

## HISTORY OF PHILOSOPHY

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## DEVELOPMENT OF IDEAS OF PHILOSOPHY OF LAW IN THE ANCIENT EAST

### Abstract

Any science striving for the creative development of its content cannot be indifferent to its past, to the history of its ideas, discoveries, and conclusions. This idea is entirely related to the philosophy of law - one of the most ancient sciences of law. With the development of humankind, with the formation of the first states, there is a gradual departure from mythology, which is being replaced by philosophy and religion as forms of social consciousness. Traditions of human life are fixed in their norms. Among the norms, the norms of law also function. In the ancient East states, in which powerful theocratic monarchies took shape, the first philosophical and legal views were also formed. The peculiarity of the development of the countries of the Ancient East, when the state became the owner of the land, slaves, etc., leaves its imprint on the formation of political doctrines about the state aimed at substantiating the despotism and omnipotence of the monarch.

*Keywords:* philosophy, philosophy of law, Ancient East, law, ideas.

### Introduction

With the emergence of the state, norms and rules of behaviour established by it, people talked about these social phenomena, their essence and their role in public life. At first, these reflections, views on the state, and its demands on the rules of people's behaviour, of course, were not knowledge themselves but were elements of a syncretic mythological worldview. According to the mythological ideas of our ancestors, the order established on earth was considered by them as a component of the world order founded by the Creator.

Taking this into account the ideas about people's place in the world, the relationships with other people, rights and obligations, and state structure were formed. Such an approach to understanding the essence of the state, order, justice

was typical for most peoples, as evidenced by the previous literary monuments of the countries of the Ancient East, Greece, Rome, and Kievan Rus. Nevertheless, the similarity of the approaches of different peoples in the definition of the primary source of earthly orders took place only at the initial stage of the emergence of these glances. Therefore, developing the views on the state and law, order and justice began to differ, take different directions and colours (Kravchenko, 2004).

The following features remained unchanged for all civilizations: the state is despotic, the law, with all its sometimes significant differences, is on the side of wealth and nobility (Lipset, 1972; Finnis, 1980). However, in the East, agriculture, crafts, architecture appeared and developed, and with them - statehood and law, legal literature and legal culture in general. These movements

took place in close connection with the establishment of slavery as the main engine in the living of the Ancient Eastern peoples.

The countries of the Ancient East have made a significant contribution to the development of the civilization of light. Reflecting the general tendency inherent in all peoples at the initial stage of the development of legal thought, the law has long remained commonplace and very slowly transformed into writing. Although Ancient Eastern law was class-oriented, it still retained its national purpose. In general, these legal systems are characterized by high degree of alienation of peoples from each other, isolation on purely national religious traditions and norms of social community, which is explained not least of all by the geographical remoteness of the first eastern states.

#### Methodology

The methodological basis of this scientific article was formed by the most important approaches, methods and principles of historical research. Also, this article in the process of cognition of state-legal phenomena was used:

- general scientific methods (formal-logical, systemic, structural-functional, concrete-historical);
- general logical methods of theoretical analysis (analysis, synthesis, generalization, comparison, abstraction, analogy, modelling, etc.);
- private, scientific methods (technical analysis, specification, interpretation, etc.).

#### Research Results and Discussions

A person who sincerely believes in God perceives the Bible as the Book of Books, Divine Revelation, the supreme source of truth. Moreover, the fact remains unconditional that no book in the world has made such a massive impact on the minds and hearts of millions of people as the Bible - the sacred book of Christianity and Judaism. There is no critical topic for a per-

son that has not been covered in this book, and there is no such “eternal question” that the Bible would not give philosophical meaning to directly or in a figurative form. Furthermore, although its main content is devoted, first of all, to moral and spiritual problems, in particular to the question “What is good and what is evil?” in a more narrow sense, when the legal systems of certain historical periods are considered, and the “roots” of the crime are comprehended, and its consequences are shown (Raz, 1980, 1979).

The system of normative ideas and prescriptions for the regulation of religious, cult and public life, formulated in the Bible, is a specific form of religious and legal ideology, which is characterized by the following factors:

- recognition of the sacred origin of law;
- assessment of unlawful behaviour as sinful;
- a synthesis of legal and religious norms;
- the use of both specifically legal and religious sanctions.

The Old Testament is one of the first not only religious but also philosophical and legal works of humankind, in which religious, philosophical, legal judgments about the structure of the world and the engines of its development were organically merged. He talks about the relationship between God, state, society, and man, on public administration laws and rules of conduct in public and private life. The Old Testament stories, songs, and legends still remain the source of living, valid law not only in modern Israeli legislation but also in the legal systems of those states, the source of which was the Christian paradigm of law (Holmes, 1898). So, let us consider the Old Testament as the history of the origin, flowering and decline of ancient law.

Procedural rules supported the general foundations of justice. Thus, the laws of Moses established that one witness is not enough to be accused of some crime or sin. The case should only be heard based on the testimony of two or three witnesses. Witnesses should only tell the truth. Moreover, in order to prevent false testimony, the Book of the Covenant demanded: “The judg-

es must investigate well, and if the witness ... falsely reported on his brother, then do to him what he intended to do to his brother; and so destroy the evil from among you; and others will hear, and will be afraid, and will not do such evil among you”.

The judges were not only men but also women. The most famous of them was Deborah - a judge, prophetess and warrior, under whose leadership the people of Israel received many victories over enemy tribes. The power of the judges, in fact, was unlimited since it was recognized that it came from God. At the same time, the Bible does not mention that the judges ever abused their authority. This was a reign based not on strength but on boundless faith in the holiness of judges. The Old Testament creates amazing images of judges. They are flesh of the flesh of their people. They had everything: virtues and vices, strength and weakness, which is confirmed by the life story of Samson, who was the judge of Israel for twenty years.

King Solomon’s “judicial practice” is also of interest, only ascending to the throne showed himself as a wise and far-sighted ruler. He did not ask God for himself long life, wealth, death for his enemies but asked to help him become a righteous judge. From the very first days, Solomon’s court decisions boggled the imagination of his contemporaries. As the Old Testament says: “And all Israel heard about the judgment, as the king had reasoned; and they began to fear the king, for they saw that the wisdom of God was in him to execute judgment”. He never tired of convincing his subjects: “Observance of justice is joy for the righteous and fear for” (English Standard Version Bible, 2001, 1 Kings 3:28).

Let us remember the most famous crimes from the Bible. So, for the first time, the murder was due to envy. The sons of Adam and Eve, Cain and Abel, brought gifts to God. He fell in love with the gift of Abel, despising the gifts of Cain. Holding a grudge, Cain insidiously kills his brother, for which God cursed him and made him an exile whom no one could kill. Since then,

the name of Cain has become synonymous with meanness and fratricide, and the symbolic stigma given by God to the murderer of his brother is a sign of immunity and deprivation.

This first form of punishment for murder also raises many questions: why did God make Cain intact - is it really a chance for correction and repentance? Or maybe exile and mental anguish are worse than death?

Another case of God’s punishment of people for sins is the Flood, after which only Noah and his family remain alive. It is interesting that now people receive a new law from the Almighty, according to which: “Whoever sheds human blood will be shed by human hands,” that is, the death penalty is already provided for murder. More specific are God’s laws in the Commandments of Moses (Book of Exodus). We all know well what these commandments are about: “do not create an idol”, “do not remember the name of the Lord in vain”, “honour your father and your mother”, “do not kill”, “do not steal”, “do not engage in adultery” and etc. (English Standard Version Bible, 2001, Luke 18:20).

In the 1<sup>st</sup> century, a new religion arose on the territory of the Roman Empire - Christianity. In accordance with the new religion, justice and truth are revealed to man in the new law, love for one’s neighbour was affirmed. If the Old Testament ordered revenge on your enemies, then the New Testament - to forgive them. The basic principle of the Christian concept, which calls for obedience to power, is reflected in the postulate: “Give God to God, and Caesar – Caesar’s” (Moore, 1992; Davtyan & Pirumyan, 2018).

The main purpose of a person is to manifest love for each other. The New Testament says that “love is above all,” “love is longsuffering, merciful, does not envy, does not exalt, does not abuse, does not seek its own, does not get irritated, does not think evil, does not rejoice in untruth (but rejoices in the truth), covers everything, believes everything, hopes everything, endures everything”, “love between people brings one closer to God”, but we are talking about “unhypocritical

love” (Bix, 1995).

Love in the New Testament is affirmed as a compulsory component of human behaviour since it more and more strongly harmonizes all the natural processes in the Universe. According to the commandment of love, a person should increase the good in spiritual and material aspects. Spiritual goodness finds its expression both in words and through sincere thoughts and thoughts. There should be no hypocrisy in communication with God and people since it creates a negative natural-legal aura and thereby harms.

In terms of the material part of good, the New Testament says: “God loves the one who willingly gives”, “Who asks – give”, “Everyone gives according to the disposition of the heart, - not with grief and not with compulsion”, “Who sows sparingly, he reaps sparingly, who sows generously will reap abundantly”, “If you received easily, then give easily”. People often express these simple truths, but they are not always observed in everyday life (Coleman, 1998).

In addition, a believer should “not expose his alms to people” because “alms must be a secret, then the return will be obvious”. In the context of the study of biblical law, the following thesis also attracts attention: “When I do this voluntarily, I will have a reward, but when I do not voluntarily, I perform the assigned service; first reconciliation with a person, and then - a sacrifice to God”. The New Testament teaches to perceive a person not by her words or intentions but by specific deeds. On this occasion, it is written: “a tree is known from a fruit, a good tree cannot give birth to bad fruit”. Moreover, a person who does not do good falls under punishment because “every tree that does not bear good fruit is cut down and will be thrown into the fire”. As you can see, conversion to good deeds is supported by quite obvious punishment for non-compliance with established norms of behaviour (Köchler, 2016).

At the same time, in this part of the Bible, along with appeals not to resist the enemy – “whoever hits you on the cheek, turn the other

one”, or it is necessary to “bless those who are persecuting you” - there are others, full of desire to win, but to win, first of all with the help of good: “not to be conquered by evil, but to overcome with good”, “to seek glory, honour and immortality in a good deed”, “all who take the sword - from the sword and will perish”. These statements have a deep meaning in the philosophy of human life, in which harmoniously combines the eternal laws of the cosmos, the laws of nature, with those laws by which a person should live every day (English Standard Version Bible, 2001, Ecclesiastes 3:17).

According to the Bible (English Standard Version Bible, 2001, Ecclesiastes 3:17), human laws do not just coexist with the divine. They correlate with them, although sometimes they do not agree. However, the fact remains unchanged that human judgment can be unjust: “I also saw a place of the judgment under the sun, and there was lawlessness; the place of truth - and there it is not true”. Furthermore, I said in my heart: “God will judge the righteous and the wicked because the time for everything and the judgment over every deed is there,” but God’s judgment is always just, and the sinner can no longer hide from it. As you can see, the understanding of the law in the Bible has a clear distinction (human laws and God’s laws) and is filled with a subjective attitude - just /unjust /not always fair.

At the same time, the illegality of the authorities’ actions cannot be a reason for violating the law “Let everyone be submissive to the authorities, because there is no authority not from God”. It is worth considering the following statements: “whoever adheres to the entire law, but sins in one thing, he becomes guilty of everything,” or “the law was established not for the righteous, but for the wicked, wicked and sinners”. If we turn to the New Testament, in particular, to the death of Jesus on the cross, then the demonstration of the attitude of a true believer (in this case, the Son of God) to power is evident. Couldn’t Jesus have avoided this terrible execution, which took place under an unjust sentence? However,

he humbly accepts the decision of the human court, confirming by his act of all-forgiving love for his neighbour (English Standard Version Bible, 2001, Romans 13:1).

The Bible is a valuable source for studying the ancient legal system, its philosophical understanding.

There we find the answer to the main questions of the philosophy of law:

- The law of God is the main law for man, and it cannot be unjust; the punishment for breaking it is eternal torment after death;
- human law is obligatory for man on earth because “there is no power not from God”;
- both the laws of God and the human are correlated in the moral aspect; however, the concepts of “sin” and “crime” have different meanings: what the Bible calls sin is not always understood by human judgment as a crime.

No other legal system in the world has undergone such a powerful influence of two philosophical doctrines that are so polar in their content as the legal system of Ancient China. The ethical and political postulates of Confucianism and the political and legal concepts of legalism have become decisive factors in the genuinely progressive development of law, its ideological foundations, principles and institutions, as well as the traditional legal thinking of the Chinese (Poghosyan, 2016).

The concept of crime in Ancient China was associated with the manifestation of the criminal will of a person.

The offender was considered a “base person”, his “baseness” was determined because he acted as the bearer of the same pernicious, criminal will, depending on the nature of the crime, he could destroy either the entire world or order, harmony in the social group to which this criminal belonged...

From the principle of the supremacy of moral norms, it followed that the degree of guilt and, accordingly, the severity of punishment had to correspond not so much to the nature of the act

itself but to the nature of the spiritual state of the criminal, not so much the severity of the criminal act, but the intensity of the criminal will.

In most of the philosophical schools of Ancient China, practical philosophy prevailed, closely related to the problems of worldly wisdom, morality, knowledge of nature and social management. Although this initial philosophy of law was not very systematic, and it showed a weak connection even with those sciences that existed at that time in China, however, in terms of the form and methods of posing problems, it is a large-scale phenomenon, and in essence, the solution of the problems posed by it is value-significant and humanistic.

The philosophy of law of Ancient India - an integral part of the world process of development of legal reality – appeared 2.5 thousand years ago in a society with a clearly expressed socio-economic structure of agriculture, crafts, trade, a rich spiritual world, was reflected in the Vedas (in Sanskrit it means “Knowledge”). They were collections of hymns, prayers, spells, ritual ceremonies (Vasilyev, 2005). The philosophical part of the Vedas is the Upanishads - reflections of the authors of different eras on the problems of being and the universe. They also contain the first doubts of the sages about the omnipotence of the gods and even their existence. The mind of an ancient man “breaks” through the external ritual of dogmatically mythological rituals and goes deep into spirit and matter, seeking to find a single higher reality, the ultimate cause of all that exists, which harmonizes the changing empirical diversity.

Indian philosophy, particularly its ethical and legal component, should not be perceived as an exotic work of a culture that is mysterious for a European. It contains many “healing recipes” for the soul and mind of a person, which help to live a fulfilling life. The main value of Ancient Indian philosophy lies in its appeal to the inner world of a person, to the morality of the individual; this, probably, is the secret of its attractiveness and vitality. Buddhism, and then Jainism, proclaimed

human dignity as a priority and started striving for self-improvement. He does not need to seek God because she herself, like everything that exists, is a part of the divine (Ordukhanyan, 2019).

It was a tremendous leap of the human spirit from complete dependence on the material world, caste in freedom.

Muslim law was formed among the Arabs - the indigenous inhabitants of Arabia - during the disintegration of the tribal organization and the formation of a feudal society in the Arab Caliphate in the 7<sup>th</sup>-10<sup>th</sup> centuries. Arabia was associated with neighbouring countries, namely Mesopotamia, Syria, Palestine, Egypt and Ethiopia, with close cultural and economic ties. Trade routes between these countries passed precisely through Arabia. The most essential "junction" where these paths crossed was Mecca - the religious centre of the Arabs, where cult objects from various Arab tribes were kept.

The emergence and development of Muslim law, its sources, structure and mechanisms of influence reflect the interaction of two principles - religious and ethical and legal itself. Thus, in the composition of Muslim law, two groups of interrelated norms are distinguished. The first group is made up of the legal prescriptions of the Koran and Sunnah - a collection of legally significant translations (hadiths) about the actions, statements and even silence of the Prophet Muhammad (Zalesny, Goncharov, & Savchenko, 2019). The second group consists of norms formed by the Muslim legal doctrine on the basis of "rational" sources, first of all, the sole thought ("ijma") of the most authoritative jurists, as well as inferences by analogy ("qiyas"). The first group's norms are considered the main ones, especially those fixed in the Koran.

By the XIII century, Muslim law has almost lost its integrity, becoming a poly-doctrinal law, divided into different branches. The state, its legal policy provided the obligation to comply with a specific law school. As a result, the supra-national Muslim law was divided and scattered over different national-state "apartments" and

received a territorial "residence permit". Like Romano-Germanic law of the period of codification, it became national law.

The legal norms that are presented in the Quran touch upon the issues of crime and punishment. Specific examples of the provisions of the Koran, interpreted in a legal sense, are instructions for Muslims to value the mercy of Allah and to be merciful themselves. This is also an instruction to give shelter to "polytheists" if they asked for it. According to the Qur'an, for the true (Muslim) faith, every believer will be rewarded with the mercy of Allah. And those who transgress the faith or "invent a lie against Allah, but will not be happy." This applies, first of all, to polytheists: a Muslim has the right to punish them as gentiles.

In the study of the theory of offence, Muslim jurists proceeded from two fundamental philosophical and theological principles. First of all, they believed that the will of Allah somehow conditions all the actions and even thoughts of people, but at the same time, the "allowed-forbidden" framework established by divine revelation is flexible enough to allow a person to choose their own behaviour in many life situations independently. At the same time, encroachment on the five basic values of Islam - religion, life, reason, procreation and inviolability of property - was unacceptable.

Another fundamentally important point is to consider the offence as ignoring the will of Allah. Therefore, as Muslim legal scholars believed, any illegal behaviour in the legal sense is not just a deviation from the prescriptions of Islamic law, for which the corresponding "earthly" sanction comes; it is also interpreted as a sin that is not a punishment in the afterlife.

According to Muslim law, hostels (Zina) with anyone other than spouses are strictly prohibited. A free Muslim was subjected to stoning (Rajma) for violating this law, and the culprit was buried up to half in the ground and stoned to death. In other cases, the culprit was struck with a hundred lashes and kicked out of the city, while the slave

received half the blows. The same rules applied to women.

It was insane to commit zine out of ignorance, for example, if the marriage was invalid. To prove guilt in this crime, it was necessary to confess (caviar) and show four male witnesses. The confession and the testimony of the witnesses were accepted only from adults who had the appropriate mental capacity. The lack of evidence for the charge of adultery was considered slander (Kazme) and was punishable by 80 lashes (40 lashes to the slave).

In the understanding of marriage, an important place is occupied by the concept of adultery, for which comes the most severe punishment. The special social danger of this crime, according to Islamic law, is due to the fact that it infringes on one of the main values protected by law.

The Muslim legal culture is characterized by a number of systemic forms reflecting the peculiarities of the material and spiritual existence of Islamic civilization: firstly, it is the fusion of spiritual and secular principles, religious and state power in the Muslim community.

### Conclusion

The Bible is a valuable source for a philosophical understanding of law because it pays much attention to issues of a legal nature: both in the broadest sense - at the level of philosophical categories, and in a narrower sense, when the legal systems of specific historical periods are considered, and the "roots" of the crime are considered, and the "roots" of the crime are comprehended and shown its consequences. It was a fantastic document in content for that era, based on two main ideas - justice and the preservation of peace in society. According to the Bible, a person's life and thoughts should be synchronized with nature's eternal divine laws and laws.

State-legal phenomena of the countries of the Ancient East give a general idea of the main types of Eastern despotism and Ancient Eastern

legal systems. The leading position in the state was usually occupied by the monarch, who had unlimited power over his subjects. In most states, his personality was deified. Mainly in these states, there were three departments: financial, military, and public works. They were under the control of the respective dignitaries and monarchs. Law was formed as a right privilege, with a pronounced class essence. Criminal law was of a punitive and terrorist nature and aimed to suppress attempts to oppose the monarch and the ruling class.

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