

Inna Mykhailova

O. M. Beketov National University of Urban Economy in Kharkiv, Ukraine

COMMUNITARIANISM AND LIBERALISM: DISCUSSIONS ON THE UNIVERSALITY OF HUMAN RIGHTS

Law, because it relies on coercion, always needs to be justified. However, the transition from a national to a supranational level of a political organization leads to a new problematization of the topic of legitimacy of law. The thesis of the universality of human rights is disputed, on the one hand, by representatives of some developing countries who accuse the West of cultural imperialism and even of human rights imperialism. And on the other hand, its critics are supporters of communitarianism – a fairly influential trend in Western social and political philosophy. The article examines the current problems for modern society related to the creation and strengthening of social integration at a new supranational level.

Keywords: communitarianism, universalism, liberalism, law, legitimation.

Formulation of the problem. The transition from the national to the international level of political organization leads to a new actualization of human rights universality issues. According to the idea of human rights to serve as the basis for the legitimacy of the legal system at the international level, it is necessary to prove their universality. However, the thesis about the universality of human rights is denied on the one hand by representatives of some developing countries accusing the Western cultural imperialism and even imperialism of human rights. On the other hand, its critics are supporters of communitarianism at the same time. Nowadays communitarianism rather influential in Western social and political philosophy.

Analysis of current research. Representatives of these ideas are Ch. Taylor, M. Walker, M. Handel and McIntyre et. The communists insist on the connection of all values with certain cultures. Thus, the values expressed in the human rights principle are also declared to be specific, not universal. Liberal position, represented by J. Rawls, R. Dworkin, U. Kimlik, originates from the classics of liberalism and uses such values as equality, justice, freedom. The peculiarity of this approach lies in the fact that it, in our opinion, justifies the possibility of universalist morality and insists on implementing these principles in the policy of modern states. The world-famous work Theory of Justice appears as an alternative to the neo-liberal theory of Hayek. By conveying the concept of justice, Rawls set forth such goals. First, he tried to develop the minimum necessary general principles of justice, which could form the basis of a "well-organized society", built on a democratic basis. Secondly, he aimed to formulate a theory that surpasses the most common versions of utilitarianism. The philosopher focused his attention on what he calls the main subject of his study of justice on the basic structure of society; under it he understands the whole set of the most important social, political, state and economic institutions (constitution, private property, competitive market economy, monogamous marriage) The function of the basic structure of society is to distribute advantages and difficulties associated with social cooperation. Rawls sees the main problem of justice in formulating and legitimizing the principles of justice, which should correspond to the basic structure of society. These principles determine how the "priority goods" should be distributed (basic rights and freedoms, power, authority, opportunities for self-fulfillment, welfare, etc.). Applying the principles of justice to the basic structure of society, Rawls solves two problems: first, finds a criterion for the formation of concrete judgments about the justice or injustice of institutions and institutional practices; and secondly, offers a basis for further elaboration of a policy course and laws that contribute to correcting injustice in the basic structure of society. Rawls has developed a procedural method of law enforcement. Here he followed the liberal tradition. For a philosopher, a fair institution will be chosen by a relative majority of reasonable and impartial individuals who are freely involved in the discussion.

An important condition for Rawls is the "veil of ignorance" in the process of choosing the principles, that is, concealing from people who make decisions important and versatile information about them themselves for the sake of ensuring integrity and impartiality. Yes, the parties to the contract should not know what position they occupy in the public hierarchy. Their awareness is limited to political and economic knowledge of society and the laws of human psychology, which is necessary for a rational

agreement. In such a hypothetical situation of choice, reasonable, fair and equal participants in the discussion will take, according to Rawls, the following principles of justice:

1. All people have equal rights to a maximum of many equal basic freedoms, compatible with a similar system of freedoms for all.

2. Social and economic inequality should be regulated in such a way that, firstly, it is directed at the highest benefit of the least prosperous; and secondly, the institutions and the situation in society should be open to all, subject to honest equality of opportunity. However, the formulation of the principles of justice – this is only part of the problem. Also to Rawls is important its legitimacy and proof.

Having formulated two principles of justice, Rawls also focused on how the basic structure of society should be organized, to suite it and what specific mechanisms of its action should be. Such an institutional arrangement should include, in its opinion, four government bodies: to control the accumulation of resources, stabilization, transfer and distribution.

The central idea in the theory of justice as a virtue of J. Rawls calls the idea of the priority of law over the idea of good. However, the liberal political concept of justice can't contain ideas of good. So, in *The Ideas of Good and the Priority of Law*, Rawls points out that the idea of the priority of law is related to the five ideas of good contained in the theory of justice as a virtue. The author lists the following good ideas:

1. The idea of goodness as rationality;
2. The idea of primary goods;
3. The idea of permissible comprehensive concepts of good;
4. The idea of political virtues;
5. The idea of the good of a well-organized (political) society.

The main goal of the article is to uncover the dimensions of the human right discourse between communitarianism and liberal tradition.

Presentation of the main material. According to W. Kimlik, Rawls's historical merit is to destroy the hopeless opposition of intuitionism and utilitarianism.¹ The main thesis of J. Rawls is that all primary goods (freedom, income, welfare) should be distributed equally. According to this thesis, Kimlik believes, problems with the distribution of various goods may arise. Therefore, Rawls divides and arranges the general concept on the principle of "lexical priority". Namely: every person should have the right to a maximum system of equal basic freedoms compatible with a similar system of freedom for all. Social and economic inequalities should be distributed in such a way that they serve the highest benefit of the least prosperous and have been linked to posts and positions open to all, proved that equality of opportunity is honest. The last principle Rawls calls "the principle of differentiation." The question is how to ensure fair equality of opportunities? After all, one should not forget that inequalities can be both social and natural. Rawls notes that natural inequalities, in terms of morality, are random. That is, nobody has the right to be put in an unequal position because of gender, race or social status.

According to the opinion of U. Kimlik, "the argument of Rawls does not explain why the principle of differentiation applies to all inequalities, and not only those that are associated with random, in moral terms, factors"².

In the paper "Politics. Right. Justice" the basis of the critical philosophy of law and state Heffe goes beyond the world-known theory of justice J. Rawls. According to Heffe, the political project of the present, obliged by its origin to two fundamental experiences: the experience of the radical crisis of the community, experienced in the era of shock of the foundations of legal and public order, and the experience of oppression and exploitation. The highest point of oppression is the neglect of elementary human rights. The highest point of the state's turmoil is political and religious wars.

During civil wars, people are clearly convinced of why they need main political institutions. The right and the state are necessary to ensure peace and survival and to make possible freedom and happiness of man. The present order is based on respect for the fundamental right to justice. Neglecting this right has the consequence of mess and conflict. Consequently, political justice is not at all a moral luxury, but a necessary condition for human coexistence. The world is a product of justice. In this connection, Heffe argues that the political philosophy, which gives attention to both types of experience, must constantly keep

¹ Кимлика, У. (1998). *Либеральное равенство. Современный либерализм: Ролз, Бёрлин, Дворские, Кимлика, Сэндел, Тейлор, Уолдрон*. Москва: Дом интеллектуальной книги, Прогресс-Традиция.

² Кимлика, У. (1998). *Либеральное равенство. Современный либерализм: Ролз, Бёрлин, Дворские, Кимлика, Сэндел, Тейлор, Уолдрон*. Москва: Дом интеллектуальной книги, Прогресс-Традиция.

in mind the three main concepts: "right", "justice", "state". Hence one of the main theses of the philosopher: "If a human wants to have a legitimate character, then it must: firstly, have a legal character; secondly, the right must find the quality of justice, and thirdly, a fair right must be protected by public order – and, therefore, take the form of a state – a just state"¹. In other words:

1. The state has a duty to be fair.
2. Political justice forms the normative-critical scale of law.
3. Fair law is the legitimate form of human coexistence.

For classics of liberalism, the most important problem was to explain why people who born free and equal could agree to be guided. The answer as follows: "Because of the uncertainties and shortcomings of social life, individuals, without abandoning their equality in a moral sense, would agree to the transfer of certain powers to the state, provided that the state, having their trust in them, would use these powers to protect individuals from uncertainties and for distributing deficits"².

The work of J. Rawls caused controversy between the followers of Aristotle and Hegel (communitarianism) on the one hand, and the Kants (liberals) on the other. The term "communitarianism" appeared in the English philosophy to refer to such neo-Aristotelians as Ch. Taylor, A. Macintyre, M. Handel. Ch. Taylor in "Ethics of Authenticity" says that the peculiarities of our modern culture and society are perceived by people as a loss or decay. The author calls it the diseases of the present. The first source of concern is individualism. Most people are not interested in what's going on outside of them. The second source is the priority of instrumental thinking.

Instrumental thinking is the kind of rationality we apply when we calculate economic methods for achieving a certain goal. The third source is the fact that "the institutions and structures of an industrially technological society strictly restrict our choices, they force the society as well as individuals to give weight to the instrumental mind, which we never did with a serious ethical review, and which can be very devastating"³. To understand the present, Taylor thinks, it is necessary to turn to the ideal of authenticity, which is associated with the specificity of the modern person as a moral being. One of Taylor's central provisions is based on observing that authenticity only makes sense on certain horizons of significance. The process of forming a personal identity involves applying to values that are significant not only for me but also for others. Ch. Taylor claims that morality, and not the right, forms the "I". Morality is an integral part of "I," and human rights are given. They are approved by state pressure. Taylor, criticizing liberalism, wrote: "A liberal society should not rely on any particular concept of a virtuous life. The ethics of a liberal society is rather the ethics of law, not of good, therefore its basic principles relate to how society should regulate and try to compete with single individuals. These principles, of course, should include the attitude to individual rights and freedoms, but for any liberal society, the principle of maximum and equal assistance should be central. He does not say what the achievement of which benefits will contribute, but determines what benefits are achievable with these aspirations and demands of citizens – members of society"⁴. It describes this theory as unrealistic and ethnocentric. Unlike modern liberalism, Taylor offers a return to the classical republican values that are presented in the tradition of European culture. He writes: "However, solidarity with my fellow citizens in the functioning of the republic is based on the recognition of a common destiny, and this is a recognition that is valuable. It is this connection that is of a general nature, makes bonds connecting me with other people and a common cause, even closer, inspire my integrity and patriotism"⁵. According to Taylor, the legal principle is a common good, and patriotism includes not only a set of moral principles, but also a general commitment to a particular historical society. This should be a common goal. However, is patriotism possible within international world communities?

Another representative of communitarianism, A. Macintyre, considered the concept of liberals to be emotivist. Emotivism argues that all valuation judgments, all moral judgments are nothing more than an expression of feelings and are of an evaluative nature. They cannot be true or false. There is no rational

¹ Хейфе, О. (1994). *Политика. Право. Справедливость. Основоположения критической теории права и государства*. Москва: Гнозис.

² Алексеева, Т.А. (1994). Джон Роулс и его теория справедливости. *Вопросы философии*, 10, 26-37.

³ Ролз, Дж. (1998). Идея блага и приоритет права. *Современный либерализм: Ролз, Бёрлин, Дворкин, Кимлика, Сэндел, Тейлор, Уолдрон*. Москва: Дом интеллектуальной книги, Прогресс-Традиция.

⁴ Ролз, Дж. (1998). Идея блага и приоритет права. *Современный либерализм: Ролз, Бёрлин, Дворкин, Кимлика, Сэндел, Тейлор, Уолдрон*. Москва: Дом интеллектуальной книги, Прогресс-Традиция.

⁵ Ролз, Дж. (1998). Идея блага и приоритет права. *Современный либерализм: Ролз, Бёрлин, Дворкин, Кимлика, Сэндел, Тейлор, Уолдрон*. Москва: Дом интеллектуальной книги, Прогресс-Традиция.

way of justifying them. The main thesis of emotion is as follows: "There can be no rational justification, no statement about the existence of objective moral standards, and therefore it does not exist". According to Macintyera, we have not yet fully understood the assertion of moral philosophy and did not find out what will be its social application. Emotivism adheres to the notion that any attempt to give a rational justification of objective morals is doomed to failure. Macintyre in "After Virtue" analyzes the disastrous consequences of individualism and subjectivism. For a person, only those values which are enshrined in social practices and traditions of the community in which he lives are objective. The choice of human values is deterministic. O. Heffe highlights five theses of communitarianism:

1. communitarianism as a philosophy of morality is directed against the Enlightenment and universalist morality. This is a critique of Modernism and moral criticism;
2. communitarianism as a philosophy of morality looks like the ethics of virtue;
3. communitarianism as a social theory continues to defend the "community" as the perfect form of social life. At the same time, he constantly deepens his analysis of the current crisis phenomena and believes that liberalism is controversial not only theoretically, but practically;
4. communitarianism protects the possibility of the existence of a society free of state coercion;
5. communitarianism is skeptical of justice of human rights, bringing it closer to utilitarianism.

According to Heffe, communitarianism began with big claims. However, in fact, the philosopher wrote: "Instead of education and universal morality – the tradition and specific ethics; Instead of separate duties and principles – personal virtues; instead of connecting the living conditions with the freedom of partially group, and partly individual projects of good life – a common life project; instead of state registration of the self-organization of individual individuals within a diverse, pluralistic society – small, homogeneous and, if possible, free from the domination of the community"¹.

Conclusions and directions for further research. Processes that take place in modern society have a complex and multilevel character. Therefore, in our opinion, the solution of the problems humanity faces requires joint action, however, at a new level, at the level of the world community. This topic is socio-philosophical, although, of course, it requires the exit and practical philosophy – moral, legal and political.

References:

1. Aleksyeyeva, T.A. (1994). Dzhon Rouls i yeho teoriya spravedlyvosti [John Rawls and his theory of justice]. *Voprosy filosofii* [Questions of philosophy], no. 10, 26–37. [in Russian].
2. Busova, N.A. (2004). *Modernizacija, racional'nost' i pravo* [Modernization, rationality and law]. Kharkiv: Prometey–Pres. [in Russian].
3. Busova, N.A. (2000). Spravedlivost' v kontekste sovremennogo liberalizma i kommunitarizma [Justice in the context of modern liberalism and communitarianism]. *Filosofski peripetivi. Visnyk Kharkivskoho natsionalnogo universytetu im. V. N. Karazina* [Philosophical vicissitudes. Journal of Kharkiv National University. V. N. Karazin], no. 474, 20–26. [in Russian].
4. Hofe, O. (2003). *Rozum i pravo. Skladovi interkultornoho pravovoho dyskursu* [Reason and right. Components of intercultural legal discourse]. Kyiv. [in Ukrainian].
5. Yermolenko, A.M. (1999). *Komunikativna praktychna filosofiya* [Communicative practical philosophy]. Kyiv: Libra. [in Ukrainian].
6. Kimlyka, U. (1998). Liberal'noe ravenstvo [Liberal equality]. *Sovremennyj liberalizm: Rolz, Bjorlin, Dvorkie, Kimlika, Sjendel, Tejlor, Uoldron* [Modern liberalism: Rawls, Burlin, Dvorkin, Kimlik, Sandel, Taylor, Waldron]. Moscow: Dom intelektual'noj knigi, Progress-Tradycja [in Russian].
7. Makintayr, E. (2002). *Pislyta Chesnoty: doslidzhennya z Teoriyi morali* [After Truth: research in the theory of morality]. Kyiv: Dukh i Litera. [in Ukrainian].
8. Rolz, Dzh. (1998). Ideya blaha i priorytet prava [The Idea of Goodness and the Priority of Law]. *Sovremennyj liberalizm: Rolz, Bjorlin, Dvorkie, Kimlika, Sjendel, Tejlor, Uoldron* [Modern liberalism: Rawls, Burlin, Dvorkin, Kimlik, Sandel, Taylor, Waldron]. Moscow: Budynok intelektual'noyi knyhy, Prohres–Tradycja. [in Russian].
9. Teylor, C.H. (2002). *Etyka avtentichnosti* [Ethics Authenticity]. Kyiv: Dukh i Litera. [in Ukrainian].
10. Teylor, C.H. (1998). Peretyn tseley: spor mezhdou liberalamy i kommunitaristami [The Crossing of Objectives]. *Sovremennyj liberalizm: Rolz, Bjorlin, Dvorkie, Kimlika, Sjendel, Tejlor, Uoldron* [Modern liberalism: Rawls, Burlin, Dvorkin, Kimlik, Sandel, Taylor, Waldron]. Moscow: Budynok intelektual'noyi knyhy, Prohres–Tradycja. [in Ukrainian].
11. Kheffe, O. (1994). *Polityka. Pravo. Spravedlyvost'. Osnovopolozhnye krytychnoyi teoriyi prava i gosudarstva* [The foundations of the critical theory of law and the state]. Moscow: Hnozys. [in Russian].

¹ Бусова, Н.А. (2000). Справедливость в контексте современного либерализма и коммуитаризма. *Філософські перипетії. Вісник Харківського національного університету ім. В. Н. Каразіна*, 474, 20-26.