

Published by the decision of the Scientific Council
of Khachatur Abovian
Armenian State Pedagogical University



Department of Philosophy and Logic
named after Academician Georg Brutian



W I S D O M

2(22), 2022



*WISDOM is covered in Clarivate Analytics' Emerging Sources
Citation Index service*

YEREVAN – 2022

DOI: 10.24234/wisdom.v22i2.715

Volodymyr ORTYNSKYI,
Taras HARASYMIV,
Iryna LYCHENKO,
Hisham Jadallah Mansour SHAKHATREH,
Nataliia PAVLIUK

CHARACTERISTIC OF FEATURES OF THE PHILOSOPHICAL AND LEGAL PARADIGM OF CONTROL IN THE CONTEXT OF THE PHILOSOPHY OF LAW

Abstract

Social order and stability depend on many social factors, among which social control occupies an essential place as a means of self-regulation of society, the purpose of which is to streamline social relations. This problem is especially acute in the legal plane, where control is used together with other social and legal means as a decisive factor in forming the legal order. A philosophical and legal study of control and its impact on the rule of law requires a detailed examination of these concepts in historical retrospect through the prism of their value-based content. The study's primary purpose is to determine the main features of the philosophical paradigm of control in the context of the philosophy of law. The primary methodology was several historical and theoretical methods of analysis and research, which made it possible to achieve the set goals. As a result of the study, the critical elements of the philosophical and legal paradigm of control in the context of the philosophy of law were identified.

Keywords: philosophy, philosophical paradigm, control, order, philosophy of law.

Introduction

Throughout the history of the development of society, there have been numerous attempts by various means to overcome the undesirable types of behaviour of people, as well as to encourage them to act socially helpful, or at least not to violate the requirements of social norms. For these purposes, each society created a system of social (public and state) control, which included various means that made possible the existence of a legal order. The philosophy of control, therefore, was to minimize the violation of established social norms and the social values enshrined in them. At the same time, each society produced its system of means of control, which included beliefs, prescriptions, and prohibitions, as well as incentives, recognition, and rewards, which

made it possible to bring people's behaviour to the requirements of social norms. It should be emphasized that control, as one of the essential functions of managing society, the purpose of which is to maintain the established social order, is based on a system of values that form the basis of social organization. Therefore, the analysis of control in its relationship with the rule of law seems possible to carry out through the prism of fundamental values dominant in society, embodied in social principles and norms.

Control has existed since the formation of human society and has as many manifestations and forms as there are forms of life and the possibilities for a person to perceive social control, as well as the possibilities of influencing him from the side of society. Control in its various manifestations was known to humankind from

the beginning of its creation and the formation of the first social institution - the family. He was always involved in the concept of order. Order in society implies the regulation of individual and group behaviour, the assimilation and acceptance by individuals of norms, values, and models of lawful behaviour. Such a process is a philosophical catalyst for implementing the rules of a society, state, or social group and is provided by appropriate social mechanisms and institutions. This whole process is closely related to control.

The study's primary purpose is to determine the main features of the philosophical and legal paradigm of control in the context of the philosophy of law.

Methodology

Research methods are selected based on the tasks set in the work, considering the object and subject of research. The general scientific methods of studying the philosophical paradigm of control to ensure the legal order include analysis, synthesis, abstraction, idealization, generalization, induction, deduction, analogy, and systemic method. The historical approach to the study helped to establish the evolution of the development of views on the importance of the philosophical paradigm of control in society. Among the non-classical approaches, the following were used: the axiological approach (the historical stages were highlighted, in which those values were found that were inherent in law and order and control in a particular historical period).

Research Results

In the religious mass consciousness of the Ancient East, there was a particular mystical attitude towards power, royalty, and the ruler. The recognition of the highest divine authority organically flowed from the existing world order. This also gave rise to unlimited despotic powers of the ruler, which were the main element of Eastern religious ideology. A characteristic feature of the

law of Ancient Egypt was that it was utterly oversaturated with control and regulatory functions due to the dominance of the administrative command of the tsarist apparatus. At the same time, the order was based on the philosophy of the status of the pharaoh as a god-like autocrat.

In old Egypt, the order was tightly controlled within the country to merit. The control functions were carried out by the overt and secret police, border guards, special security detachments that monitored the safety of canals and other essential structures, and finally, the guard service of the pharaoh and high dignitaries (guards). However, even though the state exercised total control over the life of society, the Egyptians not only were not burdened with it but also associated their well-being with the state (and above all, with the face of the king). Order in Mesopotamia was associated primarily with the position of the king in the system of relationships between gods and people. Tsarist power was not considered to be something peculiar to human society at first, and therefore the connection between gods and people was maintained without a king. Only later did the gods recognize the king as the primary means for effectively implementing these ties. Thus, the gods simplified and centralized the mechanism of their interaction with people, concentrating it around the figure of the king in order to better ensure social order. The sacred texts emphasize the task assigned by the gods to the king to ensure human social order.

In the countries of the Ancient East (Egypt, Mesopotamia, India), the basis of the philosophy of control was the control and regulatory functions and powers of the ruler and the administrative-command apparatus. Social control was carried out through a detailed system of a religious worldview based on social stratification. An effective means of social control was punishment, which was considered inevitable. As a conclusion, it can be argued that social control in the period of the Ancient East: had a one-sided character, exclusively as an instrument of the state; it had a tough despotic character; the control appa-

ratus was developed.

The social order was personified with philosophy by the law that enshrined social inequality. At the same time, the laws were established by the rulers or the ruling elites, who were considered the personification of the gods. The social and legal order was based on statist values; that is, the problems of governing the state, community and clan family were primary and led to strict regulation of a person's entire life. Along with this, the value basis of order was justice, which was consolidated: religious and moral norms (*maat*) in Egypt; the inscriptions of the Babylonian kings; in the law of Karma, regarded as the universal law of justice in India.

The formation of the theory of social order in the philosophy of Ancient China deserves special attention, the doctrinal basis of which was not mythology or religion but ritual as the basis of heaven and earth. A developed sense of obedience characterizes this philosophy to the authorities, the father in the family, elders, and ancestors. The legal ideology of this state was characterized by increased pragmatism and was focused on the search for practical management tools capable of ensuring harmony and order, which led to the free coexistence of various moral and legal teachings. The Chinese state-legal doctrine established under the influence of four traditional teachings for China: Confucianism, Taoism, Moism and Legalism. Ancient China was torn apart by social contradictions, dynastic wars and popular uprisings; therefore, all four teachings aimed to create a practical theory of an ideal harmonious society and lead a huge empire to internal harmony and order.

The social order has become, as it were, a continuation and reflection of the universal order created by Heaven. The main philosophical idea of Confucius is the idea of harmony as the primary condition of the general cosmogonic order, balance in the world, and, consequently, people's happiness. It follows that order depends on harmony between people and nature, harmony between people themselves, expressed in their be-

haviour, which must correspond to the "natural order", that is, virtues and morality.

We find a reflection of the philosophy of control as a function of the state to establish order in the philosophy of the Legistov school: "The law is an expression of love for the people. A state that is delayed in restoring order will be dismembered... If you teach people with justice, it will corrupt them, and when people are corrupted, the order is destroyed, and where there is no order, people suffer from what they hate. What I call punishments is the basis of justice, which, in our century, is called justice is the path to violence".

According to the teachings of the philosophy of Taoism, the basis of order was defined as Tao, the natural, lawful order of things, independent of the divine will or will of the ruler. Tao personified the highest virtue and natural justice, before which everyone is equal. In this interpretation, Tao acted as a natural right. The emperor must build up the administration in such a way that order is carried out by itself and does not even require instructions, and everyone would know his job and carry it out flawlessly. The adherents of this doctrine believed that order, like everything else in life, is determined by the existence of a "way" (Tao) that operates outside people's will. A person is not able to understand this path, and therefore the best way is not to make mistakes: to be inactive in governing the state, that is, to refuse active intervention in a predetermined course of historical events.

The peculiarities of the relationship between control and order in the philosophy of law of Ancient China are considered in the corresponding schools:

1. Confucianism. The management of society should be organized based on self-regulation because in order to order and harmonize human life, one should understand the heavenly will and the good order of things that it has established. Self-government based on formal rules and standards of social control was recognized as the key method of social manage-

ment.

2. Moism. A contractual theory of order was proposed. The lack of government was recognized as the cause of chaos, and a wise ruler was considered the guarantor of order, an example of virtue and justice. The rule of order was possible on the basis of a moral standard, which was interpreted as philanthropy and a proper attitude towards people.
3. Legalism. Order was understood as the result of the rule of the laws of the state. The law embodied the control that the Legalists tried to extend to all occasions, which could be filled with any necessary content. The absence or inadequate quality of laws was considered to be the reason for the lack of social order.
4. Taoism. The Tao was recognized as the basis of order, the natural, natural order of things, personifying the highest virtue and natural justice, before which everyone is equal. The value basis of social order and control in Taoism was justice and equality. It was believed that for the rule of order in society, a person must be virtuous and constantly exercise self-control.

In theoretical and cognitive terms, the genesis of order and control took place through the gradual rationalization of the original mythical ideas. The philosophical foundation of social control and order arose among all ancient peoples on the basis of mythological origins. The myths were characterized by the identity of the informative (messages about the events that took place and the significant actions of the gods) and the imperative. According to mythological consciousness, the earthly order was inextricably linked with the global, cosmic order, which had a divine origin (Fuller, 1956; Kazanchian, 2020).

Ancient myths' main idea and theme was the primary divine source of the existing social and legal order. However, among the ancient peoples, one can find different mythical versions of how the questions about the method and nature of the connection of the divine principle with

earthly relations should be resolved. Each myth, in its own way, reflected the originality of that system and socio-political order, the ideological justification of which was fixed in it. So, the myth was, at the same time, the basis of the origin and legitimation of order, the justification of its existence and eternal, unchanging preservation, and the principle and norm of its functioning. The myth endowed the highest authority and sanctioned the corresponding order (Finnis, 2014; Slyvka, Harasymiv, Levytska, Kolyba, & Panchenko, 2021; Zakhartsev & Salnikov, 2021).

The philosophy of ancient Greece viewed order through morality as a blessing, and the law was perceived as a norm opposing chaos, anomaly and evil. The culture of that time demonstrated the competitiveness and subordination of a person to the norms of customary law on the basis of legal equality, which ensured the orderliness of social relations. The man was viewed as contradictory, based on two principles (Apollonian - creative and Dionistic - destructive). The mythologeme of the Apollonian beginning was understood as order and harmony, morality and law (Sokolovskyi, Kobetiak, Melnychuk, & Chaplinska, 2021; Herdegen, 2013). The mythologeme of the Dionistic - as chaos, destruction, crime. Since the confrontation between order and chaos was recognized as universal, it was perceived as the ontological beginning of being, in which the unity and struggle of opposites declare themselves as a source of development.

It should be agreed that the philosophy of law of Ancient Greece was characterized by the following features of the understanding of order:

1. the institutional basis of order was made up of laws that provided equal opportunities for the implementation of every free citizen of the polis;
2. the stable power of the democratic majority, which operated both in peacetime and in wartime;
3. there was an institution of harmony between the rich and poor strata of the city-state,

which included traditions, moral norms based on mutual trust;

4. laws determined the stability of order;
5. the value structures of the order were diverse (they regulated property relations and interpersonal relations, which made it possible to identify the individual's consciousness with the established norms and laws of the polis community).

It should be agreed that the ancient Greek thinkers were sure that the world order (harmony) affected the legal order and had the opposite effect. In their opinion, violation of laws, rituals and traditions entailed a violation of world harmony, which entailed inevitable punishment of the gods. They considered God's judgment in two dimensions: the deformation of the actually normative tissue and the deterioration of the present life of society. In the minds of ordinary citizens, fear of punishment from higher powers was seen as a strong guarantee of order. Equally, the idea that the gods establish the legal order of a particular country was transformed into the thesis of divine world order as a reason for giving rise to at least some kind of state and legal order (Rist, 2008; Rawls, 1971; Radzivill, Shulzhenko, Golosnichenko, Solopenko, & Pyvovar, 2020). This entailed a detailed regulation of the behaviour of all members of society and the expulsion or physical destruction of those considered potential enemies of the established religious and legal order.

In the early stages of the formation of ancient philosophy, the justice category was contained in a more general, syncretic concept showing the world order as a whole. In relations between people, the proper rule of law criterion was the degree of observance of justice. Eternal justice was identified with law. Consequently, the specificity of social control and order concepts is primarily fixed in the specificity of ancient sociality. The ancient world invented an entirely new social order: a polis or city-state, a community of full-fledged citizens united in protecting their rights against foreigners, incompetent citizens

and enslaved people. In the ancient world, a completely new person appeared – a free citizen who was not in Eastern societies and states. The limits of a citizen's freedom were determined by law, but at the same time, these were also the limits from state interference in his private life. That is, in the ancient East, a person has always been a part of a social whole, which is always indebted to society and everything that was the basis of the social order. The law, the custom that regulated its status within the whole, determined different duties for people. A citizen of the ancient polis was obliged to society to act according to the established law, and the legality or illegality of the requirements of the society-state, he could discuss and decide in court before other free citizens (Escobar, 2020; Pavlenko, Utiuzh, El Guessab, & Veliiev, 2020).

Antiquity, having discovered the autonomy of the human spirit, led to a change in the paradigm of spirituality and worldview, which led to the transformation of the understanding of the meaning of life-based on Christianity from the material to the spiritual. The ancient culture, which divided the sensual and rational world, was replaced by medieval culture, which consolidated the domination of the spiritual, seeing in it the transcendental, eternal, unchanging and perfection of the world.

The development of society took place within the framework of a religious worldview, and control over members of society was exercised by religious methods, which were the basis of Christian doctrine. The main feature of the philosophical teachings of that time was their theocentric nature, that is, the assertion of God as the centre of the universe.

The next stage in the development of the philosophy of the relationship between social control and legal order was the Renaissance, which was an era of profound social upheavals, the revival of ancient culture, the growth of the socio-political role of cities, the formation of a class of the bourgeoisie and the intelligentsia, directly related to the entry into force of science and art.

In such conditions, a new system of values was formed based on the principle of individualism, which led to a revision of questions about man's position in the world, the essence of man, and his relationship to God and nature. The issue of human dignity, the meaning of his earthly existence and his place in the world were actively discussed. Thus, the foundation of the philosophy of the Renaissance was anthropocentrism, under which the recognition of the central position of man in the world was established on the basis of the affirmation of the consubstantiality of God and man. The new culture was based on the ancient heritage, which was closer and understandable to humans than the theological-scholastic culture. Instead of a religious explanation of state and law, the new concepts proceeded from the premises about the natural character of these phenomena. At the same time, the recognition of man as an individual has led to new searches for substantiating the essence of order through the prism of its humanistic direction.

In the philosophy of law of the Renaissance, man appears in the centre of an infinite world, capable of realizing his greatness and transforming the world. At the same time, the following took place: the destruction of feudal and early capitalist relations, a critical rethinking of religious teachings, an increase in the authority of the bourgeois strata of society, a decisive shift towards secularization, and the development of secular culture. The ideology of the Renaissance was based on ideas about the state, law, order, and law from the treasury of the spiritual culture of an ancient civilization. The main idea of the humanistic direction was the need to assert the self-worth and autonomy of the individual, to ensure the conditions for its free development, and to enable a person to make decisions on their own (Kryshtanovych, Chubinska, Gavrysh, Khl-tobina, & Shevchenko, 2021).

The concept of the relationship between social control and the legal order had undergone rapid development in the modern era, when such essential concepts for the philosophy of law as,

for example, the theory of social contract and natural human rights, were developed. Researchers have expressed the opinion that since the modern era, control over the observance of inalienable human rights is increasingly taken over by the state, and control over the actions of the state is taken over by civil society. Since then, the disclosure of the social order has been based on human nature, expressed in natural law and natural rights, primarily in the human right to life and the right to equal human-human communication.

Representatives of the philosophy of law of this time considered social control and legal order in unity and close interaction. The primary purpose of social control was to create and maintain a social order, which is possible only if the person's behaviour becomes typical and acceptable to society. At the same time, the main emphasis was placed on individual freedom as a value, thanks to which a person can make a free choice in favour of social norms and values. It was believed that only a free person is capable of improvement, socialization, integration, etc. Along with this, there was a transformation of philosophical and legal views from rational to irrational, which entailed considering the influence of such factors as solidarity, conscience, and responsibility to ensure the legal order.

Discussions

Social order and stability depend on many social factors, among which social control occupies an important place as a means of self-regulation of society, the purpose of which is to streamline social relations. This problem is especially acute in the legal plane, where social control is used together with other social and legal means, as a decisive factor in the formation of the legal order (Kelman, Kristinyak, Andrusiak, Panchenko, & Kelman, 2021; Ortynskyi, Slyvka, Scotna, Levytska, & Shcherbai, 2021; Kryshtanovych, Golub, Kozakov, Pakhomova, & Polovtsev, 2021). A philosophical and legal study of social control

and its impact on the rule of law requires a detailed examination of these concepts in historical retrospectives through the prism of their value-based content. It has been proven that in the countries of the Ancient East, the basis of social control was the control and regulatory functions and powers of the ruler and administrative-command work (Malakhov, Lanovaya, & Kulakova, 2021). Control was exercised through a detailed system of a religious worldview based on social stratification. An effective means of control was punishment, which was considered inevitable. Social control of that time: had a one-sided character, exclusively as an instrument of the state; it had a tough despotic character; the apparatus for the embodiment of social control was developed. The historical aspects of the formation of the relationship between social control and legal order in the philosophy of Antiquity with two ideological periods are reproduced: mythological and rational-reflective understanding of social control and legal order. It has been established that the philosophical concept of the value foundations of social control and legal order in Ancient Rome and Ancient Greece should recognize freedom, equality, and justice. The main ideas that formed the legal order include the following: the order had a divine character; state and order were identified; the common good was recognized as the essence of the legal order; The purpose of law and order was to protect private property.

It is concluded that in the Middle Ages, social control and legal order were viewed through the prism of religious consciousness. Medieval culture took a big step in returning from the material to the spiritual, focusing on the transcendental, divine world based on Christianity. The normative basis of social control in the Middle Ages was: religious (Christian) norms (canon law), and the primary subject of its implementation was the church (interdicts, encyclicals, indulgences); corporate (group) norms, which were the normative basis for social control within social groups; legal norms, for the most part, reflected the content of feudal legal customs,

which were the primary source of law. Their gradual systematization took place, as well as the reception of Roman law, in particular, through the activities of glossators. It is stated that the Renaissance era introduced the values of anthropocentrism and humanism into the development of the relationship between social control and the legal order, which were based on the principle of individualism (human dignity, revealing the essence of man and his central place in society and the world based on consubstantiation with God).

Conclusions

Control, as one of the essential functions of managing society, the purpose of maintaining the established social and philosophical-legal order, is based on the system of values that form the basis of social organization. Therefore, it is advisable to analyze control in its relationship with the rule of law through the prism of fundamental values dominant in society, embodied in social principles and norms. It is proved that in the entire history of the development of society, there have been numerous attempts by various means to overcome the undesirable types of behaviour of people, as well as to encourage them to act in a socially beneficial way, or at least not to violate the requirements of social norms. For these purposes, each society created a system of social (public and legal) control, which encompassed various means that made possible the existence of a legal order. With this in mind, the goal of control from a philosophical point of view was to minimize the violation of established social norms and the social values enshrined in them. In historical retrospect, each society has developed its own system of means of social control, which included beliefs, prohibitions, and rewards, which made it possible to shape people's behaviour in accordance with the requirements of social norms.

As a result of the study, critical elements of philosophical and legal paradigm control in the context of the philosophy of law were identified.

In the future, attention should be paid to the study of the philosophical paradigm of the essence of control in the current conditions of the development of the philosophy of law.

References

- Escobar, A. (2020). *Pluriversal politics. The real and the possible*. Durham and London: Duke University Press.
- Finnis, J. (2014). What is the philosophy of law? *The American Journal of Jurisprudence*, 59(2), 133-142. <https://doi.org/10.1093/ajj/auu012>
- Fuller, L. L. (1956). Human purpose and natural law. *The Journal of Philosophy*, 53(22), 87-99.
- Herdegen, M. (2013). *Principles of international economic law*. Oxford: Oxford University Press. <https://doi.org/10.1017/S0165070X12001362>
- Kazanchian, L. (2020). Features of human dignity in the context of the modern philosophy of law. *WISDOM*, 15(2), 147-152. <https://doi.org/10.24234/wisdom.v15i2.358>
- Kelman, M., Kristinyak, M., Andrusiak, I., Panchenko, S., & Kelman, R. (2021). The influence of the ruling elite on political activity in the conditions of de-structuring the essence of the philosophy of law. *WISDOM*, 1(1), 90-97. <https://doi.org/10.24234/wisdom.v1i1.603>
- Kryshtanovych, M., Golub, V., Kozakov V., Pakhomova, T., & Polovtsev, O. (2021). Socio-ecological effect of public management of green development in the context of the philosophy of modern ecology. *WISDOM*, 19(3), 114-126. <https://doi.org/10.24234/wisdom.v19i3.493>
- Kryshtanovych, S., Chubinska, N., Gavrysh, I., Khlitobina, O., & Shevchenko, Z. (2021). Philosophical and Psychological Approach to Self-Development of Scientific and Pedagogical Workers. *WISDOM*, 20(4), 139-147. <https://doi.org/10.24231/wisdom.v20i4.560>
- Malakhov, V., Lanovaya, G., & Kulakova, Y. (2021). Mythologisation of law by historical consciousness. *WISDOM*, 1(1), 125-137. <https://doi.org/10.24234/wisdom.v1i1.667>
- Ortynskyi, V., Slyvka, S., Scotna, N., Levytska, O., & Shcherbai, I. (2021). Features of the socio-political and theoretical foundations of the philosophical understanding of law from the middle ages to the present. *WISDOM*, 19(3), 204-216. <https://doi.org/10.24234/wisdom.v19i3.488>
- Pavlenko, N., Utiuzh, I., El Guessab, K., & Veliiev, P. (2020). Postmodern interpretation of the metaphysical grounds of the wealth phenomenon. *WISDOM*, 15(2), 33-44. <https://doi.org/10.24234/wisdom.v15i2.340>
- Radzivill, O., Shulzhenko, F., Golosnichenko, I., Solopenko, V., & Pyvovar, Y. (2020). International legal and philosophical aspects of the new protection concept of the common heritage of mankind: Philosophical and legal worldview. *WISDOM*, 15(2), 153-174. <https://doi.org/10.24234/wisdom.v15i2.330>
- Rawls, J. (1971). *A theory of justice*. Cambridge, MA: The Belknap Press of Harvard University Press.
- Rist, G. (2008). *The history of development. From western origins to global faith* (3rd ed.). London & New York: Zed Books.
- Slyvka, S., Harasymiv, T., Levytska, O., Kolyba, M., & Panchenko, S. (2021). Development of ideas of the philosophy of law in the ancient east. *WISDOM*, 20(4), 209-216. <https://doi.org/10.24234/wisdom.v20i4.502>
- Sokolovskyi, O., Kobetiak, A., Melnychuk, M.,

& Chaplinska, O. (2021). Reconstruction of the religious paradigm in the modern globalized world. *WISDOM*, 18(2), 153-160. <https://doi.org/10.24234/wisdom.v18i2.467>

Zakharov, S., & Salnikov, V. (2021). Philosophical and legal foundations of the comprehensive theory of law. *WISDOM*, 1(1), 223-231. <https://doi.org/10.24234/wisdom.v1i1.665>