

Civil Society as a Space for the Law Developing (On the Material of Modern Philosophy)

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Abstract: It is determined that in the philosophical thought of the theory of natural law, substantiating the natural nature of law, its moral principles and contractual basis, inextricably linking morality and law, created an axiological, ethical and philosophical basis for developing lawyer ethics as a value-imperative regulation of lawyers.

The phenomenon of civil society as a space of actualisation of law through modern philosophy's prism is analysed. Two approaches to understanding the configurations of civil society are identified - liberal and state. These approaches differ in defining civil society and the importance of the state's role in its actions. Simultaneously, both approaches share a common vision of the values of individual freedom, concretised in human dignity, human rights, inviolability, respect for property, and the rule of law, which meant the establishment of laws observance and punishment for violations. Such values set the need to protect the rights of citizens in resolving conflicts and disputes. The agonal nature of protection is associated with competition in public life and as such is possible in a bar that defends human dignity, human rights and freedoms, inviolability and respect for property.

Background: Philosophical understanding of the field of law has been inherent in Western culture since antiquity, but fully manifests itself in the New Age, when the rights and freedoms of the individual have become the focus of intellectuals. Philosophers and jurists have formed a discourse that has unfolded over the centuries within the philosophy of law. The relevance of this discourse today gains additional leverage due to the general civilisational demand for human existence's unifying factors. The concepts of justice, rights, freedoms, human dignity are actualised in the global social discourse, concretised in the dialogue of citizens with the authorities, discussed in the media, etc. By its nature, philosophy is designed to seek answers to socially significant questions, analyse the problems that cause social resonance, and justify the strategies of social development. Obviously, in this perspective, the philosophy of law is in demand at the present stage of civilisational progress.

Keywords: civil society, law, morality, values, justice, regulatory potential.

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I. INTRODUCTION

The emergence of the phenomenon of civil society is associated with a reaction to the strict hierarchy of social society, and at the time of its formation was called "commercial" or "civil", depending on the features that wanted to emphasise as leading to its functioning - immersion in economic activity (bourgeois society).) or the establishment of civil liberties (civil society).

Within the framework of social philosophy, it is appropriate to turn to the conceptualisation of civil society's idea by contemporary thinkers of the processes of its formation. As eyewitnesses, they made a philosophical understanding of the phenomenon, which led to radical transformations of social life values while enriching the theoretical pursuits of the day.

Modern thinkers actively used the term "civil society" (*societas civilitas*, civil society) to denote the new order formed in society.

The English philosopher Thomas Hobbes was one of the first to call society "civil." In his treatises *On the Citizen*, *Leviathan*, or *Matter, Form, and Power of the Ecclesiastical and Secular State*, and many other works, he contrasts the natural state with the civil state and points out that the natural state is a state of chaos and disorder when "everything belongs to all." Everyone by nature has the right to everything, and therefore it turns into a war of all against all. "Everyone seeks to satisfy their interests, but because the earth is" close ", the desire of some faces the same desires of others and relentlessly there is oppression and violence of some over others, that is - the struggle of all against all. Everyone wants to destroy another to clear a place for themselves "[1]. Thus, according to Hobbes, the beginning of civic life is associated with fear. To overcome fear, people secure

themselves and unite in civil society. Hobbes does not distinguish between the concepts of "state" and "society". He writes: "The association created in this way is called the state or civil society (*societas civilis*)" [2].

Hobbes defines that the state is one person, one person who is authorised to speak on behalf of the state. And this person is sovereign. No one else can speak on behalf of the state. The state itself is authorised to use force, whether it is participation in wars, or ensuring peace and security, whether justice and law-making or the welfare and prosperity of science. Such all-encompassing power is like the biblical monster Leviathan. Citizens are deprived of their rights by delegating their sovereign. "The ruler remains outside the treaty the sole custodian of the rights renounced by the subjects, and, accordingly, the only one who retained all primary rights. Since the ruler does not participate in the "treaty", having received all citizens' rights, he holds power indisputably. Citizens must obey civil laws.

On the one hand, it can be noted that the image of Leviathan as a comprehensive state monster extends to Hobbes and civil society, completely absorbing the individual. On the other hand, it is possible to depart from this obvious interpretation and look at the contract as a constituent event that stops the horror and arbitrariness of the natural state. To transform this "natural state" of unbridled freedom to inflict evil, boundless violence and fear of death, "war of all against all" Hobbes and proposed by the forces of civil society, which arises objectively. It required an agreement ("pact") of citizens to renounce mutual violence, part of their freedom and transfer the right to lawful violence to the state, which was to establish internal peace "[4]. Therefore, we can assume that Hobbes understood civil society's formation as a self-organised community, in which individuals with a sense of duty, honour, responsibility based on conscious individual freedom and responsibility to the community.

Separately, in his treatise *On Man*, Hobbes singled out the qualities (virtues) that man needs to live in civil society. He calls the virtues of ingrained positive tendencies, which can be easily manifested without encountering resistance from the mind [5]. Virtues are good customs inherent in a person only in civil society because only in the state there is a common measure for them. To this extent, there are laws. Thus, virtues (good customs) exist in the natural state, but, in the latter, they have no measure (law). "Whatever the laws, obeying them has always been considered a virtue of citizens, and violating them - a defect. Even if known actions that are considered fair in one state are considered unjust in another, justice as such, that is, obedience to the law, will remain the same everywhere and will remain so "[6].

At the same time, explaining in "Leviathan" the effectiveness of natural laws (*a justice* - the third natural law), Hobbes explains in detail its force in compliance with the agreements concluded by people, because without the effect of "agreements have no force and are only empty sounds" [7]. But the binding nature of agreements begins only with the establishment of civil authority, "strong enough to force people to fulfill their agreements" [8].

Customs (i.e. following customs), according to Hobbes, differs in the natural state and civil society. First, it appears as following the laws of nature, that is, as *mercy*, and in the second - as following civil laws, i.e. as *justice*. According to Hobbes, these two qualities are reduced to *virtue*. In the civil state, "moral virtue is such customs, due to which once a state organisation has emerged, it can best survive" [9].

Justice and civil obedience are at the heart of it *rationality*: "By endowing with reason, God has made us a covenant: no one should do to another what he would consider unjust if another did it to him" [10].

In addition to justice, it is worth paying attention to some values that directly address the legal issues. These are impartiality, the problem of using common things, the question of a lot and first possession, the mediators and subordination of arbitration, and the conditions of suitability for impartial trial and the legality of the testimony of witnesses [11]. They give grounds to consider Hobbes as a theorist of civil society and identify the latter with the state - as a theorist of the rule of law. Civil society is legal by definition; its citizens recognise the force of law and obey the law itself, act as law-abiding subjects.

The ideas of civil society, expressed by Hobbes' compatriot John Locke, are also related to the idea of a social contract, with which the natural state ends and civil begins. But if for Hobbes the natural state is determined by the war of all against all, then for Locke it is "a state of peace, goodwill, mutual aid and security," which at any moment can be crossed out by one who, by force, turns it against any -who creates a state of war "[12].

As indicated by G. Zaichenko, "despite the fact that in the natural state there are no state institutions that guard the rights of individuals, this state is not social chaos and not a war of all against all. Therefore, Locke's distinction... is not as radical as Hobbes's. However, this is achieved by the actual transfer of a number of institutions characteristic of the state organisation of society, in the natural state "[13]. In the natural state, man has a set of rights: the right to life, the right to liberty, the right to property and the right to protect these rights. By uniting society, people retain almost all natural rights and give up only the right to self-defence at their own risk. Thus, the state is formed due to the common sense of individuals. "The state has the power to issue laws (the legislature), enforce them and enforce them (the executive). The boundaries of state power are established by the same rights of citizens for whose protection it was created "[14]. The point is that human

rights are fundamental; the state in its functioning is subject to their power and must ensure their observance in relation to its citizens. But by transferring these rights, citizens do not weaken but strengthen their rights and freedoms. This order of things in society indicates that society acquires the qualities of civil.

At the same time, it should be noted that Locke distinguishes between the concepts of "society" and "civil society". The society also exists in its natural state - it is the relationship between wife and husband, parents and children, master and servants. But these associations are not political. And civil society is a political union.

At the same time, like Hobbes, Locke is not yet clear about the distinction between state and civil society, although, unlike Locke, the state is not a comprehensive Leviathan, a kind of arbitrator who guards justice, order, and protects property. The main goal of the state is to protect the life, freedom and property of citizens. It is possible only if the law is obeyed. "No person in civil society can be exempted from the laws of that society." Again, as with Hobbes, there is a noticeable tone in relation to the rule of law and the principle of the rule of law.

The Scottish educator Adam Ferguson wrote in *The Experience of the History of Civil Society*: "In nothing but the conduct of civil society does man find such a broad satisfaction in his talents and such an apt object for expressing his best feelings." Thus, according to MI Mikeshin, Ferguson became the first in the English-language tradition to use the term "civil society" to write a treatise on its history.

Ferguson distinguished between the stages of development of society - savagery, barbarism and civilisation. The criterion for distinguishing stages is the attitude to property. At the savagery stage, people are not familiar with the idea of property, barbarians have property, but there is no legal regulation. "Where the rights of property and positions are vested in the individual and where the exercise of those rights is protected, the individual may be recognised as free; and the very restrictions that prevent him from committing crimes are part of his freedom." [18] This stage is a civil society, which has the following components: the existence of an agreement (law) between members of society, based on which citizens and the government act in the name of peace in society, legislative regulation of property (ways of entry and ownership, acquisition of rights, transfer and inheritance, guarantees of property ownership, etc.), protection of citizens' rights.

Researcher AK Bektanova notes that Ferguson already has a distinction between state and civil society. Recognising the state as a set of bureaucratic institutions, it enshrines in civil society the unity of parties and estates, as well as citizens who differ in their abilities and the size of private property [19]. The condition for state power effectiveness is an effective system of checks and balances, which makes it impossible to concentrate power in one hand. "Thus, A. Ferguson's civil society is a civilised society that arose together with the legislative consolidation of private property. An essential feature of such a society is the commercialisation of all relations and close ties with the state. The main subject of civil society is a citizen endowed with certain rights and responsibilities, who defends his private interests and together with fellow citizens seeks to achieve the common good" [20].

The French thinker and politician Alexis de Tocqueville sought to comprehend the essence of social transformations in his contemporary countries, which successfully reformed social life by changing the "old order", and did not follow a revolutionary path. In *Democracy in America*, Tocqueville first identifies the connection between civil society and democracy. "If all previous philosophical thought saw democracy as a form of government that affirms the sovereignty of the people, then A. Tocqueville saw in democracy something more - a special social status, a certain type of social connection" [21].

Tocqueville's work consists of two books, the first of which gives a detailed description of the state and society in the United States, and the second contains theoretical generalisations of the studied results. Among Tocqueville's key ideas, we will focus on those that highlight the idea of civil society. He points to the division of power into legislative, executive, judicial and clear civilian control over power, emphasising the social aspects of life. Everyone's participation in the community's life, the election of positions determine the development of social virtues. "When social affairs begin to be done by joint efforts, each person begins to notice that he is not so independent of other people... and, in order to gain their support, he often has to help them" [22]. We are talking about civic education, a kind of spirit of citizenship, the importance of freedom of association, respect for the law, equality of opportunity as part of civil society. Tocqueville initiated a sociocultural approach to understanding civil society that emphasises the moral and sociopsychological impact of a network of public associations engaged in day-to-day "small business." It is these organisations that form "local and personal freedoms", create the social field necessary for democracy, and spread the spirit of solidarity, tolerance and cooperation" [23].

These thoughts became one of the first historical evidence that characterised the essential changes in society in modern times. The value slice of civil society can be defined as follows. It is freedom, law, protection of rights, settlement of property rights, and the commercial component's obvious dominance.

In general, as researchers note today, "early concepts of civil society emphasised the economy as its main part. After all, it is here that individuals proved to be independent subjects of social activity, and, relying

on the mechanisms of market self-regulation, sought the least possible state intervention in their affairs "[24]. At the same time, the function of the state was to create and implement laws, to control their observance, to embody in the laws the general will of citizens, to protect "the inviolability of their rights and freedoms" [25].

Freedom is becoming a leading feature of civil society. The idea of freedom had a very concrete embodiment - man's dignity, rights and freedoms, inviolability, and respect for property. "The most important feature of the concept of civil society is that it, based on the principle of inviolability of individual freedom, sharply rejects any oppression, restriction of freedom" [26].

The modern German philosopher Jürgen Habermas in his fundamental study of civil society at the time of its formation "Structural Transformations in the Field of Openness" [27] described in detail the emergence alongside the economic (or rather, outside it) cultural function of civil society. Since the XVIII century. The sphere of public cultural (leisure) interaction is formed, in which public opinion is formed and in which the state cannot interfere.

A. Kolodiy in his article "Historical evolution of civil society and ideas about it (formation of the ideal)" points out that at this time formed the idea of "primacy and autonomy of civil society in relation to the state, much attention was paid to justifying its morals, ethics and the role of civilisation... This is where the tendency to ethicize the concept of "civil society", especially in English social philosophy, emphasising the role of morality, education, everyday and political culture "[28].

This liberal tradition of civil society is openly opposed to another powerful tradition of the New Age - Hegel's, in which, precisely because of the primacy of the state as an effective repressive force seen [29].

The fundamental difference between the liberal concept of civil society and Hegel's is seen in the following. In the first, civil society is independent of the state, and freedom is the highest value. By endowing the state with instrumental functions, civil society seeks to control it. Instead, Hegel makes the state's idea, which expresses the people's spiritual and cultural integrity and guarantees the protection of individual freedom, the disclosure of its internal and external freedom. Simultaneously, the law serves to protect and develop only external freedom in society [30]. Simultaneously, the state is not any state, but only one that can codify laws, organise public proceedings and create a jury, which is a state governed by the rule of law [31].

At the same time, researchers who adhere to the Hegelian tradition see in his texts the conceptual design of civil society's idea. «...Hegel's doctrine of society in many respects corresponds to the real task of generalised philosophical analysis of civilisational forms of interaction of individuals, groups, large and small, peoples and states, which in the process of human history, indeed, constantly accumulate and enrich, and the central trend of which, in fact, is the fundamental need to take into account the dialectic of the singular - special - universal "[32].

Hegel believed that "Civil society is the difference between the family and the state." In civil society, everyone has a goal. The rest is nothing for him "[33]. However, without a relationship with others, a person can not achieve their goals in their entirety. People in civil society act as "individuals who have their interest in their goal." As V. Nersesyants points out, in such conditions of life in civil society "is imbued with the relationship of two principles - features and universality: each feature is the goal of the individual, which requires for its implementation a relationship with other special goals, is thus limited seeking implementation. Satisfying oneself, a special goal is forced to satisfy at the same time the good of others "[35].

N. Motroshilova notes that in the new historical circumstances associated with the formation of bourgeois relations, "a new stage of history is also characterised by an unprecedented increase in the role of individuals, their interests, goals - in short, the" specifics "of their lives" [36]. Hegel singles out the system of needs, the administration of justice, the police and corporations as the main points of civil society [37]. It is in these circumstances that the need for hitherto unheard of the interdependence of people is reflected.

In such circumstances, civil society "becomes an arena for the struggle of private individual interests, the struggle of all against all, there is a conflict between the private interest and common special affairs" [38]. Not only the state but civil society must work to resolve such contradictions. According to Hegel, in civil society, the law itself becomes the law [39], protecting the people's freedom and dignity. The institutionalisation of citizens' rights in a society represented by laws also requires state action. Civil society acts as a "social instance of population control over the activities of the state, aimed at the real solution of the most specific problems of specific citizens, social groups, public associations..." [40]. The dialectic of citizens' activity in civil society is that they declare their private interests in it, but for this, they leave the sphere of privacy and go into public space, "into the sphere of" publicity", joint and open, public social action and interaction" [41].

In the light of the issues we study, the point of view of contemporary American authors J. A. Cohen and E. Arato on the individual's status in civil society is interesting. If citizens are private individuals, then the essential connection of civil society with its citizens is broken. But the subject of civil society, the bourgeoisie, is not a purely homo economicus. However, it is included in the system of needs - "this is only a starting point for further Hegelian thinking: because the system of needs is only the first level of civil society. When reflection moves to the second level, the level of "law enforcement" and "universal authority of the corporation, a

particular person appears before us in a different form as a subject of law, a client of universal authority and a member of the association" [42].

Thus, the secular principle in civil society was combined with the legal principle. "Here the homogeneous unity of politics and religion, politics and ideology is abolished, the bifurcation of public and private, society and state, law and morality, political ideology and science, religious and secular, etc. is asserted" [43].

Conceptual differences between the liberal tradition and the Hegelian system in understanding civil society's idea do not eliminate the emphasis on the leading role of freedom as a regulatory idea of the existence of the individual in society. "In general, the formation of different versions of the concept of civil society is inextricably linked with the formation of the idea of individual freedom, the self-worth of each individual" [44]. Besides, it is important to emphasise that in civil society, an individual's legal status is distinguished; he is both an individual and a citizen.

As researchers show, the principle in civil society's concepts is the actual dilution of the concepts of state and society. But although at the time of civil society's idea, this distinction was not obvious, all the thinkers mentioned here pointed to the leading nature of law in civil society. The functions of establishing laws, their implementation and observance and punishment for their violation are entrusted to the state and ensure human life in civil society.

II. MATERIAL AND METHODS

Understanding the philosophical aspects of legal ethics is based on the study of the value potential of law in modern times' philosophical thought (GWF Hegel, G. Grotius, G. von Hugo, I. Kant, S. Pufendorf).

A civil society focused on protecting the rights and freedoms of citizens, received a conceptual design in the philosophical texts of J. Habermas, T. Hobbes, J. Locke, A. de Tocqueville, A. Ferguson. A critical review of civil society's philosophical problems was carried out in the works of E. Arato, A. Bektanova, K. Hajiyev, J. A. Cohen, A. Kolodiy, M. Mikeshin, N. Motroshilova, I. Orlova.

Analysis of the idea of justice of social life and a kind of categorical imperative in legal activity required recourse to the classical works on the theory of justice of Aristotle, F. Hayek, O. Goffe, D. Hume, J. St. Mill, R. Nozick, J. Rawls. The texts of V. Gorbatenko, B. Kashnikov, D. Kiryukhin, and A. Prokofiev became a significant methodological contribution to the analysis of the problem of justice in the socio-philosophical aspect.

Studies of the relationship between morality and law as factors of regulatory regulation have become possible thanks to well-known experts in ethics and law T. Abolina, R. Apresyan, O. Drobnitsky, V. Efimenko, V. Malakhov, V. Lapaeva, O. Lukasheva, S. Maximov, G. Muromtseva, V. Perova, T. Tarakhovich, L. Fuller.

Among modern Ukrainian scholars, whose general methodological contribution to the study of the philosophy of law and social philosophy formed the basis of this work, we should mention A. Baumeister, M. Boychenko, L. Gubersky, K. Zhol, M. Mykhalchenko, V. Pazenko, M. Popovych.

The study's methodological basis is a set of general scientific and special philosophical methods that have made it possible to reveal the subject of research and achieve this goal. Among the general scientific methods, methods of analysis and synthesis, systematisation, and generalisation were used to formulate the study's main scientific results. The dialectical method allowed to comprehend the subject of research in the interrelations set to reveal the conceptual principles of civil society in the sociocultural space. The historical and philosophical approach was used to identify the development of ideas of civil society, human rights, justice, the principle of humanism, etc. through the prism of modern philosophy. The axiological approach has become productive in identifying the value potential of civil society in the sociocultural space. In general, the methodological basis of the study is an interdisciplinary integration of philosophical and legal (within social philosophy), ethical (moral theory), ethical and applied (legal) approaches.

III. RESULTS

The phenomenon of civil society as a space of actualisation of law through modern philosophy's prism is analysed. Two approaches to understanding the configurations of civil society are identified - liberal and state. These approaches differ in defining civil society and the importance of the state's role in its actions. Simultaneously, both approaches share a common vision of the values of individual freedom, concretised in human dignity, human rights, inviolability, respect for property, and the rule of law, which meant the establishment of laws observance and punishment for violations.

Thus in the Western European cultural space, there are outlines of a new type of society, called civil. Conceived by contemporary philosophers of its formation processes, it received different configurations in the liberal and Hegelian approaches to defining its role and significance, especially in the question of the role of the state in its actions. But both approaches emphasise the values of freedom, the rule of law, law, protection of rights, and regulation of property rights. It is no coincidence that freedom is called the first value - it becomes a

regulatory idea of a citizen's life in society. Freedom in the light of positive law necessitates the formation and functioning of legal institutions.

IV. CONCLUSION

The philosophy of law from G. Grotius and S. Pufendorf was freed from religious dogmas and substantiated the natural nature of law and its moral and philosophical principles and contractual basis. The concept of philosophy of law in its modern form is formalised in G. von Hugo's philosophical studies, who understood the meaning of law in its entirety in view of the effectiveness of its impact on man and his development outside of moral legitimacy. Thus the dichotomy of natural and positive law is formalised in modern European thought. While from Grotius and Pufendorf comes the idea of law as based on value and moral principles, immersed in social processes of the phenomenon, so morality is the basis of legality, legitimacy of the legal system, Hugo understands the law as a social fact of law and order in philosophical and historical capacious legal-dogmatic doctrine with a bias in jurisprudence.

In the philosophical thought of natural law theory, the natural character of law, its moral principles and contractual basis are substantiated. Yes, morality and law are inextricably linked.

Thus, the relationship between law and morality as factors of normative regulation of public life is clarified. What unites them is their common origins in custom as the historically first form of social regulation of behaviour. It determines their reliance on customary-mass forms of behaviour, elucidation of the existing with the appropriate correlation of the proper, the ability to regulate the person's social behaviour, the connection with the freedom of action of the person and his responsibility for them.

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