



**Justice As A Legal
Value: Cultural And
Philosophical Analysis**



JUSTICE AS A LEGAL VALUE: CULTURAL AND PHILOSOPHICAL ANALYSIS LA JUSTICIA COMO VALOR LEGAL: ANÁLISIS CULTURAL Y FILOSÓFICO

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Abstract

The article seeks to conduct a cultural and philosophical analysis of the notion of justice as a legal value. The authors of this work criticize the attempts to define justice as a universal value and suggest seeking the nature of justice in the field of socio-cultural identification and communication.

Representations about justice are the result of reflective activities, based on a logical comparison operation. The value systems of different people are considered as the compared objects. The sense of justice is due to the ability of people to empathy - the ability to project themselves into the place of another person. An important condition for empathy is that people whose actions are judged in terms of justice should be related to the same sociocultural community. Social communication is seen as a means of objectification individual perceptions of justice, turning them into social value.

Based on the findings, the social significance of the jury trial is disclosed, the conditions for the fairness of laws and judgments are determined.

Keywords: justice, freedom, law, empathy, socio-cultural identity, social value, communication.



Resumen

El artículo busca realizar un análisis cultural y filosófico de la noción de justicia como valor legal. Los autores de este trabajo critican los intentos de definir la justicia como un valor universal y sugieren buscar la naturaleza de la justicia en el campo de la identificación y comunicación sociocultural.

Las representaciones sobre la justicia son el resultado de actividades reflexivas, basadas en una operación de comparación lógica. Los sistemas de valores de diferentes personas se consideran los objetos comparados. El sentido de la justicia se debe a la capacidad de empatía de las personas, la capacidad de proyectarse en el lugar de otra persona. Una condición importante para la empatía es que las personas cuyas acciones se juzgan en términos de justicia deben estar relacionadas con la misma comunidad sociocultural. La comunicación social es vista como un medio de objetivación de las percepciones individuales de justicia, convirtiéndolas en valor social.

Con base en los hallazgos, se revela la importancia social del juicio con jurado, se determinan las condiciones para la justicia de las leyes y sentencias.

Palabras clave: justicia, libertad, derecho, empatía, identidad sociocultural, valor social, comunicación.

Introduction

The ideas of justice are integral companions of the development of political and legal thought throughout the history of its existence. Even ancient philosophers (Plato, Aristotle, etc.) tried to find ideal, based on the ideas of justice, the beginnings of social and state structure. The Romans saw in the law «the art of good and justice». The question of the relationship between law and justice, one way or another, was reflected in various concepts of legal understanding, ranging from theological and natural-legal views, ending with legal positivism.

It's safe to say that the problem of justice refers to the number of «eternal» problems of philosophical and legal thought. The ideas of justice permeate all the legal matter, beginning with the level of organization of the international legal order, ending with private-law relations between individuals. Justice is the foundation of the socio-political and legal structure of the state. The conformity of legal regulations to citizens' representations about justice can strengthen the state, the discrepancy - to destroy it.

The ideas of justice refer not only to the field of philosophical discourse; they acquire quite a practical refraction, reflecting in the norms of criminal, civil, administrative, procedural legislation. Violation of the right to a fair trial by a court is grounds for the cancellation of a judicial act, compensation for the harm suffered by the injured party. At the same time, even the solution of such practical questions is impossible without a philosophical understanding of the concept under investigation.

For many centuries, attempts to develop objective criteria for justice were made, which, however, did not lead to significant results. It seems that at the present stage there is a need to rethink the understanding of justice, to move away from attempts at its objective consideration. It is necessary to take into account that ideas about justice are born and develop in the conditions of a certain socio-cultural space.



The purpose of the current study is to show how sociocultural factors determine the notions of justice as a fundamental legal value.

The relevance of this study is due, first and foremost, to the fact that it expands the research framework of the study of the concept of justice. From the standpoint of a philosophical analysis of culture, justice appears not as an abstract value, but as a concrete, dynamic socio-cultural phenomenon.

Materials and methods

According to the remark of D.E. Bogdanov «the notion of justice resembles a crystal, which in each epoch and for each researcher swivel its special facet, while all other facets remain in the shadow» (Bogdanov, 2014). The current study attempts to identify several facets of this complex concept, which requires the use of various methodological tools.

The dialectical approach serves as the basis of the methodology, allows tracing the development of the idea of justice, the relationship of this concept with other philosophical categories (primarily with the concept of «freedom»). Since the notions of justice are formed as a result of human thought activity, it is important to take into account the achievements of logic and epistemology. Justice, acting as a fundamental legal value, cannot be investigated without recourse to the categorical apparatus of legal science. However, it must be understood that the dogmatic method is able to disclose only individual, formal facets of justice. The substantive content of this category is conditioned by a concrete, sociocultural context.

It is necessary to realize that the formation of ideas about justice occurs as a result of the social interaction of different people and their communities. Therefore, we consider it necessary to use the ideas of the theory of socio-cultural communication as the starting point for a cultural and philosophical analysis of the phenomenon of justice. The communicative approach allows revealing the mechanism of formation of representations about justice, to pay attention functional significance of justice as a legal value.

Literature Review

The origins of the doctrine of justice are found even in ancient philosophy. In Nicomachean Ethics, Aristotle speaks about general and particular justice, equalizing (exchanging) justice, distributive and rectificatory justice. Aristotle's notion of justice determined in many ways the further development of ideas about this concept.

The ideas of justice were also addressed by adherents of theological teaching - Aurelius Augustinus, Thomas Aquinas. In the writings of Voltaire, J. J. Rousseau, J. Locke and other representatives of the era of enlightenment, as well as in the works of representatives of German classical philosophy (Kant, Hegel, etc.), the idea of justice is inseparably linked with the concept of individual freedom. Through the prism of human individuality, justice is revealed in the works of Rawls, Piaget, Kohlberg, and others. Justice as a kind of social value, fixed in the public consciousness, is considered by Savigny, Durkheim, Ehrlich, and others.

In the Russian political and legal thought, many prerevolutionary philosophers engaged in understanding the concept of «justice», among them B.C. Soloviev, G.F. Shershenevich, P.I. Novgorodtsev, LI Petrazhitsky, B.N. Chicherin. The problems of the



correlation of social justice and law were raised in the works of G.V. Maltsev, A.I. Ekimov, V.V. Bulgakov, and others. In the legal literature, the problems of justice were raised several times in the study of particular issues of legal responsibility, the tasks, and principles of justice, etc. At the same time, the sociocultural aspects of justice were not given enough attention not in the general philosophical, but in the legal sense.

In the course of our sociocultural analysis of justice, the ideas of the sociocultural identification and communication of M. Dubber and J. Habermas are of great interest.

Results

1. Search for universal beginnings of justice. The ratio of justice and freedom.

Traditionally, justice is seen as one of the human virtues. Throughout the history of philosophical thought, attempts to link the notion of justice with a certain common order have been made. The origins of such an understanding go back to ancient cosmological concepts.

Plato saw the universal world order in the unity of the three: the higher world of intelligible ideas or the pre-images; the soul of the world, embracing the world of sensory things; the bodily world of sensory perceived things. In turn, the soul also has three beginnings: the reasonable, by which man is able to reason, the smoldering, which directs the thoughts of man to sensory things, and the intermediate - a violent principle, inherently gravitating toward the reasonable. Justice, according to Plato, is ensured by the harmonious state of all three components of the human soul with the predominance of a reasonable beginning. Injustice is «the confusion and wandering of different parts of the soul, their unruliness and cowardice and, in addition, ignorance - in a word, all possible evil» (Plato (transl). 2016).

Fairness in the concept of Aristotle means giving people what they deserve. Justice, expressed in positive laws, he divided into allocated (distributive) and equalizing (retributive).

As a general rule, equal must have equal (retributive justice), but equality in distribution does not always correspond to the ideals of virtue, and most importantly - to the goals of the distributed welfare. Equalizing justice, in contrast to the distributing one, presupposed a retribution equal to an equal on the basis of the principle of equivalence. The basis of distributive justice lay down the geometric principle; the basis of equalizing justice is the arithmetic one (Aristotle, transl. 1997).

In the ancient Roman philosophical discourse, the notion of justice acquires legal implications. The Roman jurist Ulpian noted: «Justice is an unchanging and constant will to give everyone his right. The regulations of the law are as follows: to live honestly, not to damage the other, to pay everyone what belongs to him».

The ancient perception of justice as an objective principle, as a certain mathematical or formal legal measure is symbolically reflected in the mythological images of the goddess Themis in Greece and the goddess of Justitia in Rome. In both cultures, the necessary attributes of the image were the presence of weights in the hands of the goddess and her blindfolded. It was believed that it was the blind impartiality of the goddess that allowed her to equally and justly judge the mortals when the gravity of the acts committed by them



was measured by the gravity of her weights. Themis is still an attribute of judges and lawyers, expressing universality, equality, objectivity - the fundamental features of justice.

In the Middle Ages under the influence of Christian dogmas, the perception of justice has been radically changed. If in the Aristotelian tradition justice had a mathematical expression, in the ancient Roman tradition - legislative, then from the standpoint of Christian religious doctrine, virtue has the divine, transcendental nature. The initial idea of Christianity is the impossibility of knowing God's plan through reason.

It must be recognized that the logical operation of comparison lies at the heart of a person's conception of justice. Speaking about justice, we compare social behavior with a certain standard (mathematical, legal, moral). The gospel principles do not presuppose an assessment of the behavior of Christ from the point of view of logically conditioned justice. From the standpoint of justice, it is absolutely impossible to explain why, according to the gospel study, the first man who entered Paradise with Christ was a robber. As the Russian philosopher N.A. Berdyaev, «justice is Iustitia not a Christian idea at all, it is a legal and graceless idea. Christianity showed not the idea of justice, but the idea of truth (Berdyaev, 2003). «In the same vein S.L. Frank talks, revealing the essence of Christian values. In his opinion, «it is not the struggle for justice, but love for one's neighbor that should move us in helping others. Everyone should be guided by his individual task, and not by the norm, given once and for all. Love does not require rewards, it is necessary to do good works not for personal salvation, but for uniting all in the spirit in the Kingdom of God. Love is manifested through pity and mercy; indifferent, identical love cannot exist. Christian love should be carried out in two ways: by the direct emanation of the gracious forces of love and the fulfillment of the duty of love through earthly affairs» (Frank, 2003).

In the era of the Enlightenment, the ancient tradition of understanding justice is further developed, but in the natural-legal key characteristic of this historical epoch. Justice is considered in the mainstream of natural human rights, the theory of social contract. All the values of the era of Enlightenment, unlike the ancient worldview, are not cosmological, but man-centered. Within the framework of the contractual tradition, justice for the first time begins to be conceived conventionally - as the subject of an agreement between free and equal individuals regarding the mutual recognition of rights.

If, in the natural-legal concept, the discussion about justice is filled with political and legal meanings, and connected with the need to ensure the inalienable rights of the individual, then in Kant's teaching this idea is considered in line with the moral choice. Justice is ensured by observing the Kantian moral imperative: do so that your actions can become a model for all.

Unlike many thinkers, Kant does not believe that the right is meant to personify justice. According to the philosopher, the strictest right is the greatest injustice («summum ius summa iniuria). Strict (strikte) law is considered by I. Kant «as an opportunity for complete mutual compulsion, consistent with the freedom of everyone, commensurate with the universal laws» (Kant, transl. 2005).

In the understanding of Hegel, the idea of justice is inextricably linked with the idea of freedom and right. Right is the realm of realized freedom. Justice can only be embodied in right. It is necessary to pay attention that Hegel understood the equality underlying the justice exclusively in a formal legal sense. The philosopher wrote: «The assertion that



justice demands the property of everyone be equal to the property of another is false, for justice requires only that every person has property» (Hegel, transl. 1990). Hegelian views on right and justice were the basis for the libertarian concept of law, the founder of which was the Russian philosopher-lawyer V.S. Nersesyants. The libertarian theory of law is built on the trinity of the essence of law: as a form of legal equality, a universal measure (form) of freedom and universal justice. V.S. Nersesyants considered justice a purely legal category since justice expresses universally valid correctness, and this in its rationalized form means universal legality, i.e. the essence and the beginning of right, the meaning of the legal principle of universal equality and freedom (Nersesyants, 2006).

There is a dialectical relationship between freedom and justice. The less the social freedoms are in society and the stronger the oppression of economic, political, legal and other restrictions, the more persistent and relevant are the calls for restoring trampled justice and the means of guaranteeing it are being developed. Conversely, the more examples and practices of injustice accumulate in society, the more often and more confidently public opinion turns to the idea and principles of freedom as a means of protection against arbitrariness. The historically developed process of leveling out the volume and measures of freedom and justice is being carried out in these conditions, by limiting their extreme, excessive manifestations. The historical logic of this pattern is that the restriction of freedom in the name of justice is quite appropriate and permissible; ignoring the same justice for the worldwide triumph for freedom and its individual manifestations looks like anarchy or human egoism. We agree with N.N. Voplenko who says that justice is the moral and legal ideal and the principle of social life, which should be the basis for all acts of free human life (Voplenko, 2012).

Through the concept of justice, freedom acquires the character of a measure and not unlimited permissiveness, it has the duty to be consistent with the principles of equivalence, social balance. Justice is a tool for assessing reasonableness and legitimacy for freedom. In other words, in the justice, the legitimization of freedom is taking place. At the same time, freedom itself acts as a means of legitimization of justice. According to some scholars (Rawls, Habermas), moral values, including beliefs about justice, are the result of a contract concluded by a community of people. The treaty, being a manifestation of freedom, thereby legitimizes the postulates of justice (Rawls, 1999).

The idea of the contractual origin of freedom needs a separate consideration. It seems more interesting than attempts to present justice as a universal yardstick of human behavior.

The universalism proceeds from the premise that justice is a universal value that assesses a person's actions within the framework of a single system of coordinates. But, in fact, we easily find the insolvency of such an approach. That for some people seems fair, for others do not seem that way at all. Moreover, even similar life situations can be evaluated by us in different ways depending on our involvement in this situation. When it engages us personally, assessing the justice of actions can have a completely different meaning.

Those thinkers who try to give justice the property of universality, but cannot reconcile this universality with the realities of life, generally come to the conclusion that it is impossible to achieve justice in a society (Derrida, 1994).



Without indulging in pessimism, we believe that when studying justice as a social phenomenon, one should recognize the relativity of this concept. It is not necessary to search for the criteria of truth in the understanding of justice, since the notions of justice are largely determined by the results of cogitative activity (subjective factor), which, in turn, are significantly influenced by the sociocultural characteristics of a particular community.

2. The sense of justice and sociocultural identification

When we talk about justice and freedom, we perceive these concepts as the fundamental values inherent in all civilizations. This property of the European worldview - to extrapolate their own values in other sociocultural spaces, to strive to universalize them.

At the same time, it is necessary to pay attention to the fact that in some cultures the notion of freedom is introduced. For example, among the Chinese hieroglyphs, initially there was no mention of the phenomenon of freedom, this concept was brought by Christian missionaries only in the 19th century (Nanaeva, 2010). The same is true of the notion of justice. Aristotle's notion of justice, based on the idea of equivalence, is at variance with the understanding of justice in religious-type cultures, as we have already discussed, in considering the correlation of justice and Christian values. It is worth adding that in the Russian cultural tradition the word idea of justice is reflected in the word «truth». At the same time, the concept of truth is not a concept that usually represents some information that corresponds to reality and which is an antipode to the word «lie». This concept has a much broader meaning, rather than to simply represent the designation of certain information. The word «truth» has a moral meaning.

Thus, the semantic significance of the categories «justice», «freedom» has a definite socio-cultural context.

It is necessary to pay attention to the place of socio-cultural factors in the mechanism of formation of ideas about justice. Also of interest in this context is the empathic conception of Marcus Dubber's justice. Dubber believes that the sense of justice should not be sought in the sphere of morality (moral and ethical attitudes are an incomprehensible matter) but in the field of social communication between people. Injustice occurs when one person does not treat another as an equal and reasonable person and thereby denies his status as a subject of law (Dubber, 2006). At the heart of justice is the feeling of empathy - the ability to empathize with another person. This feeling stems from the person's ability to project himself into the place of another person. However, it should be noted here that empathic reactions occur in various social connections of people (in the family, in the educational environment, at work). The sense of justice is built on empathy, purified from the influence of unconscious and emotional factors. At the same time, the sense of justice should not be reduced to a purely logical abstraction. In logical thinking, there is no place for empathy. When the evaluation of any life circumstances is based on the principles of constructing logical syllogisms (or the laws of arithmetic - as in the case of the equalizing concept of justice), the sense of justice of such an assessment does not arise.

What does justice require in this recognition? It is essential that we, on the one hand, rejected our subjective, emotional feelings, on the other hand - did not plunge into the deep end of formal logic. The achievement of the golden mean in this matter directly depends on how much a person recognizes his sociocultural identity with the people whose actions he evaluates. If he (a conditional «judge») equates himself with them (conditional «defendants»), he is able to put himself in their shoes, taking into account his life



experience and the values that he has absorbed in this community, and to make a decision that will be understandable to himself and to the «defendants». It is that vision that propels the mechanism of the formation of a sense of justice, and not in attempts to consider an act from a position of a template of abstract value.

The importance of the sociocultural space, the cultural identification of «judges» and «defendants» can be seen in the arguments of Gabriel Tarde. According to Tarde, one of the indispensable conditions to induce a sense of moral and criminal responsibility is that the offender and the victim feel themselves compatriots from a social point of view so that they have a certain amount of social similarities. Further, he talks about completely different feelings of moral indignation when the criminal is a savage, and the victim is a European when both parties of the crime are Europeans or savages (Tarde, transl. 2001).

Thus, sociocultural identification is a key element in mechanism to generate the concept of justice. One can recall Hegel's words that «Freedom is achieved when «a person renounces abstract freedom in thinking and enters the world with the consciousness that it is «his own world»; when the self-aware subject finds his freedom in the form of «We», not in «I».

Discussions.

This view of justice through the prism of a sense of empathy, which is based on socio-cultural identity, opens up new avenues of research on the problems of law and justice. From this position, the deep social meaning of why juvenile, insane persons are not recognized as the subject of responsibility, becomes clear. Such subjects, in spite of the fact that they exist with «judges» in the same community, do not possess the psychophysiological and social qualities that allow the «judge» to step into their shoes.

From the position under study, the special social and legal significance of the institution of juries in the administration of justice is revealed. The idea of the jury trial was initially to allow those local people who were members of the concerned community, and who knew the local customs to administer justice. It was precise as a means of defining local customs by the central authority that jury trials were first used in France, later in England. Jury trials should not be perceived as an elite club of people who possess sacred knowledge of the requirements of justice and personify it with their verdicts. Juries are members of the same community as the defendant. They are able to step into defendant's shoes, as well as he can step into their shoes. It is in this possibility of an empathic reaction that the purpose of the jury trial is hidden. At the same time, several types of such empathies are manifested in the justice process: juries between themselves, between juries and defendants, between juries and victims. In cases where empathy can be established between the victim and the defendant, the conflict can be resolved by an amicable agreement. The sense of justice of a court verdict arises from the fact that the defendant and the victim see their representatives in the jury, and accordingly, they take this verdict as if they themselves decided it.

An empathic view of justice allows us to understand more deeply why Christian values diverge with the idea of justice. At the heart of Christianity is the principle of empathy, which is expressed in the concept of «love.» But in this concept, the emotional aspects of empathy are hidden to a greater extent. Such empathy has no rational explanation; it does not have a clear attachment to specific sociocultural conditions.



Speaking of empathy as a condition for the formation of a sense of justice, we must realize that this process is always subjective. But if justice is a subjective concept, does this mean that every person has his own sense of justice and it is impossible to consider it as a social value at all? If each person's notions of justice were unique, we would not have discovered that in reality, the evaluation of human actions by many people of the corresponding community is the same. Does this mean that the principle of justice still has a universal, general character? We still believe that no. Sociocultural identification cannot have a universal character. However, a person is an active participant in communication, and with its help, individual ideas about justice go through the «sieve of social significance», are fixed not only in the individual but also in the public consciousness.

The fixation of the notions of justice as social values is possible in two main ways. A first way is a contract. John Rawls saw in fairness the ability of people to agree about the rules of the social order and honestly carry them out. These rules were reduced to the following two principles: equality in their rights and duties, that is, formal equality before the law and the court; social and economic inequality, for example, in wealth, power, if only it leads to compensation for each person, in particular for less prosperous members of society.

The treaty serves as a means of legitimizing justice, turning it into a status of social value due to the fact that it is that during the contractual process the parties are able to project themselves into each other's places, to lead to a compromise of their aspirations and interests. Everything that they achieved as a result of consensus acquires the character of a measure, and of justice.

The second way is powerful communication. In this case, the understanding of justice is unilaterally broadcast to authorities by other members of the community. Such a formalized, emasculated understanding of justice found throughout all the history of the state and law. The Roman principle "Dura lex, sed lex" embodies this approach. On the one hand, such a principle has undoubted merit. What particular often takes the generally binding form of the law is much more sustainable to exist in the practice of social development. However, with this approach, certain representations extradited for justice can go against the socio-cultural characteristics of society. They may not have an empathic reaction at their core. The powerful subject, formulating the requirements, does not always step into shoes of those whom they are addressed. In turn, addresses do not put themselves in the place of a domineering subject and do not perceive the rules prescribed by him as their own. Social value is not formed in this case. Legislative provisions are perceived as necessary, but not as significant for the people (Tlehatuk, 2016).

With this powerful communication, the ideas of justice can be legitimized only on condition that the legislator is able to step into the shoes of those whom his instructions are addressed.

Thus, social communication is a means of objectifying the notion of justice. As a result of communication, these ideas acquire the character of social value. This value takes on a purely legal nature, since such legal properties as formal certainty, compulsory, coercive force security, contribute to its stable consolidation in society.



Conclusions

The conducted research allows drawing a conclusion that justice has in its basis a subjective-objective nature.

We live in a society and we will daily experience the influence of those social ties in which we are. Our own actions, actions of other people are constantly being evaluated. At the same time, from the position of fairness, actions begin to be evaluated when a conflict arises. We can say that while there is harmony in social relations, a sense of justice is in a dormant state, it is escalated when this balance is violated.

The foundation of justice as a result of thinking activity to evaluate actions is a logical comparison operation. We correlate our system of value's coordinates with those circumstances that have occurred in the surrounding reality. Given that each person can have his own system of values, to reach a public consensus in assessing the most dangerous; conflict manifestations of human activity would be very difficult. However, such a consensus and objectification of justice as a social value occurs precisely as a result of communication.

By means of communication, social values are exchanged and consolidated. The systems of value's coordinates of different people become similar, which contributes to the formation of a unified sociocultural community. The formation of such a community becomes possible due to the fact that there is a mutual understanding between people, which is possible due to the person's ability to empathy - compassion for others. A sense of justice is born from the person's ability to project himself into the place of another person. If you step into someone's shoes, you strive to correlate his system of values with the value system of this person. Only in such a communicative comparison is the emergence of justice possible. The sentence will be fair when there is an understanding that if the defendant had taken the place of the judge, he would have passed the exact same sentence.

An important condition for empathy is that the subjects of communication are related to the same sociocultural community. That is why we consider it impossible to consider justice as a universal value. Its substantive content depends on the socio-cultural conditions and features of the process of social communication.

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