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# Typological Parallels with Ancient Democracy in Georgian Legislative Tradition

The analysis of the legislation of the country, lawmaking and legal proceedings is one of the most significant issue in the process of identification of the level of state democracy: to what extent the lawmaking and legal proceedings consider (direct or indirect) engagement of people living in the state in this process. In this regard, we will analyze the processes ongoing in the Ancient Greece, Rome and feudal Georgia in the area of lawmaking.

Naturally, when discussing the Georgian state, for which all political-social-legal norms common for feudal formation were organic, we can not talk about democratic principles of management of the field of law, with the direct meaning of this term. We will rather accentuate the scheme of collegiality, advising, which clearly works in the legal system of both the united Georgia and Georgia of the late feudal period.

Lawmaking of Athens represents an unprecedented example of democracy of this field. Apart from all main institutions of the Greek democracy (Public Assembly, Boule, Nomothetai, Thesmothetai), common citizens of Athens could participate in it. If the law did not meet the requirements of society, a citizen had a right to submit a new draft law to the people. It should be accentuated that a citizen could not initiate only an amendment. He should have necessarily submitted a new version of the established law. After submission of the draft law, the Boule would include this issue in the agenda of the Public Assembly. After that, the Assembly would consider whether it was worth submitting the new draft law to Nomothetai (legislators). A draft law was given the force of a law after being approved at the meeting of Nomothetai.[1]

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[1] Sealy R., The Justice of the Greeks, Michigan 1994, 27-33.

As for the Roman Republic, we have a comparatively different picture here. While the Greek lawmaking can be freely called absolutely open to the citizen initiative, as any person directly participated in lawmaking, magistratus maiores (Dictator, Consul, Pretor) and tribuni plebis (Tribune) had the legislative function in Rome. As Tribunes represented protectors of people's interests, their right in the field of lawmaking can be evaluated as indirect participation of Roman people in lawmaking to a certain extent. In the feudal Georgia, only the King was vested with the right of initiator in lawmaking, which will be discussed in more detail later.[2]

It is also important, to what extent these laws were available for citizens, to what extent they were allowed to know laws and become acquainted with them. Knowledge of laws was not a prerogative of the elite in Athens. Laws were publicized in the center of Athens around the statues of Eponymous Heroes and everybody could get familiarized with them ("All citizens have the same laws before them, simple and clearly readable and understandable." (Dem., 20, 93)).

We find the identical picture in Rome in this regard. The *Law of the Twelve Tables*, which became the foundation of the Roman legislative system, was carved on tablets and according to the custom, they were displayed in public place so that people could become acquainted with them. This tradition lasted until the 5th century BC and thereafter. The author of the draft law had to preliminarily submit, promulgate (*promulgatio*) it for a certain period (not more than three weeks). Citizens could study the draft law and enter amendments to it. On the day of voting, the magistrate would read at the assembly the draft law, which was not subject to amendments any more and propose to vote in a following manner: UR (uti rogas – as you propose = vote in favour) and A (absolvo – I reject the new proposal = vote against). If the law was adopted at the assembly, the magistrate would order to solemnly announce it (renuntiatio – promulgate results of voting). Afterwards, the law was enacted. Approval of law by Senate was a necessary condition (auctoritas patrum). The text of the adopted law was saved in the state archives (aerarium populi Romani).

As we have already mentioned, the King of Georgia had a legislative function, but it did not imply the right of unipersonal adoption of laws, but in cooperation with members of "Darbazi" and their decision. In the Code of Law of Bagrat Kurapalati we read: "initially … submitted to the Kings by order of the Archbishop and afterwards, the bishops, nobility

[2] Kunkel W., Schermaier M., Römische Rechtsgeschichte, 14, durchgesehene Auflage, Köln 2005, 33.

and clever men."[3] According to the norms applicable in the feudal society, lawmaking was not available for people, however, sources have provided us with information that in some cases Khevisberi (elders of Khevi) were also engaged in the process of creation of a new legislative act together with public officials. By means of Khevisberi the people of that region also participated (indirectly) in creation of laws (*Code of Law of the King of Kings, George*).

The state permamently worked on improvement of the legislative sphere. This is clearly evidenced by the fact that after oligarch revolution in Athens, the first step of the democratic power was formation of the so-called council of *promulgators of laws* (ἀναγραφεῖς τῶν νὸμων) in 410 BC, which was instructed to create a body of laws on the basis of existing laws, which took six years. The laws were carved in the center of the town, on walls of *Basileios Stoa* in Agora for people to become acquainted with them. It is noteworthy that the laws inscribed on stone slabs in the period of temporary overthrow of democratic government in 404 century BC were removed from Agora. The new democratic government put the issue of regulation of legislation in the center of attention again and created the council of Nomothetai, thus starting a new stage in the Athenian lawmaking – the Public Assembly was deprived of the lawmaking right and it was assigned to Nomothetai.[4]

Attaching great significance to this sphere by the state is evidenced by the fact the entire body of Athenian laws was revised on an annual basis. At the first Public Assembly of the year, the laws rejected by raising a hand where reviewed at the final meeting of the month where the issue of assembly of Nomothetai, their salaries was raised. They used to agree on the term required for study of laws. It is also important that a law was not annuled and replaced by a new one directly. On the contrary, the state approached this procedure very seriously. This is evidenced by election of five persons at the same Public Assembly, who were instructed to observe laws to be annuled and carry out graphē paranómōn – legal action against the persons who would submit such new draft law which contravened the existing legislation. A person incriminated of this crime three times was deprived of citizenship. The first two cases were restricted to a penalty.

Annual revision of laws was also instructed to Thesmothetai. The purpose of this revision was to reveal inefficient laws and laws

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[3] Javakhishvili I., Works, 12 vols., v. 7, Tbilisi 1984, 169.

[4] Gagarin M., Early Greek Law, University of California Press, Berkley, Los Angeles, London 1986, 51-81.

contravening the legislation, which would be followed by undergoing traditional steps of approval of law (promulgation, convening the Public Assembly, convening the Nomothetai and voting for law).

It can be said that the Athenian state, on the one hand, permanently controlled, revised the legislation and was oriented at its improvement, but on the other hand, it established a legal mechanism (graphē paranómōn – γραφὴ παρανόμων – collegium of protectors of laws to be annuled), which ensured supremacy of own laws.

Athenians had two different concepts in legislation: law and decree. They had the same meaning until the 4th century BC. Later, their approval was followed by a different procedure: decrees were adopted at the Public Assembly by voting. Laws defined which decree the Public Assembly was entitled to adopt. Accordingly, the law was superior to the decree in the Athenian legislation.

Athenian laws were divided into blocks:

1. Laws concerning the Council (gathering of Nomothetae, lawmaking procedures).
2. Laws common to all Athenians (τῶν κοινῶν).
3. Laws of nine Archons.
4. Laws having to do with "other authorities" (τῶν ἀλλῶν ἀρχῶν).

There is a different picture in Rome. The first serious concern for improvement and development of the Roman legislation is associated with the reform of Servius Tullius (509 BC). According to Tacitus, Servius Tullius is mentioned as the first legislator, as his predecessors were limited only to issue of separate laws and resolutions. After expulsion of kings, only separate laws were issued to reduce the patrician influence. Finally, Decemviri developed the *Law of the Twelve Tables*[5] considering the legislative tradition of Athens (*Solon's Laws*) in 451-450 BC, which laid the foundation for the Roman legislation. *Leges Liciniae Sexstiae* (Gaius Licinius Stolo) ensured equation of legal state of plebeians and patricians more or less. The next two centuries, which were full of continuous wars with other peoples, were not distinguished by development of legislation. On the contrary, Stolo's laws were forgotten. Activities of the Gracchi Brothers can be considered as the next uprise in the history of legislation development. Non-democratic laws of Sulla (*Leges Corneliae,* 87 BC) were oriented at full reorganization of the state, by enchancement of aristocracy. With the death of Sulla (78 BC), democratic opposition reappeared, trying to regulate the situation in the state with various laws. Under condition of

[5] RE, Tabulae Duodecim, IV A.2 1900-1949; S VII, Berger.

fight between the Caesar and Pompey, legislation turned into an instrument for struggle, where laws were amended and new laws were issued mainly for personal interests. Augustus managed to restore order in the country by means of laws, however, the legal institutions established by him were later occupied by protection of personal interests.[6]

In the republican period, laws were passed by Public Assemblies (Curiate, Century, Tribal Assemblies). Depending on where the law was voted for, the laws were divided into the following categories: *leges curiatae, leges centuratae* and *leges tributae*. During the period of Empire, the role of the Public Assembly declined and the Emperor arrogated to himself the right to issue laws (constitutions).

The laws were given the name according to the surname of their author. The law consisted of three parts: *praescriptio legis* (introductory part of the law), *rogatio legis* (the text of the law, which may be divided into chapters) and *sanctio* (the part of the law stipulating what will be the outcome of violation of this law). Often several laws were issued in connection with the same issue, as the adopted law was not observed. Therefore, large groups of laws were formed: *leges agrariae, leges de alea, leges de ambitu, leges de colonii deduncendis, leges de maiestate, leges de provocatione, leges de sacerdotis, leges de sponsu, leges de fenebres, leges frumentariae, leges iudicariae, leges repetundariae.* By essense, laws were divided into two types: *leges privata* – which protected interests of private persons, separate citizens and governed relations between them and *leges publicae* – which protected sovereignty of the Roman people.

Next to laws (leges), edicts of Magistratus (Pretor, Censor, Consul, Edil, Questor, Tribune of Plebes, Dictator) were also applicable in Rome and they had the force of law. Edict was a public statement, order. The Pretor's edicts had the greatest importance. Orders of Magistratus were effective during one year, however it did not apply to the Pretor's edicts which had a long validity term.

Unlike Athens and Rome, we do not have any information about how the first state laws were created in Georgia, but we can already say about the legislative sphere of the feudal (united and late feudal) Georgia, that in line with the common law, which represents the basis of ancient law of any country, is based on canon (translated and Georgian canon law) and secular law (their number is quite large: *Regulations of the Royal Court, Dasturlamali, Bagrat Kurapalat Laws, Code of Law of George the Brilliant, Laws*

[6] Flach D., Die Gesetze der frühen Römischen Republik, Text und Komments, Darmstadt 1994, 137.

*by Beqa and Aghbugha, Collection of Codes of Law of Vakhtang VI* etc.).[7] The Georgian kings paid great attention to the issue of regulation of lawmaking, which is clearly evidenced by the reason for starting to work on the new *Code of Law by George the Brilliant.* After George the Brilliant united the country, Mtiuleti was placed in the center of his attention, where the old customs could not govern the legal relations between people any more and the institutional power did not function normally. Due to this reason, working on the new Code of Laws began as instructed by the King. It must be underlined that as already mentioned, together with special officials, Khevisberi of Mtiuleti also participated in creation of laws, as representatives of the region, through which the people were involved in this process, even though indirectly. *Codes of Laws* (Laws) were created by people having a knowledge of law and afterwards were approved in the advisory body. Vakhtang VI instructed the Commission of Scholars to collect the monuments of the Old Georgian law, translation of foreign monuments (*The Law of Moses, Greek Law, Armenian Law*) and created a body of laws himself. The passed law was approved by Darbazi, which was obliged to adopt laws and execute the supreme justice, together with many other functions.[8]

Therefore, many people participated in creation of a legislative act in the Georgian reality as well – scholars, public officials, king and finally the law was approved at the advisory meeting. The other norm applicable in the Georgian legal space was of a different nature – decree, order, which had the force of law, but it was made by the King unipersonally, unlike the law.

The law encompassed two areas in Georgia too. There were laws governing relations between citizens and laws protecting inviolability of the King and the country (abdication and treachury; insult of the King; conspiracy entered into by defeated population living in Georgia (Muslims); *coup d'etat*, which is expressed by an interesting term in some sources "unthinkable").

All Athenian citizens exercised equal rights before the law, unlike foreigners, whose legal rights were restricted to a certain extent. The power of a person before the law was called a status in Rome and it encompassed three elements: 1. Freedom status (free and unfree citizens);

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7 Surguladze I., Historical Sources of Georgian Law, Tbilisi 2003, 159.

8 Customary Law, I. Javakhishili History and Ethnography Institute, Tbilisi 2010, 311-333.

2. Citizenship status (Roman citizens and non-Romans – Latins, Peregrines); 3. Family status (state of a Roman citizen in the family). All three elements of the legal status are used in Athens as well.

As for Georgia, rights of citizens before law were governed by social-legal norms of the feudal formation. Difference in titles were directly reflected on the citizen rights before the law, which is rather noticeable in legal proceedings and which we will discuss later. Naturally, this restriction did not apply in the customs law, where nearly all members of community had equal rights before the law.

As can see, Roman law developed much more than the Athenian law. However, it should be mentioned that in terms of democracy, Athens was before Rome. At different stages of the state development, law in Rome was changing according to the political situation, people-oriented laws, or on the contrary, laws directed at enhancment of aristocracy, were adopted.

Lawmaking of the feudal Georgia was first of all directed at strengthening of the central power, proceeding from peculiarities of the formation, and protected interests of the ruling class. The level of engagement of people in the lawmaking process (representative – for example, Khevisberi) can not be compared to, but anyway shows more similarity to Roman law (*tribuni plebis* – the right to submit a new law).

Athenian lawmaking is distinguished from the Roman and feudal Georgian lawmaking by its loving nature.

Nomothetai were elected from Dikastes.[9] Any male citizen over 30 years old could serve as a Dikastes, not to mention direct participation of Athenians in drafting bills. In this regard, Georgia provides a picture closer to Romanian. In the Georgian legal system, laws were created by scholars, i. e. law experts. It is noteworthy that lawyers, "scholarly nobles of council matters" appear in the Georgian lawmaking from from the mid-10th century, who were convened to the palace for resolution of legal matters by Bagrat IV.[10]

In the law of all three countries, there are two forms of law – law (νόμος, lex) and order, decree (ψήφισμα, adictum, except edict). Unlike Athens, Roman and feudal Georgian lawmaking show an identical picture: unlike law, decree is adopted unipersonally.

At the same time, it should be mentioned that Athenian law was common to all Athenians, which means, that the law was not tailored to

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9 RE, Δικασταιν, v. 1, 565-571, Thalheim.

10 Javakhishvili I., 1984, 382.

individuals. According to the Orator Andocides, a law would not be approved if it was applicable against an individual or in favour of an individual, except the rare exception, which required secret voting of the Public Assembly of 6 000 persons to be approved, while laws were often drafted and approved for personal purposes and were used as an instrument for political struggle in the era of the republican Rome.

Analysis of the sphere of legislation and legal proceedings of the feudal Georgia in this regard is required to have an idea about how organic the principles of democratic management were for the legal sphere of historically Georgian state.

As it becomes clear that democratic trends are observed at all stages of development of the Georgian lawmaking (united feudal and late feudal state), this predetermines our conviction that under the conditions of development of a modern democratic state it is simpler for the legal system to be more democratic, people-oriented and aimed at protection of interests of people.