

ONTOLOGICAL PROPIS¹, RATIONALITY AND LEGITIMACY

Andrey Pavlenko

The article discusses the conditions upon which certain rights are outlined in legislation. The “ontological propis” – the area of all ultimate legal and moral objects is a given space that guides legislation and such are the unconditional values they are not freely chosen, they are pre-chosen.

Key words: *ontological propis, rationality, legitimacy*

What is “the ontological Propis”?

To answer the formulated question let’s turn to the area of the law and morality, to those their parts that deal with the “universal” statements – laws and norms. Opening the “Law Dictionary”, we may find in it such definition of law”:

The law is: in the broadest sense, all legislative and normative acts in general, all the mandatory rules established by the state; in itself a legal sense, the law is a legal act, accepted by the highest representative authority of the government, or by the direct expression of the will of the people (for example, by way of referendum) and regulating the most important public relations.²

Further is noted that:

- 1) All the other acts must be subordinate.
- 2) Any legislative act, which has contradiction with the law, should be recognized as invalid.

Based on this definition of “law” we can, for clarity, consider all the legal field of one state. What do we find first of all?

In this legal field, there should be no contradictions within “the law”: for example, the constitutional norm and all the “ordinary” laws, legal acts. This means there is such domain of reality, which we call “law” and

that is consistent. In other words, the consistency of the law – *is the first formal requirement of it*. The reason is simple: *the controversial law cannot regulate effectively the human relations in society*. Therefore, we can assume the existence of some domain of reality, which includes *all such possible consistent legal objects as “laws”*. This domain, in some sense, has given for us. Then it turns out that when we are formulating the rule of law (ethics), we, in fact, the only *draw out* (hand write) *the outline* of the objects *that had existed in this potential area yet*. *This objects we call “laws.”* Let’s call such area of consistent legal and moral objects “handwriting sample” or, using the Russian word, “Propis” (ontological Propis), because doing rule-making, we only “draw out” the outlines.

Obviously, that “inside” the Propis (handwriting sample) will appear all consistent objects (any law, not just legal). “Outside” the Propis will appear any contradictory objects – oxymorons (the freedom which is not free, wooden iron, circle round square, etc.)

Let’s suggest that we have agreed with this interpretation of the “law’s” nature. But then may arise a natural question with any reasonable researcher: why do we find *different laws in respect of the same subject* of the law, if all possible laws are handwritten?

In the base of laws lie “*unconditional*” values. How much are they “unconditional”?

Let’s consider an example. In Clause 2 of the Constitution of the Russian Federation states:

“The human person, his rights and freedoms are the supreme value.”

A similar statement (in relation to Clause 2 of the Russian Constitution) is made in the Constitution of the European Union:

In “Preamble” we are finding such sentences:

“Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”³.

As we can see, such claim, made explicitly, as we find it in the Constitution of Russian Federation that “the human person is the supreme value,” in the Constitution of the European Union we do not find. However, we can easily show that all the “material body” of the European Constitution is an *implicit* statement of thesis that “the human person is the supreme value“.

Now come back to the Clause 20 of the Russian Constitution, which states the following:

Clause 20.

1. *Everyone has the right to life.*
2. *Capital punishment until its complete elimination may be established by federal law as an exceptional punishment for especially grave crimes against life, with the giving to the accused the right to have in his case tried by a jury.*⁴

Above we have agreed to consider that a condition for the feasibility of such object as a “law” is its “consistency.” In the logic this requirement is expressed as follows:

$\neg (A \ \& \ \neg A)$

The statement reads as follows: “not true (there cannot be such) that the assertion of something (A) and its negation ($\neg A$) were true at the same time, in the same place and at the same sense”. One could say that from the feasibility of this requirement has begun the European civilization – in its scientific and philosophical terms. Now try to apply this logical requirement to discussed norms from the Constitution. What do we get as a result? We have a statement A – “The human person, his rights and freedoms *are* the supreme value.”

Its negation would be: $\neg A$ – “The human person, his rights and freedoms *are not* the supreme value.”

Ostensibly, we don’t find such statement in the Constitution, but there is other “*The human person, in exceptional cases, can be deprived of his life.*”

From logical point of view we can reveal the “school” contradiction from logical square:

Statement (A) – *Any* Human persons (their rights and freedoms) *are the* supreme value.

Statement (O) – *Some* Human persons (their rights and freedoms) *are not the* supreme value⁵.

But, in this discussion can arise the question: how can a “supreme value” be “deprived of life”? The answer is simple: “*The human person is not the supreme value.*” Obviously, this sentence contradicts to the Clause 2 of the Constitution Russian Federation.

It must be recognized that the European Constitution in this matter is consistent, because it says that “the rights of the human person

(understood logically in sense of sentence (A) – *A.P.*) *are inviolable and inalienable, including the right on life*“.

It is noteworthy that neither the U.S. Constitution nor the “Bill of Rights” do not say anything about the fact that “the human person is the supreme value”. Certainly, it opens the possibility to introduce or not to introduce – at States discretion – *the death penalty* (forcible taking of human life).

In other words we have an unusual situation: in the United States – the death penalty *is allowed*. In the European Union – the death penalty *is not allowed*.

As a result, we find a contradiction. The question arises: between what and what is a contradiction? We can find the contradiction of two types:

1) between the basic law and “ordinary” laws, for example, between the statement “*the human person is the supreme value* that cannot be forced to take his life (murder)” and the statement “the human person can be forcibly deprived of life; therefore, *the human person is not the supreme value*”. This is a contradiction we had found in the Constitution of Russia.

2) Between “the ordinary” laws of the U.S. and the EU.

So why do we find a different formulation of the laws (different laws) in relation to the same subject? Answer: because that in the various cases we are dealing with *different values*. What is today *the supreme value*? The answer is clear: the human person, (human life). What does it mean? It means, as has already been noted, that all other values in relation to this “supreme value” are “lower” (secondary) or derivatives thereof.

However, this value was “superior” not every time. Let us demonstrate simultaneously with humanism examples of other “supreme values”:

(a) – consistent laws, based on “Humanism” as a value (The Modernity).

(b) – consistent laws, based on “Cosmism” as a value (The Ancient epoch).

(c) – consistent laws, based on the “Theism” as the value (The Middle Ages).

So we fix clearly the position of a system (a): “the human person is the supreme (ontological and legal) value.” Hence there follow the next conclusions:

1) *“All the other values considered in relation to the supreme value are the lowest.”*

Now try to draw other consequences:

2) “Nature” (the world outside of man) is, by definition, “inferior” and is considered by human person as the subject of his possession. The human being “legally” rules over the world. But this state of affairs is not possible in the system (B).

3) A person, using his skills (technology), subdues the natural world. It is prepared in the world (C), but is implemented in the world (A).

What does the technology give (understood in the broadest sense) as a way of man’s relationship to the world, from the legal point of view? Obviously, it promotes elimination of differences. Between what and what?

In essence, technology breaks the natural relationship in the world, and with them the natural (traditional) norms of law and morality. Thus, the technology eliminates the distinctions between “natural and artificial”, “man and woman”, “parents and children”, “competent and dilettante”, etc.

Consider, for clarity, the following chain: the development of “maternity incubators”⁶ will, in fact, lead to the elimination of the distinction between “man and woman” in the biological sense. This process, in turn, provokes the other – elimination of gender-based differences between the “father” and “mother”. In legal practice in some countries (for example, in those U.S. states, where same-sex marriages are allowed) were created new legal terms – “parent 1” and “parent 2”. This, in turn, will lead to rethinking of such notions as “family” or even to elimination of it, as an obsolete social institution.

This is only a very simple outline of the direction in which today is the transformation of social relations, and going after them transformation of law and morality, based on a higher value as “a human person, his rights and freedoms”.

Whether we choose our values and, if we choose, is our choice rational?

Concerning with the discussed subject it may arise the belief that the process of changing “rationality” and “the law” is an objective and purposeful. But this is misleading. What is the cause of error occurring? From my point of view, is that the values are not freely chosen, they – are pre-chosen⁷.

One of the most widespread fallacy about “freedom” is the belief that:
1) A free can be just such an individual who is conscious (rational individual)⁸.

2) “Freedom” for the rational individual is reduced to the “freedom of choice”.

Let’s show the difficulties faced by such a position.

Since we have assumed that the “freedom” is an attribute of the rational man, so his choice, as a rational procedure, has to have a “base”. (If not – if there is no conscious “base” – the choice is irrational.) If so, then we construct a model in which there are two sets of objects (A and B), the first of which – is the possible “results” of choice, while the second series of objects – is the possible “base” of choice:

A) a, b, **c**, d.....

B) α , **β** , γ , δ

Let us assume that a rational individual chooses from all possible outcomes – (c), with exactly how a rational creature, he must make a choice, based for example on the base (**β**). Suppose, further, that he makes such a choice. The question arises: whether is his choice “free”? Externally, for ordinary thinking, it seems that “yes”. But this is fallacy, because as a result of a rational procedure, *it was determined by base (**β**) with necessity*. Strictly logically it can be expressed as:

$(\beta \supset c)$,

Which reads as follows: “out of the base (**β**) with logical necessity, follows the result (c)”.

But such a *necessity* (in inference) contradicts directly to our assumption (2) that:

“Freedom” for the rational individual reduces to the “freedom of choice”.

As the basis of consideration of the relationship between two numbers, is true just another statement:

“Freedom” is reduced to “the necessity to choice”.

But I’m pretty sure that there is an “acute critic” of position, declared by me, who says: Why do you mislead us and deliberately hide the real state of affairs? After all, in reality, there is one more number (D), which allows to select the base (**β**), for example, on the basis of meta-level (**r**)⁹. So, in the case of “acute critic” we have no longer two numbers but three:

A) a, b, c, d.....

B) a, β , g, d.....

D) a, \bar{b} , B, r.....

Yes, I agree with this argument. Let's introduce a number (D). As a result we will receive much more complex construction: choice of the result (s) is defined with necessity by the base (β), and the choice of the base (b) is defined with necessity by the meta-level (r).

As we can see, although our construction has become more complicated:

$(r \supset \beta \supset c)$

However, the essence of it has not changed, under the law of transitivity we still can conclude that the choice of the object (s) is defined with necessity by the meta-level (r), for:

$(r \supset \beta \supset c) \vdash (r \supset c)$

However, the essence of our argument, that the choice “is defined with necessity”, does not change. Moreover, we can help to “the acute critic” and allow for the existence of even more meta-levels – E, F, G and so on. In any case, all relationships – between the base and the result – *will always be necessary*. From my point of view, in this situation there are only two ways to overcome this difficulty. The first way – to go to infinity in the series of bases and meta-levels. This path is a dead end, because does not lead anywhere.

The second way – to stop at a certain step and admit that all the previous steps are selected, and this step – no. This step is pre-chosen. It is pre-chosen by what is most natural for us – *our values*. Consequently, “freedom of choice”, if we understand it as *a rational procedure of choice – is an illusion*¹⁰. So the foundation of all of our choices, we do not choose, we take it unconsciously (instinctively), relying only on our most natural values. What does this result give for the stated topic? It gives very much.

Why is there one “Propis”, but lots of “values”?

It becomes clear that for different legal subjects may be different values: as in the case of “cosmism”, “theism” and “humanism”. Consequently, the “humanism” and standing behind it “antropolatriya” – understood as the system of values – can be, and indeed are a natural value for some subjects of law and morality, and unnatural for others.

*Consequently, statement that the humanistic direction of the evolution of modern society, which is considered as only possible, in my view, does not entirely convinces.

Proponents of values (A) try to present the case in such a way that the set of “values-laws”, which covers section (A), is a “natural and historically the only possible way of humanity’s evolution”. But since, as has been shown, modern technology is directed by a human being to his end, quite justified a different conclusion: the values can be imposed by the representatives of one system to the representatives of the other system. This process may lead to destruction for the last one.

The analysis of the notion “Propis”, its connection with rationality and legitimacy, let us see what often hides behind the veil of everyday notions, covered with scientific terminology only for respectability.

NOTES

¹ Russian word “Propis” means in English “Handwriting sample”. But in the Russian language this notion does not have a “manual” meaning and is therefore a more abstract term.

² *Low Dictionary*, p.100.

³ Full text of the Constitution of the European Union you can find on the link :<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0003:0010:EN:PDF>

⁴ *Russian Constitution*,

⁵ As we know from traditional logic, contradictions, described by the logical square, there may be between two types of judgments: 1) between (A) and (O), 2) between (E) and (I).

⁶ Already the scientific researchers are going in the field of creating an “artificial womb”. Its creation in the final form will be considered as the first step in the implementation of the “human incubator”.

⁷ For the first time this feature I noticed in the “Predvivor” (*Eng. Pre-choice*). Pavlenko, *Being at its threshold*, pp. 46 – 60.

⁸ This is based on the requirement of “legal sanity” of the individual.

⁹ This number is denoted by the letters of the Russian alphabet.

¹⁰ It should be noted that this conclusion in any way does not negate the psychological conviction of any person that he has “just committed an act of free choice”.

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