# HISTORICAL DEVELOPMENT OF THE THEORY OF HUMAN RIGHTS

***Saadat Novruzova***
*(Khazar University, Baku, Azerbaijan)*

## 1. RIGHTS OF INDIVIDUALS IN THE PERIOD OF ANTIC CIVILIZATION

In the ancient world, in the epoch when statehood and politico-legal ideas began to evolve, all myths heavily overwhelmed culture and life of people. The myths were primarily reflected in the concepts of world rule, truth and justice, necessity of compliance with established rules, power as means of their satisfaction, forms of statehood. At that time there was process of formation for political and ethic consciousness that enabled humanity to politically organize the public life.

The ides of justice can be seen in the ancient monuments of jurisprudence such as the Laws of Hammurapi, Laws of Manu, Laws of 12 tables of Hammurapi, who ruled in Babylon as of 1750 to 1850 BC, the introductory part of the Law says: "Marduk sent me to rule the people justly and bring happiness for the country, then I endowed the country with truth and justice and improved the conditions of people."[1] The sovereign godliness in the opinion of Hammurapi, not only rewards submissive and punishes disobedient but also communicates its laws that establish justice in their relations between themselves through the king.

Initially, human consciousness was overcome with the godly origin of law, which was associated with the values bestowed by God. The godly law functioned in Ancient Egypt, Persia, Assyria, and Shumer. In the East the concept of natural law emerged as the law of charitable persons, which is to be followed by ruler and other members of the society.

Antique legal reasoning also oriented towards natural, unchangeable, infinite, genuine truth, with less religious hue. All the ancient Greek thinkers and Roman lawyers recognized its existence. For Ancient Greece it was typical to think of the natural law in terms of justice deriving from the nature.

[1] Human Rights and Law, M.I.Abdullayev. Saint Petersburg, 2004 p.13

Antique classis legal theory and practice was built upon aesthetic beginnings, including the question on the situation of an individual in the state. Politico-legal thinking and practice of police organization of the society weren't yet aware of the rights of personality. The condition of having rights in the antique police was citizenship. The main value of police was recognized to be not an individual freedom of a personality, but collective freedom-freedom of a person as a citizen of police forming the base of reasonable jurisprudence

The primitiveness of state (collective) values inherent to Greek democracy is explained by institute of ostracism often used by Ancient Greeks (banishment of citizen from the country for 10 years, during the time of which he was deprived of neither citizenship nor property). The institute of ostracism had the right of antique statehood to punish innocent persons under assumption that it is allegedly warranted by state interests (for example, if any acquired too big authority thanks to his personal merits). All the citizens in the police were perceived as equal. This form of human society found its adequate reflection in the concept "izonomia" (isonomia), i.e., t equal participation of all the citizens in the exercise of power.

The symptoms of the idea of individual rights (free persons).i.e., principle of citizenship, during V-IV BC in ancient polices (Athens, Rome)- major step on the path to progress and freedom. The free citizens of polices had certain rights and obligations, specifically the right to participate in the management of state affairs in national assemblies (ecclesia), in launching jurisprudence, rights for private property, possibility of signing various transactions, right for freedom of speech and etc. Namely existence of these rights and specifically the right for private property created prerequisites for the formation of civil society and civil laws.

The mechanism of the realization and support of the rights of Athens citizens under primacy of governmental interests based on the principle of division of power into legislative and judicial was sufficiently elaborated. The Athens law covers a whole system of measures ensuring stable development of the society and prevention of antidemocratic overthrows. The outstanding role of the institute of citizenship is related to the fact that for the first time in the human history there was not only advanced but also confirmed on certain rights of citizens as well as their governmental support. Nevertheless, human didn't use freedom in the present sense of the word. Ellin didn't have a notion about them and not even supposed that there may by any rights in respect with state. The citizens of polices identified themselves with state, its goals and pursuits.

The autonomy of a person and integrity of private property were strictly limited even in antique democratic autonomy. Perception of the citizens of antique

polices was built in such manner that in the individual and social jurisprudence their dominated the idea on primate state interests and not their harmony. Nevertheless, in antique polices" ("city towns"),-wries A.B. Ilyin-takes its sources from the legal system of the West, basing on private property and active role of an individuum, the rights and freedoms are supported by all penetrating and devastating state dictate, violence and pilferage"[2]. Political democracy and freedom were inherent of the ancient police.

The antique type of the interrelations between the citizen and state (police as civil society), rights and law was primary in the history of politico-legal thought, characterized by juxtaposition of the written laws (nomos), the law of nature (fusis). According to the opinion of mystics (George, Hippie), it is related to their correspondence (or non correspondence) or generic natural norms, regulating human life or the nature of the human being himself. Other mystics (Likofron) call the attention on the individual rights and interests for which support laws are instituted and therefore the laws, not anticipating any rights are not obligatory for those whose rights and interests are violated by them.

The struggle of democratic and antidemocratic tendencies in antique societies defined the difference theoretic approaches to the rights of a person. The ideas of political democracy and right of an individual were developed by such scientists as Aristotle, Epicures, and Cicerone, including Roman lawyers. The guessed that the right is not godly and hence the result of agreement between human beings; neither customs, nor codes of laws create sufficient base for just social order. The notion of godly order was replaced by abstract concept of charity or justice.

Natural-legal principles basing on the interrelationships of the individual and government were the focal point of both senior and junior mystics (Protagor, George, Hippie, Antifont, Lycofron)

The ancient Greek philosophers-mystics advanced the ides of equality of all the people by birth having equal, natural rights conditioned by nature, that may guaranteed by law. According to them, a citizen of any city has the same rights as the citizen of any other city, and a member of one class is equal to the other member of the class, for by nature a man is equal to another man: all have one and the same needs. The basic principle of views of mystics was formulated by Protagor, who said among others: "The dimension of all the things-human beings existing that they do exist and not existing that they don't exist" (Platon, Teetet, 152a). According to Protagor, it was human and not traditionally godly

[2] Theory of State and Law. Saint Petersburg, 1996 p. 25

beginning that came out as the dimension and measure of all the creation. The axis of all the universe is by Protagon- a human being.

The term of "human being" was not thoroughly defined by this thinker. Rather, Protagor has in view an individual human, irrespective of his status in a concrete society; as such he is equal to any other man under all endlessly multifarious individual differences. This concept encompassed general information on the epoch of Protagor, which was characterized as the epoch when slave-owning was at its height liberated from tribal authorities and religious-mystic world outlooks. As a matter of fact, Protagor recognized the equality of all the human beings by their equal involvement in wisdom and charity. In his view, the state, laws, political virtue is the product of human consciousness, high achievement of human being and it is the state and laws which are called upon to provide justice in the society.

The state with the equality of all the people by nature is also proponed by Antifont who by reference to all the persons-ellins and barbars, noble and ordinary-says that they have equal natural needs. In his view, inequality derives from human laws and not from nature.[3]

The assumptions that a man is the dimension of all the things in the words characterizes the aspect of philosophical problems of V-IV centuries BC, when human being was at the center of the focus (and not the nature) and not human being in general sense, but a personality, since his being a measure of all the things presupposes his individuality. It was mystics who advanced the idea of equality of all the people in political and legal terms. Though egalitarian view of the majority of mystics covered only the citizens of police. Besides, mystics didn't elaborate the idea of equality in the legal aspect.

The antique classic concept of lawfulness basing on the idea of police and governed by sensible law also included the concept of contractual relations between the citizen and police (Likofron, Socrates). The law as interpreted by Likofron is a simple contract and "simple guarantee of personal rights". In his opinion, the individual rights of a person were the natural rights that were covered by contract on the establishment of state communality. Refuting inequality of human beings by nature, Likofron considered nobleness of background as nonsensical. Probably, he assumed that God created everybody equally and the nature didn't make anyone into a slave. He also refuted the privilege by birth: "The privileges of a noble by birth are fictitious and all the privileges are based on agreements:"[4] This notion according to Aristotle in

[3] Anthology of world philosophy. M. 1969. T.1. P.1. P.321
[4] Anthology of world philosophy. M. 1969. T.1. P.1. P.327

essence transforms the law into an agreement, which in its turn ensures mutual justice for people. In his opinon, Likofron characterized state communication as a result of the contract between the people on mutual alliance. At the core of this concept lies imagination on natural equality of people (and inequality of their "personal rights"), as ignoble and noble don't differ in any aspects; and if there are no differences between the ignoble and noble it is necessary to orient towards the nature of a individual.[5]

Apart from the philosophical basis of the sophistic, at the core of which lies the aspiration to find universal natural norms, regulating human life. The other philosophical tendency setting the nature of human being as priority on top of the order the nature of an individual. The basis of this teaching is in the idea that state mainly exists for the support and satisfaction of the needs of an individual.

In Socrates concept a citizen is subordinated to police. Socrates "develops a kind of paternalistic version of contractual relations between a citizen and state, according to which Homeland and Laws are higher and more valuable than father and mother, they are the supreme parents, instructors and authorities."[6] And unwritten and written by human beings godly laws have one and the same justice, which is not only a dimension of law, but in essence is its self. Socrates related the supremacy of rational and just laws with the police freedom-" beautiful and excellent merit for both human being and a state" (Ksenofot. Memories on Socrates. IV, V, 2).

It was Socrates who attempted for the first time to define the essence of human being. He was tormented by questions of "the nature and ultimate reality of a human being, his essence", and he asserts that human essence is his soul. "Soul" is perceived by Socrates as our intellect, thinking activity and morally guided conduct. Socrates supported the principle of individual freedom at court by denying his own guilt. AS .F. Gegel says, Socrates demonstrated heroism, who consciously defined a new principle of soul-absolute right of an individual conscious for inner belief and decision. Thanks to such self-consciousness (consciousness of one's self as a free and independent being) individual stands as a personality and subject of freedom and rights before the other individuals and state. Gegel desribing Socrates writes as follows: "Great personality wants to be guilty and undertakes a great collision. So Christ sacrificed himself with his individuality and what he had created remained for eternity."[7] Socrates

[5] Ancient Greece police: ideas, reality (V-IV cc BC) PhD Paper Saint Petersburg, 1998 p.12
[6] Human Rights and Law, M.I.Abdullayev. Saint Petersburg, 2004 p.19
[7] Hegel G.V. Essays T. 10, M., 1932 p. 86

created moral and intellectual tradition feeding moral culture of Europe until present times.

Many provisions on equality, justice, rights and law as expounded by Socrates were further developed by Pluto who asserted that "justice lies in everybody should have his own and performed his own: (State, 433. AD). In Pluto's views justice presupposes "adequate measure" certain equality. He writes that "if people failed to follow the adequate measure, then the equal would become unequal and" (Laws, 757a). In ideal just country political rights belong to only citizens. Their major work-maintain and comply with the state order. All the citizens have equal rights, though the principle of equality Pluto explains from the point of view of Aristocrat.

Considering the police organization, Pluto says about really just laws. He wrote "I see death in the end of the state not governed by law and placed under anybody's authority. By contrast, where laws have supremacy over rules and they are their slaves, I see safety of that state and endowment of all the good things, which may be endowed on states by gods" (Lawsa 715 d). According to Pluto, the Law must place obligations rather than grant rights and all these obligations are centered around the maintaining unity. Law can't be adopted for all the cases of life. Philosophers must rule not by laws but intellect. Philosophers don't need laws or private property. "What is the use of private property, when it is in their souls"-asserts Pluto. Kassirer does justly points out the interconnection between law and political freedom in his concept. The scientist wrote that "laws are the only true expressions of freedom. Such is the thoughts of Pluto about state and summary of his political wisdom."[8] Developing Socrates thought that only knower must rule, Pluto advances his project of ideal statehood as ruled by rulers-philosophers with no slaves in this ideal state.

In his ethical insights Aristotle (384-322 BC) the ideas of freedom, equality and justice are further developed. At the core of Aristotle's teaching stands the image of political nature of a man based on political justice and virtuous acts In his views, political justice is possible only between free and equal persons. He expounds the idea that it needs not slip off our attention that the deep rooted notion lies both in justice in general and political justice (rights). The latter takes place between people, belonging to one community and having the goal of self-satisfaction and by that between the people just and equal, equal in way of thinking or proportionality and equality (rights) but having certain justice called so with previous form. The rights belong to those in respect with who there

[8] Cassirer Ernst. Logos, Dike, Kosmos in der Enrwicklung. Goteborg, 1941. S. 22

exists a law defining their relations; law presupposes crime, justice-distribution of truth and untruth" (Aristotle. Ethics, V.10).

Unlike Pluto Aristotle comes forth as the supporter of an individual's rights, private property and family. In Aristotle's opinion, communality of property I against the laws of nature, private property corresponds to nature. He wrote that "every man is in itself more than a friend and must love himself in the first place". In reasonable terms it is normal in Stagirit's views. Private property is the result of self-love. It is a virtuous beginning, stimulus to work, production and enrichment. In reasonable term as Stagirit supposes it is normal. Police benefits in the same thin in the same degree as a citizen. It is during that state of things corresponding to general welfare when citizens are rich. Common property by contrast against natural law. Common interest-nobody's interest. Commonality of property doesn't stimulate for production, it is hard to control, it leads to laziness, aspiration to benefit from the labor of others. Therefore, legislative authority ought to recognize private property as reasonable and virtuous beginning. Aristotle's ideal is the private property the fruits of which used for common interest. This ideal was adopted by Christianity, Islam and proved its practical significance.

In Aristotle's opinion, state (political order) and right are the means of communication between people. Judgments upon freedom and equality have no bearing on slaves. For Aristotle slave-owning seemed something natural and inevitable.

Police shall be governed by right and not human beings. Aristotle expounds the idea of natural right recognized elsewhere and not needing legislative formulation and conventional rights, i.e. in the norms established by people in the forms of laws and agreements. He delineates the difference between the written and unwritten laws (or ordinary). Both rights (law) and various forms of state order shall correspond to the principle of justice and the idea of right.

For proper organization of political order of society (where citizens can feel safe and be happy). Aristotle suggests to introduce the governing law. In the given case he means the law established by will basing on godly and reasonable beginnings. Rational laws are such laws which correspond to political justice and rights He wrote that "every law in its basis presupposes some kind of right" (Aristotle. Politics. 1,2,18,1255 a,19). Aristotle doesn't identify the right as an ideal concept, reflection of intellect and justice with conventional, handmade rights, i.e. law. He says that every law anticipates some kind of rights and that ruling bypassing the rights is not law's business In his view the law may be just and unjust, and the imagination on the rights provide us with the criteria to assess it. Aristotle supposes that right is equal to justice. Lawful and just ought

to fully overlap. The goal of right and state (police)-communal welfare that is associated with justice. The right as an important element of police regulates the relations between free and equal people and the relations of ruling and subordination. The relationships between slave-owners and slaves is not the subject of rights.

A state is "the creation of nature" the product of natural development, at the base of which lies the needs of people. The famous definition of human being as "political or social animal" belongs to Aristotle, for police is the society itself. The essence of this definition lies in the fact that human being can life alone, he needs to maintain contacts with the others resembling him in unity with them. Police is the communication between free and equal people, having intellect and having the ability for self-determination, managing their affairs. The power in police includes free and equal citizens.

Aristotle's conclusions on politics, rights and legislation concern only free citizesn, where human being is recognized as a part of the state. Aristotle notes that "the nature of a state stands before the nature of a family and individual" that "state by its nature, precedes individual" (there 1,1,12,1253 a,16). This thesis on precedence of state before an individual acknowledged at later political teachings (Russo, Gegel) have the sense in Aristotles' teaching that the nature of human being and human communication reaches its highest goal in a state.

Further development of the concept of individual freedom and mutual safety of people in police organization is related to the epoch of ellinism with the name of Epicur (341-270 BC). Epicurs insights into socio-political order bear individual character. In his views, individual-independent participant of political and legal relations; freedom and independence-result of conscious acts of a man; human freedom lies in his responsibility for conscious choice of his lifestyle.

In the matters related to the interrelation of a human being and a state Epicur adopts such view that people define the conditions of their communications and lifestyles consciously basing on the results of their consciousness. People consciously sign contract (agreements) for ensuring mutual safety and justice. "Justice is itself is not something, though in communications between people elsewhere there is some agreement on not to cause harm or incur any harm. In general terms, justice is the same for all and in the fact that it does really exist there is something beneficial in the relations between the people".[9]

[9] Materialists of Ancient Greece. M., 1955 p. 217

Epicur thinks that state is called upon to provide mutual safety and common justice. Laws are seen as public guarantee of freedoms, safety and autonomy of an individual.

According to the Epicur's concept justice in light of its correlation with laws is a natural right with variable (depending on place, time and circumstances) content that is how the overall benefit provided by mutual communication is. In the correlation between natural rights and law the variable practical "needs in the mutual communication of human beings" are the driving forces of natural rights and law as well as the sources of "natural imagination on justice". As a result of under these changing with needs of communication of the imagination on just and unjust came ot be recognized jurisprudence. "Epicurian contractual explanation of a state and right, presupposes equality, freedom and independence of the members of contractual communication and in essence is the historically first philosophical-legal concept of liberalism and liberal individualism. The important line of connection extends from the contractual-legal concept of Epicur to the ideas of social contract of the New Era"[10]

By downfall of police and national formations under universality of the whole social life patriotic feelings of nation in various countries became dull, and constant variability of life, unstable society as a whole, weakened the interest for socio-political activity and brought about the definition of a individual. Then question on the liberation of a man from state was a dominating issue. Philosophy concentrates the attention on the problem of an individual as a source of the happiness of an individual, nurtures indifference attitude towards the surrounding reality, prompting to seek happiness out of the contact with the society, in solitude, in his inner world. Crisis and downfall of ancient Greek police results in the reorientation of politico-legal teachings, emerged at the epoch of ellinism: valuable was not police, but a human being as a rational creature, regardless of his/her position in society, the primary virtues of whom is recognized to be freedom. Where freedom was perceived as a collective freedom of the citizens of police ("freedom for"), now freedom was viewed as independence-neither political, but still moral and spiritual (freedom from). By separating apart human being and citizen-wrote J. Reale and D. Antisery-there separately emerged ethics and politics. Old classic ethics, including Aristotle, took the path of identifying human being and a citizen, and ethics was subordinated to politics. In the first time in the history of ellinist ethics is structured as an independent discipline considering a human being as such in his singularity and as autonomous…human being became free by attaining his

[10] Human Rights and Law. M.I. Abdullayev p. 24

self individuality."[11] This had great significance for the creation of theory of human rights in the New Era in 17-18th centuries.

Ancient Greek democracy died, ravaged by the struggle between stronger Athens police and its weaker allies, between polices leaded by Sparta and Athens union, fight between property owners and needy within the democracy itself. But the rights of a citizen, creaed in Athens, especially in the political sphere, mechanism of direct legislation, composition of their guarantees before abuse of freedom by a person entered the intellectual domain during the following epochs.

The theoretical bases of natural-legal ideas on the nature of a human being was substantiated by ancient Greek and Roman stoicists in their teachings on state and law (Zenon, Seneka, emperors Mark Eurelius). Considering the interrelation of an individual and state within the frame of a unified creation of universe, the stoicists assumed that human nature is part of overall nature and universe as a whole. Human being must live in harmony with nature, i.e., live honestly and virtuously in accordance with intellect, natural (or common) law of universe. It also concerns states, and the laws adopted by them. "Therefore (the ultimate) goal-as taught by Khrisip is living in harmony with nature and general nature, avoid doing anything prohibited by law, and namely with right reasoning penetrating everything; it is inherent to Zeus who was the creator and ruler of universe".[12]

In his teaching on statehood and rights stoicists bases cosmic and political imaginations that all the human beings (be their nature and the laws of creation of universe as a whole) are the citizens of a single world state and that a human being is a citizen of universe. According to Seneca, state and laws are subordinated to natural rights. We have to picture two states in our imaginations: first, which includes gods and people; in that our sights is not limited to this or that nook of the world, we measure the boundaries of our state by the movement of the Sun; the other one is what is prescribed to us by accident. This second may be Athens or Carthagen or may be connected with any other city; it doesn't concern all humans, but a certain group of them. There are people who serve both big and small state at a time; and those who serve only big cities and those serving only small ones".[13] In the natural-legal concepts Seneca insists on the idea of spiritual freedom and equality of all the people including slaves.

[11] Reale J., Antiseri D. Western philosophy from the source to our days. T. 1 Antiques Saint Petersburg, 1997 p.172
[12] Anthology of world philosophy. T. 1. P.1 p. 490
[13] Ibid. p. 507

The same view is maintained by a stoicist Mark Eurelius in his judgments on the interrelationships between a personality and state, the role of laws in the social life. He spoke about "the state with the equal rights for all, managed in equality and equality of rights of all and kingdom granting freedom to its subordinates above all".[14]

Natural-legal insight of stoicists basing on cosmo-political imagination on the creation of the world had significant impact on the further development of natural-legal imaginations and first of all Polibiy,Cyceron, Roman lawyers, first Christian thinkers -apologetics (liter-"supporters" from the Greek word "apologiya" –"support")

The ancient Romans viewed natural rights differently. In classic periods of Roman rights Cyceron 9106-43 BC), which was under strong influence of stoicist philosophy considered that actual right is genuine intellect in harmony with nature. It is universal in application, invariable and eternal. There exists one eternal and invariable law true for all the countries and all the times. The basis of the morality Cyceron sought in "general consent of all the people" (Consensus gentium) and "fundamental notions" (notions inatae). It is estimated that during that period the concepts of natural rights (jus naturale) neared the concept of the rights of nations (jus gentium). As Emer de Vattel wrote (in reference to Cyceron) "Romans often confused the rights of nations with the rights of nature calling the rights of nations (jus gentium) natural rights, since it is applied by all the civilized nations, unified in states".[15]

The meaning of justice Cyceron sees in that is" present each its due and maintains equality between them" (Cyceron. About a state. II, VII, 10). Here the matter is the legal equality and not equation of property status of people. Supporting the institute of property, in refernce to soticist Panetiy Cyceron asserts that the reason for the formatin of state is security of property. In breach of property rights Cyceron saw violation of justice and right. Justice according to Cyceron requires not causing any harm to others and not transgressing others roperty. He wrote "the primary requirement for justice is that nobody should harmed others unless prompted to it by injustice so that all avail of common property as common property as common and private property as own property (Cyceron, about obligations. I, 20). AS "common order" state is called upon to maintain property of all and establish rule of law. Laws have supremacy both in the state affairs and in the relations of subordinates (Cyceron. About the laws. III 17).

[14] Ibid.
[15] Wattel E. Rights of people, or principles of natural law, implemented to the behavior and issues of nations and souverenities 1960. P.11

Roman law as an independent secular legal science emerged at the beginning of III century BC. Roman lawyers quite elaborately worked out many law institutes both theoretical and in its various spheres. Special place in this regard belongs to theoretical and practical elaborations of the problems of legal state of personality in state in Roman law.

Prominent Roman lawyer Ulpian wrote that "all are born independent by natural rights" (Ulpian. D. 1.1.4). Cels and other roman lawyers noted that the rights has inherent qualities such as equality and justice, that is just equality is what characterizes rights. The idea of such perception of right is seen to some extent in the definition of Ulpian about justice and the requirements coming forth from the requirements of rights. "Justice is invariable and constant will of presenting each his due rights. Prescription of rights in essence is as follows: To live honestly not causing harm to others, giving everyone his due. Justice is consciousness of the god's and human being's affairs, science on justice and injustice (Ulpian. D 1.1.10). Scientist notes that "this Ulpianish definition deriving referring to preceding similar (Ancient Greek and Roman) philosophic-legal ideas and provisions, in essence, talks about basic principle of rights (not only natural but also the right in general sense of the word)-equality which anticipates and expresses equal justice and fair equality".[16] In their practical activity the lawyers aspired to follow this principle, i.e., what contradicted the principle of rights not to recognize as having legal force. The relationships between a citizen and state in Roman republic were built upon this judicial reasoning.

Roman jurisprudence gave us the institute of rights that haven't lost their theoretical and practical significance until our times, for example, the institutes of subjective right, legal person as well as many other public and private rights.

But "the break-up of aristocratic republic and assertion of empire underlined the period of independent civil development in Rome itself…..iron rule (ordo), created by new regime oppressed the civil population of Rome and the independent, but the province population having unequal rights in the same manner not mentioning the lower classes… political oppression was further complemented by socio-economic crisis called forth by the same grandiose process of consolidation of antique world"; Christianity as religious protest movement the main feature of which was belief in God-human who was called upon to share the sufferings of the nations, emerged namely under these conditions, in the context of spiritual depression. "In it were joined in a single

[16] Human Rights and Law. M.I.Abdullayev. Saint Petersburg, 2004, p.28

form Eastern cults, movements of antique idealistic philosophy (kinism, stoicism, gnostism), Messianism of Ancient Judea".[17]

## 2. RIGHTS OF INDIVIDUALS IN THE RELIGIOUS TRADITIONS

### a) Personality in Christian tradition of world outlook

Christian tradition of perceiving every personality as an absolute value made major contribution to the development of the imaginations on human rights. First christens preached the idea of equality and freedom of people "before God" irrespective of their ethic and state identity, social and property statuses. Apostle Paul proclaimed in the letter to Galatians: "There are neither Judea nor pagans; neither slave nor independent; and neither male nor female; for all of us are equal in Jesus Christ" (Gal 3:28). But it in no way meant proclamation of social and legal equality (Col. 3:22 and 4:1).

There appeared the notion of personality for the first time in the context of Christian world outlook, which can't in its entirety belong to state, as it was created "in the image and semblance of God" and Universal Godly Consciousness- Logos is more than anything reflected in the personal intellect and willpower of human being. Spiritual life of a person as such was separated from political life, and spiritual experience from activity for the sake of state. Besides, in the religious experience God might be opened as supreme freedom and creativeness inherent to human being" Therefore, namely it was in the spiritual domain where human considered himself free from the state before God.

In the Christian teaching there were the reflections of human values with oppression of which people were faced with almost every day, norms of morality and justice; " and thus in all the things as you would have others treat you, treat others in the same way"-says in the New-Testament (Matthew 7:12). A part of famous Moses' commandments passed from Old-Testament to New-Testament (Second 5: 7-21), including: don't steal, bring false testimonies, commit adultery and etc., confirmed such natural rights as the rights for living, private property and family.

Christianity advanced the idea of dualism of human nature on the one hand, human-God's creature, on the other-social creature, thus segregating the spiritual power from secular. This idea- partition of spiritual life from secular,

[17] Ibid

clerical power from secular power was primary in Christianity, meaning avoidance of human being from being absorbed by state as it was characteristic of Greek-Roman tradition, and acquisitions by it the first integral right- the right for perfection and eternal life. Where Old-Testament urged to certain acts or prevented them, New-Testament said "be". "be as perfect as Your Heavenly Father". All the evangelic commandments talk about internal organization of heart, commandment of love which for the first time in the history of humanity becomes superior over anything. Notwithstanding this, creation of out-of-state unity of people-community of believers- posed the problem of political obligations: should a man obey the instructions of power if they are unfair? Though not infinitely, majority of Christians were inclined to submissiveness, as Christians were subjected to cruel persecutions. Thus, division of power presupposed possibility of resistance. Having in view that the religious dogma hadn't been elaborated by then, but the picture of first communities as may be reasonably judged by Apocalypses, characterizes best the democratic-revolutionary, rebellious spirit of divine John's revelation (Revelations 18:6-7), the members of first Christian communities might even justify tyrannical killings. Major orientation to tolerance would appear only in apostolic commandments when there would be established the rules of interrelations with power (Romans 13: 1-5).[18] In accordance with the institutionalization of the Christian religion the church began to adapt to state, governed by the principle "there is no power without God"

Emerged as persecuted no orthodox religion, Christianity (in all circumstance in the Western Europe) gradually lost its democratic features. Christian church drew near the state and began to persecute the members of other religions and dissenters 9heretics) in their context. For many centuries Christian doctrine dominated in the European scientific and socio-political thinking. During the Medieval period many discoveries of Greek and Roman scientists, and brilliant works in the fields of law and just state order were lost for long time.

As a whole, Christianity promoted humanization of political thinking absorbing it with the ideas of moral responsibility. Greek-Roman understanding of equalizing and distributing justice was enriched with the Christian appeal to mercy. Proclamations of equality of all the people regardless of their ethnic identity and social status, respect to physical labor are justly related to Christianity. But at the same time there was certain negligence of worldly affairs and advance of the religious ideal of spiritual rescue to the foreground typical for the new religion. "the major contribution of Christianity to our civilization-as F. Rode wrote-is personality concept." Only religion with its idea God, the idea of exalted and deeply personal God, who takes all the cares of

[18] Kurbatov G.L., Frolov E.D., Froyanov I.Y. Christianity: Antics, Bezants, Ancient Russia. p. 101

each man, knows each by their names might produce the personality concept. Fundamental assertion of Biblical anthropology consists of the following: a man was created in the image of God. Each human being is the apparent image of unseen God. Every person is illuminated with Godly Oriole. Therefore, each man is holy, is the bearer of absolute values, power and must never turn into a weapon in the hands of any person. Every person is unique by nature and is bestowed upon absolute and integral merits. Each person must fulfill his/her mission, say his word, leave his track behind during his short stay on the earth. Respect and recognize him the rights to express his thoughts, accept his words, however modest it may be-it means to respect the image of God, the bearer of which is human being. From such perception of human being, this concept of personality derives the present idea on human rights. It is true that it only gradually established itself in the minds of human beings, though this meaning takes its source from the Christian idea of a human being as a unique personality".[19]

The tragedy of Christian teaching is that its ideas even recognized as state ideology weren't introduced in the practical management of society and state affairs. As A. Lerua-Bolye wrote" Christian idea has never been truly sovereign and ruler of the world. The world as we know to be Christian was ruled by other forces whether by Roman dominion or conquests and anarchy of barbars, monarchies and bureaucratic centralization. Never has the Christian spirit been free and the ruler of the world. If all the evangelic grains could grow in entirely the Gospel and Christianity in the forms unlike the present" the ideas of freedom, equality and brotherhood became socio-political reality only in XVII-XVII centuries in the epoch of Enlightenment.[20]

The special place in the history of Christianity in Western Europe belongs to prominent thinker of late medieval period Foma Akvinsky (1226-1274), his teaching on human communal living. Aristotle's philosophy had significant impact on Foma's world outlook, which he tried to combine with religious-ethic concept" According to him the primary cause of all, including human existence and acts-god. At the same time, human being is a sentient being that has free will at that he is the root of all the freedoms, and a man must define the freedom of his acts in the frame of godly order of the world.

Foma Akvinsky notes that existence of statehood, unification of people in political communities is the natural law, will of sentience. Man strives to unification, communication for the provision of best conditions of life, disclosure of his abilities. Families, household for this is not enough. Human

[19] Rode F. Role of Christianity in European civilization . History. Traditions. Culture. M. 1993, p. 92
[20] Lerua-Bolye A. Christianity and Democracy. Transl. from Fr. S. Troickiy. Saint Petersburg 1906, p.18

interest are much broader. Family can't afford to ensure safety, order, full satisfaction of material and moral needs, it needs society. It unifies all the people with different capabilities, occupations, which complement each other. Creation of a state-result of natural inclination to communal life, some kind of instinct, but it is predestined by the will of God and conditioned human sentience. Foma Akvinsky doesn't rule out the social contract as a means to create a state. The goal of a state is certainly overall welfare both material and spiritual. According to Foma Akvinsky, private property is one of the elements of natural right and order, it is identified with the property in the general sense of the word, i.e, acquisition of natural products by man.

**b) Rights of individuals in Islam**

This is a very important and valuable right which Islam has given to man as a human being. The Holy Quran has laid down: "Do not let your hatred of a people incite you to aggression" (5:2)[21]. "And do not let ill-will towards any folk incite you so that you swerve from dealing justly. Be just; that is nearest to heedfulness" (5:8). Stressing this point the Quran again says: "You who believe stand steadfast before God as witness for (truth and) fairplay" (4:135). This makes the point clear that Muslims have to be just not only with ordinary human beings but even with their enemies. In other words, the justice to which Islam invites her followers is not limited only to the citizens of their own country, or the people of their own tribe, nation or race, or the Muslim community as a whole, but it is meant for all the human beings of the world. Muslims therefore, cannot be unjust to anyone. Their permanent habit and character should be such that no man should ever fear injustice at their hands, and they should treat every human being everywhere with justice and fairness.

Islam not only recognizes absolute equality between men irrespective of any distinction of color, race or nationality, but makes it an important and significant principle, a reality. The Almighty God has laid down in the Holy Quran: "O mankind, we have created you from a male and female." In other words all human beings are brothers to one another. They all are the descendants from one father and one mother. "And we set you up as nations and tribes so that you may be able to recognize each other" (49:13). This means that the division of human beings into nations, races, groups and tribes is for the sake of distinction, so that people of one race or tribe may meet and be acquainted with the people belonging to another race or tribe and cooperate with one another. This division of the human race is neither meant for one nation to take pride in its superiority over others nor is it meant for one nation to treat another with contempt or disgrace, or regard them as a mean and degraded

[21] Holly Quran

race and usurp their rights. "Indeed, the noblest among you before God are the most heedful of you" (49:13). In other words the superiority of one man over another is only on the basis of God-consciousness, purity of character and high morals, and not on the basis of color, race, language or nationality, and even this superiority based on piety and pure conduct does not justify that such people should play lord or assume airs of superiority over other human beings. Assuming airs of superiority is in itself a reprehensible vice which no God-fearing and pious man can ever dream of perpetrating. Nor does the righteous have more privileged rights over others, because this runs counter to human equality, which has been laid down in the beginning of this verse as a general principle. From the moral point of view, goodness and virtue is in all cases better than vice and evil.

This has been exemplified by the Prophet in one of his sayings thus: "No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man, or the black man any superiority over the white man. You are all the children of Adam, and Adam was created from clay" (al-Bayhaqi and al-Bazzaz). In this manner Islam established equality for the entire human race and struck at the very root of all distinctions based on color, race, language or nationality. According to Islam, God has given man this right of equality as a birthright. Therefore no man should be discriminated against on the ground of the color of his skin, his place of birth, the race or the nation in which he was born. Malcolm X, the famous leader of African Negroes in America, who had launched a bitter struggle against the white people of America in order to win civil rights for his black compatriots, when he went to perform the pilgrimage, and saw how the Muslims of Asia, Africa, Europe, America and those of different races, languages and colors of skin, were wearing one dress and were hurrying towards God's House-the Ka'bah and offering prayers standing in one row and there was no distinction of any kind between them, then he realized that this was the solution to the problem of color and race, and not what he had been trying to seek or achieve in America so far. Today, a number of non- Muslim thinkers, who are free from blind prejudice, openly admit that no other religion or way of life has solved this problem with the same degree of success with which Islam has done so.

Islam has also laid down the principle that no citizen can be imprisoned unless his guilt has been proved in an open court. To arrest a man only on the basis of suspicion and to throw him into a prison without proper court proceedings and without providing him a reason- able opportunity to produce his defense is not permissible in Islam. It is related in the hadith that once the Prophet was delivering a lecture in the mosque, when a man rose during the lecture and said: "O Prophet of God, for what crime have my neighbors been arrested?" The

Prophet heard the question and continued his speech. The man rose once again and repeated the same question. The Prophet again did not answer and continued his speech. The man rose for a third time and repeated the same question. Then the Prophet ordered that the man's neighbors be released. The reason why the Prophet had kept quiet when the question was repeated twice earlier was that the police officer was present in the mosque and if there were proper reasons for the arrest of the neighbors of this man, he would have got up to explain his position. Since the police officer gave no reasons for these arrests the Prophet ordered that the arrested persons should be released. The police officer was aware of the Islamic law and therefore he did not get up to say: "the administration is aware of the charges against the arrested men, but they cannot be disclosed in public. If the Prophet would inquire about their guilt in camera I would enlighten him." If the police officer had made such a statement, he would have been dis-missed then and there. The fact that the police officer did not give any reasons for the arrests in the open court was sufficient reason for the Prophet to give immediate orders for the release of the arrested men.

The injunction of the Holy Quran is very clear on this point. "When- ever you judge between people, you should judge with (a sense of) justice" (4:58). And the Prophet has also been asked by God: "I have been ordered to dispense justice between you." This was the reason why the Caliph 'Umar said: "In Islam no one can be imprisoned except in pursuance of justice." The words used here clearly indicate that justice means due process of law. What has been prohibited and condemned is that a man be arrested and imprisoned without proof of his guilt in an open court and without providing him an opportunity to defend himself against those charges. If the Government suspects that a particular individual has committed a crime or he is likely to commit an offence in the near future then they should give reasons for their suspicion before a court of law and the culprit or the suspect should be allowed to produce his defense in an open court, so that the court may decide whether the suspicion against him is based on sound grounds or not and if there is good reason for suspicion, then he should be informed of how long he will be in preventive detention. This decision should be taken under all circumstances in an open court, so that the public may hear the charges brought by the government, as well as the defense made by the accused and see that the due process of law is being applied to him and he is not being victimized.

The correct method of dealing with such cases in Islam is exemplified in the famous decision of the Prophet which took place before the conquest of Makkah. The Prophet was making preparations for the attack on Makkah, when one of his Companions, Hatib ibn Abi Balta'ah sent a letter through a woman to the authorities in Makkah informing them about the impending attack. The Prophet came to know of this through a Divine inspiration. He ordered 'Ali and

Zubayr: "Go quickly on the route to Makkah, at such and such a place, you will find a woman carrying a letter. Recover the letter from her and bring it to me." So they went and found the woman exactly where the Prophet had said. They recovered the letter from her and brought it to the Prophet. This was indeed a clear case of treachery. To inform the enemy about a secret of an army and that too at the time of a war is a very serious offence tantamount to treachery. In fact one cannot think of a more serious crime during war than giving out a military secret to one's enemy. What could have been a more suitable case for a secret hearing; a military secret had been betrayed and common sense demanded that he should be tried in camera. But the Prophet summoned Hatib to the open court of the Mosque of the Prophet and in the presence of hundreds of people asked him to explain his position with regard to his letter addressed to the leaders of Quraysh which had been intercepted on its way. The accused said: "O God's Messenger (may God's blessings be on you) I have not revolted against Islam, nor have I done this with the intention of betraying a military secret. The truth of the matter is that my wife and children are living in Makkah and I do not have my tribe to protect them there. I had written this letter so that the leaders of Quraysh may be indebted to me and may protect my wife and children out of gratitude." 'Umar rose and respect- fully submitted: "O Prophet, please permit me to put this traitor to the sword." The Prophet replied: "He is one of those people who had participated in the Battle of Badr, and the explanation he has advanced in his defence would seem to be correct."

Let us look at this decision of the Prophet in perspective. It was a clear case of treachery and betrayal of military secrets. But the Prophet acquitted Hatib on two counts. Firstly, that his past records were very clean and showed that he could not have betrayed the cause of Islam, since on the occasion of the Battle of Badr when there were heavy odds against the Muslims, he had risked his life for them. Secondly, his family was in fact in danger at Makkah. Therefore, if he had shown some human weakness for his children and written this letter, then this punishment was quite sufficient for him that his secret offence was divulged in public and he had been disgraced and humiliated in the eyes of the believers. God has referred to this offence of Hatib in the Holy Quran but did not propose any punishment for him except rebuke and admonition.

The attitude and activities of the Kharijis in the days of the Caliph 'Ali are well-known to the students of Muslim history. They used to abuse the Caliph openly, and threaten him with murder. But whenever they were arrested for these offences, 'Ali would set them free and tell his officers "As long as they do not actually perpetrate offences against the State, the mere use of abusive language or the threat of use of force are not such offences for which they can be imprisoned." The imam Abu Hanifah has recorded the following saying of the Caliph 'Ali (A): "As long as they do not set out on armed rebellion, the Caliph

of the Faithful will not interfere with them." On another occasion 'Ali was delivering a lecture in the mosque when the Kharijis raised their special slogan there. 'Ali said: "We will not deny you the right to come to the mosques to worship God, nor will we stop to give your share from the wealth of the State, as long as you are with us (and support us in our wars with the unbelievers) and we shall never take military action against you as long as you do not fight with us." One can visualize the opposition which 'Ali was facing; more violent and vituperative opposition cannot even be imagined in a present-day democratic State; but the freedom that he had allowed to the opposi- tion was such that no government has ever been able to give to its opposition. He did not arrest even those who threatened him with murder nor did he imprison them.

Amongst the rights that Islam has conferred on human beings is the right to protest against government's tyranny. Referring to it the Quran says: "God does not love evil talk in public unless it is by some- one who has been injured thereby" (4:148). This means that God strongly disapproves of abusive language or strong words of condemna- tion, but the person who has been the victim of injustice or tyranny, God gives him the right to openly protest against the injury that has been done to him. This right is not limited only to individuals. The words of the verse are general. Therefore if an individual or a group of people or a party usurps power, and after assuming the reins of authority begins to tyrannize individuals or groups of men or the entire population of the country, then to raise the voice of protest against it openly is the God-given right of man and no one has the authority to usurp or deny this right. If anyone tries to usurp this right of citizens then he rebels against God. The talisman of Section 1444 may protect such a tyrant in this world, but it cannot save him from the hell-fire in the Hereafter.

Islam gives its citizens the right to absolute and complete equality in the eyes of the law. As far as the Muslims are concerned, there are clear instructions in the Holy Quran and hadith that in their rights and obligations they are all equal: "The believers are brothers (to each other)" (49:10). "If they (disbelievers) repent and keep up prayer and pay the Ipoor-due, they are your brothers in faith" (9:11). The Prophet has said that: "The life and blood of Muslims are equally precious" (Abu Dawud; Ibn Majjah). In another hadith he has said: "The protection given by all Muslims is equal. Even an ordinary man of them can grant protection to any man" (al-Bukhari; Muslim; Abu Dawud). In another more detailed Tradition of the Prophet, it has been said that those who accept the Oneness of God, believe in the Prophet- hood of His Messenger, give up primitive prejudices and join the Muslim community and brotherhood, "then they have the same rights and obligations as other Muslims have" (al-Bukhari; al-Nisa'i). Thus there is absolute equality between the new converts to Islam and the old followers of the Faith.

This religious brotherhood and the uniformity of their rights and obligations is the foundation of equality in Islamic society, in which the rights and obligations of any person are neither greater nor lesser in any way than the rights and obligations of other people. As far as the non- Muslim citizens of the Islamic State are concerned, the rule of Islamic Shari'ah (law) about them has been very well expressed by the Caliph 'Ali in these words: "They have accepted our protection only because their lives may be like our lives and their properties like our properties" (Abu Dawud). In other words, their (of the dhimmis) lives and properties are as sacred as the lives and properties of the Muslims. Discrimination of people into different classes was one of the greatest crimes that, according to the Quran, Pharaoh used to indulge in: "He had divided his people into different classes," ... "And he suppressed one group of them (at the cost of others)" (28:4).

Islam clearly insists and demands that all officials of the Islamic State, whether he be the head or an ordinary employee, are equal in the eyes of the law. None of them is above the law or can claim immunity. Even an ordinary citizen in Islam has the right to put forward a claim or file a legal complaint against the highest executive of the country. The Caliph 'Umar said, "I have myself seen the Prophet, may God's blessings be on him, taking revenge against himself (penalizing himself for some shortcoming or failing)." On the occasion of the Battle of Badr, when the Prophet was straightening the rows of the Muslim army he hit the belly of a soldier in an attempt to push him back in line. The soldier complained "O Prophet, you have hurt me with your stick." The Prophet immediately bared his belly and said: "I am very sorry, you can revenge by doing the same to me." The soldier came forward and kissed the abdomen of the Prophet and said that this was all that he wanted.

A woman belonging to a high and noble family was arrested in connection with a theft. The case was brought to the Prophet, and it was recommended that she may be spared the punishment of theft. The Prophet replied: "The nations that lived before you were destroyed by God because they punished the common men for their offences and let their dignitaries go unpunished for their crimes; I swear by Him (God) who holds my life in His hand that even if Fatimah, the daughter of Muhammad, has committed this crime then I would have amputated her hand." During the caliphate of 'Umar, Muhammad the son of 'Amr ibn al-'As the Governor of Egypt, whipped an Egyptian. The Egyptian went to Medina and lodged his complaint with the Righteous Caliph, who immediately summoned the Governor and his son to Medina. When they appeared before him in Medina, the Caliph handed a whip to the Egyptian complainant and asked him to whip the son of the Governor in his presence. After taking his revenge when the Egyptian was about to hand over the whip to 'Umar, he said to the Egyptian: "Give one stroke of the whip to the Honourable Governor as

well. His son would certainly have not beaten you were it not for the false pride that he had in his father's high office." The plaintiff submitted: "The person who had beaten me, I have already avenged myself on him." 'Umar said: "By God, if you had beaten him (the Governor) I would not have checked you from doing so. You have spared him of your own free will." Then he ('Umar) angrily turned to 'Amr ibn al-'As and said: "O 'Amr, when did you start to enslave the people, though they were born free of their mothers?" When the Islamic State was flourishing in its pristine glory and splendour, the common people could equally lodge complaints against the caliph of the time in the court and the caliph had to appear before the qadi to answer the charges. And if the caliph had any complaint against any citizen, he could not use his administrative powers and authority to set the matter right, but had to refer the case to the court of law for proper adjudication.

## 3. HUMAN RIGHTS AND FREEDOMS OF A PERSON IN THE MIDDLE AGES

Despite the complete sway of scholastics and theology in the political consciousness, middle age politico-legal thought continued to make some contribution to the development of human rights. The proponents of so-called humanistic legal school expounded the idea of general freedom, equality of all before the law, criticized the feudal dependence as unlawful phenomenon. So, Bomanoir asserted “each person is free”. In his legal provisions and settings he aspired to realize this idea.

During the Medieval ages rights were seen as privileges granted by senior Vassals. Feudalism on the one hand and church with its religious intolerance on the other did a lot to obstruct all the paths of human aspirations to political freedom and freedom of conscience. There was no question as to the rights of wide layers of community at all. In the codes on the rights for political and civil struggles, freedom of faith was not universal and recognized only for one layer of society-gentry.[22]

The most famous of such codes is the Great chart of liberties (1215). Its adoption was the political result of fights unleashed in England between the monarchs and anti-king coalition, headed by barons and supreme clergy displeased with excessive royal taxes. This document proclaimed constitutional principle based on which the king could impose taxes only with the agreement of taxpayers-the principle, the consequent implementation of which brought

[22] Troshkin Y.V. Human rights. 1997. p. 10

about the organization of national governments followed by the provision of political struggle. In the same place the principle of civil freedom was fixed in legislation. It was declared in Article 39 of Great chart: "no any free man shall be arrested or put in custody, deprived of property, outlawed or banished or otherwise made destitute, and we won't go against him unless as specified in the law."[23]

So it was acknowledged that individual is entitled to free life and may be subjected to any punishment not otherwise as the court ruling. Characterizing this document, D.M. Petrushev noted that this Charter ensures freedom from arbitrariness of power of all "free person" (liber homo) and guarantees him in case of the rime committed by him lawful sentence by piers under the country laws.[24] The chart also fixed the freedom of church, the idea of lawfulness, freedom of movement, anticipated creation of an organization that might secure integrity of all the subordinates (page 61). Committee consisting of 25 barons, who were recognized the right of raise "the community of the whole land" against the king in the event of violation by him or his agents. The main significance of Great chart lies in the inclusion of provisions on the supremacy of law over the king.

Later Status on the imposition of taxes (1295) was proclaimed the principle of establishment of taxes by king only upon the agreement by taxpayers where it said that " no tax or benefit shall be levied unless so agreed by archbishops, bishops and other prelates, earls, barons, dukes, city population and other free persons in our kingdom".[25]

Adoption in Great chart of liberties and the Status on the imposition was a major step in the sphere of human rights. The documents in English-speaking countries were based on these acts and the modern concept of human freedom in many aspects by far stems from this. Everything that was achieved by English jurisprudence since the time of the confirmation of Great chart is the development of its basic provisions.

The establishment of parliamentary institution characterized 13th century in England. Parliament emerged as a result of transmission of power to the hands of barons in 1264. In 1265 there was convened an Assembly with a view to reinforce the alliance between the various layers of population in England that formed the English parliament. The parliament gradually turned into a supreme legislative authority of the country. At the same period they came to understand

[23] Monuments of History of England XI-XIII cc. M. 1936 p. 106
[24] Ibid, p.28
[25] Ibid, p. 228

the necessity of establishing an independent legislative power in English society, without which no personal freedoms could be guaranteed. The main principle of such judicial power is nobody may be deprived from freedom and property without the court order.[26]

During the epoch of Renaissance and Reformation belongs the period of formation of legal world outlook. After many centuries of dominance of theology and religious ideal at the core of interest became a human being and the imagination about him penetrate the principles of humanism concentrating on the needs, interests and nature of personality. Individual is gradually liberated from the grips of church and state dictate. The individualism emerged namely at that time as the assertion of independent value of human being absorbed with various types of religious and secular corporations.

In the fight with middle age conservative-protective ideology there appeared a system of qualitatively new socio-philosophic visions, at the core of which stood the meaning on the necessity to assert self-estimation of a personality, recognition of dignity and autonomy of any individual, provision of conditions for free human development, guarantee of everyone the possibility to achieve happiness with own forces. Such humanistic set of mind prompted to refer to antiquity, find in them examples and arguments which might confirm their conviction of own constructions.

Politico- legal rationale of the Renaissance and Reformation epochs requires to restore the thesis on the quality in the relationships between believers as well as recognition of equality as a norm for civil relationships too. In their critique on the theological politico-legal thoughts, interrelationships between a personality and state the thinkers of that period began to appeal to natural rights of human being and found the necessity of establishing new socio-political order that would include new interrelationships between the state and an individual based on human rights. They interpreted natural rights as the ascertainment of intellect, source of rights and freedoms of an individual, his independence from church ideology and arbitrariness of secular powers. Acknowledgement of natural equality between al the people brought about the acknowledgement of the fact that each of them has certain rights and freedoms. This same ideas of rights and freedoms of an individual are reasserted in a number of disciplines on the state sovereignty. Along with the questions of independence of the secular power from church and partition from each other, and centralization of the power on the scale of the whole country and etc., this thematic included such a vital aspect as interrelation between the state and a personality, bases and

[26] Yudovskaya A. Y. Evolution of Law in Europe and America (XVII-XIX cc.). 1996, p.15

boundaries of state intervention in the life of an individual, obligation soft state power on the provision of rights and freedoms of a personality and etc.

Politico-legal relationships as viewed from thinkers and philosophers of Renaissance and Reformation epochs were began to be built on rationalism and empirism. It was assumed that human fate is predestined by his gentility, origin, title, identity with a certain confession and exclusively with his personal accomplishments, demonstrated activity, nobility in acts and thoughts. One of the main merits of an individual, that is citizenship, unbiassed service for common welfare gained in significance. In its turn, common welfare was associated with the republic, state basing on principles of equality (in the sense of liquidation of class privileges and limitations) and justice. The guarantees and justice, security of freedom of a personality were taken up in the issuance of and compliance with laws, the content of which meets human nature.

One of the most outstanding figures in the struglle for human rights and limitation of royal power in English political and legal though of XV, the head judge of the Royal bench under Henry, the author of treatise "praise to English laws", "Nature of nnatural laws" and " Ruling England" was john Fortesque (died in 1476). In his opinion, positive law bses on natural right, defining the order of all the creation and ahving supremacy over ordinances. He supported foma Akvinsky who stated that "A king is to serve kingdom and not kingdom a king". In his work "Ruling England" J. Fortesque notes that royal power must be limited with rights guaranteed for citizens by laws and England belongs to this form of administration.[27] Thus, J. Fortesque saw in rights human freedom.

The idea of freedom and legal equality of all the community members as a basis of their civil merits, political activity and participation in common state affairs are illustrated in the works of famous Florence thinker of Renaissance era was N. Machiavelli (1469-1527) (who is more often and unfairly deemed to be just a philosopher of political intriques). His contemporary and opponent T. Kampanell also denied scholasticism, equality of people and primate of human intellect (in his works called "Philosophy confirmed by feelings", "City of Sun" and poems), though on other ideologic bases as well.

## REFERENCES AND NOTES

1. Cassirer Ernst. Logos, Dike, Kosmos in der Enrwicklung. Goteborg, 1941. S. 22
2. Reale J., Antiseri D. Western philosophy from the source to our days. T. 1 Antiques SPb, 1997

[27] History of Bourgeois constitutionalism XVII-XVIII cc., M. 1983 p. 68

3. Wattel E. Rights of people, or principles of natural law, implemented to the behavior and issues of nations and sovereigns. M., 1960.
4. Rode F. Role of Christianity in European civilization. History. Traditions. Culture. M., 1993
5. Lerua-Bolye A. Christianity and Democracy. Transl. from Fr. S. Troickiy. SPb., 1906
6. The New Encyclopedia: Micropaedia. L., 1988 Vol.6
7. Donnelli D., Haward R., "Human rights in modern world" USA., 1991 n.421
8. Monuments of History of England XI-XIII cc. M. 1936
9. Christoph J.M. Safferling. Towards an International Criminal Procedure, Oxford 2003
10. Holly Quran
11. Holly Bible
12. Абдуллаев М.И., «Права человека и закон», СПб., 2004
13. Волкова С.В. «Древнегреческий полис: идеи, реальность (V- IV вв. до н.э.): Автореф. канд. дис. СПб. 1998
14. Курбатов Г.Л., Фролов Э.Д., Фроянов И.Я., «Христианство: Античность, Византия, Древняя Русь» Л., 1998
15. Трошкин Ю.В. «Права человека» М., 1997.
16. Юдовская А.Я. «Эволюция права в государствах Европы и Америки». (XVII-XIX сс.). М.1996
17. Гегель Г.В.Ф. Соч.: Т. 10, М., 1932
18. История буржуазного конституционализма XVII-XVIII сс., М. 1983
19. Материалисты Древней Греции М., 1955
20. Антология мировой философии М. 1969. Т.1. Р.1.

## *Summary*

## HISTORICAL DEVELOPMENT OF THE THEORY OF HUMAN RIGHTS

*Saadat Novruzova*
*(Khazar University, Baku, Azerbaijan)*

The "Historical Development of the theory of Human Rights" article deals with the creation and development of the theories of human rights in different periods. The article also speaks about the protection human rights in Islam and Christian religions in ancient and middle ages periods. The human rights and freedom theory placed special emphasis in the moral cultural history of humanity. The article described how human rights and freedom convey a many-sided character and emphasize fundamental public values. Certainly human rights is a manifestation of social history and it was long delayed in the cultural history of humanity for perceiving the social values of human rights.