

**ARGUMENTATION OF THE SOURCE OF POWER, ITS FORMS AND THE STATE
SOVEREIGNTY IN THE “CODE OF LAW OF ARMENIAN PEOPLE”
BY MKHITAR GOSH**

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Philosopher, theologian, jurist, ecclesiastical and public-political figure Mkhitar Gosh (c. 1130-1213) has made a significant contribution to the history of Armenian medieval legal and political culture. He left a huge literary legacy, appreciated by Kirakos Gandzaketsi, “...**thoughtful books like a tomb statue for the benefit of scholars**”.¹ These are "A Brief Interpretation of the Prophecy of Jeremiah", "A Lament on Our Essence", "The Declaration of the Orthodox Faith Against the Schists", "The Order of the Patriarchs from Albania" ("Albanian Chronicle"), "Fables", etc. Gosh's masterpiece is the work "Code of Law" ("Armenian Book of Judgments", 1184), which took a leading place among the world's recognized legislative monuments.

At the XII century, the level of legal awareness of the Armenian people was so high that they understood the need for secular-political laws to ensure **national judicial identity**. It is known that Muslim rulers did not examine the internal affairs of Christians under their own law. According to Nerses Lambronatsi, during the patriarchate of Grigor IV Tgha (1173-1193), "the inhabitants of towns and provinces asked for secular laws from His Holiness", but "there were no secular laws amongst Armenians, neither in churches, nor among princes."² There were only canonical laws in the Catholic archives. The creation of the "Code of Law" was conditioned by the legal and political realities of the given historical period.³ In Armenia itself and in Cilicia, the Armenian people were waging a national liberation struggle to restore political independence and national statehood. Therefore, the Judicial Code was drafted as the code of the future Armenian state.

Mkhitar Gosh's legislative activity was based on **the idea of a sovereign and centralized statehood in Armenia**, the implementation of which presupposed the solution of a number of issues, unification of internal and disbanded armed forces, cooperation of local authorities, neutralization of separatist-centric policy, mitigation of inter-class conflicts on the principle of justice, establishment of social harmony, influence of spiritual and moral ideology, etc. These problems are reflected in the “Code of Law” and were solved by the genius thinker on a philosophical and legal level.

Based on the Bible, Mkhitar Gosh considers **God**, the Divine Will and the Predestination as the sources of power, because "there is no power that is not of God, and the present authorities are ordained of God" (Rom., Ch. 13: 1-2).

¹ Kirakos Gandzaketsi 1982: 161.

² See The law of city 1907: 5.

³ The 12 reasons of writing his "Code of Law" Gosh explains in the second chapter of “Prolegomena” to his "Code of Law". See Mhitar Gosh 1975: 2-5.

At the same time, the Jurist establishes the rights of political self-organization and self-government of nations. In the national political system, Gosh distinguishes between two structures of power: **state (secular) and ecclesiastical (spiritual)**. The principle of separation of powers should have ensured the Armenian statehood and its stability, covering all spheres of national existence. The state and the Church are the pillars on which the nation is based as a political reality.

Gosh imagines the state as a kingdom (monarchy). Having been aware of national history, he advocates the **idea of a centralized royal government**. According to the thinker, there is no state in the Armenian world, but "we set the rules of kings for the sake of decency."⁴ And although many mocked the idea because of non-existence of the Armenian state, it should be remembered that "all earthly kingdoms are transient and changeable, especially our kingdom, because the past [kingdom] does not exist now and we will not have it in the future, but I make my wish come true by trying to keep my [legislative] proposal complete".⁵

It should be noted that the "Code of Law" ("Judicial Book"), being aimed at national interests, contributed to the processes of self-preservation and political self-determination of the Armenian people. Medieval Armenian thinkers developed a unique concept of **national sovereignty and state sovereignty** (power supremacy-sovereignty), which corresponded to the national ideology of the Armenian people and the demands of the national liberation struggle.

Gosh imagines the independence of the country with a strong sovereign state, which was connected with the head of state, the king. In order to substantiate the sovereignty, he confirms: **"And God is only King, and men are only nominees**, not true [kings] (emphasis added – L. S.)."⁶ The King is ordained of God, and only He can change him. That is, the king is God's substitute on earth, ruling by God's commands and imitating Him. Gosh defines the concept of "king" in the earthly (secular) sense. "Kings are called kings who rule over their entire nation, and collect other taxes from other nations, and if not, they [themselves] are not compelled."⁷ The content of this definition implies that the king: a) is endowed with sovereignty, b) is the head of state, the supreme representative of the nation, c) collects taxes from other nations, d) if he does not take taxes from others, at least he does not become a taxpayer. According to the understanding of the time, these characteristics were sufficient to consider the king's authority superior.⁸

In this historical period, the Zakaryan princes were called **kings, Shahshah**, which proves that their rule did not differ from that of the king. Unofficially anointed king, the Zakaryans were not taxpayers of the country, but took taxes from others. This fact is

⁴ The «Armenian Code of Law» 2001, Article 2, p. 392.

⁵ Ibid.: 399.

⁶ Ibid.: 392.

⁷ Ibid.

⁸ For the analysis of national and European perceptions of the concept of sovereignty, see Mirumyan 2008: 194-199, 240-241, 291-292; Safaryan 2013: 19-120.

proved by Kirakos Gandzaketsi, "Zakare and Ivane seized many Armenian territories occupied by the Persians and Arabs. **They made the sultan of the city of Karin a tax payer.**" "The fame of their courage spread over many lands, and **many nations became their taxpayers** out of love and fear."⁹

It is noteworthy that Gosh mentions the characteristics of the king's sovereignty without using the term "sovereign". Meanwhile, in the same article related to the Armenian Patriarch, he writes: "And in the court the patriarch will be sovereign to sit, but not the king in the patriarch's house"¹⁰. It is obvious that the "Protocol" recognizes unconditionally the sovereignty of the Armenian Patriarchate.

One of the guarantees of stability and survival of a sovereign, strong and centralized state is the **rule of inheritance**, which is based on the following principle: "The kingdom is personal property and passes from father to son".¹¹ Based on the national tradition of inheritance law, the political realities of the time and the state interests, Gosh defines a flexible system of heredity:

- A) First, it confirms the equality of the king's heirs. "If he has sons and daughters, let the kingdom be divided equally among them." But the son is a "king by descent."
- B) He considers it appropriate to **inherit the throne of his eldest son**, but realizing the importance of the head of state in governing the country, he orders the king: "And let the **progressive** son sit on the royal throne." And the firstborn needs to be honored with his chosen possessions.
- C) If the king has brothers, "his sons have no right to take the kingdom," but only after the brothers have died can the sons reign. In this provision, he means the Zakaryan brothers.
- D) If the king has a daughter, "she and her husband will have a patriarchal house, and the [daughter] will receive half of the brother's [receipt]."
- E) After the death of kings, "the son of the son shall receive the throne, but not the daughter of the daughter." Otherwise, the daughter's heirs will be considered strangers.
- F) If the king does not have a son, but a daughter, and "gives the crown to his daughter," and if she marries, "she will have the right to give her throne to her husband," but in the event of her death, "her children will be considered strangers."¹² In this regard, Gosh relies on biblical laws (see Count. 17, 8-11).
- G) The king has the right to make a will and change it during his lifetime. If he has no heirs from his family, "he shall have the right to give his crown to a stranger, but **not by religion.**" And if there are heirs from the royal family, "the closest ones will be the heirs." This regulation also applies to princes and nobles, but "reign will not be arranged without the order of the patriarch."¹³

⁹ Kirakos Gandzaketsi 2002: 122-123.

¹⁰ The «Armenian Code of Law» 2001: Art. 2, p. 393.

¹¹ Ibid., Art. 230, p. 515.

¹² Ibid., Art. 2, p. 392.

¹³ Ibid.: 393.

Thus, the inheritance was to be done directly from the descendants of the blood relatives to the "eldest" of the king's sons, brother or daughter without transferring to the latter's sons.

According to the "Code of Law", the king's personality is sacred and inviolable. His **exclusive rights** as the supreme bearer of the state power are as follows: declaring war, normalizing foreign relations, building cities, fortresses, bridges, conducting a census, minting coins "according to the laws", the death penalty, the right to pardon, etc.

The model of the **national legal state** is outlined in Gosh's concept. All classes of the country, including high-ranking princes, clergy, and even the king, are subject to certain rights. It is the king's **duty** to govern by the principle of justice ("in any case, and in every case, let the believing king do the right thing"), to maintain peace in the country, to prevent internal split. He should be a member of the Armenian Apostolic Church, take the example of the pious, "do not abide by the laws of pagan kings, but be legally married, for he has the power to go to court with the patriarch."¹⁴

Gosh calls for the king's **humanitarianism**, urging him to refrain from violence, to avoid killings, and to "kill only foreigners who cause war" after the end of the war with foreigners. And if he invades another country, he must first call for peace, only if he resists, he will kill the conspirators and turn the others into taxpayers. Gosh sets the death penalty for those who surrender their cities and fortresses to the enemy, but urges the king to "instruct us in one way or another for the sake of the humanity of our laws, so that he may attain repentance and not perish...."¹⁵

In the state system, the secular princes are subordinated to sovereign king, whose rights and responsibilities are defined by Gosh based on the **principles of centralized governance and relative decentralization of local bodies**. Realizing that one of the reasons for Armenia's current political situation is the dispersal of the country's armed forces and the inclusion of princes in their provinces, he criticizes those princes who discreetly "considered better the state enslaved by any people than obey each other and be free."¹⁶ Gosh tries to solve the problem of neutralizing the centrifugal aspirations of the princes on the legal level, which at that time was possible only on the principle of subordination.

The Jurist clearly defines the powers of central and local authorities. Only the king has the upper hand. He orders the princes. The latter are masters and directors in their domains. "In the province given to the prince by the king, if, according to him, a fortress or a trading village is built, or he rebuilds the ruins of the province, the prince's inheritance must be considered."¹⁷ Moreover, if the prince does not commit a major

¹⁴ Ibid.: 393-394.

¹⁵ Ibid.: 394.

¹⁶ New Armenian witnesses 1903: 24.

¹⁷ The «Armenian Code of Law» 2001, Art. 2, p. 398.

crime, the right of inheritance is transferred to the sons after his death by the order of the king.

The princes can only enjoy some of the king's exclusive rights (building cities, fortresses, bridges, minting coins, etc.) only by royal decree. They have the right to punish thieves, but without the king's order they have no right to execute murderers. The authorities are not allowed to punish or fine employees without a sentence. Punishment is allowed if "...there is a crime against the country, let those who are criminals in other things be judged".¹⁸ During the war, gold, the main spoil, belong to the king, and silver to the princes, copper, iron and other items to the army. Half of the captives and loot belong to the king, the other half to the army. The king and the princes are obliged to give tithes to the church.

Gosh defines the **responsibilities of secular officials**: fair governance, the rule of law, and moderate taxes. "Residents have to be forced into crafts or trades, because Christians do not have a head tax, the head tax belongs to non-believers when they are forcibly taxed." According to Gosh, the king and the princes have the right to land, but not to water. Taxes vary widely for Christians and non-Christians alike. Therefore, "it is not appropriate for princes, like other believers, to tax believers."¹⁹ The "Code of Laws" defines various taxes for deserts, gardens, orchards, animals, as well as for water use.

Gosh defines the **subordination of the subjects to the princes**, according to which the princes are subject to the prince of princes, the nobles to the princes, and the peasants to the nobles. Each class has certain rights, responsibilities to the superior and the state. Various punishments are imposed on those who insult the king and the princes. "If someone is unjustly hostile to kings or princes, he will be punished, if he is religious, he will be disqualified, and if he is secular, he will be isolated." Bishops and priests have the right to decide, "for the kings and princes are the image of God."²⁰

The degree in the "Code of Laws" is also reflected in the provisions on the **right to punishment**. God punishes kings appointed by God, as the Bible testifies, "As for the princes, whom the king commands, the king has the right to exile and punish." However, the king's authority is not unlimited. "If there is a need to punish the king for maintaining **peace** in the country, it must be done by the will of another king and the patriarch and with all justice."²¹

Gosh does not define the right of dethronement for the people, because at that time it could lead to internal unrest, and its purpose was to establish **national unity**. But he does not accept illegal judgments, even by high-ranking princes. If the princes put on throne an unworthy king, they must be exiled. The nobles or princes have no right to "declare themselves princes and rule themselves," in which case the king has the right to exile or punish them. The prince of the princes has the right to punish or exile the

¹⁸ Ibid.

¹⁹ Ibid., Art. 2, p.397-398.

²⁰ Ibid., Art. 50, p. 419.

²¹ Ibid., Art. 230, p. 515.

nobles as well, and if "he was ordained by them (the princes), he shall do so by their unanimous consent."²² And if he is appointed by the king, he must do as he pleases.

Freedmen have no right to punish soldiers, because punishment is the prerogative of the princes. Similarly, soldiers have no right to exile or punish villagers because the nobles can exile and punish the princes. Gosh confirms that the decisions regarding the royal house are fair.

The creation of a national legislative system presupposed the key functions of the central government - to create a common legal system, to ensure the mandatory application of human rights throughout the country. National laws must apply equally to all segments and nationalities of society. The natural rights of all subjects (that is of life, person, dignity, property, etc.) must be protected by law. The fact that Gosh does not accept the Muslim religion (according to which Christians are oppressed by the laws), but defends the rights of Muslims as subjects of the Armenian Kingdom, rightly shows some discrimination against them.

State sovereignty was to be strengthened in the country with the establishment of a **common law**. According to Gosh, in order to overcome the economic isolation and local separatism of individual provinces, **internal economic unity** is needed as an essential factor and precondition for the unification of the people. This implies a common legal, customs system, a single trade and a common internal market.

The "Code of Laws" sets **common standards for trade** for the whole country. The collection of customs duties within the limits of the state power is prohibited, unified size and weight are approved, and the right to set food prices is reserved to the central government as an exclusive monopoly. "Sales in the cities were regulated by the orders of kings or by the permission of kings through princes. The order of sale is defined in cities, towns and other provinces. And they were the first to adjust the size and weight, creating samples."²³ Gosh considers the **internal free market** as a guarantee of the internal unity of the people, condemning the fraud, deception, illegal transactions in the mentioned sphere.

According to the Code, **customs** are also regulated by royal decrees, and princes are not authorized to take customs without the king's order. Gosh urges to set food prices "according to the fertility of the year or other circumstances." Prices can be changed (go up or down) only by the order of the king and the princes, "informing the governors and the people's leaders (local officials – L.S.) of the price changes." Price fluctuations are also due to the poverty or wealth of buyers. Therefore, "Let the authorities exercise fair control by establishing high and low prices so that farmers and other agents, as well as traders, do not deprive each other," and "judges can conduct the investigation accurately, according to the orders of the government."²⁴ Thus, Gosh's legal policy is based on the **principles of justice and social harmony**.

²² Ibid.

²³ Ibid., Art. 240, p. 522.

²⁴ Ibid.: 523.

The Jurist defines penalties for robbery, theft, prohibited trade and charges, illegal minting, and violation of customs standards. For example, the article on the **prohibited trade** states: "The property that the local church does not want to sell is not for sale." Gosh also instructs, "It is appropriate to know that church property is not subject to sale for other nations, and if it is sold because of unsuitableness for the church, it should be sold at the same price (emphasis added – L.S.)."²⁵ Another article condemns fraud: "And if an animal with a defect or a bad habit is sold, then whatever damage is done, the seller must compensate the damage in court, because the law instructs to eliminate such an animal and not to sell it."²⁶ The above articles clearly show the national, moral, social and health context of the law.

Under the **authority of economic control**, "[the kings] have established a procedure to search and find the robbers so that they do not commit fraud in the sale." Fraudsters are punished according to the orders of the princes. "Those who steal with size and weight must repay four times as much and be ashamed to reprimand others." The hands of those who mint illegal coins (*dahekan*) must be cut off." Customs must be taken legally if they come from other places for sale. Gosh forbids customs duties on the road, saying "one can rent if the enemies have taken refuge in them."²⁷ For the welfare of the people, he also imposes a **stable and certain amount of taxes and duties**, criticizes usurers, forbids usury, rebukes illegal officials, and imposes penalties for abuses.

According to Kh. Torosyan, "the forces of the agrarian society, which were fighting against localism, political separatism and economic inclusion, were fighting for political and economic unity, for a free internal market without feudal obstacles. They have historically been progressive forces".²⁸ In his time, Gosh noticed and appreciated the positive tendencies of the realities of Armenia's internal life, defending them in his "Code of Laws."

One of the important factors in establishing a common law in Armenia is **social harmony**, which is possible through the legislative regulation of social relations. Gosh tries to alleviate the differences between the different classes of society, the owners and the servants, to harmonize their interests. The owners are urged to act within the law, in accordance with the **principle of justice**, to refrain from arbitrariness, to "take care" of employees, to prevent dangers at work, to pay the rent, and so on. And he calls on the lower classes to obey their masters, to fulfill their obligations in good faith, to pay their taxes on time, and so on. Gosh has clearly defined the rights and responsibilities of each social class, which must be unconditionally fulfilled.

The norms of the "Code of Laws" are aimed at the **protection of human dignity and rights**, the realization of the idea of public welfare, because "there is nothing more

²⁵ Ibid., Art. 142, p. 454.

²⁶ Ibid., Art. 185, p. 474.

²⁷ Ibid., Art. 240, p. 522.

²⁸ Mkhitar Gosh 1975, Preface, p.29-30.

honorable than public benefit." However, as K. Mirumyan confirms, "in the absence of a national state and the presence of a foreign yoke, the social problem, in all its necessity, is subject to the general national-political problem."²⁹

Spiritual Power. The second pillar of the Armenian Kingdom is the **sovereign and independent Armenian Church**, which has played a major historical role in uniting the people, organizing the national liberation struggle, restoring statehood and establishing national unity.

The "Code of Laws" emphasizes the **national** nature of the Armenian Church, as it is a structure that carries and propagates the national ideology. Gosh unequivocally defends the Armenian religion, and, as Kh.Torosyan affirms, "the law at that time was a religion, and the latter was not only a ritual and a faith, but also a **weapon of political self-determination and national self-preservation.**"³⁰

Prior to the re-establishment of the Armenian statehood, the Armenian Church was the only nationally centralized organization capable of uniting the divided parts of Armenia and individual princedoms around national-political ideas. In the event of a threat from Muslim tribes, Gosh does not rule out Christian solidarity among the churches. However, this generality is interpreted only as the **equality of national churches without any administrative authority of the church.** It rejects both pro-Greek and pro-Latin currents, defending the ideological and religious freedom of nations, their freedom to choose their own way of self-governance and the historical path. According to Gosh, religious differences should not affect the relations between peoples. Christian nations cannot be united by religion, but they may not be enemies and may even be allies in the political arena.³¹

The "Code of Laws" is based on the **state-church-people** relationship. Many defined provisions reflect the rules of legal regulation of secular power and spiritual authorities, as well as the relations between the government and the people. Gosh seeks to give a normative character to the mentioned relations, which form the legal basis of the Armenian state to be established.

The church class is the bearer of spiritual power and must deal with the spiritual sphere, but not interfere in the state and political affairs. The secular government must deal with purely state and political issues, without interfering in the affairs of the clergy and the church, and without restricting the ownership of the church. For example, "The princes have not the right to appoint a person as a priest upon brothers they do not want. Bishops can settle the issue, but not by bribery, but only by law."³²

Thus, by the **principle of separation of powers** Gosh clearly defines the rights and functions of state and ecclesiastical authorities, reserving relative independence for

²⁹ Mirumyan 2008: 245.

³⁰ Mkhitar Gosh 1975, Preface, p. 16.

³¹ See a detailed analysis of the problem in Mirumyan 2005: 308-310; Mirumyan 2008: 241-243.

³² The «Armenian Code of Law» 2001, Art. 3, p. 400.

them. At the same time, the methods and means of solving national problems are discussed by the joint political authorities in a joint consultation.

According to Gosh, the church must govern with true judgments according to the heavenly order. As in the case of secular power, he misses the **spiritual hierarchy** from top to bottom. For example, in the case of problems that arise, the final word belongs to one who stands higher in the hierarchy.

The church governs with the **principles of centralization and relative decentralization**: "Everyone can decide on the consecration of priests and the affairs of villages and towns only in his domain, and in another domain he has no right to the authorities and does anything if there is no decision of the bishop of the capital. Nor can the Catholicos himself do anything without consulting other bishops."³³

Thus, the "Code of Laws" reaffirms the **principle of consultation** established by the first National-Church Assemblies, which was used to solve national problems of utmost importance.³⁴ In this context, Gosh's exhortation is noteworthy. "The ancient traditions of the churches of the provinces should not be changed. This is the order of the day, the officials and the people. And if a patriarch wants to change the tradition, **he must do it in the Assembly, safely, according to the Code**" (emphasis added – L.S.)³⁵.

The Church has the right to participate in the discussion of important social and political issues of the country. According to the Code, the Patriarch of All Armenians has free access to the court, participates in the election of the heir to the throne, and his consent is required when the king is overthrown or punished.

For the sake of improvement, Gosh considers the **electoral system** of the clergy important, "The honor and grace of electing a diocesan bishop belongs to the head, that is, the Catholicos, but the decisive will goes to the great assembly."³⁶ With the approval of the leaders in the Congregation, the **progressive** should be chosen as the "chief and senior." In this case, the unworthy will not seek the throne. And if everyone is equal in grace, "the older one becomes the better."³⁷

When defending the **church's property rights and property immunity**, Gosh bases his rule on those of St. Sahak and Barsegh of Caesarea, stating, at the same time, that "we must add to them the provisions of certain laws."³⁸ The laws contain both moral counsel and severe punishment for encroaching on property belonging to the church and the clergy.³⁹ The monasteries are not subject to inheritance, as they are built to meet spiritual needs.

³³ Ibid., Art. 157, p. 460.

³⁴ For a detailed analysis of this issue see Sarvazyan 2014: 43-58.

³⁵ The «Armenian Code of Law» 2001, Art. 161, p. 462.

³⁶ Ibid., Art. 4, p. 400-402.

³⁷ Ibid., Art. 3, p. 399.

³⁸ Ibid., Art. 3, p. 399.

³⁹ Ibid., Art. 44, 75, 92, 142, 153.

The terms of sale of church property are defined. Church property is under the jurisdiction of the bishop, and if the elders sell it, the bishop has the right to claim the same property or its value. It is noteworthy that Gosh gives the bishop a choice by ordering: "And let the bishop weigh what is right and what is wrong; if he can, let him take the price or return it."⁴⁰

The "Code" pays great attention to the **education of the clergy**, "Monks must be educated according to the laws of the canon and the Old and New Testaments." They are obliged to "report on the sciences they have obtained," so that the half-educated people, receiving the title through deception, "will not do evil because of their incompetence."⁴¹ For example, if a priest retaliates against someone with personal revenge, "he will condemn himself, but after repenting, he must do penance on the advice of the bishop."⁴²

The Jurist punishes gluttonous, drunkard, undisciplined and lawbreaking priests, instructing to take from them their ranks. For secular attractions bishops should be deprived of their ranks since "... nobody could be servant to two lords".⁴³ In case of robbing the people, extortion, greed, violence the priests should be judged by the **great council** in order "to deprive the robbers from position and priestly rank and completely release from their duties".⁴⁴ At the same time, relying upon Apostolic laws, Gosh establishes a punishment equal to the offenders of the God for the civilians who would offend priests.⁴⁵

Thus, the state-legal provisions of M. Gosh's "Code of Laws" provided bases for the restoration of the Armenian statehood, the **sovereign kingdom**, the establishment of the right to national self-government, and the establishment of a unified national legislation. Based on the principles of centralization of governance and relative decentralization of local authorities, the "Code" clearly defines the rights of central and local authorities, with the supremacy of central government. Based on the principle of separation of powers, the powers and functions of secular and spiritual authorities are clearly separated. The ecclesiastical laws were designed to strengthen the authority of the Armenian Church, to enhance its authority and role in governing the country, uprooting moral principles in society, and establishing national unity.

⁴⁰ Ibid., Art. 142, p. 454.

⁴¹ Ibid., Art., p. 400-402.

⁴² Ibid., Art. 5, p. 403.

⁴³ Ibid., Art. 48, p.418-419. See also Art. 36, p.414-415.

⁴⁴ Ibid., Art. 138. See also Art. 139, p.453, art. 160, p.462.

⁴⁵ Ibid., Art. 37, p. 415.

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