

## THE IDEA OF NATURAL LAW AS A DRIVING FORCE FOR SOCIAL PROGRESS BY UKRAINIAN ENLIGHTENERS

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*In this article the following aspect is studied comprehension of the idea of natural law which was the basis of liberal democracy in the European countries by the representatives of the Ukrainian Enlightenment, which was the basis of liberal democracy in European countries. The thoughts on the natural law of the professors of the Kyiv-Mohyla Academy, its graduate Y. Kozelskyi, S. Desnitskyi, P. Lodiy, which did not find any support either in the society at that time or from the authorities, although they were related to the idea of social progress, have been analysed. Ukrainian thinkers interpreted the state as a community of free people, the movement of the continuously progressive development of which is the natural law. Their works propagated the ideas of freedom, equality, democracy, the source and basis of which was the natural law, as the ability given to a man by God to choose the best ways for individual and social development by his own mind. The task of the given scientific research is to attempt a more detailed philosophical analysis of the naturally legal issues among the representatives of the Ukrainian Enlightenment, which nowadays is little studied just as a problem of the history of Ukrainian philosophy of law. However, the specialists of law partially turned to it. Consequently, this article tries to fill the gaps in this very interesting and relevant theme. As a result, it has been determined that the meaningful outline of the phenomenon of natural law should be carried out through the reception of historical and philosophical paradigmatic principles, which appear as a semantic and conceptual manifestation of cultural-historical traditions and individual-authorial innovations. As well as the interpretation of the phenomenon of natural-legal thinking through the perception of natural law as a phenomenon of the virtues of justice, the guarantee of peace and harmony in society. Nowadays, the idea of natural law is relevant in Ukraine in the context of judicial reform, as well as of the development of a democratic state.*

**Key words:** natural law, Ukrainian Enlightenment, M. Kozachynskyi, Ya. Kozelskyi, S. Desnitskyi, P. Lodiy, democratic state.

### **Хвойницька-Переїма Христина. Ідея природного права як рушійної сили соціального прогресу українських просвітників**

*У праці досліджується інтерпретація діячами українського Просвітництва ідеї природного права, що була основою ліберальної демократії у країнах Європи. Проаналізовано думки про природне право професорів Києво-Могилянської академії, її випускника Я. Козельського, С. Десницького, П. Лодія, які не знайшли підтримки ні в тогочасному суспільстві, ні у влади, хоча пов'язувалися з ідеєю суспільного прогресу. Українські мислителі інтерпретували державу як спільноту вільних людей, рушієм невпинно прогресивного розвитку якої і постає природне право. Їхні праці пропагували ідеї свободи, рівності, демократизму, джерелом і основою яких поставало природне право як дарована людині Богом здатність власним розумом обирати найкращі шляхи для індивідуального та суспільного розвитку. Здійснена спроба детальнішого філософського аналізу природно-правової проблематики представників українського Просвітництва, яка нині малодосліджена лише як проблема історії української філософії права. До неї частково зверталися юристи. Дана стаття намагається заповнити прогалини в цій дуже цікавій і актуальній темі. У результаті визначено, що змістовне окреслення феномену природного права має здійснюватися через рецепцію історико-філософських парадигмальних принципів, які постають як семантико-концептуальний прояв культурно-історичних традицій та індивідуально-авторських інновацій. А також інтерпретація феномену природно-правового мислення через сприйняття природного права як феномену чеснот справедливості, запоруки миру*

*та злагоди в суспільстві. Ідея природного права нині актуальна в Україні в контексті судової реформи, а також розбудови демократичної держави.*

**Ключові слова:** *природне право, українське Просвітництво, М. Козачинський, Я. Козельський, С. Десницький, П. Лодій, демократична держава.*

In the context of proclaimed and partially implemented judicial, administrative and other reforms in Ukraine, the references to the practice of formation of European liberal democracies, which in their basis had the idea of natural law are seem relevant. Natural law is not the result of conventions, or the creation of the human mind, it is objective and has an ontological foundation, – it is the sum of the requirements generated by the natural life of society, the objective conditions of human life. The concept of justice which is a combination of wisdom, courage and moderation is in the basis of the concept of natural law formed by civilization: a person has an innate right to life, health, maintenance of its natural needs and their protection. Natural law is the basis of a legal law that does not restrict human freedom, does not punish, but clarifies and permits. The development and putting into effect of such laws nowadays are actual in our democratic state. For these reasons, it is important to turn to the thoughts on the natural right of domestic enlighteners – they have actively studied and promoted the concept of natural law in Ukraine and Russia, with which they associated a social progress.

The idea of natural law as a phenomenon of jurisprudence in recent years was mostly interesting for law specialists (S. Slyvka, S. Rabynovych, M. Bratasiuk, etc.), but it rarely attracted the attention of philosophers, in particular, it was not associated with the social development of modern Ukraine. In Russia, this idea was actively covered in the 1960's in the context of the analysis of the content of the Russian Enlightenment (A. Kunitsyn, Z. Kamenskiy, etc.), the works of enlighteners Ya. Kozelskyi, S. Desnytskyi, P. Lodiy were published, despite the fact that they were the figures of the Ukrainian Enlightenment, although they had to work for a certain time in Russia. Among the publications of recent years, the article by Yu. Laptyeva attracts attention [8, p. 109–114]. Here the author states that “the genesis of social institutes

was explained by the thinkers of the second half of the XVIII century relying on the idea of natural law and the theory of social agreement” [8, p. 109]. Among such thinkers, she names Ya. Kozelskyi and S. Desnytskyi, who along with M. Scherbatov, N. Panin and D. Fonvizin sought ways to optimize the state system, considering the law as one of the means of such optimization.

The purpose of this article is to analyse the views of the enlighteners on the idea of natural law in the context of improving laws as a guaranty of social progress on the basis of the theory of social agreement.

The idea of natural law well known since the XVI century in Ukraine (S. Orikhovskiy) as a motive for social progress began to be actively reflected in the XVIII century, when, after the era of Ruins, the lands of Ukraine finally reigned in peace and the hope for the free development of Ukrainian social and state life appeared. The time of hay-day of the spiritual culture of Ukraine falls to the first half of the XVIII century, then the newly elected Hetman, Danylo Apostol, obtained the consent of the Russian tsar to develop for the Ukrainian people his own Code of Laws, so that “the people would be judged by their right in their courts through the judges elected by the people”. The Commission established by the Hetman, for the conclusion of his own Code worked from 1728 – the most experienced specialists from all over Ukraine completed the writing of “Rights, by which the Malorossiysky people is judged” in 1743, but the authorities did not like the document and it has not been even published, this is not to say that has been implemented in life. It was first published by Oleksandr Kistiakivskyi in the “Kiyv University News” in the years 1875–1877, and as a separate book, in 1879. Only then a reason for ignoring the “Rights” became clear – they were created on the basis of European statutes and the idea of natural law, in accordance with which Ukraine people traditionally lived and judged, because Ukraine was always a democratic European state. A detailed analysis of this document,

published in the "Notes of the Shevchenko Scientific Society", shows that there was almost nothing from the Russian imperial law, and from 3031 articles 1580 are derived from German law, 1006 from the Lithuanian Statute, and 445 is a long-standing Ukrainian customary law [10, p. 66].

Section X "On the rights of subordinates of the state" may be the evidence of the application of the norms of natural law in the Code. At the beginning it was noted that in the anarchist society, every member kept its natural rights: the right to freedom, equality, independence and self-defence during an attack. Subsequently, people felt that the rights were not useful to a person, if it could not safely use them, therefore, they decided to obey the supreme authority. Consequently, the Commission briefly mentioned the dominant in the European countries theory of social agreement, while noting that the rights are different: some are based on the sensory-minded nature of man, the other are derived from social cohabitation, and the third ones are positive, that is, they are created by the authorities. In particular, such innate human rights are ascertained: the right to be a sensually-intelligent being, this right is based on the nature and essence of man; the right to preserve its life and the natural perfection of the body, or health; the right to worry about morality and well-being; the right to improve mind and will; the right to an honest name – all of these rights are derived from the natural human right as such [10, p. 29]. The Commission has not ignored the natural law even while forming a section of the Code on Civil Laws. Thus, in paragraph 87 we read that civil laws should, as far as possible, be brought closer to the simplicity of natural laws. Thus, they become permanent, because they are similar to human nature and "will have clarity, like the clarity of natural laws" [10, p. 66].

Despite the neglect of this Code by the imperial authorities of Russia and the actual prohibition of the idea of natural law, Ukrainian enlighteners actively conceived this idea and even promoted it. First of all, it was done by the professors of the Kyiv-Mohyla Academy, for example, by Mykhaylo Kozachynskyi (1699–1755). He lectured three philosophical courses

at the Kyiv-Mohyla Academy (1739–1745). In the section of the moral philosophy of the last philosophical course, which has already been published in the Russian translation from the Latin language, the professor identified a special clause "Civil politics", in which he represented the foundations of the study of the European theorist of natural law, Yust Lipsiy (1547–1606) to the audience. Speaking about the properties and the division of the law, he cited the definition of natural law / law from "Politics" of this author, popular in Europe: "The natural law is a spark of common sense remaining in a person, a judge and a sign of good and bad deeds" [3, p. 90–118]. M. Kozachynskyi explains that the natural law has not been introduced by anyone, it is inborn – it is "nothing else than the very intelligent nature, since it has the ability to judge what is essentially good and what is essentially bad", or "the actual command of conscience, by which we determine the main principles of morality without guidance" [6, p. 101]. Natural law in his interpretation is the primordial property of a rational being that forever remains unchanged, and the common good and human freedom originate from natural law. The professor is convinced that even God himself can not dispose of natural law, that is, he can not change it [6, p. 102]. Other professors who taught the section of moral philosophy, briefly mentioned the natural law in the analysis of justice as a moral virtue (S. Kalynovskyi, S. Kulyabka, H. Konyskyi).

The position of the professors of the Kyiv-Mohyla Academy was clear – they were working in a censorship education institution, so they had to adhere to certain norms, and these norms forbade even mentioning the natural law – then in the state the "true will of the monarchy" reigned which was sanctified by the Church. Another situation consisted of the leaders of the Enlightenment, among which there were many graduates of the Kyiv-Mohyla Academy. They became famous for familiarizing the society with the achievements of European science (Vasyl Karazin), translated the works of European thinkers-enlighteners, in particular the "Encyclopedia of All Sciences and Arts", and also brought to contemporaries the progressive ideas gained ground in

Europe ("The Assembly which strives for translation of foreign books").

The son of the commanding centurion of the Poltava regiment, Yakiv Kozelskyi (1728–1794) was authoritative in the circles of educators. After graduating from the Kyiv Mohyla Academy, he studied at the gymnasium at the St. Petersburg Academy of Sciences, served in the Senate, and at the Malorossiysk Collegium in Hlukhiv. Deeply educated man, he not only translated a number of articles of the "Encyclopedia", but he also wrote his philosophical works, among which "Philosophical proposals" (1768) stand out. The work testifies that the author deeply understood the natural and scientific contributions of Descartes, Newton, Leibniz, Wolf, and critically perceived the social, political and legal ideas of Voltaire, Rousseau, Montesquieu, Helvetius, Baumeister and other European enlighteners. So, he does not agree with Rousseau's belief that people in a natural state felt more free and happy than in a civilized state: "Although Mr. Rousseau proves that the human race, in the course of many centuries, completely stepped back from its natural completely state, the property ownership skill and through that he knew right and wrong, good and evil, invented many unnecessary needs and through that he learned mutual dependence and subjected itself to many misfortunes; but now this natural well-being is irrevocable, and in the present state of the universe all experiments state that there is no closer and more decent means of achieving prosperity than direct virtue and direct mind; but as both of these qualities, exact cognition depends on the doctrine, then for this it should begin from it" [7, p. 6–19].

We find in the "Philosophical Propositions" by Ya. Kozelskyi the definition of the natural law: "The natural law is the natural motivation of the man to what he wants to do or does not want, for example, the natural laws are the following: to eat, drink, walk, play fun, look for an affectionate person, turn away on a contrary person, protect his stomach, defend himself against the harm done by the force, and if there is no force, then run away and etc." [7, p. 28]. In the next paragraph, the author emphasizes that

"natural laws call those laws that are similar to human nature, and do not exceed it".

In the empire, where the autocratic ruler considered his unlimited power sanctified by God himself, the idea of natural law and social agreement was not popular. In such circumstances, the very mention of the names and works of European philosophers, which considered the natural human right and the contractual origin of state power, at least in the form of criticism of such views may be considered the merit of the enlighteners. The enlighteners appealed to the natural law and the idea of a social agreement mainly in the comprehension of the theory of social progress. As Ya. Kozelskyi states, he understood that the metaphysical notions of the unchanging essence of human nature – on the one hand, and the assertion that the unification of people into the society and the establishment of a certain form of government are connected with the consent of people who voluntarily give part of their natural rights established to their authorities – on the other hand, in those days in Russia could not be perceived neither by the ruler nor by the society. But he considered to familiarize certain circles with the doctrine of natural law and the social agreement of European thinkers as his important duty.

The creative heritage of Semen Desnytskyi (unknown year of birth – 1789), Ukrainian from Nizhyn, who educated in Europe, listened to Adam Smith's lectures, defended his doctoral dissertation "De testamentis ordinariis" in Glasgow, later the professor at the Moscow University, confirms this view.

In his works, he actively promotes the idea of natural law and social agreement, arguing that the power of the monarch and of any ruler should be subject to contractual principles – it can not be absolute and uncontrollable, since the social agreement, which resulted in it, implies the satisfaction of the interests of all members of the society. On the basis of the idea of natural law and social agreement, the educators put forward the requirements of the social welfare, the care of the authorities on the good of the subordinates, the development of legal sciences and fair legislation. S. Desnytskyi, in particular, deeply worked out the problem

of the origin of power and argued that it existed forever, calling three reasons for the origin of power: the physical inequality of people at the earliest stages; spiritual inequality subsequently; property inequality, or uneven distribution of material goods at later stages of social development [1, p. 26–34].

The thinker believes that in the process of historical development, people gave way to some of their natural rights in order to unite efforts to eliminate the common threat, "but also with this close connection, the primitive peoples stubbornly retained their personal rights and natural liberty and not before, as after a longevity, they gave them to the government" [2, p. 6]. On the basis of the natural law of preservation of life, humanity, according to Desnytskyi, evolved from the subordination to a strong and enduring person through the awareness of the superiority of the intelligent and cunning one, to the dependence on the person who has more ownership of the means of survival. In connection with this dependence, the thinker identified four stages of the historical development of the mankind, where each one acts more complicated than the previous one. The first stage when people engaged in hunting and gathering ready-made gifts of nature – it is the most primitive, the lowest one; the second is the stage of "shepherding", the taming of wild animals; the third is the stage of agriculture, or "farming"; and the fourth one of the "commercial" state. These stages, the enlightener convinces, "akin to all the original peoples, and on other fourfold states of the peoples, we must derive their history, government, laws and customs and measure their various prosperity in the sciences and the arts" [2, p. 6].

The ideology of natural equality of people attracted also Petro Lody (1764–1829) – educator, professor of Studium Ruthenum of Lviv University, who was involved in the creation of Ukrainian philosophical terminology through teaching philosophy at this university. He was humiliated and harassed in every way, since the textbook "Logical Instructions" created by him was based on the idea of natural human rights, the idea of the contractual

origin of state power, and so on. The adherents of the purity of Orthodoxy saw in his textbook and lectures the danger to the foundations of autocracy after moving to St. Petersburg, which led to the recognition of the book politically harmful, it was withdrawn from sale and banned from using it. The author was dismissed from the post of Head of the Department of Theoretical and Practical Philosophy and transferred to the post of Head of the Department of Natural Law. Here he briefly (from 1821 to 1824) lectured on the course of criminal and natural law, since denunciations and persecutions accompanied the professor until the end of his life. The researchers of his work believe that "a number of provisions of the textbook really indirectly undermined the foundations of the Russian monarchy, because of these provisions it followed that the monarchical despotism and serfdom limited human freedom, contradicted to natural human rights and did not meet the requirements of mind" [4, p. 37].

Acquainting the audience with the principles of natural law, the professor allowed himself such "seditious" from the so-called orthodox statements: "A king perceived as a man, is equal to all his subjects" [4, p. 38].

The following words could not be met with approval: "Soft laws of the government contribute to the development of various abilities of people; the feeling of freedom stimulates the minds to master perfectly the things to which a strong desire of his spirit aspires a person. This was the cause of great enthusiasm in the republics. Therefore, free Greece and Rome were considered to be a fruitful mother of great philosophers, speakers, poets, and artists. Now such a living example, where, thanks to freedom, there are great speakers and profound philosophers, is England". The work of P. Lody, "The theory of common rights, containing the philosophical doctrine of the natural universal state law" (St. Petersburg, 1828) [4, p. 37], published a year before his death, consists of two parts: "On the principles of state law" and "Natural universal law". The professor outlined his understanding of the principles of law, the theory of the origin of the state, the basic laws of social cohabitation, the functions of the state, legislative, executive

and judicial power, the form of government, and most importantly, the rights and duties of the supreme authority and the citizens of the state were considered. The sources for his work as a course of lectures P. Lodyi called the works of Grotius, Wolf, Puffendorf, Bemer, Keler, Shrot and many other lawyers from different European countries. He also agreed with the books of Viennese professors Carl Martini "The provisions of state law" (1768) and Franz von Ceyler "The New Austrian Code of Law", which he translated into Russian and published in 1809.

From the text of the book by P. Lodyi it follows that he considered the concept of natural law as an immutable basis of the law, independent of the specific social conditions and forms of government, it is the right arising from the command of reason and the reasonable human nature. On the basis of the idea of natural law approved by European thinkers, he promotes the equality of all people, since all people at birth are equal in the right to life, freedom and property. In order to avoid accusations of free-thinking, the professor resorts to the teaching of the doctrine of natural law in the course of general law, deciding to popularize thoughts "unwilling" for the monarchist regime. For example, thinking about freedom of speech, P. Lodyi gives different views on this issue, from those which he sympathizes with: "Some argue that the unrestricted freedom of book printing is very useful to the state, because freedom to think is inherent in man from birth, and everyone has the right to report

to another person such truth in which he is convinced himself. The experience shows that enlightenment is at the highest level in those states that have unrestricted freedom to speak and write. Others, by contrast, believe that the unrestricted freedom of book-printing destroys the most important truths of morality and religion" [4, p. 68–69].

The professor does not make any comments when presenting such thoughts, leaving his thoughts at his discretion of the reader or the listener. Such a form of popularization, even propaganda of certain ideas, is practised to this day, it is quite advantageous at the time of the prohibition, as it was in the second half of the XVIII century in Russia regarding the idea of natural law. It is known that P. Lodyi also wrote the work "Natural Right of Peoples", which remained unpublished, as well as the work "Complete Course of Philosophy".

Consequently, the leaders of the Enlightenment in Ukraine actively conceived the idea of natural law in the context of social progress, they popularized the works of European theorists of natural law and the theory of social agreement, despite the opposition of power authority and certain circles of the society. On the basis of the idea of natural law, they considered the state as a community of free people voluntarily united for the purpose of general well-being and security. The idea of natural law as a motive of social progress was also actively considered in Ukraine in the XIX century, which needs a detailed analysis.

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