

Regarding One Regularity

"The bad man has no need to fight,
the good man can always meet the foe!"

Vazha

Introduction

This article is the first attempt for the attention to be paid to an unusual regularity, characteristic for Georgian habitual law. It can be conditionally called the principle of "turning responsibility back on the best one". It can still be found in ethnographic materials and can be described as an outcome of centuries-lasting empiric observation of people or be regarded as a superstition, widespread solely in the past and still maintained in a certain way only because of momentum, deprived of any real background. In one way or another, one thing is apparent: in certain cases the old Georgian legal philosophy was guided by this very principle.

The principle of "turning responsibility back on the best one"

There are several factual circumstances which *prima facie* have nothing in common, but in fact, they are all based on or somehow related to the principle of "turning responsibility back on the best one", specifically:

- In the highlands of Western Georgia, particularly in Svaneti, there is a rule of "cursing for the best", implying the desire of a curser for his curse to befall on the best representative of the kin and posterity (*'machene'* in Svanetian language, i.e. renowned/prominent) and not on some unworthy descendant. This desire is quite logical and natural as diseasing and death of the best son will give deeper grief to his parents and family, than that of a person who might have already be bothering his relatives and next to kin for a long time because of his bad character or behaviour. Likewise, the Svans believe that the God will hold accountable the

* Assistant-Professor, Faculty of Law, Ivane Javakhishvili Tbilisi State University.

best member and descendant of the family of the person swearing on oath before the icon for the breach of the oath or false oath.¹

- According to the other rule, common for Svanetian habitual law, the revenge for a homicide committed by an insane person is reverted not on the insane person concerned, but rather on the best and renowned representative of his kinfolk (family, relatives). It is a known fact, that old Georgian law does not admit an insane person as a subject of crime and does not impose liability thereon; however, apart from the aforementioned reason Svanetian habitual law has two more arguments to support this rule: a) the victim's family does not want a bad (insane) person in exchange for a good (wise) one, as this will upset the balancing element of the principle of vengeance; b) physical destruction of a mentally ill person by an avenger could have been taken as a kind of indirect favour to the family of the latter: the family was taking care of its insane member – the source of multiple problems – all by themselves (because of the absence of a specialized institution), hence getting rid of him would not have hurt them much, but rather made them feel relieved to a certain extent, moreover this was done by someone else and in addition – in exchange for the “blood“ of a healthy person.²

- An identical rule can be found in the highlands of Eastern Georgia as well, in the habitual law of Khevsureti: liability for a homicide, committed by an insane person is imposed on the best representative of the kin of the latter. The object of blood feud killing is the former – the best person, who has done nothing wrong, but is punished instead of the other.³

- It is stressed in the Old Testament that an animal offered as a sacrifice should necessarily be the best and healthiest one in the herd. It should have no blemish,⁴ i.e. in this case as well the best animal of the herd is to be offered as a sacrifice, which, according to the followers of Mosaic law, assumes the sins of the person offering sacrifice through the ritual of laying on of hands.⁵

It's worth mentioning that the same set of rules prohibits for a preacher who has a defect to come near to offer the food of his God, specifically, to approach the veil of a temple and touch the sacrificial altar.⁶

- An analogue of the flawlessness of sacrifice of the Old Testament in the New Testament is the history of sacrificing Jesus Christ as the innocent Lamb of God (i.e. the best).⁷

¹ G. Davitashvili, S. Oniani, Operation of Habitual Law in Contemporary Above-Bali Svaneti (Scholarly-accounting report on field-ethnographic expedition of June 20-30, 2015), Tbilisi, 2016, 291, 370-371 (*in Georgian*).

² A. Kordzaia, Svanetian Proverbs, (“Lahrakd Ari“), Tbilisi, 2000, 113 (*in Georgian*); G. Davitashvili, S. Oniani, Operation of Habitual Law in Contemporary Above-Bali Svaneti (Scholarly-accounting report on field-ethnographic expedition of 20-30 June, 2015), Tbilisi, 2016, 222, 260, 291, 296, 370-371 (*in Georgian*).

³ G. Davitashvili, Crime and Punishment in Georgian Habitual Law, Tbilisi, 2011, 60, 62 (*in Georgian*).

⁴ Leviticus 22.19-24.

⁵ Leviticus 1.3; 1.10; 3.1; 3.6; 4.3; 4.23; 4.28; 4.32; 5.15; 5.18; 6.6; 9.2.

⁶ Leviticus 21.17-23.

According to Christian doctrine Our Saviour was pure, ignorant, innocent and was crucified not for His sins, but for those of the other people.⁸

- The same Old Testament mentions the principle, that the God is severe with His beloved children to teach them.⁹ This statement is also present in the last Book of the Bible,¹⁰ and Apostle Paul discusses it in details in his Letter to the Hebrews, where he directly states, that the God disciplines the legitimate sons, and if He does not – then they are mamzers and not sons.¹¹

- The New Testament contains a formula: from everyone who has been given much, much will be demanded.¹² In one of the episodes of the Testament where the Apostles are disputing as to which of them is to be regarded the greatest before the God, Our Saviour explains to them that the one who wants to be the greatest should serve all the others, i.e. the best will be demanded much.¹³ And during the establishment of the ritual of washing feet, the Christ serves the Apostles and personally washes their feet, thus teaching them the example of serving.¹⁴ The identical formula is also given in the Parable of the 'talents' and 'ten minas': five talents will be demanded from the one, who has five and only two – from the one, who has two.¹⁵

- This principle is reflected in clerical law and an offence, committed by a high official (of clerical hierarchy, a clergyman, a bishop) and educated men, is regarded and chastised as an aggravating circumstance. Such a person should bear more responsibility than the others.¹⁶

- And finally, two forms of swearing, common for contemporary Georgian spoken language, specifically, cursing of the so-called 'good' and 'kinds', are also directly linked to the aforementioned objective law, as the curser demonstrates his aggression against the best, good and kind and not the worst or wicked one.

Conclusion

It is hard to say, whether or not the mentioned principle has some real social background and whether or not such regularity exists objectively, but one thing is apparent:

⁷ John 1.28-37; I Peter 2.22; Is. 53.3-12.

⁸ *John of Damascus, An Exact Exposition of the Orthodox Faith*, Tbilisi, 2000, 419 (*in Georgian*).

⁹ Deut. 8.5; Job 5.17; Ps. 93.12; Prov. 3.11-12; 13.24.

¹⁰ Revelation 3.19.

¹¹ Heb. 12.7-11.

¹² Luke 12.47-48.

¹³ Luke 22.24-27.

¹⁴ John 13.4-17.

¹⁵ Matthew 25.14-30; Luke 19.12-27.

¹⁶ *Iv. Javakhishvili, Works*, in 12 volumes, vol. VII, Tbilisi, 1984, 205 (*in Georgian*).

this principle is definitely confirmed by old Georgian law, where it is associated with specific legal consequences.

The main goal of the article is to offer this principle for discussion, to accentuate it and show a new direction to the scholars, studying the history of law and the philosophy of law, for this question to be given deeper insight in future, if they so desire.