UNIWERSYTET ZIELONOGÓRSKI

DYSKURS PRAWNICZY I ADMINISTRACYJNY 4/2023 ISSN 2657-926X

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The idea of justice in the Middle Ages: evolution or deformation of the legal concept?

Keywords: justice, codification, welfare, law, humanism

Summary. In October 2022, in the opening speech at the annual conference of EU Ambassadors, EU High Representative Josep Borrell, in particular, noted that «many people in the world vote and elect their government, but their material conditions do not improve. And in the end, people want to live better. We need to explain the connection between political freedom and a better life. And we Europeans have this extraordinary chance. We live in a world, in this part of the world, where political freedom, economic prosperity, and social cohesion are the best, the best combination of all these ingredients. But the rest of the world is not like that. Our struggle is to try to explain that democracy, freedom, political freedom is something that cannot be exchanged for economic prosperity or social cohesion. Both of these topics should go hand in hand. Otherwise, our model will die. It will not be able to survive in this world.»
Therefore, the world and Europe, in particular, and especially Ukraine, have entered the so-called bifurcation point. We do not know when and how they will come out of it. However, it is clear that the modern political and legal concept is changing, requiring either renewal or improvement. European civilization has already passed through such times, in particular, when Classical Greece and the Roman Empire were dying. Nevertheless, significant intellectual searches and reflections have always accompanied the processes of renewal or at least improvement of political and legal systems to the existing circumstances. It is not surprising that on the threshold of political and legal changes, the search for the content of the idea of justice occupied a central place in such intellectual explorations. The Middle Ages made a significant and invaluable contribution to the understanding of the idea of justice. Having certain flaws, this era became a certain bridge between Antiquity (in which the idea of justice received the highest philosophical and legal elaboration) and the New Age, in which justice as a philosophical idea and a legal concept was subjected to a significant transformation. Nevertheless, it is the historical approach to the study of the content of the idea of justice in the context of philosophy, law, and politics that can provide answers to questions about possible ways to solve modern social problems of the world.

Idea sprawiedliwości w Średniowieczu: ewolucja czy deformacja pojęcia prawa?

Słowa kluczowe: sprawiedliwość, kodyfikacja, opieka społeczna, prawo, humanizm

Streszczenie. W październiku 2022 r. w przemówieniu inaugurującym doroczną konferencję ambasadorów UE Wysoki Przedstawiciel UE Josep Borrell zauważył w szczególności, że „wielu ludzi na świecie głosują i wybierają własny rząd, ale ich warunki materialne się nie poprawiają. W końcu jednak ludzie chcą żyć lepiej. Musimy wyjaśnić relacje między wolnością polityczną a lepszym życiem.

A my, Europejczycy, mamy tę niezwykłą szansę. Żyjemy w świecie, w tej części świata, gdzie wolność polityczna, dobrobyt gospodarczy i spójność społeczna są najlepsze, najlepszym połączeniem wszystkich tych składników. Ale reszta świata nie jest taka. Nasza walka – próbą wyjaśnienia tego, czym jest demokracja, wolność, wolność polityczna, coś, czego nie da się wymienić na dobrobyt gospodarczy lub spójność społeczną. Oba te tematy powinny iść w parze. Inaczej nasz model umrze. Nie będzie w stanie przetrwać w tym świecie".
Dlatego Świat i Europa w szczególności, a zwłaszcza Ukraina, weszły w tzw. bifurkacje. Nie wiemy, kiedy i jak z tego wyjdą. Jednak oczywistym jest, że współczesna koncepcja polityczno-prawna się zmienia, wymagając albo aktualizacji, albo poprawy. Cywilizacja europejska już takie czasy przechodziła, w szczególności kiedy umierała Klasyczna Grecja, Cesarstwo Rzymskie. Jednak zawsze procesom aktualizacji lub przynajmniej dostosowania systemów politycznych i prawnych do istniejących warunków towarzyszyły znaczące poszukiwania i refleksje intelektualne. Nic dziwnego, że u progu zmian politycznych i prawnych, w takich intelektualnych poszukiwaniach centralne miejsce zajmowało poszukiwanie treści idei sprawiedliwości.
Epoka Średniowiecza wniosła znaczący i bezcenny wkład w zrozumienie idei sprawiedliwości. Mając pewne wady, epoka ta stała się swoistym pomostem między starożytnością (w której idea sprawiedliwości otrzymała najwyższy rozwój filozoficzny i prawny) i Nowym Czasem, w którym sprawiedliwość jako idea filozoficzna i koncepcja prawna poddana została znacznącej transformacji. Niemniej jednak właśnie historyczne podejście do badania treści idei sprawiedliwości w kontekście filozofii, prawa, polityki może dać odpowiedzi na pytania o możliwych sposobach rozwiązywania współczesnych problemów społecznych świata.

I. Introduction

In the middle of the 6th century AD. Italy, the center of the former Roman Empire, was conquered from the Goths by the Byzantines and incorporated into the Eastern Roman Empire, better known as the Byzantine Empire. On the throne is the last emperor of Antiquity, Justinian I. Of course, he is known to the entire legal science of Europe as the codifier of Roman law, because during his reign, the «Corpus Juris Civilis» was published, which consisted of four parts: «Institutiones», «Digesta» («Pandectae»), «Codex» and «Novellae».

In its essence, «Corpus Juris Civilis» no longer had the creative fervor that was characteristic of Roman jurisprudence of the classical period. It was at that time that Roman lawyers, relying on the philosophical views of ancient Greek philosophers, realizing the heritage of their own philosophical thought (Stoicism and Epicureanism), filled classical Roman law with ethical and philosophical content. In this period, Roman law is characterized by the sophisticated skill of formulating abstract definitions, which, on the one hand, generalize certain aspects of social relations, and on the other hand, are so applied and practical that they act as their effective regulator (through the pragmatic interpretation of cases). A characteristic feature of this period ofthe development of Roman law is the attempt of Roman lawyers to approximate the content of legal acts with natural human rights and ideas of justice, which would make all manifestations of immorality and injustice impossible[1].

[1] М. Утяшев, *Курс лекций по истории политических и правовых учений*, Уфа 1999, 319 с., p. 86.

It was not for nothing that Ulpian noted that «justice is an unchanging and permanent will to give everyone his right. The precepts of the law are as follows: to live honestly, not to harm others, to give to everyone what belongs to him.» That is why, according to his views, «jurisprudence is the knowledge of divine and human affairs, the science of what is just and unjust.» In turn, one cannot but agree with Paul, who noted that «the word 'right' is used in several senses: first, 'right' means that which is always just and good, which is a natural right.» In another sense, «right» is something that is useful to all or many in each state, it is civil law»[2].

II. Justice and lawin the Middle Ages

After establishing the dominion, the formula of which was «Dominus et deus», the sole source of the law becomes the boundless will of the Roman emperor. Given the power-structural changes in the late Roman Empire, lawyers went into the shadows, turning into a function of the imperial office. There is a vulgarization of high Roman law with the legal representations (quasi-systems) of the peoples who inhabit the Roman Empire and its federations. Collections and commentaries on the works of classical lawyers and imperial constitutions were the fruits of the activity of lawyers of that time. However, the lawyers of the late Roman Empire no longer reworked the imperial constitutions, finding a place for them in the imperial legislation, setting the limits of their distribution. Their destiny is to carry out codifications and publish compilations of universally binding constitutions. The result was Codex Gregorianus (295), Codex Hermogenianus (325), and finally, in 438, the Codex Theodosianus was adopted by Emperor Theodosius II[3].

«Codex Theodosianus» includes all imperial constitutions since the reign of Constantine the Great. However, many early norms of Roman law were not included in it. At the same time, back in 426, special laws of Theodosius II and Valentinian III on citation recognized the legal force of the works of only five lawyers of the classical era: Papinianus, Paulus, Ulpianus, Modestine and Gaius. Judges were to reveal the general opinion of these jurists, and in case of disagreement between them – the opinion of the majority. In the event of an equality of votes, Papinian's opinion was considered decisive, if in this case Papinian did not express himself, the judge could act independently[4].

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[2] *The Digest or Pandects of Justinian*, URL: https://droitromain.univ-grenoble-alpes.fr/Anglica/digest_Scott.htm [access: 10.10.2023].

[3] *Римське право крізь призму традиції і судової практики: монографія*, за ред. І.В. Спасибо-Фатєєвої, Х. 2022, 512 с., p. 67.

[4] *История государства и права зарубежных стран: Учебник для вузов*, В 2 ч., Ч. 1, Под общ. ред. д. ю. н., О.А. Жидкова и д. ю. н., Н.А. Крашенинниковой, 2-е изд., стер, М. 2004, 624 с., p. 209

In parallel with the retreat into the «shadow» of jurisprudence, philosophy is also retreating into the «shadow». If the late Roman Republic and the classical period of the Roman Empire are characterized by an intellectual competition between Epicureanism and Stoicism, with a certain ideological victory of the latter, then the late Roman Empire is neither subject to such competition nor philosophical influence on power.

In «Corpus Juris Civilis» Roman law received its completion. The work of the ancient world was finished and condensed into a compact form. Roman law was brought to such a state that it could survive the state that created it. The birth of the ancient world entered the life of new peoples, began to live with them, and in this sense we can talk about the second history of Roman law. But this second story was not the same in both parts of Europe – in the East and in the West. After Justinian, the life of Roman law seems to be divided into two branches – Eastern and Western. The Eastern Byzantine branch, directly adjacent to the former source of its development, first shows a significant revival, but then this revival gradually dies down, until finally this branch, experiencing several energetic impulses, in particular, in the form of the «Eclogue» (εκλογή) and the «Basilik» (Βασιλικά), does not completely dry up with the death of the Byzantine Empire. The fate of the western branch is completely different: at first, it seems dead and doomed to perish, but some time passes, it revives, develops again and covers the entire western world with its sprouts[5].

Despite a certain deformation of Roman jurisprudence during the period of domination and especially in the Western Roman Empire, law and philosophy receive a new vector of development, being filled with theological content and developing in the Christian-religious discourse.

The period of formation of Christian philosophy begins in the II centuryAD when the so-called «patristics» arises (that is, the teachings of the «fathers of the church», which included, however, not only those theologians who wrote philosophical and theological works). It reaches its climax and, one might say, its completion after the recognition of Christianity as the state religion of the Roman Empire and especially after the First Ecumenical Council in 325. From that time, Christian philosophy began to follow the path usually characterized by the formula: «Philosophy is the servant of theology.» This, in fact, expresses the position of Christian philosophy in all countries during the Middle Ages, where religious-monotheistic beliefs and their corresponding dogmatic ideology ruled[6].

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[5] И.А. Покровский, *История римского права*, М. 2004, 416 с., p. 182.

[6] *Антология мировой философии в четырех томах*, под ред. В.В. Соколов, В.Ф. Асмус и др. Том 1: Философия древности и средневековья, часть 1, М. 1969, 576 с., p. 55.

We will recall that for the Roman Stoics, Seneca, Marcus Aurelius, the source of justice was the Logos, which at the same time acted as Law, Fate and Necessity. It is certain that the idea of justice could not fail to find its place in the search for a new Christian philosophy, in which the image of the Stoics' Logos is replaced by God. It should be noted that the paths of these searches had a more philosophical than religious basis. The Areopagitics had an important influence on the idea of justice in the Middle Ages – four works – «On the Names of God», «Mysterious Theology», «On the Heavenly Hierarchy», «On the Church Hierarchy», as well as ten letters written in Greek in the second half of V century. Areopagitics are the most important works of patristic religious and philosophical literature. The main feature of these works is the adaptation of the ideas of Neoplatonism to the understanding of Christian doctrine. The most important of such ideas is the so-called positive theology, which comes from the analogy between the world of real objects, and especially human beings, and God as a supernatural personality, their supreme and only creator[7].

At this time, there is still a view of justice as a virtue, but to a certain extent, this view is based on the statement of the hero of the Platonic dialogue «The State», the sophist Thrasymachus, who said that «justice is the benefit of the stronger»[8]. However, the «benefit of the stronger» already has a positive connotation, since God is stronger. That is why justice, as it belongs to the strong, does not divide in the religious sense, but is the basis of unity because it belongs to God. It is power, not violence, but the endowment of power. God cannot renounce himself, fall away from the truth, from what is. God is justice – who bestows all with dignity. It, preserving its own purity, does and determines everything and everyone due to him, giving according to what is due to each of those who have dignity[9] [9, p.76].

In this context, the views of Augustine the Blessed, who synthesized Stoic views on law with Christian doctrine, had an important influence on the ideological transformation. Through mediation and thanks to the authority of Augustine, the legal ideas of Stoicism had a powerful influence on all medieval scholasticism[10].

Since Christianity considers the wisdom and will of God to be the source of the moral law, the idea of justice and the concept of natural law with the beginning of the Middle Ages did not leave the intellectual explorations of prominent figures of this period, but moving within the limits of Christian religious doctrine, they were not as free as the philosophers of the previous era.

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[7] *Ibidem*, часть 2, p. 606.

[8] Plato, 338C.

[9] Дионисий Ареопагит, *О божественных именах. О мистическом богословии, Тексты*, пер. С древнегреч, СПб. 1994, 370 с., p. 76.

[10] *Філософія права: навчальний посібник*, А.О. Баумейстер, К. 2010, 311 с., p. 167.

Natural law as a reflection of God's justice is identified with positive law, the doubts were only about whether it merges with the concept of God's law or compares with it. However, there is no doubt that the system of natural law of the Middle Ages was formed from the combination of Roman law and the Holy Scriptures[11].

According to Augustine's concept, in which the meaning of natural law is revealed (the time of the break of Roman law), the world is divided into «civitas terrena» – the city of Earth and «civitas Dei» – the city of God. We can say with some certainty that here we encounter Plato's idea of the world of things and the world of ideas. «So, consider that there are two rulers: one is over the kind of objects accessible to the mind and in the world of thought, and the other rules over everything visible – I don't want to use the word «heavenly», so that you don't think that I'm somehow wise with words and play along with the sophists,» says Socrates to his interlocutor Glaucon in the Platonic dialogue «The State»[12]. But, if for Plato these worlds are to some extent separated, then Augustine introduces a single point of unification in the image of a lady. Characterizing the two cities: one as one who lives in the reality of this age, the other in hope of God, Augustine says that they both came out of the same common door of mortality, which opened in Adam, to strive for different, each of them inherent and proper end[13].

It can be argued that in the views of Augustine, the views of the Roman Stoics and, moreover, of Cicero find their reception that positive law is essentially a continuation and qualitative addition of natural law. At the same time, justice for Augustine consists «in giving to everyone what is his.» Isn't it strange the reception of the view of the Platonic Polemarchus, who just asserted this. From this statement, Augustine deduces that a certain natural order of justice is manifested in man himself, by which the soul is subject to God, the flesh to the soul, and because of this, both the flesh and the soul to God[14]. In the public aspect of justice, Augustine noted that

> in the absence of justice, what kind of state is nothing more than large bands of robbers; since the bandits themselves are nothing more than states in miniature. And they are also societies of people, governed by the authority of the chief, bound by a mutual agreement and dividing the production according to a voluntarily established law. When such a group of lost people grows to such a size that it captures regions, establishes settled dwellings, dominates cities, subjugates

[11] *Філософія права: підруч. для студ. юрид. вищ. закл.*, О.Г. Данильян, О.П. Дзьобань, С.І. Максимов та ін., за ред. О.Г. Данильяна, Х. 2009, 208 с., p. 51.

[12] Plato, 509D.

[13] Aurelius Augustine, Bishop of Hippo, *The City of God*, URL: https://www.gutenberg.org/files/45304/45304-h/45304-h.htm [access: 10.10.2023].

[14] Aurelius Augustine, Bishop of Hippo, *The City of God*, URL: https://www.gutenberg.org/files/45304/45304-h/45304-h.htm [access: 10.10.2023].

peoples to its power, then it openly accepts the name of the state, which already completely appropriates it not suppressed greed, but acquired impunity[15].

In general, political and legal issues, especially in its applied version, do not occupy a significant place in Augustine's philosophical system. It is present in his writings only to the extent that it is related to the religious and ethical issues raised and considered by Augustine. At the same time, the basis of his legal knowledge was probably not so much the works of Roman lawyers as the philosophical treatises of Cicero. However, it was in his work that the most important principles of medieval Christian ethics were formulated, which determined the development of ethics and philosophy of law[16].

From an intellectual point of view, the concept of «divine justice», which was developed in the early Middle Ages, falls within the realm of morality, which derives from God's relationship with man. This is emphasized in the thesis Jus divinum, jus sacrum – «divine law is sacred law.»

However, as Albert the Great claimed, in addition to the ability to rational understanding, the human soul also has a conscience. Conscience reports moral norms to the soul as general principles of moral behavior leading to future eternal bliss through the virtues – in particular, justice whose definition and internal subdivisions are borrowed from Cicero's De inventione. The human soul also has free will, which, without obeying any necessity, is able to make a choice based on knowledge. Again, we face the reception of the philosophical views of Plato and Aristotle. At the same time, it is characteristic that of all the commentaries on Aristotle's Nicomachean Ethics, Albert the Great's comment was considered the most authoritative in medieval European universities[17].

Important changes come from the 11th century. From the time of Gregory VII, divine justice becomes the «norm», moreover, the absolute reference point for any human behavior, finding its historical embodiment in the Roman Church as a historical institution. It is in this ideal context, in the close connection between the thought and activity of Gregory VII, that the era of the great collections of canonical documents begins, culminating in the Decretum [Decrees] of Gratian. As a result, the pope will become in Christendom not only the guarantor of law, but also the supreme and general judge (directly or through his legates), not in an abstract way, but as one who applies divine law to the accidental situations of life, not only by his power to issue new laws, but also from the monopoly on interpretation

[15] *Ibidem*, URL: https://www.gutenberg.org/files/45304/45304-h/45304-h.htm [access: 10.10.2023].

[16] Левон Батиев, *Августин Блаженный: формирование средневековой философии права*, URL: https://www.researchgate.net/publication/292953615_Avgustin_Blazennyj_formirovanie_sr [access: 10.10.2023].

[17] А.М. Шишков, *Средневековая интеллектуальная культура*, М. 2003, 592 с., p. 290.

and dispensation, that is exemption of an individual or a group of persons from the mandatory norm of church law or relaxation in its implementation[18].

However, if in the «West» the problem of searching for justice and developing ideas about law was based mostly on ancient Greek and ancient Roman works, then in the «East» in the Byzantine Empire, intellectual searches on this matter almost disappeared. The last state project in the field of law-making on the territory of the empire was the Basilicas – a significant contribution of the Macedonian dynasty to the jurisprudence of that time. In fact, after the death of Emperor Leo the Wise in 912, Byzantine jurisprudence developed mainly on the basis of private initiative. There are a lot of private legal collections of interpretations and revisions of Basilics, Eclogues, Prochiron, Isagoga, and of course Justinian's codex. However, the legal opinion of Byzantium until its collapse in 1454 did not have those inspiring features, the originality of scientific treatment of legal material, which were characteristic of Roman classical lawyers, or of Byzantium during the time of Justinian or the Macedonian dynasty[19].

Statehood and the concept of law inherent in it, which existed on the Apennine peninsula since the fall of the Western Roman Empire, entered a regime of turbulence with a short period of peace during the Byzantine rule. Starting from the second half of the 6th century after the invasion of the Lombards and the gradual reduction of the Byzantine presence, the main arbiter on the Italian lands became the Catholic Church. That is why the fact that the church applied Roman law to all its relations, that is, to disputes between church institutions and to its individual ministers, was of great importance for the preservation of the concept of Roman law. A formula was even developed that «the church lives according to Roman law» (ecclesia vivit lege romana). As a result, of course, Roman law was not only preserved, but the very scope of Roman law expanded significantly[20] [5, p. 196].

Thus, in the West, two legal systems are emerging that have their roots in Roman law: canon law, which is administered by the pope, and civil law, which is applied by secular sovereigns, and these two legal systems compete with each other in the same way that the pope competes with the emperor. Against the background of the stabilization of the political situation, in particular, in Italy in the X-XI centuries, there is a growing need for universal law, which could be used by representatives of different peoples both within the borders of one state and external relations with representatives of other states, in particular during the

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[18] П. Проди, *История справедливости: от плюрализма форумов к современному дуализму совести и права*, М. 2017, 512 с., p. 64.

[19] Є.О. Харитонов, О.І. Харитонова, *Приватне право як концепт*, Том ІІ: *Пошук парадигми (до історії питання): монографія*, О. 2019, 614 с., p. 357.

[20] И.А. Покровский, *op. cit.*, p. 196.

trade. For these purposes, the legal dualism that existed since the invasion of the Lombards in Italy, of course, was not suitable. Since its basis was that the Germanic population of Italy was governed by Germanic legal norms, and the conquered Italians by Roman ones, including its Byzantine version.

That is why, in these conditions, the norms, principles and positions of Roman law begin to acquire a more general and universal meaning in terms of their meaning. A significant place in the legal understanding of that time begins to be given again to the idea of justice (aequitas) developed in Roman jurisprudence and adopted in the Roman legal system, and to the related natural law ideas and approaches to valid, positive law. It is aequitas that becomes the basic doctrine of the combination of different legal systems, and any norm must be evaluated from the point of view of aequitas. An unfair norm should be replaced by a rule that dictates justice[21].

That is, the Roman principle that justice and good are the law of laws (afequum et bdnum est lex legum) is being returned to practice. However, if the Roman aequitas actually made the law a universal form of the embodiment of justice, including relying on a significant philosophical array, the return of aequitas to the universal legal model of the Middle Ages (which they tried to find) could lead to the collapse of legal matter as such.

That is why, in contrast to the former freedom of dealing with positive law and the freedom of judicial discretion, the Bologna school, which arose at the end of the 11th century, demanded that the judge, abandoning his subjective ideas about justice, adhere to the positive norms of the law, i.e. «Corpus Juris Civilis». Thus, Irnerius (whose name is associated with the formation and flourishing of the Bologna School) declared that in the event of a conflict between jus and aequitas, its solution now belongs only to the legislative power in the spirit of positive law. In the future, two opposing camps emerged, led by Irneria's students. Thus, Bulgar and his supporters defended the opinion that aequitas, which is proposed to be placed above the written law, is «fictitious justice» since its very content is not recorded in the law. That is why it was necessary not to interpret, but to carefully study Roman legal works, in particular the Digests. Another camp, headed by Martin Gozia, maintained the view of the primacy of the idea of justice in the event of a conflict of norms. In the end, the ideas of Irneri and the Bulgarists prevailed and became the general tone of the entire Bologna school[22].

With the development of social relations in the Middle Ages, the «scientific schools» of Roman law also lost their importance. Scholasticism is gradually replaced by the ideas of humanism, within which the search for the idea of justice.

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[21] В.С. Нерсесянц, *Философия права*, М. 1998, 652 с., p. 444.

[22] И.А. Покровский, *op. cit.*, p. 210.

Agreeing with Aristotle's statement that justice is the highest (full) virtue, which is manifested not unrelatedly, but in relation to another person, that is, it can be addressed to another, and not only to himself, Thomas Aquinas subordinates justice to the mercy of God, indicating that He does something, which surpasses justice.

Systematizing the ideas of Christianity, Thomas Aquinas introduces the classification of laws:

– eternal – the general law of the world order, embodying God's mind, as an absolute rule and principle governing the general connection of the phenomena of the universe. It is the source of all other laws;

– natural, which is a direct manifestation of the eternal law (nature and all living things move towards the goal determined by the laws of nature);

– human – a positive law, provided with a coercive sanction against its violations, it is only an establishment that corresponds to the natural law (the dictates of the physical and moral nature of man). Otherwise, such determinations are not a law, but a distortion of it.

Thomas Aquinas's distinction between just and unjust human (positive) law is connected with this. At the same time, the goal of human law is the general good of people;

– God's law, given to people in God's Revelation (Old and New Testaments). It is necessary as a supplement to human rules by God's: as a higher and unconditional criterion for guidance in disputes about what is proper and just, about human laws[23].

Understanding that a positive law should regulate the earthly life of a person, Thomas Aquinas points out that such a law cannot lose its reference point – the Natural Law. Without idealizing human nature, Thomas Aquinas understands that a person tends to distort a positive law, making it unjust in order to achieve his own interest. Thus, according to his opinion, unjust laws are those laws that lack certain mandatory features of the law, for example, the common good is replaced by the private interest of the legislator, or the legislator exceeds his powers. Although such laws are not obligatory for the subjects, their observance is not prohibited for the purpose of preserving general peace and the undesirability of cultivating the habit of disobeying the law. Among other unjust laws, he includes those that contradict natural and divine laws. And such laws are not only not mandatory, but also should not be observed and implemented[24].

At the same time, Thomas Aquinas noted that on the part of a person whose actions are regulated by a positive law, such a law can be justly changed due to changes in the conditions of a person, to whom different things are suitable depending on the changes in the conditions of his existence. Thus, the theory of Thomism paves

[23] О.Г. Данильян, О.П. Дзьобань, С.І. Максимов та ін., p. 54.
[24] В.С. Нерсесянц, *op. cit.*, p. 543.

the way for progress in humanitarian legislation, since legislation is an attribute of supreme power, it also paves the way for progress in the administration of states. However, Thomas cautions that positive laws should not be changed without a substantiated reason. After all, any change in the law is made at the expense of the power and majesty inherent in the legislative power, which means that when the law is changed, the force of the law that imposes obligations weakens[25].

Thomas quotes Augustine: there is no law where there is no justice. But what is justice?

> In human affairs, that is called fair which is right (true) according to the [fundamental] rule of reason. And the first [fundamental] rule of reason is natural law. Therefore, all positive laws [that are created by man] only then have the meaning of law, when deduced from natural law. If some positive laws do not agree with natural law, then [in such a case there cannot be] even [a talk about] law, but rather about its distortion[26].

The theory of the state of Thomism is a crystallization of the political experiences of the 12th and 13th centuries, but it is also subject to feudal civil and canonical law, which did not make any progress at that time. Therefore, the three legal systems (feudal, civil and canon) are unanimous on many important issues, such as the divine origin of power, the subjection of the king to the law, the character of the king as a servant of justice, the power of the law, the intervention of society in the delegation of power to the prince and the participation of the people in the government. Similarly, natural law for legalists and canonists was the ideal to which positive (humanitarian) legislation should strive, and the precepts of natural law should be borrowed as much as possible in existing circumstances[27].

However, in the future, it was the humanists who gave impetus to further intellectual movements and brought ethical and legal thought and jurisprudence out of a certain stagnation. It was in Italy that something unimaginable happened in Byzantium at that time. Humanists, no longer limited to religious doctrine, brought features of the ancient ideal into the ethical and political model of modern society and the state they created. And again, justice occupies a central place in the works of Bruni, Palmieri, and Rinuccini. Following Aristotle, they distinguish between compensatory justice (equality for equals, inequality for unequals) and distributive justice – the distribution of positions and other public goods according to the merits of citizens. The central principle of «civil humanism» is the principle of the common good. It is the category whose definition was sought by Socrates, Glaucon and Adimanthus in Plato's «State» when building an ideal polis and developing the concept of justice. It was the principle of the common good that determined

[25] М. де Вульф, *Средневековая философия и цивилизация*, М. 2014, 253 с., p. 210.
[26] А. О. Баумейстер. *op. cit.*, p. 189.
[27] М. де Вульф, *op. cit.*, p. 218.

the solution to many socio-political problems in the concept of «civil humanism». The opinion was asserted about the need to strictly adhere to «just» civil laws, to be honest in any business and not to hide one's income when paying state taxes. Humanists referred, among other things, to the works of Cicero «On Duties» and «On the State». Developing his ideas, humanists claimed that just laws, which, in contrast to the eternal and unchanging «natural» (divine) law, are the fruit of the activity of wise rulers. Therefore, based on reasonable principles, just human laws should be the support of a state built on the principle of the common good. At the same time, a departure from the principles of justice inevitably leads to the death of even the most powerful states. The duty of state officials is to protect the interests of citizens in every possible way, forgetting about their own, to protect the unity of the state, not to favor any one group to the detriment of another. In this context, there is a connection with Plato's «guards», who are also called to protect the polis and its citizens. They find their reception in civil humanism and Aristotle's ideas. It is from him that humanists borrow the interpretation of the main categories of their own ethical and political thought, in particular, the definition of equality and justice as the most important foundations of the best state system. Aristotle's teaching became the basis for the justification of the principle of the common good as an ethical dominant in the construction of the state. A comprehensively developed problem of the relationship between the individual and society was found in his moral doctrine[28].

The confrontation between the Papal throne and the emperor of the Holy Roman Empire is constantly tearing Italy apart, in which until the 13th-century city-states begin to strengthen. In the well-known document of the Catholic Church «Dictate of the Pope» was stated that the Roman throne has the right to dispose of crowns, appoint and depose bishops, dukes, kings, emperors; all power is valid only so far since it comes from the head of the church, the vice-dominus, the representative of the Most High on earth. The political and legal logic of the pope consisted in the creation of a theocratic, «universal», i.e., worldwide, monarchy headed by the Roman pope, forcing other monarchs of the Christian world to swear to the apostolic throne.

Against the background of this confrontation, the outstanding Italian writer Dante wrote his opus magnum – a work called «De Monarchia». He begins by explaining that worldly government was established by God to control humans, who are a species of free-willed animals. He further asserts that since the kingdoms are unable not to come into conflict with each other, a supreme secular power is necessary to judge them; that the universal monarchy really belongs to the Romans

[28] Электронная библиотека Marco Binetti. URL: http://www.binetti.ru/content/1249 [access: 10.10.2023].

and to no one else; and that the supreme monarch should be equal to the pope, but by no means subordinate to him and not be himself[29].

This single monarch who is standing over the various kings of feudal Europe is necessary for the realization of the process of unification of human society. There is no other way to establish unity among the disjointed groups of the human race than by subordinating the parts to the interests of the whole. Since he would be the most powerful ruler on Earth, a single monarch must necessarily be just and free from greed – just as Plato's ideal philosopher must by his very conception do justice[30].

III. Conclusions

The author understands that within one article it is not possible to show the entire discourse of the development of the idea of justice since the crisis of the Roman Empire in the 3rd century. AD, which buried classical Roman jurisprudence, which was based on the ideas of, in particular, the Academy, the Lyceum, and Stoicism, until the modern era. However, answering the question that was posed in the title of the article, it can be argued that this period was not a deformation of the legal concept, which is based on the ancient Roman aequitas and the ancient Greek dike. The philosophical and legal concept of justice as a measure of judges' activity is reflected in the intellectual views of medieval lawyers, primarily Italian and Byzantine. However, it can be stated that in the definition, reasoning and worldview, in intellectual searches in the establishment of justice «as such», the level of freedom demonstrated by the creative heritage of ancient philosophers, in particular, Plato, Aristotle, Cicero and Seneca, is not achieved in Christian theology and scholastics. It certainly cannot compete with the intellectual creativity of classical Roman law and the work of jurists of the period in question. However, the proper perception of the concept of Roman law by the state formations that arose in the territories of the Western Roman Empire, its existence and perfect codification (including subsequent repetitions) in the Byzantine Empire prove the inner strength of the concept of law of the ancient Romans, who filled their primary legislation with the idea justice, turning law into a manifestation of justice in society. Modern Europe stands on the threshold of radical changes that have been felt before, but their necessity is already assumed today. First of all, the changes will affect the state and its positive law. Will such changes be relevant and their consequences fair? Will the new legal order be fair in international and national dimensions? Will the idea ofjustice leave the spirit of future laws? These are difficult questions that we

[29] М. ван Кревельд, *Расцвет и упадок государства*, К. 2021, 601 с., p. 110.
[30] М. де Вульф, *op. cit.*, p. 102.

cannot answer unequivocally in the affirmative. Nevertheless, there is certainty in the understanding that the success of our modern intellectual search for changes in our existence, their justification and implementation is not possible without an understanding of the idea of justice, good and their manifestation in positive law.

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