

PROBLEMS OF LAW AND MORALITY IN THE PUBLIC SPEECH OF MATTEOS MAMURYAN

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Abstract

The presence of legal culture in the Western Armenian reality has been significantly contributed to by the political publicity reflected in Armenian periodicals and journals. In this respect, the “Eastern Press”¹ published in Smyrna at the end of the 19th century, whose editor Matteos Mamuryan repeatedly commented on legal and political issues, was of exceptional importance. Its concept is based on the ideas of protection of historical and political rights of the nation, national-civilizational identity and freedom of self-government. Analyzing the legal philosophical ideas of American and Western European thinkers, Mamuryan reinterpreted them in the context of national existence and compared them with the legal views of Armenian authors.

Keywords: *“Eastern Press”, Matteos Mamuryan, law, morality, legal understanding, freedom, duty*

According to Mamuryan, the starting point of a person’s legal understanding is the knowledge of the law and the origins of the law, its types and nature, the relationship between law and morality, which determine the nature, trends and purpose of the law-making processes. In his regard, the concept of “law” cannot be defined unequivocally, which he clarifies in the preface of one of Harutyun Svachyan’s articles: “It is true, the so-called Law is a very big, complicated problem, many points of which will still remain unsolved, so that, having various appearances with successive human progress, it has not yet received a certain limit.”² Definitions of law change due to the problems of time, way of philosophizing, understanding of law and methods of its application.

Based on the natural law theories by H. Thiersle and H. Ahrens, Mamuryan divides law into two types: “natural or initial, derivative or conditional”.³ Natural rights “...simply arise from the nature of man, they are equal to him and from the noun.” They

¹ “Eastern Press” is a literary-political periodical published in Smyrna in 1871-1909 and 1919-1922. The periodical reflected the national political goals of the Western Armenians, the constitutional ideas, and discussed the tyrannical policy of the Ottoman government towards the subject nations.

² Svadjian 1881: 137.

³ Mamuryan 1875: 121.

are implemented regardless of human will or any condition, because they are absolute: “Every person will enjoy this right regarding his life, freedom, dignity, etc.”⁴ Mamuryan argues the special ontological status of natural law, that is, its immutability and independence from human consciousness and legal assertions.

Conventional or derivative right does not derive from human nature, but “...will be obtained by human activity: the condition that gives birth to them can only be brought about by an individual or several other individuals.” However, conventional (positive) law is the result of formalization and implementation of natural law. As an example, Mamuryan mentions the ownership right, which “...can arise from an activity, that is, from pre-occupation (premiéré occupation) or work. but according to him, it is a preliminary right that will arise from human personality, although the ways of obtaining it are different and different⁵. In the same way, he affirms that the rights defined by treaties and covenants must derive from the principles of natural law, otherwise they will not be considered valid. At the same time, he emphasizes that “Conventions can never produce or delete a natural right”, as well as oblige any people to renounce their nationality or religion. Therefore, “Man’s natural rights are inalienable, being part of human nature, they are beyond the capricious will and moods of individuals, cannot be destroyed by the deed of my person and not by his sin...”⁶

Mamuryan distinguishes five natural rights: individual (person) freedom, dignity, right of religion and worship, freedom of education and right of possession. According to him, “there is no other natural right that is not included in one of these rights.”⁷

A. Considering autonomy as the primary right of a person, “being the master of one’s own person”, the thinker affirms: “Individual freedom is a right in itself, and a condition for the use of other rights.” Without this freedom, other rights lose meaning. By alienating individual freedom, a person is deprived of all abilities, so personal freedom is a “multifaceted right” that manifests itself in different ways. For example, the laws of all countries confirm the inviolability of the right to human life and set the maximum penalty for murder, but “... death is a punishment, and it cannot define the right of an individual, just as the prison sentence does not define the individual freedom itself, and the penalty of a fine does not define the right of criminality.” In other words, although criminal punishments are defined in accordance with the committed crimes, they cannot generally alienate the right to human freedom. With this point of view, Mamuryan also condemns suicide, because the right to life “...requires that a person does not harm his life, as well as the government protects him from hostile attacks and natural dangers.”⁸ Therefore, one of the main functions of the state is the fight against epidemics, drought, hunger and extreme poverty.

⁴ Mamuryan 1875: 122.

⁵ Mamuryan 1875: 122.

⁶ Mamuryan 1875: 122.

⁷ Mamuryan 1875: 123.

⁸ Mamuryan 1875: 123.

According to Mamuryan, the legal protection of natural rights is in accordance with the civilizational development of peoples, and "...will be more or less secure depending on the location and situation".⁹ In civilized states, human natural rights and freedoms are constitutionally protected as the supreme task of the state. In backward countries, this problem is neglected because "Man is lawless by nature, in his savage state... he has neither moral nor intellectual lawfulness".¹⁰ Examining the problem in the context of morality, the thinker affirms that humanity is still guided not by moral standards, but by political and economic interests: "And to say... that man has been civilized, law-abiding, justice-loving, and truthful, to claim that the feelings of humanity, selflessness... will develop so much in our social situation that... every law, prison, prison, and that is corporal punishment... brotherhood, There will be harmony in actions, movements, ideas, it is just a daydream."¹¹ Therefore, the "civilized" world also has a problem of self-education and reform.

B. Mamuryan interprets dignity as the "essential value of a person's personality", the source of which is reason. He distinguishes a person's honor from worthiness, because honor does not come from a person's nature, but "...it will arise from his moral course, his deeds, and the consciousness confirms it".¹² A person has honor in front of God, people and his conscience, his decency is verified by his actions, therefore, individual honor, family honor, national honor, political and public officials' honor are manifested in society in different ways. According to Mamuryan, a dignified attitude is the guarantee of the permanence of both individuals and nations. Dignity also implies the fulfillment of obligations towards one's own person, family, nation and state: "the superiority, moral courage and solidarity of a nation will be found in the consciousness of defeat, which will resist all worldly bad tendencies and calamities."¹³ It is the duty of the people to develop their moral virtues and "...shine among humanity as a dutiful and right-loving person".

C. Mamuryan examines the freedom of religion and worship as natural right on different levels. Freedom of worship has always been valued as an inalienable right, however, according to the thinker, "...freedom of worship is not simply the ability to worship God."¹⁴ People perceive religion through doctrine, advice and ritual, therefore, it is necessary to respect the rituals of different peoples, the unique ways and right to believe and interpret the faith, the national way of counseling. Religious tolerance and freedom of religion are interrelated. For free-thinking peoples, the spiritual identity of each nation is legitimate. Meanwhile, in dictatorial countries, religious conversion becomes state coercion: "...when a ruler or a government arms against a religion he

⁹ Mamuryan 1875: 123.

¹⁰ Mamuryan 1897: 405.

¹¹ Mamuryan 1897: 407.

¹² Mamuryan 1875: 124.

¹³ Mamuryan 1892: 483.

¹⁴ Mamuryan 1875: 124.

doesn't like and bans its worship ceremonies, he will commit violence by only allowing his religion to be practiced.” Therefore, if in the status of subjection, Mamuryan declares the principle of the unity of the nation and the church in the internal relations, then in the relations with the occupying state, he emphasizes the sovereignty of the Armenian Church, the spiritual independence of the nation and the freedom of religion: “the right is freedom and freedom consists of the mutual independence of the Church and the State.”¹⁵

D. Freedom of thought, speech and education. Mamuryan argues these natural rights as mutually binding values. According to him, “in society, a person has the right and freedom to express his ideas in print, orally, and explain them in any other way through publication.”¹⁶ Publicism is a manifestation of the degree of civilization of nations, a wide arena for self-expression and discussion of national issues. Emphasizing the necessity of the press in the national-political life, the public speaker urges: “he who has a voice should draw a bright line on national rights, keep his mind awake and shine his pen as a sword of justice and revenge against the known and unknown enemy of our home and church.”¹⁷ At the same time, he criticizes the Ottoman laws restricting the freedom of the press, noting that “it is still impossible to reach an unlimited freedom of writing in this friendly building situation and mutually contradictory and unnatural laws.”¹⁸

According to Mamuryan, free thinking is both a right and an art, which is the result of developing mental abilities. But not everyone is given the ability to think independently and express their ideas. Moreover, free thinking, which is not easy even under conditions of independence, is impossible under dictatorship. Therefore, “a true contemplative is a super-selective and influential factor in the expansion of enlightenment.”¹⁹ In this context, the thinker also analyzes the role of public opinion as a manifestation of national thinking and freedom of speech. In his view, the public opinion of a polite people with a free press is a moral law that affects not only individuals but also governments. Public opinion “...is the sign of public interest, it is the conscience and judgment of a people that will issue a verdict on this or that issue. This judgment is as straight and legal as the conscience and mind are enlightened and just”.²⁰

So, public opinion is given meaning by the people's judgment and fairness. According to Mamuryan, the conditions for the formation of public opinion are legal freedom and moral virtues, recognition of rights and responsibilities, awareness and participation in national affairs.

¹⁵ Mamuryan 1875: 125.

¹⁶ Mamuryan 1875: 125.

¹⁷ Mamuryan 1966a: 458.

¹⁸ Mamuryan 1966a: 457.

¹⁹ Mamuryan 1896: 386.

²⁰ Mamuryan 1874: 346.

E. The right to own the country's natural raw materials and resources. According to Mamuryan's conviction, "the freedom to allocate objects to the outside world as one's material life will come from the constitution of a person." A person is obliged to satisfy his physical needs, therefore, appropriating the natural resources of the country "...is an undeniable, more noble right than all other rights". He distinguishes between the rights of appropriation and ownership, considering the first a natural right and the second a positive-conditional right: "...material acquisition is one of the manifestations of freedom, ownership is one of its results."²¹ Moreover, the work through which a person possesses natural things also derives from the right to appropriate.

Mamuryan's concept of natural law is completed with an original interpretation of the problem of freedom. According to him, the source of freedom is the will and reason given by God. Proclaiming the slogan "freedom is the thoughtful mind...the honest leader",²² he conditions freedom with human reasoning. By developing his intelligence, a person directs his will towards the good, the true and the beautiful, and "...the person is truly free whose mental and moral abilities have this triple goal and the desire to achieve the same goal more and more every day".²³ But the thinker also values the free activity of a person not only for his own personality, but also and especially for the realization of national interests and goals. For this purpose, he classifies the following manifestations of freedom in society:

- individual freedom, which "...will belong to the individual by himself",
- family freedom - to protect the "home-sanctuary" from external threats,
- civil liberty - to protect the rights of citizens,²⁴
- political freedom, which "encompasses and protects the members of the nation, and is the shield of all other freedoms",²⁵
- religious freedom, by which the relationship between the human conscience and God, the right to exist of different religions,
- epistemic freedom to guarantee human cognitive activity and the development of its results in society,
- economic freedom, which makes it possible to ensure the well-being of the people. It is divided into different branches: freedom of labor, exchange and trade.

Mamuryan interprets the right to property in a broad sense, in the context of individual freedom. According to him, "freedom will begin with the person of a person, a person is born a soldier, and his... first soldiership is his person, his abilities, for one

²¹ Mamuryan 1875: 126.

²² Mamuryan 1966b: 78.

²³ Mamuryan 1871a: 478.

²⁴ Mamuryan 1871a: 479.

²⁵ Mamuryan 1871a: 480.

thing, his noble nature, which cannot give, entrust, sell, kill without the heavenly and committing a heinous crime against natural law. A person's ego is not transportable."²⁶

From the starting point of the right of personality, he justifies the right to appropriate the results of work. If a person is the free owner of his personality according to nature, then he is also obliged to "... be the sovereign owner of all the things that will come from his personality, which will form part of his being thanks to his work".²⁷ The source of property rights is not positive law, but natural law. Positive law only regulates, preserves property by legal means. Freedom of work implies the right of a person to freely choose any field of activity. According to him, "work is a necessary law of nature, an essential condition of existence",²⁸ and the freedom of work is a gender concept that includes all other economic freedoms, being their sum.

Mamuryan discusses the issue of preserving natural rights. Although man is endowed with natural freedoms, he is "... by nature friendly as well... and due to mutual relations, he is subject to political laws."²⁹ These laws establish rights and responsibilities that are balanced by oversight by government agencies. Sometimes governments conduct policies to limit or prohibit individual, social, political, economic activities and rights of a person, suppressing the vital forces of the people. As a result of all this, according to Mamuryan, the state "...will open a door to destructive sects and will indirectly contribute to the cause of socialism and communism".³⁰ He condemns Socialism and Communism as "bad" theories based on wrong principles, which restrict the free thought of a person, instill anger and hatred in the people, often becoming the cause of an unnecessary revolution.

Mamuryan interprets the meaning of the concepts of law, legality, responsibility, and the relationship between rights and obligations. According to the source of origin, he divides laws into eternal-natural and positive (conditional) types: "there are ... laws that are based on eternal principles and when they are changed, they will lose their force and purpose." Such are the moral laws, some traditional ecclesiastical rights, which have historically turned into laws and are valued as immutable rules protecting the church's autonomy.

Positive laws "...being based on temporary *pito* and *paraga*, will be considered changeable and... perfected".³¹ They derive from natural laws and do not lose their essential principles during formalization, which, of course, are sometimes violated in the legislative process, international covenants and political agreements. According to Mamuryan's description, "legislative texts... are a bulwark against the laws of nature."³² One of the consequences of civilization is that man has deviated from the laws of justice

²⁶ Mamuryan 1871a: 480.

²⁷ Mamuryan 1871a: 481.

²⁸ Mamuryan 1871b: 525.

²⁹ Mamuryan 1871a: 482.

³⁰ Mamuryan 1871a: 483. Also, Mamuryan 1867: 654.

³¹ Mamuryan 1885: 57.

³² Mamuryan 1966a: 459.

and nature. Therefore, "...the person himself should be the one who gives the law to the people, and the people should be the ones who establish the law that made the person".³³

Mamuryan argues that the basis of law-making is the customary law of specific peoples, historically tested traditions and national spirit. This point of view of him and other Armenian thinkers (Marcos Aghabekyan, Grigor Otyan, Malakia Ormanyan and others) is consistent with the ideas of Edmund Burke, Charles-Louis Montesquieu, Benjamin Constant and the historical school of law. F. C. Savigny, the representative of the mentioned school, affirms that the whole history of law is the slow, smooth unfolding of that substance which originally exists in the bowels of the popular spirit. Therefore, "every law will be shaped by customs and popular belief, and then it will be approved by legislation, always by bringing the influence of the king, and not especially by the power of the legislator."³⁴

Examining the above-mentioned issue on a historical-comparative basis, Mamuryan confirms that God has determined by his will that "...people choose their friendship with the strength and courage of their nature".³⁵ For example, Americans have adopted Biblical laws as the constitutional basis of their state; England prefers its traditional laws. From the beginning, the Armenian people were governed by unwritten laws and did not need "mixed" laws at all, because "natural memorized rules, which were part of the habit, were enough". Moreover, if all the foreign and controversial laws are dissolved, the Armenian nation will be able to govern itself according to traditional regulations. According to the thinker, if some nations need special positive laws, "for us, our have become a habit and their spirit has been imprinted on our good."³⁶ He concludes that ancient nations cannot be ascribed the characteristics and standards that characterize modern states.

Comparing the legislative principles of theocratic, monarchical and constitutional states, Mamuryan considers only the constitutional government as acceptable, which "... based on justice and morality, will establish the law of mutual relations of every person, and therefore of national rights and obligations",³⁷ while monarchical governments publish laws: to assert their autonomy and violence.

Keeping in mind the changeability of positive laws, he does not consider even constitutional laws to be perfect, which must be improved in accordance with the requirements of the time. And the thinker determines the enforceability of the laws, first of all, by obeying the laws published by the legislators: "when the custodian of the law will throw down the law by which he will govern, how will the governed take it up and keep it?"³⁸

³³ Mamuryan 1966a: 492.

³⁴ Legal Conference 1896: 515.

³⁵ Mamuryan 1966b: 73.

³⁶ Mamuryan 1966b: 112.

³⁷ Mamuryan 1966a: 491-492.

³⁸ Mamuryan 1873a: 356-357.

Thus, Mamuryan proclaims the equality of all before the law as a fundamental principle of the legal state. At the same time, he rejects both the absolutization of the idea of equality and extreme inequality: “if the doctrine of cosmic equality cannot be theoretically put into practice, it is also unforgivable to use natural inequalities as a pretext to create artificial ones.”³⁹ According to him, in the legislative and diplomatic processes it is especially important to take into consideration the differences in the nature and national characteristics of various peoples, which are the reason for the natural inequality.

In Mamuryan’s concept, the coverage of the problem of the ratio of right and debt is remarkable. He defines these concepts in their interdependence and interdependence: “the law is a practical duty, and its foundation is in the moral. Law is the ability by which a person performs what he is ordered to do by defeating all the obstacles that someone else’s will will rise against him to prevent the performance of his duty.”⁴⁰

The source of duty is conscience, through which a person distinguishes between good and evil. Reason judges the morality of human actions as well as the truth of ideas. According to Mamuryan, the society where an individual can freely do good and exercise his rights is legal. Duty is the measure of right, and where there is no duty; there is no right to exercise. With that, “...the idea of debt will determine the extent of the right, and just debt will only determine the limit of all rights (emphasis is by L. S.)”⁴¹

Responsibilities are multifaceted, the primary of which is to maintain independence. On the moral level, Mamuryan emphasizes dedication, benevolence, patriotism, etc. He justifies that the understanding of morals is not unambiguous among all peoples: “morality in practice...changes according to the place, the climate, the good, and the demands of religious and political institutions.”⁴² Moral fundamental rules determine family, public, national relations and the extent of responsibility.

However, according to Mamuryan, people still do not have enough humanity, altruism, as well as understanding of spiritual values as a basis for regulating relations. His big dream was that people “...morality should be based on such broad and universally useful principles that each nation, each society, each tribe, each family would not be seen as isolated individuals... with their narrow moral ideas... but a harmonious body.”⁴³ It is obvious that the thinker is referring to a new type of humanistic civilization, which will be a self-governing universal society with a common spiritual and moral value system formed on the basis of the national originality of the peoples.

³⁹ Mamuryan 1893: 32.

⁴⁰ Mamuryan 1873b: 165.

⁴¹ Mamuryan 1873b: 166.

⁴² Mamuryan 1895: 193.

⁴³ Mamuryan 1895: 196.

SUMMARY

The article analyzes the legal and political concept of Matteos Mamuryan, the core of which is the issue of the relationship between law and morality. According to the thinker, the basis of law-making is the customary law of specific peoples, historically tested traditions and national spirit. The essential human rights are self-determination, freedom of thought, dignity, freedom of religion, education, work and the rights to own its results. It is argued that the legal protection of natural rights is in accordance with the civilizational development of peoples.

However, examining the problem in the context of humanism and morality, Mamuryan confirms that humanity is still guided not by moral standards, but by political and economic interests. Therefore, not only the dictatorial states, but also the “civilized” world has a problem of self-education and reform.

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