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## **UKRAINIAN POLITICAL AND LEGAL THOUGHT WITHIN THE SCOPE OF WORLD DOCTRINE OF LIBERALISM AND COMMUNITY SELF-GOVERNING AT THE END OF XIX – BEGINNING OF XX CENTURIES**

In the article was shown the development of domestic political and legal thought at the end of XIX – beginning of XX centuries within the scope of worldwide spreading liberalism. It was substantiated that both domestic and world idea leant toward recognition of the ideal of personal freedom as a universal goal. Particularly this thought is the cornerstone of the idea on the right of each person for life, freedom and private property. Being founded on these postulates the political and legal concepts on authority institutes establishment and development were articulated, which are set on the principles of recognition and guaranteeing of human rights, general justice and personal freedom of individual, pluralism of his activities in political, economic areas, freedom of moral-ethical and social-political values choice.

**Key words:** political and legal thought, liberalism, human rights, personal freedom.

The most important postulate of liberalism is setting of balance between areas of social, state and individual interests. It is considered that liberalism is not an ideology dogma, but “a society project” which may be adjusted to local historical, national and cultural conditions.

Combination of liberal ideas and postulates played a revolutionary role at the transition of European countries from feudalism to capitalism. Liberalism became a source for the ideas on division of powers, subsidiarity, constitutionalism, parliamentarism, pluralism, political representation, which were used as a basis for modern state political system. Nevertheless, mainly liberalism is associated with such usual for modern social and political lexicology notions and categories as idea of inherent value of particular person and his/her liability for own actions; an idea of private property as immanent condition for personal freedom; a principle of free market, free competitiveness and free entrepreneurship; equal possibilities; a system of division of powers, checks and balances; an idea of social legal state and local self-government; recognition, fixation and guaranteeing of fundamental rights and freedoms of person, etc.

Liberalism is a quite flexible and dynamic ideological and political trend open to dominance by other tendencies, which sensitively reacts to the changes in social and state life. Liberal ideas were formed and developed at different social-historical and national-cultural conditions. Still, considering present multi-variety the liberalism has general origins and certain combination of concepts, ideas, principles and ideals which in total make it a specific type of political-legal thought.

By its roots liberal world-view goes to Renaissance, Reformation, Newton scientific revolution. At its origin were such various persons as J. Locke, Ch.L. Montesquieu, I. Kant, G. Hegel, A. Smith, W. Humboldt, T. Jefferson, J. Medison, B. Constant, A. de Tocqueville and others. Along all XIX century liberal ideas were elaborated by J. Bentham, J. Mill, T. Grin, L. Hobhouse, B. Bosanquet and other representatives of western social-political thought. Considerable impact on formation of liberal world-view was made by representatives of European and American Enlightenment, French physiocrats, supporters of English Manchester School, representatives of German classical philosophy and others.

In scientific area of modern Ukraine liberal world-view became perpetuated relatively late – at second half of XIX century, due to the number of reasons. However, representatives of Russian and Ukrainian social and political thought made a significant contribution to understanding and elaboration of liberal ideas. Among them the following thinkers may be named primarily: B. Chicherin, P. Struve, T. Granovsky, V. Leshkov, O. Vasilchikov, M. Ostrogelsky, B. Kystyakivsky, M. Dragomanov, I. Franko and others who were intended not only to receipt and adapt, but also elaborate principles of liberalism consistently with local realities.

Regardless diversity the common between these different thinkers, ideological trends and directions consist in that circumstance that they all and every one in his own way according to reality of his époque, spoke for revision of outdated values and approaches to resolution of important social political problems, for reconstruction and improving of social political and state institutions, for revision and modernization of key provisions, doctrines and concepts in comply with changes in the society.

Exactly recognition of generated by liberal thought categories of justice, freedom and equality at national legislations of various countries, rules of international law enabled legalization of general electoral law, possibility of citizens to take part in managing of local issues and their resolution. Precisely with electoral reforms was related a transformation of state and particularly local authority in XVIII – XIX centuries in Western Europe countries. Hence, I. Redlikh has connected successes of authority and local self-government with reforms in XIX century and established their direct dependency from the democratization process and ideas of liberalism, democracy and socialism<sup>1</sup>. It is worth to stress that with times main scientific estimations on this subject changed insufficiently and modern authors consider liberal and democratic ideas as necessary precondition for establishment and development of authoritative powers.

An idea of natural rights embedded in legal institutions has strengthened liberalism doctrine with provisions on participation of all citizens in managerial functions. If originally the idea of authority and self-government was aimed at evolution of citizen's feeling on affiliation with one community, than with times it was applied in connection with citizen's and political rights and freedoms of a persons. The mentioned demonstrates merging of liberal studies on natural rights, social equality and justice with doctrine on authority arrangement.

World liberal political-legal thought was most developed in XIX century. This period is characterized by drastic change of views on authority arrangement, state importance in life of a person and local self-government, which foresees certain autonomy, personification of community within the mechanism of public power. Self-government naturally became a logo for majority of liberal political movements and political reforms.

Hence, a significant input in liberalism doctrine establishment was made by J. Mill who by analyzing phenomenon of representative ruling and local democracy was intended to find reasonable combination of egoism and altruism, has considered local authorities as education instrument encouraging people to look much far than current interests and recognize legitimate demands of other people. J.Mill considered that only when individuals participate in management they may understand its results. This idea of population inclusion in managing processes serves nowadays as one of the basis for concept of territorial communities' development. According to J.Mill, bodies of local authority shall be established and function on the basis of the same principles as bodies of central authority, as well as in comply with the principle of local interests' solidarity. This principle, as per J.Mill, means that as far as each territory has its specific common interest, than in every electoral district and each city must exist their own parliament which is tasked by solution of local issues<sup>2</sup>.

A. de Tocqueville was a researcher on problems of interrelations between state, society, person and his/her associations (territorial, religious communities, etc.), whose ideal was a society which function as a combination of many free and self-governed associations and communities. Articulated by him and his followers theory on natural rights of free community has appeared at the beginning of XIX century as a reaction on bureaucratic ruling with all negative sides, when the attention of scientists moved from constitutional monarchy to representative democracy as more progressive implementation of ideas on rule-of-law, when in political and philosophy-legal thought have occurred essential changes of opinions on problems of democracy and public freedom. The following representatives of liberal thought were his followers: G. Arens, N. Gerber, O. Girke, O. Laband, Maurenbreher, E. Meyer, O. Ressler, Sheffle, B.M. Chicherin and others. Defined at their works theory along with three generally recognized constitutional branches of power (legislative, executive and judicial) required the recognition of forth branch – a communal (municipal) branch. According to A.Tocqueville, a community is such “union which corresponds to the nature of person the most, because everywhere where people gathered together, the community appears allegedly naturally. There are kingdoms and republics created by a man; community seems just goes out of God's hands”<sup>3</sup>. At the systems of ruling funded on the principles of decentralization and self-government he saw a real alternative to state autocracy.

<sup>1</sup> Редлик И. (1907). *Английское местное управление. Изложение внутреннего управления Англии в его историческом развитии и современном состоянии*: в 2-х т. СПб., Т. 1, 111–112.

<sup>2</sup> Цит. за: Работяжев Н. В. (2000). Миль Джон Стюарт. *Федерализм*, № 4, 15-34.

<sup>3</sup> Токвиль А. (1999). *Про демократію в Америці*. К.: Видавничий дім «Всесвіт», 63.

At the second half of XIX century a famous German legal expert O. Girke defined the idea of society as federation of communities and small groups. As per him, only with help of “concrete”, but not “abstract” communities (family, village and city community, state) it will be possible to resolve the conflicts which permanently appears between the interests of majority and minority. The key circumstance for him was that the state is not a public apparatus ruling over the community, but is one of chains in the mechanism of social interactions<sup>1</sup>.

Domestic scientific thought was also under influence of this doctrine of authority and self-government for a long time. At the works of domestic researchers was insistently promoted an idea that essence of self-government lies in providing local community with possibility on self-realization of its public interests and reserving for governmental (central) authority only occupation with state affairs. In other words self-government core idea comes from opposition of the territorial community to the state, public interests to political, demanding that society and state shall execute their own interests. An opposing of community and state interests seems as kind of precondition for complete independence of self-government authority. If self-government authority deal not with state, but exclusively with community affairs, than the state should not care how these not proper for them issues will be carried out. Following this theory, the self-government authority at resolution of local importance issues shall act according to the principle “all is freely permitted except what is prohibited by law”<sup>2</sup>.

From the very beginning of the research on authority and self-government was outlined a tendency on comparative analysis with European countries, during which was justified a thesis on their substantial difference.

While analyzing these scientific views it may be admitted that shaped in XIX century liberal theories were originated from opposing of the community fundamentals to the state fundamentals. Even theory on local self-government itself was focused mainly about establishment of legal relations between territorial community and state. The whole science on self-government originates from the attempt to solve the following problem: if the community has power different from the state power or it is independent from the state public-legal corporation, or it is only tightly included in state organism and act only as a state body.

So, for example, criticizing centralists and state approaches to self-government it was spread an idea stating that in principle self-government lies in the right of local communities to manage local administration with assistance of elected by them persons who are controlled by these same communities. That is why self-government authority shall be accountable only before their electorate and independent court, but not administration.

Famous at that times Russian scientist P. Korf has wrote about drastic distinction of local self-government from the state management. As per him, one or either organization and functioning of high state management certainly has a great importance, but understanding of issues which shall be solved by it is a bent of intelligent minority and usually it is beyond reach to the majority which rather has no time to think on state issues; in the meanwhile so far somewhere above are discussed issues and interests of higher level, here at the bottom the life goes its way. State budget, state of affairs at armed forces, international relations of the native land, state credit – all this is understood far not by everyone, but even one or another solution of state affairs is less notable for everyday life of population, than specification and collection of local taxes and fees, struggle with thieves and robbers, settling of payments by employers with employed personnel, rural roads, fires, hospitals, primary schools. At the same time, small transformation at local governing, change of its competence is closer, consequently they are more important for population life than reformation of the whole ministry<sup>3</sup>.

Doctrine of liberalism and community self-government was largely spread in Ukrainian political-legal thought already in XX century. Namely, in Dragomanov’s area of interests were human rights, constitutionalism, federalism, political and national freedom, local self-government, political struggle, etc. In his ideas were merged socialistic and liberal ideas which foresee establishment of federal socialistic republic and constitutional-legal transformations, aimed at liquidation of absolutism and rests of Russian feudal-selfdom system, setting of political freedom. M. Dragomanov understood political freedom as offering all citizens with political rights and freedoms, primary with a right to participate in governing

<sup>1</sup> Цит. за: Туровский Р. Ф. (2005). Местное самоуправление: к организации эффективной власти. *Общественные науки и современность*, № 6, 68-79.

<sup>2</sup> Цит. за: Коркунов Н. М. (1914). *Лекции по общему государственному праву*. СПб., 353–354.

<sup>3</sup> Цит за: Корф П. Л. (1988). *Ближайшие нужды местного управления*. СПб, 1–2.

by state, freedom of speech, print, gathering, inviolability of person, and also as introduction of local self government capable to implement equality of all nationals, freedom of national and cultural development<sup>1</sup>.

Upon shaping the concept of free communities federation (so called community socialism) in his work “Historical Poland and great Russian democracy” M. Dragomanov derives a number of important principles of local democracy: consideration of national specifics of each country; self-government of communities and regions in the set “down-up” politically free state; freedom of all “alive composing parts of nation”; interdependence of political freedom and local self-government. If in this work he approached the problem on local self-government system creation through general democratic perception, than in the project “Free Unions” he justified in details the idea of political decentralization, which should be based on introduction of “self-governing” for communities, volost, county, land, each of them with “its own internal independence and sovereignty in relation to other self-governing structures no matter of higher or lower type”<sup>2</sup>.

A significant contribution in the development of liberal ideas was made by I. Franko. According to him, the features of the democratic state and society shall be the following: association of work people set on the equality of property, establishing of absolute “citizen’s and political freedom”; absence of the state as an enforcement, pressure from the above on population. Future society, as per thinker, is a real rule of the people, but not the formal democracy. The main method for realization of its power by people shall be communities, which perform all governing functions. Giving priority to the direct democracy he did not deny a representative democracy for solving of some important for all society issues. “Future order, as I. Franko outlined, – ... will be based on the broadest self-governing of communities, counties and states composed from the free people and united among themselves by free federation grounded on the solidarity of interests”<sup>3</sup>.

Summing up the above mentioned, it shall be admitted that liberal movement of XIX – beginning of XX century leant to recognition of the ideal of personal freedom as a universal goal. Exactly this thought lies in the fundamentals of the idea on right of each person for life, freedom and private property. Political and citizen’s freedom was originated precisely from the economic freedom. On the basis of these postulates were defined political-legal concepts of establishment and development of authority and self-government institutes, set on the principles of recognition and guaranteeing of human rights, general justice and personal individual’s freedom, pluralism of its action forms in political, economical areas, freedom of moral-ethical and social-political values choice, creation of conditions for transformation of this choice into real life.

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<sup>2</sup> Скакун О. Ф. (1999). Драгоманов М. П. *Юридична енциклопедія*: В 6 тт. / [ред. кол.: Шемшученко Ю. С. та ін.]. К., Т. 2: Д – Й, 207.

<sup>3</sup> Цит. за: Копиленко О. (1994). Український федералізм. *Місце та регіональне самоврядування України*, Вип. 1-2 (6-7). К., 25.