ПРИРОДНЕ ПРАВО ЯК РЕГУЛЯТОР СПРАВЕДЛИВИХ СУСПІЛЬНИХ ВІДНОСИН

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У контексті сучасного традиціоналістського інтелектуального руху розглянуто ідею органічного суспільства, що є поєднанням права і моралі на рівні спільноти. П. Юркевич вважав основою такого суспільства ідею справедливості та пов'язане з нею природне право як засвідчено у спадщині Гуго Ґроція. У трактуванні Юркевича природне право є змістом позитивного законодавства у справедливому суспільстві.

Природне право як регулятор справедливого суспільства все ще залишається важливим для сучасного культурного процесу. Метою цієї статті є розкриття того, як розуміє Юркевич природне право в контексті регулятора справедливого "органічного" суспільства.

Юркевич особливо цінував внесок Античної філософії у розвиток проблематики законодавчої системи як регулятора соціальних відношень. Згідно з Юркевичем, це був філософ, який звернув увагу на сім'ю, як початкову форму соціального життя, тому що вона грунтується на природному праві та правилах моралі.

Поняття природного права пов'язане з його "філософією серця", яка слугує методологічною основою для морального виправдання (обґрунтування) закону, на якому базується органічне суспільство. Тому Юркевич був одним із перших українських філософів, який намагався зрозуміти поняття органічного суспільства, яке асоціюється зі справедливою соціальною системою, базованою на ідеї природного права.

Ключові слова: *Юркевич, Ґроцій, справедливість, природне право, органічне суспільство.*

PAMFIL YURKEVYCH ON THE NATURAL LAW AS A REGULATOR OF JUST SOCIAL RELATIONS

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In the context of the modern traditionalist intellectual movement, the idea of organic society is considered. It is a combination of law and morality at the community level. Yurkevych regarded the basis of such a society to be the idea of justice and natural law associated with it, as evidenced by the legacy of Hugo Grotius. Natural law as interpreted by Yurkevych is the content of positive legislation in a just society.

Natural law as a regulator of just society, as Yurkevych saw it, is still relevant in the context of a new modern cultural trend. The aim of this paper is to outline Yurkevych's understanding of natural law as a regulator of a just "organic" society.

Yurkevych particularly appreciated Ancient philosophy's contribution to the development of problems of legal system as a regulator of social relations. According to the Professor, it was this philosopher who drew attention to the family as the initial form of social life, because the family is based on the laws of nature and the rules of morality.

The concept of natural law is closely linked with his "philosophy of heart", which serves as the methodological foundation for the moral justification of law, on which an organic society is based. Thus, Yurkevych was one of the first Ukrainian philosophers who attempted to understand the concept of organic society, which is associated with a just social system based on the idea of natural law.

Key words: *Yurkevych, Grotius, justice, natural law, organic society.*

In Ukraine the image and ideas of Yurkevych have been studied quite in detail. Even his hand written works have been published in Ukrainian, including "Philosophical Diary", which is his "workshop of

thinking" [Mamardashvili 2010: 751]. However, in our opinion, the studies of this prominent Ukrainian nineteenth-century philosopher' teachings lack full understanding of natural law as a rational regulator of fair and just social relations. This problem is particularly urgent in Ukraine due to the implementation of judicial reform and the reformation of Ukrainian legislation, where the term "legal law" is rarely used. Attempts to introduce the concept into legal practice were made in the first half of the 18th century when making the Code of "The laws the Little Russian People are Judged by" (Note: *Little Russian People* defined people who lived on the territory of today's Ukraine). A special committee of experienced lawyers created the Legal Code for Ukraine based on Lithuanian Statutes, the Kulm law, the Saxon Mirror and other European legal instruments, as well as Ukrainian customary law, even considering certain judicial practices of Russian legislation. Obviously, the laws borrowed from the European Statutes were adjusted to the principles of natural human laws. The Code story was sad: being submitted to the Senate in 1744, this bill was returned to further development 12 years later, but the work was never completed, as in the second half of the 18thcentury the Russian legislation was introduced after the abolition of the remaining autonomy of Ukraine. Yurkevych could not read the Code, as such, since it was first published by Kistiakivskyi in 1879 [Kistyakovsky 1879: 1063]; however, he knew European philosophy well and studied scientific literature in German and French, as evidenced by his works. The Ukrainian philosopher also knew Latin thus being able to read the works of the Medieval and New Age authors in the original [Pich 2001: 688].

Addressing natural law as a regulator of just society, as Yurkevych saw it, is still relevant in the context of a new modern cultural trend, expressed in the need to find ideals in the distant historical pas, combined with the modern traditionalist intellectual movement, which tends to the socio-moral basics of traditional society. In the 20th century, the socially recognized combination of law and morality at the level of the whole community was called, organic society (Gemeinschaft), as opposed to society (Gesellschaft), which traditionally exists based on formalized institutions. Organic society is the ideal of social interaction that every self-sufficient nation seeks. The term "organic society" was proposed by the German sociologist and historian of philosophy Tönnies (1855–1936). It is mentioned by Mamardashvili [Mamardashvili 2010: 583]: "Gemeinschaft is an organic people bonding with no formalization of institutions... This bond is not given to us as an act of social existence, independent of us ... it arises directly as the social community of people, which by its nature provides us with the meaning that we generally expect from a society or from a social bond, or the meaning that we attach to a social bond (namely, a social bond must ***make*** a person). Hence, the search for archaic social structures, examples of which may be found in history; hence the archaic trend in modern culture, that is the need to find ideals in a distant historical past, which the Enlightenment called primitive, and it suddenly turned out to be a desired lost paradise, a bliss for modern consciousness" [Mamardashvili 2010: 246].

The aim of the paper is to outline Yurkevych's understanding of natural law as a regulator of a just "organic" society.

In his arguments the Ukrainian philosopher, as evidenced by his lectures on the philosophy of law, relied on the works of several German scholars (Robert von Moll, Henry M. Arens, Johann Caspar Brungli, Carl Hildenbrandt), whose names are related to the final transition from natural law theory to the philosophy of law. The study of crucial importance for singling out natural law through the philosophy of law was the "Elements of Philosophy of Right" by Hegel (1821). According to Hegel, notes Pich, one of the key reasons for the transition from natural law to the philosophy of law was that "the concept of natural law inherited from previous epochs could not clearly reflect that the law is a phenomenon that historically emerged, historically develops and, therefore, has its actual historical positive existence" [Pich 2001: 7-12]. A clearer idea of Frederick Julius Stahl, the founder of the Prussian Conservatism, is given below: "Law and Positive Law... are equivalent concepts. There is no other law except positive. The underlying ideas of natural law are in fact such thoughts and the demands of the divine world order, legal ideas; nevertheless, they... are neither sufficiently certain (accurate) nor binding. They are the basics for further development of the normal state. Consequently, there may be the requirements of reason to law, but there is no reasonable law" [Pich 2001: 8]. Thus, owing to the above work of Hegel, the positive law doctrine, perceived as an analogue of natural law, came to be defined as the "philosophy of law". This concept was borrowed by European and Asian countries, and P. Yurkevych, "keeping up with time", made the transition from the natural law theory to the philosophy of law in the Ukrainian intellectual culture.

The earliest thoughts about the notion of law as a regulator of relations between people, Yurkevych found in Ancient Greek philosophy, analyzing the expressions about the law of the "seven wise men", fragments of Pre-Socratic philosophers, Socrates, Plato and Aristotle in detail. The Professor emphasized that initially the basis of the doctrine of law was the idea of justice, which

determined not only the relations between people, but also the life of the entire cosmos and humanity. Socrates considered the idea of law to be a manifestation of divine justice, while his student, Plato, defined the main function of the state as the implementation of the divine idea of social accord and social justice, while people must properly perform their functions, defined by nature itself. Yurkevych regards "The Republic" as the most notable of Plato's works, where the philosopher considers justice, since it is here that the dispute over justice, the complexity of its definition, is highlighted. Therefore, Socrates, a participant of the dispute, decides to consider justice in the state that is where "it is expressed most explicitly" [Yurkevych 1990: 87]. It is worth noting that the ancient authors did not distinguish between the notions of state and society.

Plato explains that the state originates from the people's need to live together: since a person cannot satisfy his or her needs, people unite to help each other. "Common living is natural... Everyone has their special significance in the community, which enables the division of labour. Since everyone does the best what he or she is called for and is capable of, then [it is fair] for a society to be divided into classes and social strata" [Yurkevych 1990: 68-69].

Yurkevych particularly appreciated Aristotle's contribution to the development of legal problems as a regulator of social relations. According to the professor, it was this philosopher who drew attention to the family as the initial form of social life, because the family is based on the laws of nature and the rules of morality. Yurkevych considered the statement on the realization of the idea of social justice in the state to be the most significant and valuable element of Aristotle's theory. Interpreting the categories of the philosophy of law in the teaching of Aristotle, the professor noted that the ancient thinker "trusted the course of nature more than the creativity of the mind crowned with the idea" [Yurkevych 2000: 82]. Justice as a kind of righteousness is between the two extremes: creation of lawlessness and suffering from the impact of lawlessness, a skill, which enables a person to act freely and justly. Objectively, just things are those that meet legal requirements. Aristotle admits that there may be different laws in the state – natural, unconditional, unwritten, or introduced, state, private, and written. Answering a question, what laws a person should follow to implement the idea of justice in life, Stagirite claims that "only in the perfect state the unwritten, natural law fully correlates with the written law; thus, a righteous citizen and a man are identical" [Yurkevych, p. 89]. Aristotle was convinced that there was natural justice that is unchangeable, although in its application as laws it may be different: "Yet, justice exists in the very nature of all people; only the manifestation of this justice in one nation is carried out in one form, in another – otherwise; hence, differences in thoughts about justice" [Yurkevych 2000: 89].

The distinction between law and justice was first established, according to Yurkevych, by "the practical genius of the Romans" who realized and defined the law in a special sense, in contrast to justice and other moral ideas. "Roman civilization did not recognize social life as moral" [Yurkevych 2000: 131], so their law was completely different from the basis defined by the Greeks. In Greece, law historically developed as a natural awareness of ethnic unity, while in Rome, where society was comprised of different newcomers, and each group knew their different laws, it was necessary to work out a common norm, a secular law, which would form a nation "as a large number of people, united by one common order" [Yurkevych 2000: 443]. It was an equal law for all citizens. Strict compliance with this order created the huge Roman state. In that state, Yurkevych remarks, the developed common behavioral norm was perceived by all citizens as justice for everyone. Cicero's doctrine serves a confirmation thereof, as it "contains all the views of prominent ancient thinkers", and the core of the doctrine is the essence of humans' social nature, determined by reason. "He places his mind in the power source, ability to rule over animals, and does not see in it the body of truth," says Yurkevych [Yurkevych 2000: 460].

Yurkevych believes that the idea of a just, perfect organic society was developed by Christianity, based on the conviction that all people are the children of God, so all the brethren are equal to their Father: "Christianity developed the idea of a perfect society and led it to the most enhanced state that the world has not yet seen. First of all, Christianity developed the idea of a society as an organic whole. From the Christian viewpoint, a society is a complete living organism whose members are integral parts thereof; its members, unable to exist without each other, mutually serve each other and, moreover, they care more about the weak than the strong" [Yurkevych 2000: 143–144].

In early modernity such a society could not exist, because philosophers began defining the idea of law and state using the universal method of natural sciences, and thus "the state was seen as a product of art". The doctrines of Hobbes, Locke, Spinoza, and Rousseau ignored the notion of a moral person, Yurkevych states, and only Kant mentions the notion of an autonomous moral personality, a person who should be honoured. However, Yurkevych notices controversy in the teaching of the German classical philosophy founder – a discrepancy between an intelligent being of free will

and a human being as a part of nature: "A human being as a rational being is an equal member among his peers just as he is a unique and unhappy being as a part of nature" [Yurkevych 2000: 514]. Therefore, Kant's idea of achieving eternal social peace turned out to be utopian.

According to the Yurkevych's understanding, the idea of law being a regulator of organic society is not imposed on humanity or invented by philosophers; it is eternal, because "it is given". The idea of law is present everywhere where people are, because there are certain relations between them that predetermine the existence of good and evil: "This idea was clearly realized by "intelligent heads", and they moved it from the subjective to the objective realm, in the form of positive laws" [Yurkevych 2000: 168].

The original form of the natural law doctrine, Yurkevych finds in the legacy of Hugo Grotius (1583–1645), where it is grounded in the natural human seeking social life. This human aspiration differs from animal instinct in the fact that a person chooses to live in a community bounded by one law, common to all, arising out of the human ability to think. Having the ability to think, a human being can act not only following animal instincts, but also according to their own discretion and inner sense. Consequently, a person is subject to reason, because his or her nature requires reasonable life, with a mind pointing out to a person what is useful and inherent only in him or her. "These prudent prisms constitute the law of nature. Thus, reasonable living is the natural human law", Yurkevych conveys Grotius's opinion [Yurkevych 2000: 165-166].

A human being strives not merely to live in a community, but to live in accord, peace and harmony, which can be provided by law. Yurkevych draws attention to Grotius' idea about the delimitation of law and morality. The thinker believes that only law protects a society, "the principle itself is, in fact, the law unlike general morals". "The general moral idea requires that our actions are in line with reason, whereas the private, proper legal idea requires that this reasonable life maintains peaceful and harmonious coexistence" [Yurkevych 2000: 166].

It is important for human life in community (and for the organic society especially) that natural law is of a moral nature and is sacred and binding for a person as is, and not due to the authority that gave it, even if that authority were God. God is the cause of nature and, therefore, of natural law as well. However, natural law emerged not because it has a divine origin, but because it meets the requirements of human nature, thus, "it would be suitable even if it had not been given by God, even if there was no God. It is useful, necessary and binding even for atheists, because they, denying the existence of the Supreme Being, do not deny what is reasonably necessary for human nature. In other words, natural law is authorized from within, not from outside" [Khvoynytska 2016: 108].

Natural law, like any other law, is coercive by nature, which makes it significantly different from morality. By its natural force, law requires elimination and destruction of the things preventing the development of peaceful and harmonious coexistence, while moral rules and norms do not have this force. A person does not have to comply with them, and nobody can demand their performance. For example, a person cannot be forced to donate money or substance, but can be made not to harm others. The professor finds that this is a key difference between morality and law and makes an important conclusion for public life: "The law having a coercive nature still remains a moral quality, but not all moral qualities are laws" [Sorochyk 2008: 59].

Yurkevych pays tribute to the fact that G. Grotius highlighted law as a separate idea in the moral realm, whose specific purpose is to promote peaceful and harmonious co-habitation of people. He stated and argued that the idea of law was rooted in the rational human nature, existing as permanent law, but may acquire various random forms under the influence of positive law. The idea of law as natural law is eternal, unchangeable, universal, having no history, whereas positive law, which is created by people, constantly changes: it is binding for some people only, arises from random sources, and has its own history. These types of ideas of law exist together and affect each other. Despite the fact that the concept of natural law was interpreted and understood differently by European philosophers, it is very important to consider Yurkevych's statement that "Hugo Grotius, understood the natural state as the non-coercive fair relations; but these relations, definitely, are typical of an educated society, and not of a wild person. The more educated the person is, the easier he or she perceives these requirements of the law idea, and the deeper he or she is aware of the need to respect the truth without coercion. This person is in effect a truly natural person" [Yurkevych 2000: 170].

Having analyzed the natural law doctrine of early modern European philosophers, Yurkevych found out that the very concept of "natural law" in these theories seems to be rather vague, and this entailed its "impractical" and "even irrational" developments. First, this term "led the philosophers to thinking that gross animal instincts were considered as law, because they are completely independent" [Yurkevych 2000:169]. But Grotius's merit is that he clearly distinguished between the animal element of a human being from the reasonable and spiritual one, due to which a person becomes a member of a reasonable 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 unjustified prejudice against a positive, good law, as evidenced by Rousseau. For him, everything unnatural is positive. Thirdly, Yurkevich observes that "the scientific term natural law" is marked by its consequences. There appears a theory of the so-called never-existing "status naturae", which is opposed to "status civilis" [Yurkevych 2000: 169]. Such thoughts contradict the theory of Grotius, claims Yurkevych, since the founder of the natural law doctrine believed that the harmonious coexistence of people is a real natural state. After him, the philosophers speculated that there was a separate state – "status naturae", where the natural direct law of survival acted as the law. Hobbes portrayed this state as "the war of all against all", where as Rousseau imagined it was paradise. However, it was impossible to find people who would live in this state. Humans, as evidenced by experience, may go wild and inhabit animal skills, but this is not their natural state, according to Yurkevych, since "going wild is a consequence of extremely adverse conditions of human nature for social relations" [Yurkevych 2000: 169]. Thus, the natural state and natural law are normal for a civilized society as these forms the state of conscious, reasonable compliance with law inherent in people as sentient beings.

Yurkevych argues, inter alia, that natural law should not be understood as the law being the instinct of wild creatures, but only as that inherent in people as sentient beings. In his interpretation, natural law responds to the question of what should be considered a human law as that of a sentient being. And this is a matter of life: the idea of law is the force expressed in a person as a belief, according to the professor. Yurkevych determines that natural law, although not entirely identical to positive law, is still vital for people: "Natural law is a positive moral power, because it is the idea of the human mind; and the mind is always lawmaking; its idea is always real as a task and a requirement, which people always implement following their degree of belief. It is the law established by human nature and divine mind" [Yurkevych 2000: 170]. Consequently, natural law is a pure idea, which does not require external authorization and is mandatory for sentient beings due to their internal authority. The authority of natural law strengthens and terminates positive law, since the authority of natural law is rooted in reasonable nature, and reason by its definitions is independent. When the idea of natural law is well-established in public opinion, it acquires the power of belief, thus influencing positive law. The idea of law becomes the law itself and, therefore, natural law is an effective force. It is notable in positive law as its moral sense. Yurkevych is convinced that when the idea of reasonable law reaches the level of practical conviction, it emerges in the form of positive law: "One fact has been the most obvious for all humanity and over its whole history: the more culture develops, the more open, exposed to natural law positive law becomes" [Yurkevych 2000: 172].

Undoubtedly, this thought is ingenious and highly relevant for today's Ukraine. This mode of thought encourages reasoning: if we have achieved an appropriate level of development of social culture, such that our laws, the totality of which is positive law, start reflecting the principles of reason related to natural law, that is a measure of not only organic society, but also of social progress. The essence of social progress is seen by Yurkevych in the fact that positive law is based on natural law, was perceived by it, "that reason should become real ever in a simpler and faster way" [Yurkevych 2000: 172]. This means that in creating legal codes the requirements of natural law become the norm: personal freedom, freedom of work, freedom of conscience and beliefs, the possibility of free satisfaction of natural human needs as reasonable needs. Constitutional form, in the interpretation of the Ukrainian professor, is nothing but the unconditional submission of positive law to natural law. "As long as the ideas of natural law are not clear and confusing in the widespread conviction, the expression of positive law will suffer an abnormal form" says Yurkevych: "The clear idea of natural law keeps positive law, exposing the principles completely false and doesn't penetrate them into the social milieu" [Yurkevych 2000: 173].

This Yurkevych's conclusion suggests that he understood natural law as the basis of any legislation (positive law), which ensures its rationality and morality, because "consciences and human mind cannot be removed from the realm of the positive law: they will certainly be expressed by themselves" [Yurkevych 2000: 174]. The concept of natural law is closely linked with his "philosophy of heart" in Yurkevych's theory, which serves as the methodological foundation for the moral justification of law, on which an organic society is based. Therefore, Yurkevych was one of the first Ukrainian philosophers who attempted to understand the organic society, which is associated with a just social system based on the idea of natural law.

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