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EDITORS' FOREWORD

Legal issues invariably concern legal scholars and representatives of the scientific community in various fields of knowledge. There is no doubt that law is the most important means of arranging social life, developing communication links between people, improving social interactions. It occupies a central place in our political, economic and moral life. At the same time, the problem of the essence of the law becomes the subject of theoretical analysis from different, sometimes polar positions. Law is a complexly organized object that requires interdisciplinary discourse to reveal this essence, and in which the philosophical understanding of the law is definitely a centrepiece since only the philosophy of law has the arsenal of theoretical and methodological possibilities that allows one to gain an understanding of law in its integrity and being. The proposed issue of the philosophical journal WISDOM presents the original author's concepts of leading scientists of various philosophical and legal schools of Russia, Armenia, and Ukraine, which will help comprehend the fundamental problems of comprehending nature and meaning of the law.

The Armenian State Pedagogical University and the WISDOM Editorial Board are pleased to present the first special issue of the journal on "Philosophy of Law". The articles presented in the issue reflect the current issues in the field in question.

The guest editor of the issue is Konstantin SIGALOV, Doctor of Juridical Sciences, PhD of Philosophy Science, professor at the Chair of Theory of Law and State of the V. Ya. Kikot Moscow University of the Ministry of Internal Affairs of Russia, Moscow.

The issue includes 22 articles, the authors of which represent Russia, Armenia and Ukraine.

The Editorial Board extends the sincerest gratitude to all the authors, reviewers, professional critics and assessors of the papers involved.

The positive feedbacks, observations and achievements on the already published issues of the journal are evidence of the importance and value of the articles published so far.

Given the significance of the underlying principle of pluralism over scientific issues and freedom of speech, we should remind that the authors carry primary responsibility for the viewpoints introduced in their papers which may not always coincide with those of the Editorial Board.

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Alexei AVTONOMOV,
Vladislav GRIB

EPISTEMOLOGICAL ASPECTS OF THE ORGANISATION OF HUMAN ACTIVITY IN THE TRANSITION FROM DISPARATE SOCIAL TECHNIQUES TO SOCIETAL TECHNOLOGIES

Abstract

The expansion and deepening of human-computer interaction in modern conditions have attracted attention to human activity and required its study at a new level. The article is devoted to the examination of the problems of organising human activity based on the knowledge of its key components. Epistemological approaches to thinking and knowing as directions of the development of human activity make it possible to increase the efficiency of the organisation of human activity as a whole and raise questions that can be resolved on the way of further methodology evolution. The further transition from the methodology of research and practices to social technologies that would allow purposefully producing new knowledge, on the basis of which, in turn, it would be possible to improve the quality of the organisation of human activity, seems appropriate and natural. The authors argue that the technological approach to problem resolution is useful and fruitful not only in the sphere of engineering and technical devices but also in the field of social relations.

Keywords: human activity, epistemology, activity organisation, methodology, project approach, social technology.

Introduction

The impetus for a new round in the development of the theory of activity at the end of the 20th and in the 21st century has become research and practice in the field of human-computer interaction. As Olav Bertelsen and Susanne Bødker (2003) explain, "Because activity theory understands human conduct as anchored in collective/shared practice, it addresses more than just individual skills, knowledge, and judgment, and it is not restricted to the "generic" human being. In other words, we can talk about the appropriateness of a certain tool for a certain practice, and we can study how the introduction of a particular artefact changes the practice and how practice may change the use of the artefact" (pp. 294-295). They continue: "Historically, activity theory originated as a dialectical materialist psychology developed by Vygotsky and his students in the Soviet Union at the beginning of the twentieth century" (Bertelsen & Bødker, 2003, p. 298). More specifically, human activity is one of the central categories of Marxian philosophy, behind which there is a phenomenon that was thoroughly and actively studied by Karl Marx. The merit of Lev Vygotsky lies in the fact that he introduced Marxist methodology into psychology and built on this methodology a fruitful theory that makes it possible to solve, among other things, practical issues. "Activity systems are fundamentally marked by contradictions. In dialectical thinking (Hegel, Marx, etc.), dynamics are understood as the eternal resolving of inner antagonist contradictions (Bertelsen & Bødker, 2003, p. 302). …Human activity is mediated by socially produced artefacts, such as tools, language and representations. This means that, in their imme-

diate relationship with their surroundings, human beings extend themselves with artefacts that are both augmentations of and external to the person" (Bertelsen & Bødker, 2003, p. 305). Olav Bertelsen and Susanne Bødker (2003) argue: "Studies of computer artefacts in use need to focus on the narrow-use activity and the handling of the computer artefact, as well as on the wider context of use and design. One of the forces of activity theory is that it allows studies of all these levels of activity to be combined" (p. 311). All this encourages us to examine some aspects of human activity in a little more detail before moving on to the question of its organisation ensured by acquired knowledge.

Human Activity in the Dialectic of the Whole and the Fractional

It is in the activity that a human being becomes human, manifests himself/herself in his/her quality of a human being, self-actualises. Society, in its turn, is understood as a concrete historical form of joint activity of people. At the same time, the structure of human activity is rather complex and is constantly becoming more complex with the development of mankind. In view of this, the specialisation of the activities of people is carried out, and such specialisation at the same time increases the efficiency of such activities, and to ensure the unity of human activity composed of sundry types of activities, cooperation of people takes place. Specialisation leads to the formation of social communities in which people are grouped on certain grounds, entering into some relationships with each other, while cooperation establishes and consolidates relationships among communities. Relationships are the interdependencies of the elements of any system, and the relationships are universal. As Vladimir Lenin (1977) rightly noted when studying the "Science of Logic" by Georg Hegel, "every concrete thing, every concrete something stands in different and often contradictory relations to everything else, ergo, is itself and another" (p. 124). As for a human being, it is in relationships with other human beings that he/ she becomes a human being. The joint activity makes people human, and thus a human being is a metamorphosed society, and society is a metamorphosed human being. According to Hegel's proper remark, "The *relationship of the whole and the parts* is the immediate relationship; hence, the thoughtless relationship and the process of the identity-with-itself turning over into diversity" (Hegel, 2010, p. 203). It is worth pointing out the term "thoughtless" (originally the whole phrase reads [with the preservation of the spelling of the publication]: "*Das Verhältnis des Ganzen und der Theile* ist die unmittelbare, daher die gedankenlose Verhältnis und Umschlagen der Identität-mit-sich in die Verschiedenheit" (Hegel, 1845, p. 123)), which is quite important in Hegel's philosophy. Georg Hegel defines the concept of "thinking" in two ways: "*Thinking* as an *activity* is thus the active universal and, more precisely, the universal that acts upon *itself* in so far as its accomplishment, i.e. what it produces, is universal. Represented as a *subject*, thinking is a *thinking being*, and the simple expression for a concretely existing [existierenden] subject that thinks is *I*" (Hegel, 2010, p. 51). (in German [original spelling]: "Das *Denken* als die *Thätigkeit*, ist somit das *thätige* Allgemeine, und zwar das *sich* bethätigende, indem die That, das Vervorgebrachte, eben das Allgemeine ist. Das Denken als *Subjekt* vorgestellt ist *Denkendes*, und der einfache Ausdruck des existirenden Subjekts als Denkenden ist *Ich*" (Hegel, 1845, pp. 26-27)). It is obvious that describing the relationship of the whole and the parts Georg Hegel keeps in mind the first meaning of "thinking", to wit thinking as activity. Although, in our opinion, activity cannot be reduced to thinking, it is important to clarify Hegel's approach to the relationship in order to better understand the role of relationship in the joint activity of people.

Human activity, manifested in relationships with other people, is the same, but the nature of

social relationships in which a human being is included can be different. Let us follow Hegel's reasoning and conclusions: "What is one and the same in this relationship (the relation to itself that is on hand in it) is thus an immediately *negative* relation to itself and, to be sure, as the mediation to the effect that one and the same is *indifferent* to the difference, and that it is the *negative* relation to *itself* that repels itself, as reflection-in-itself, towards the difference, and posits itself, concretely existing as reflection-into-another and, in the reverse direction, conducts this reflection-into-another back to the relation to itself and to the indifference" (Hegel, 2010, p. 203). Thus, in a single, in fact, human activity, its structural elements and varieties can be distinguished.

Human activity is structured in some way. Structural components of human activity can be perceived as certain types of activity. There are a number of grounds for identifying certain types of activities. For example, according to the content of the activity itself, it can be divided into mental and physical or into theoretical and practical. Such a division has been known for quite some time. For example, in the view of Aristotle, "the person with experience seems wiser than those who have any perception whatever, the artisan wiser than those with experience, the master craftsman wiser than the manual laborer, and the contemplative arts more so than the productive ones" (Metaphysics I (A) 1, 981b 30 – 982a) (Aristotle, 1999) David Ross gives another translation of the same passage: "…the man of experience is thought to be wiser than the possessors of any sense-perception whatever, the artist wiser than the men of experience, the masterworker than the mechanic, and the theoretical kinds of knowledge to be more of the nature of Wisdom than the productive"(Aristotle, 1928) More than a half century later it was re-published by J. Barnes with small editorial changes (Aristotle, 1984) Earlier David Ross in his commentary to Aristotle's Metaphysics in Ancient Greek suggested a slightly simplified translation of this fragment: "…the experienced man is thought wiser than the man who has only sensation, the artist than the experienced man, the master-artist than the manual worker, the theoretical than the productive arts" (Aristotle's Metaphysics, 1924). Although in these words of Aristotle the correlation of types of activity is seen, they are elucidating the structure of human activity, and the structure itself presupposes, in its essence, hierarchy. This is especially evident in the original text in ancient Greek: "ὁ μὲν ἔμπειρος τῶν ὁποιανοῦν ἐχόντων αἴσθησιν εἶναι δοκεῖ σοφώτερος, ὁ δὲ τεχνίτης τῶν ἐμπείρων, χειροτέχνου δὲ ἀρχιτέκτων, αἱ δὲ θεωρητικαὶ τῶν ποιητικῶν μᾶλλον" (Aristotle, 1924, p. 5). In particular, this meaning is conveyed by the grammatical construction provided by particles "μὲν… δὲ…" (signifying "as for… whereas…"), which expresses the contraposition and which Aristotle repeatedly uses in his writings.

Knowable Activity and Activity's Knowing

In the structure of thinking as an activity, Georg Hegel pays special attention to knowing (Erkennen), paying tribute to Aristotle and his attitude to knowledge, while noting, nevertheless, that "this knowing does not yet know [*weiß*] itself as the activity of the concept, something which it is only *in itself*, but not *for itself*" (Hegel, 2010, p. 292). Speaking about drives to sublate the one-sidedness of the objective and the subjective world, Georg Hegel points out that "the former is the drive of knowledge [*Wissen*] to truth, *knowing* [*Erkennen*] as *such*, the *theoretical* [activity]; the latter is the drive of the *good* to bring itself about, *willing*, the *practical* activity of the idea" (Hegel, 2010, p. 291). Therefore, Georg Hegel, unlike Aristotle, does not establish a hierarchy in relation to theoretical and practical activities but reveals their dialectical interaction. Vladimir Lenin underlines this conclusion of Georg Hegel: "Very good is §225 of the **Encyclopedia**, where '*knowing*' ('theoretical') and 'will', 'practical activity' are depicted as two

sides, two methods, two means of destroying 'one-sidedness' and subjectivity and objectivity" (Lenin, 1977, p. 190). Studying §213-§215 of the Hegel's Encyclopedia and appreciating the presentation of dialectics in these paragraphs, Vladimir Lenin draws attention to the fact that "here, the coincidence of logic and epistemology, so to speak, is shown in a remarkably ingenious way" (Lenin, 1977, p. 174). (Traditionally, in Russian a word "gnoseology" (["гносеология" in Russian] like in German "Gnoseologie") is used instead of "epistemology", although a word "epistemology" exists in Russian language, and the word "epistemology" is used in the present translation of a Russian text as it is more habitual for an English language reader. Meantime, some modern Russian authors try to distinguish between "epistemology" and "gnoseology", considering that the former is dedicated to the relationship "object-knowledge" while the latter is devoted to the relationship "subject-object" (see, for instance, Vechtomov, 2013, p. 14) But such a formulation of the problem can just cause bewilderment: knowledge can only be possessed by the bearer of such knowledge and can exist together with this bearer, while the bearer of knowledge is the subject of activity, whoever (Idea, human being, isolated "I", etc.) he/she is. An object exists independently of knowledge about it, but knowledge about such an object arises in the subject of activity and becomes an attribute of such a subject from the moment of its occurrence.) Thus, epistemology coincides with logic in both Hegelian and Marxist philosophy since both philosophies are based on dialectics. Meanwhile, the fundamental opposition of these two doctrines is that in Hegelian teaching, the idea is considered to be an active subject, and in Marxism, the human being himself/herself is a subject of activity. Since its inception, Marxism has been focusing on human activity. A well known thesis 11 of the "Theses on Feuerbach" by Karl Marx: "Philosophers have hitherto only *interpreted* the world in various ways; the point is to *change* it" (Marx & Engels, 1976, p. 3) (originally in German: "Die Philosophen haben die Welt nur verschieden *interpretiert*; es kömmt drauf an, sie zu *verändern*" (Marx & Engels, 1969, p. 7). It can be seen that the translation accurately conveys the meaning of the original phrase in German, and it shows that one of the fundamental foundations of this teaching is action. The activity-based approach is characteristic of Marxism in the field of epistemology including. This directly follows from the seco[nd] thesis: "The question whether objective truth can be attributed to human thinking is not a question of theory but is a *practical* question. Man must prove the truth - i.e. the reality and power, the this-sidedness of his thinking, in practice. The dispute over the reality or non-reality of thinking that is isolated from practice is a purely *scholastic* question" (Marx & Engels, 1976, p. 1). The German version allows one to draw attention to some peculiarities: "Die Frage, ob dem menschlichen Denken gegenständliche Wahrheit zukomme – ist keine Frage der Theorie, sondern eine *praktische* Frage. In der Praxis muß der Mensch die Wahrheit, i.e. die Wirklichkeit und Macht, Diesseitigkeit seines Denkens beweisen. Der Streit über die Wirklichkeit oder Nichtwirklichkeit des Denkens – das von der Praxis isoliert ist – ist eine rein *scholastische* Frage" (Marx & Engels, 1969, p. 5). For example, the word "Diesseitigkeit" obviously stresses that Marxist epistemology lies in materialism. This thesis reflects a dialectical approach to the correlation of the theoretical and practical in human activity, including in activity dealing with acquiring knowledge.

The issues of interaction between theory and practice acquired special interest and significance in the eyes of representatives of various doctrines and sciences in the 20[th] century. This interest and significance remain in the 21[st] century, as evidenced by a number of publications that use the aphorism "There is nothing more practical than a good theory" (Vansteenkiste& Sheldon, 2006; Del Boca & Darkes, 2012; Alter, 2016). Though the majority of scholars indicate Kurt Lewin as

an author of this aphorism, he himself did not claim to be its inventor and wrote: "…A businessman once stated that 'there is nothing as practical as a good theory" (Lewin, 1999, p. 36). Meantime usually, his other work is cited in connection with the mentioned aphorism (Lewin, 1952, p. 169) (it was published after his death). However, the same phrase or a slight variation of it was pronounced or written earlier by some other scholars: Ludwig Boltzmann (physicist and philosopher), his teacher Gustav Robert Kirchhoff (physicist), Friedrich Wilhelm Hagen (psychiatrist). The earliest publication contained a similar phrase that I could find, and it was a book of 1873 entitled "Basic Lines of a Theory of the Curriculum, Initially for Elementary and Middle Schools" by Friedrich Wilhelm Dörpfeld (1873) (pedagogue). It has the following motto on the cover and on the title page: "Einer richtige Theorie ist das Praktischste, was es gibt" (there is a typo on the cover – "giebt" instead of "gibt"), which might be translated into English as "A correct theory is the most practical thing there is". The source of the motto is not specified. Be that as it may, thoughts about the practicality of a right theory echoes the ideas of Karl Marx presented in the second thesis, and this anticipated certain problems of discourse that remain relevant in the modern world. By the way, as it is known, Karl Marx wrote the "Theses on Feuerbach" in 1845, and they were first published by Friedrich Engels in 1888.

Positivism, in its turn, focusing on empiricism, contributed to a better understanding of certain aspects of human activity. The development of positivism led to the emergence of analytic philosophy, which in its evolution in the 1960-70s came to the gradual ousting of the epistemological scope of problems. Richard Rorty (1980) called it "the demise of foundational epistemology" (p. 315). Nevertheless, even in the 1960s, contrary to the dominant trend, separate articles appeared on epistemological issues within the framework of analytic philosophy. One of the examples is a widely known article, "Is Justified True Belief Knowledge?" by Edmund Gettier (1963, pp. 121-123). And at the beginning of the 21st century, various issues of an epistemological nature attracted the attention of representatives of analytic philosophy. With the growing attention to epistemic problems among the representatives of analytic philosophy, there has also increased interest in past works in this field, so this is not by chance that the mentioned Gettier's article was re-published along with its translation into Spanish in 2013. An added bonus for readers of the Spanish-language version of the article is additional comments, including on cited texts (absent in the original English version) (Gettier, 2013). Other publications on epistemic topics have also appeared in the 21st century (for instance, an Anthology of epistemic works in 2008 (Sosa, Kim, Fantl, & McGrath, 2008)). Thus, in the 21st century, various issues of epistemology remain relevant for sundry philosophical doctrines and teachings.

Meanwhile, epistemology develops not only by itself but in interaction with other spheres of human thought. In particular, the relevance of epistemological research is associated, among other things, with the need to ensure the effectiveness of the human activity organisation, which has intensively developed in the 20th and 21st centuries. At the same time, knowing, in its turn, is a type of human activity and, accordingly, is organised in some way and, of course, needs the best organisation possible for its efficiency.

Some Issues of Activity Organisation

The problems of organising human activity retain their significance in modern discourse in various teachings and schools of philosophy. One of the contemporary ways of organising human activity is elaboration and putting into practice a project. People have been using the elements of the project approach for a long time, even before they discovered, realised and studied

the project approach, mastered its application on a scientific basis, just as people used, for example, the fire long before they discovered its physical and chemical essential character. Natural and social phenomena develop according to their own inherent laws, the discovery of which does not mean that the phenomenon itself did not exist before the discovery and that certain effects produced by the phenomenon could not be used with a certain success. However, only the scientific mastering of any phenomenon and the laws of its existence and development creates the conditions for taking full advantage of the opportunities inherent in the phenomenon itself.

The project is one of the phenomena structurally related to expedient human activity. Due to the fact that purposeful activity has been inherent in people since the emergence of mankind, those or that elements, systemically combined into what is today called a project, were consciously and unconsciously included in the composition of purposeful human activity. The human activity itself, in the end, turned into an object of reflection and research, which led to a number of discoveries, including in regard to such a phenomenon as a project.

As David Allen, Andrew Brown, Stan Karanosios, and Alistair Norman (2013) rightly conclude, "that activity theory addresses difficult issues regarding culture and technology in a materialist way… through an abiding focus on activity systems as contradictory unities of subjective and objective aspects in ongoing development" (p. 850). Turning to the organisation of activity, one may note that a person (an individual or a group), with the help of a project approach, can draw up his/her/its activity to achieve a desirable goal, moving from values to actions. In fact, the values that are formed in social communities but are reflected and fixed in the individual conscious of people, in fact, control needs. Values are formed over a fairly long time, but at the same time, they are stable and also change slowly under the strong and more or less constant and prolonged influence of various factors. Values and necessities are in dialectical interaction: certain necessities are turned out on the basis of values, but certain values are formed under the influence of necessities, which, although driven by values, in general, have greater flexibility and mobility than values. At the same time, necessities affect interests. Interests, when they are realised by people, encourage them to act. Taking their cue from the satisfaction of their deliberate interests, people enter into some kind of relationship. And relationships are manifested in opinions, which in their turn motivate people to commit certain actions. It should be noted that actions carried out for a long time can lead to a significant change in the situation, and such a change in the situation, which is, in fact, the formation of fundamentally new living conditions, can, over time, affect the change in value orientations.

Actually, the importance of a well-thought-out expedient activity was indicated even by Confucius (孔夫子), albeit in very general terms. Describing one of the main characteristics of a jūnzǐ (君子), which might be translated as a "gentleman", a "man of honour", a "superior man", a "man of high morality", at the request of a disciple, Confucius in his treatise "The Analects" (論語) pointed out: "先行其言，而後從之" (Soothill, 1910, p. 163) [為政, 十三] (in the original text, the characters are arranged in a column from top to bottom). The phrase might be translated as: "He first formulates his words (elaborates his theory), and then follows what is required by them (it)". This derives from the meaning of the characters: 先 – "first", "previously"; 行 – "to do", "to be occupied with"; 其 – a possessive pronoun ("his", "her", "its", "their"); 言 – "word(s)", but may also mean "a doctrine" or "a theory"; 而後 – "and then", "only then"; 從 – "to do as required" "to listen to", "to follow"; 之 – a third person pronoun ("him", "her", "it", "them"). It should be noted that other authors translate this passage in a different way. Due to the importance, in our opinion, of this

statement of Confucius for this paper, one cannot but dwell on a brief overview of its translations. Thus, Wlliam Soothill (1910) translates as follows: "He first practises what he preaches and afterwards preaches according to his practice" (p. 163) (the spelling is original, as in the text). However, he cites a different translation in his commentaries: "He first acts his speech and afterwards 從 follows up 之 his already materialised words with speech" (Soothill, 1910, p. 162). The translation by James Legge (1893) is: "He acts before he speaks, and afterwards speaks according to his actions" (p. 150). James Legge (1893,) in his commentary, recognises that "literally – 'He first acts his words and afterwards follows them', – adding, nevertheless. – A translator's difficulty is with the latter clause. What is the antecedent to 之? It would seem to be 其言, but in that case, there is no room for words at all" (p. 150). Meantime, it is not clear what difficulties are meant, as the mentioned words are substituted by a pronoun (it has been shown earlier). That is why the suggested literal translation seems to be closer to the meaning of the original Chinese text. Din Cheuk Lau has his own translation: "He puts his words into action before allowing his words to follow his action" (Confucius, 1979). The translators may have been influenced by the translations in Latin, in particular, the translation by Angelo Zottoli (1879): "prius agit quæ dicit, et postea verba rem sequuntur" (p. 219). Couvreur's French translation stands somewhat apart: "Le sage commence par faire ce qu'il veut enseigner; ensuite il enseigne" (Confucius, 1895, p. 80). Later, he slightly corrected his translation, but not significantly: "L'homme honorable commence par appliquer ce qu'il veut enseigner; ensuite il enseigne" (Confucius, 1930, p. 83). But nothing in the original Chinese text deals with education (*enseignement* in French). So, the modern English translation by Edward Slingerland looks more adequate: "He first expresses his views, and then acts in accordance with them" (Confucius, 2003, p. 12). By the way, the Russian translation is closer in its sense to the latter translation (it may be translated from Russian as: "He first sees the deed in the word and then follows what is said" (Confucius, 1999, p. 23). In any case, the meaning of Confucius's utterance seems to be deeper than just fidelity to the spoken word. As already noted, it is about the importance of well-thought-out in advance actions, which is significant for the present paper in the context of studying purposeful activity.

Project Approach to Activity Organisation

For a long time, people in their activity set goals and could pay attention to various factors that contribute to or hinder the achievement of the relevant goals. To achieve the goal, people thought over their activity in advance and made plans, and they organised their purposeful activity in accordance with their thoughts and plans. Gradually, people began to notice some general trends and patterns. Over time, expedient activity became the object of research, and the natural laws of purposeful activity's accomplishment, independent of the intentions of the subjects of such activity, were discovered. Accordingly, people began to organise their activity on the basis of the known natural laws, along the way continuing their research. As it has been mentioned, elaboration and putting into practice a project is one of the ways of organising human activity. And a project is limited in time and resources interconnected set of actions is carried out according to a plan to achieve a specific goal.

Historically, ideas about the project have changed. Before moving into the fields of economics, politics, and social relations, the term "project" was used for quite a long time in engineering, architecture, etc. In other words, the original project approach was for human-made things. A project was also understood as a document prepared before its official approval (however, we note that a document is also a human-made thing). Obviously, in the manufacture of things, it was much easier to introduce project

principles than in the field of social, economic and political relations. At the same time, for quite a long time (perhaps due to the preparation of documents before their approval), the idea of the project as a proposal of some measure with the motivation for the need for such a measure and with a description of the ways and procedure for implementing such a measure has also been established.

At the same time, in the middle and, especially, in the second half of the 20th century, the idea of projects is expanding, and social, economic, financial, scientific and other projects are being developed and implemented. In other words, the project approach is no longer limited exclusively to the sphere of making things and turns into a tool for managing certain processes in a particular area of public life. Thus, the project approach is one of the varieties of an activity-based attitude to problem-solving, implying a system of purposeful actions, including elements of forecasting based on studying the situation, calculating and using available resources, implementing envisaged measures and arrangements to solve problems in order to achieve a specific planned result.

In the 20th century, referring to projects and programs allegedly prepared on the basis of a project-based approach has become a kind of fashion. The documents were and are tried to be given the appearance of a project or program, but without appropriate elaboration and use of the principles of the project approach. Usually, this is done for the sake of obtaining funding, but as a result, the effectiveness of such an ostensible "project" or "program" turns out to be extremely low. Exploring comprehensive community initiatives (which, in fact, are non-profit, local projects and programs) in the United States in the mid-1990-s, Carol Weiss (1995) found out: "None of the programs was satisfied that it had achieved either maximal *program* benefit from its efforts or maximal *evaluation* knowledge about program consequences from the evaluations it undertook" (p. 65.). She shows that such initiatives were evaluated formalistically before they were launched, without an understanding of what changes they should lead to. To overcome this situation, she proposed to describe the concept of the program in the form of a chain of steps, each of which ends with the achievement of a certain result. This chain should start from the very first actions in the program and lead to the achievement of the long-term goal of the program. She suggested calling this way of describing the program the theory of change (Weiss, 1995, pp. 66-81). She argues that "for all its potential problems, theory-based evaluation offers hope for greater knowledge than past evaluations have generally produced" (Weiss, 1995, p. 89). Later, colleagues supported Carol Weiss's idea but suggested a different sequence of development of the theory of change - from the goal of the program through the chain of intermediate results to actions within the program, in other words, the development of the theory of change should occur already at the stage of planning the program (Anderson, 2004). Such recommendations seem to be reasonable and fair. However, it is unclear how the theory of change differs from the project approach. After all, the project approach to solving the problem just presupposes the determination of the main characteristics of the new situation, which would differ from the current situation for the better, the formulation of a goal based on this, which should be achieved, the fixation of tasks, the solution of each of which would bring closer to this goal, planning actions that allow solving each of the tasks, establishing the resources required for this, identifying the sources of such resources. Actually, this is how the project is being designed, as a result of which changes should take place, improving the existing situation or even replacing the current situation, which does not suit those who develop and implement the project, with a new situation, which they are striving for. Although the supporters of the theory of change have interesting and useful developments, it is not worth replacing the already established concept of the project

approach with a new term (let's remember Occam's razor). The problem that Carol Weiss faced, unfortunately, is found in other countries too. However, instead of introducing new terms, one can act in a simpler and more effective way, to wit to train stakeholders in the project approach.

As a matter of fact, practically any project starts with a problem that needs to be solved. The problem is a so-called incomplete task, which in logic is understood as an operation with a known goal, but unknown conditions for achieving it. The project reduces an incomplete task to a complete one when the conditions are known, and the achievement of the set goal is required. The complete task is already amenable to the solution, which is achieved thanks to the project approach.

Summing up the above, we can identify a number of opportunities that lie in the project approach for solving problems that have a particular social significance. *Firstly*, the project allows us *to actualise the problem*, in other words, to consider it from different points of view, in different coordinate systems, to see its non-trivial aspects, therefore, to find the optimal ways to solve the existing problem. *Secondly*, the project makes it possible to conduct *a "point target" analysis* of the state and predict the evolution of a certain problem area and to do this by optimal means in case of a well-developed project culture. *Thirdly*, the project helps to develop and propose *potential solutions* to the problem, including an innovative one, utilising previously unused methods and techniques. *Fourthly*, the project is focused on developing *an algorithm for solving problems* of various scales based on solving relatively narrow tasks within the framework of the mechanisms proposed by the project team. *Fifthly*, the project is aimed at achieving *a sustainable result of the developed* way of solving the problem, fixing the main methods, stages of work, mechanisms for solving or preventing the emergence/resumption of a problem situation. *Sixthly*, the project makes it possible *to optimise the further search* for a solution to the problem with a negative result of the pilot project, showing the dead-end of the tested path (a negative result is also a result). *Seventhly*, the project provides tools *to ensure the effectiveness* of the forces and means (resources) used to solve the problem.

Epistemic Attitude to Activity Organisation

Despite the fact that the project approach offers both the scholar and the practitioner a universal set of principles, rules and techniques, almost every project created on the basis of this approach is individual and unique. For the proper use of the project approach, it is necessary to apply a variety of research methods, including for various types of assessment, examination and monitoring, during the designing and carrying out a project or program, which usually consists of several interrelated projects or a megaproject. However, the outstripping growth of the significance of the methods and, accordingly, the methodology was observed even before affirming the project approach. Thus, Frederick Engels (2010) noted that "Marx's whole way of thinking (Auffassungsweise) is not so much a doctrine as a method. It provides, not so much ready-made dogmas, as aids to further investigation and the method *for* such investigation" (p. 461) (in German: "…die ganze Auffassungsweise von Marx ist nicht eine Doktrin, sondern eine Methode. Sie gibt keine fertigen Dogmen, sondern Anhaltspunkte zu weiterer Untersuchung und die Methode für diese Untersuchung" (Marx & Engels, 1969, p. 428)). Richard Rorty shows that after the "demise of epistemology" it is replaced by hermeneutics. He contrasts hermeneutics with epistemology (by saying: "For epistemology, the conversation is implicit inquiry. For hermeneutics inquiry is a routine conversation" (Rorty, 1980, p. 318)) and, although he somewhat vaguely explains the difference between hermeneutics and epistemology ("For hermeneutics, to

be rational is to be willing to refrain from epistemology – from thinking that there is a special set of terms in which all contributions to the conversation should be put – and to be willing to pick up the jargon of the interlocutor rather than translating it into one's own"(Rorty, 1980, p. 318)), it is obvious that hermeneutics is a method of study (it is precisely as a method that Hans-Georg Gadamer (1960) also considers it). In a word, the methodology has acquired special significance in modern philosophical discourse.

Piama Gaidenko (1969) suggests considering the historical change of the prevailing types of intra-scientific reflection in the following sequence: ontologism, epistemologism (in her terminology – gnoseologism), methodologism. For ontologism, it is important to focus on the object of inquiry, the search for objective knowledge, regardless of the cognitive abilities of the subject of human activity. Epistemologism is characterised, first of all, by the awareness by an explorer of the role of the internal organisation of the knowing process, as well as the identification of the plurality of foundations and forms of knowing. Methodologism is a type of scientific reflection that pays the closest attention to the means of knowing. The predominance in a given historical period of any of the types of intra-scientific reflection does not mean at all that other types are not used or disregarded, but they are, as it were, in secondary roles.

For Russia, the period of methodologism was marked by the development in the 1950s-1980s of the philosophical movement of methodologists (Tabatchnikova, 2007; Moscow Methodological and Pedagogical Circle, 2008; Rozin, 2017) who not only conducted research but also tried to put their theoretical achievements into practice. We are talking about the orientation of science to the study of existing and the creation of new means of knowing of the surrounding world, which are methods, categories, research procedures, etc. Methodologists raise the question that "intellectual actions are formed into special productions of new knowledge, norms, ideas" (Anisimov, 1991, p. 25).

And yet, for the production of new knowledge, a transition to a new level is needed - to the level of technologism. Traditionally, technology is attributed to the production of things, but there was a development in this area: once the technology was attributed only to mechanical processing, then it began to be attributed to chemical production, to electronics. It is time to move to the application of a technological approach to social processes, including the organisation of research. Since technology is understood as a complex of methodically described and practically implemented (or planned for implementation) actions combined in a certain sequence, based on certain techniques, which ultimately brings a measurable result, it is obvious that technologism is a natural development of methodologism. It is worth paying attention to the fact that technology in the domain of knowing is a consistently and consecutively formed set of methods of knowledge production, which involves the ordering and systematisation of categories for the purpose of theoretical and practical mastering of reality.

Conclusion

Effective organisation of human activity creates conditions for adequate self-realisation of the person (individual or collective). One of the ways of such an organisation is the project approach, and the conditions are ripe for the introduction of technological approaches to the organisation of social life. Meanwhile, it is the technological nature that allows maximising the possibilities of social project design to solve problems that arise in public life. Technologically, the basis of any project must inevitably be knowledge, some fairly clear idea of the subject of the upcoming project design. This requires a gradual transition to the introduction of technologibility in manufacturing new knowledge to address epistemic issues.

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THE IDEA OF HUMAN RIGHTS: FROM THE ANCIENT WORLD TO THE DIGITAL AGE

Abstract

The purpose of the article is to identify the features of the development of the idea of human rights, starting from the Ancient World, and on this basis to show its significance in the digital age. To achieve this goal, the conceptual foundations of the idea of human rights and their reflection in political and legal thought at different stages of the evolution of society and science are analysed. The subject of the study was the concept of human rights. The study was conducted on the basis of post-non-classical scientific methodology, including constructivism. The formal-legal and comparative-historical methods are also used.

According to the results of the study, it is concluded that in the conditions of modern technological development, digitalisation is becoming a challenge to the idea of human rights, a threat to individual freedom, and therefore it is necessary to develop and implement new legal mechanisms that would guarantee the full implementation of fundamental rights and freedoms, provide the necessary balance between individual freedom and public security. In this context, the legal consolidation and practical implementation of the principle of formal equality become important.

Keywords: human rights and freedoms, the idea of human rights, the principle of formal equality, digitalisation, digital technologies.

Introduction

The idea of human rights is the fundamental idea of law, which is supported in this status by representatives of various scientific fields. This idea determines the understanding of the essence of law as a regulator of public relations, as well as the limits of its possible interference in the lives of citizens. Human rights derive from human nature itself, which is inherently dualistic (Clapham, 1993). On the one hand, a person is a biological being, an integral part of the surrounding world, and on the other hand, he acts as a subject of social relations. A person as a natural and at the same time as a social "element" of society acts as a subject of activity-objective, material-production and spiritual activity. The inseparable characteristic of his dualistic nature, defining his essence, is the integrity of humans. This integrity determines the needs, aspirations, goal-setting, that is, the interests of a person in certain natural and social goods that determine the content and means of his struggle for conscious rights, both natural, given from birth, and acquired.

In modern conditions, there are deep social transformations associated with the impact of new technologies and the transition to a new technological order caused by them (Pashentsev, 2020). Among the so-called "big four" (bio, nano, cognitive and digital technologies), digitalisation still occupies a leading position. Digital technologies, actively implemented in all spheres of public, social and private life, significantly

change its important parameters. The mentality and legal consciousness of a person change, his behaviour models are transformed. This actualises the knowledge of the essence and dynamics of the legal status of a person and his dignity as an absolute philosophical and legal dimension of a person.

The ongoing modifications also affect the sphere of human rights. Scientists write about the emergence of a new generation of rights, conventionally referred to as "digital rights". At the same time, the concept of digital rights does not find a common understanding in the doctrine; it remains controversial. At the same time, digitalisation creates opportunities for the unlawful restriction of the fundamental rights and freedoms of the individual, which was clearly manifested in the conditions of the coronavirus pandemic. With the help of digital technologies, the state receives effective tools that allow it to control not only the behaviour of an individual but even the course of his thoughts. There are risks not only for the established and internationally recognised system of human and civil rights and freedoms but also for the very essence of law as a regulator of public relations. In this regard, the scientific and doctrinal analysis of the idea of human rights, the peculiarities of its development, which allows creating a methodological basis for the full realisation of these rights in the digital age, is of great importance.

Methods

The methodological basis of the research is the principles and approaches of post-non-classical science, which is based on an interdisciplinary synthesis involving the use of methods from various fields of scientific knowledge. The methodology of constructivism is used, according to which the legal sphere of society, including the very idea of human rights, acquires its characteristic features not only due to objective social development but also due to existing scientific approaches and concepts that construct a type of legal regulation through its description and study. In this regard, an important contribution to the conceptualisation of the idea of human rights is made by modern theoretical and legal science.

In the course of the research, the laws of dialectics were used, which allowed us to consider the idea of human rights from the standpoint of unity and the struggle of opposites to show the inconsistency of the process of its implementation in the conditions of digitalisation.

Using the formal-legal method, the norms of the current legislation that enshrine the fundamental rights and freedoms of a person, as well as the norms of the law of past historical periods, in the content of which the peculiarities of the genesis and development of the idea of human rights were revealed, are studied. Using the comparative-historical method, a diachronic comparison of the idea of human rights at different historical stages of its implementation is carried out.

Genesis and Development of the Idea of Human Rights

The prerequisites for the origin of the idea of human rights have their roots deep in the history of the Ancient East, in the era of the slave-owning system. Preserved cultural monuments, such as the Laws of the Babylonian King Hammurabi, ancient Indian monuments of culture and political and legal thought: Arthashastra, the Laws of Manu, Ramayana and Mahabharata contain instructions on "social" support for certain categories of subjects: orphans, widows of fallen soldiers, soldiers who were injured, etc., and also establish, along with rights, personal duties certifying the class character of a person's status.

The caste approach to assessing the value and dignity of a person is reflected in the oldest written source in history – the economic and political-legal treatise of Ancient India "Arthashastra", dating back to the end of the IV century B.C., the authorship of which is attributed to the wise

brahman Kautilya King Chandragupta (Struve, Baykov, Kalyanov, & Larin, 1993).

At that time in India, according to the Treatise, there were four main "castes" – estates, the first three of them are the highest castes: *brahmins* – representatives of the clergy and priests; *Kshatriyas* – the military class; *vaishya*s – merchants, large landowners. They were called "twice-born", emphasising their knowledge of the sciences, or *Aryans*. The "laws for them" established a certain hierarchy within these higher castes, prescribed their duties and rights (section 1, chapter III). The fourth caste consisted of *Sudras*, or representatives of the lower strata of the population, workers, artisans, dependent farmers and others, who are "legally" obliged to serve the higher castes (Struve et al., 1993).

Thus, in the Arthashastra, along with a division of responsibilities at the same time spelt out and form relationships between the four castes, also defined property rights castes.

A significant legal document, the first Charter on human rights in the history of mankind, is the so-called "Cyrus Cylinder" (539 B.C.), the provisions of which are reflected in the Universal Declaration of Human Rights adopted by the UN General Assembly on December 10, 1948.

It is known that in 539 B.C., the Persian King Cyrus the Great conquered the city of Babylon in 539 B.C., where he gave freedom to slaves and captive jews, proclaimed racial equality, the right to worship their gods. His rulings were written in cuneiform script on a cylinder of baked clay. Cyrus' ideas on human rights became the property of philosophical and legal thought in ancient India, Greece and Rome, where the ideas of "natural law" subsequently arose.

The liberation of slaves by Cyrus in Babylon was a local phenomenon and could not lead to the global abolition of slavery as a social phenomenon. But this historical monument has become a vivid manifestation of the humanistic idea of human rights, which determines its political and legal significance.

Further, it is appropriate to note that the satisfaction of the material needs of society according to the economic theory of Adam Smith and developed in Marxism is a universal sociological determinant of the material and production activity of people by its nature and action. At the same time, a person acts as a concrete and practical subject of both productive forces and industrial relations at the same time. Consequently, "the essence of the human," as Karl Marx (1955) writes, "is not an abstract inherent in a separate individual. In its reality, it is the totality of all social relations" (p. 3).

According to the materialist doctrine, each stage of the division of labour determines the social relations of individuals, at the same time, the content and forms of manifestation of their interests correspond to their relation to the historically existing three forms of property: tribal, ancient, feudal, and the division of labour and private property are identical concepts, the first of them refers to the labour activity itself, and the second – to the distribution of labour results.

The significance of the division of labour as its impact on the entire structure of social relations in a specific historical epoch – the division of labour, the embryos of which rested in the natural life of individual families, covers in its development the collectives of families and society as a whole, generating specific interests of an individual family and the inevitable common interests arising from the common needs of coexistence and self-preservation.

The joint living of ancient people who rose from the realities of the primitive communal system, when the "social" division of labour went beyond the purely natural essence of man and began to penetrate into the sphere of production, the content of which was the manufacture of the simplest tools of labour, and created the prerequisites for the appropriation of the results of labour by individuals or their groups – clans. The social nature of labour and the private nature of the appropriation of its results gave rise to antag-

onism in society, the desire and struggle of the exploited strata for their rights.

The division of labour was the basis for the emergence of private property and had a serious consequence of the formation of new relations between people – the relations of domination and slavery. Along with the objects of the material world, the slave was considered as a thing, the property of the owner, that is, only from the point of view of his natural essence. Man as a natural and social being is "destined for higher freedom" (Hegel, 1977, p. 325). However, the ancient peoples of the Two Rivers, both the Greeks and the Romans, have not yet risen to the concept of absolute freedom, awareness of their own self and their right to freedom. The spirit of the people, as the highest form of knowledge, as its social consciousness, was formed during the geological time scales in close interaction with geographical and climatic conditions.

The practical manifestation of the elements of developing self-consciousness, the desire for freedom, already in ancient times, were bloody wars in which slaves tried to achieve freedom, recognition of their natural rights by their struggle, because "every right in the world must be obtained by struggle" (Iering, 1874, p. 12). At the same time, the tragic finale of the slave revolt in Rome under the leadership of Spartacus in the I century B.C. is six thousand slaves crucified along the roads. Such a bloody massacre will be repeated nineteen centuries later in the French city of Lyon and on "Bloody Sunday" in St. Petersburg on January 9, 1905, when workers came out for a peaceful demonstration for recognition of their, first of all, economic and social rights.

The interests of private owners and the interests and rights of the working masses in any historical epoch have always been at opposite poles of the social aspirations of the antagonistic classes. Wars and revolutionary movements in the struggle of man for his rights accompanied the entire history of the development of human civilisation, during which the *desire for freedom* was strengthened as a qualitatively new "spiritual state that became a being alien to all drives" (Hegel, 1977, p. 325).

Gradually, the idea of freedom in its development reaches the degree of objectivity of both legal and moral reality. Thus, the birth of Christianity for its followers, "not to be slaves", became a reality, although slavery as an international phenomenon persisted in the Middle Ages. Moreover, even the US Constitution of 1787, progressive in its basis, for a long time preserved the importation of slaves into the country, providing the country with cheap and disenfranchised labour.

It should be noted that historically existing views about the legality of slavery, about the legal nature of slavery and domination were based on the understanding of man only as a natural being, from the position of only his physical strength.

Slavery, as well as serfdom, along with other forms of depriving a person of his fundamental social rights, legally means alienation of the individual and his substantial being, but even in this case, a person retains the absolute right to be freed because he, as a subject of Kant's (1965) moral law, is an end for himself and cannot be considered as a means for others (p. 275). Moral substantiality includes the rights of individuals to a peculiarity, which here acts as an external form (external way) of the existence of the moral itself.

Therefore, the identity of the universal will and the special will, as the unity of the concept of will and its existence, characterises the developing individual will to the level of universal, determines the dialectical relationship of duties and rights: a person has rights by virtue of a moral principle, since he assumes duties not under compulsion, unlike the phenomenon of duty. Therefore, a person who has no duties has no rights.

In historical terms, England became the birthplace of the first three industrial revolutions, starting from the second half of the XVIII century, thanks to a number of engineering and tech-

nical solutions and inventions. This was also facilitated by the official consolidation of human rights, which allowed attracting talented inventors from other European countries. So, already in 1215, to resolve the socio-political contradictions that arose, the Magna Carta was adopted, which established a number of legal rights of subjects and became a symbol of political freedoms. The English Petition of Rights (1628) and the Bill of Rights (1689) expanded the personal, economic and political rights of subjects, and at the same time, limited the power of the monarch, transferring greater powers to parliament.

In the last third of the XVIII century in England, the industrial revolution originated and covered the first half of the XIX century, thanks to the widespread use of certain technical innovations in the textile industry and metallurgy and steam energy. It spread to other countries of the world (the USA and Europe), and in the second half of the 19th century acquired qualitatively new features: it turned into the technological revolution due to its success with great discoveries in the natural sciences, primarily in physics, mathematics and chemistry. There was a process of creating a continuous production and, at the same time, the growth of productive labour, contributing to the assertion of superiority in the economy of the capitalist production system. Strengthening the economic positions of the bourgeoisie also led to its political domination, and the pursuit of profit and the accumulation of wealth in the hands of the ruling class led to increased exploitation of the growing class of workers. All this also meant a complete revolution in the state of civil society, the formation of new economic conditions, which began with the industrial revolution in England with the invention of the steam engine, the world-historical significance and which the main result was the birth of the proletariat.

The brutal suppression of the Lyon workers in France due to uprisings for economic demands (1831-1834), the Chartists speech in England (1836), who put forward political demands in the field of suffrage along with the demands for shortening the working day, marked the beginning of the labour movement in world history and meant an increased consciousness of the proletarians in defending their rights and legitimate interests, forcing the authorities to make concessions.

Thus, the important consequences of the industrial revolutions were the destruction of the traditional foundations of society, its urbanisation and a sharp increase in labour productivity on the basis of industrialisation – the transition from the feudal way of organising labour to the machine one. Two antagonistic classes were formed – the industrial bourgeoisie and the proletariat. The exploitation of the working people, especially the working class, has also intensified, which naturally gave rise to an irreconcilable class struggle of the workers for their rights.

Industrial revolutions, having an impact on the established way of life, gave rise to new value relations in society and new needs, which – being realised as socio-political-economic and spiritual interests of workers – motivated their struggle for their rights. It must be admitted that the appearance of the Soviet state on the world stage stimulated the expansion of the rights and freedoms of the working class in the West.

The decisive progress in the implementation of human rights as the idea was achieved by the adoption of a number of international legal instruments on human rights after the Second World War, where the fundamental one was the Universal Declaration of Human Rights (Sieghart, 1986). It was during this period when women's rights were formalised, which had not yet been fully enshrined in law in all countries (Garkavchenko, Maistrovich, Pashentsev, & Mirzalimov, 2019).

Human Rights in the Context of Digitalization

Over the past quarter of a century, information technologies and communication net-

works, including the Internet, actively cover all spheres of human activity and society. Digital technologies are penetrating into historically established traditional relations and institutions of society.

The fundamental human rights guaranteed by international legal acts and the constitution of the country, with the development of modern technologies, receive new ways of their existence, expression and implementation. The emerging forms of relations between a person, society and the state – based on the introduction of information and communication tools and technologies – are called digital rights for short, which can be understood as human rights to access and use computer networks, the right to free communication and expression of opinion, the right to inviolability of the private information environment, etc.

The Okinawa Charter of the Global Information Society, adopted by the heads of eight leading powers, including Russia, in Japan on July 22, 2000, proclaims the goals of information technologies to ensure sustainable economic growth, increase public welfare, promote social harmony and the full realisation of their potential in strengthening democracy, transparent and responsible governance, human rights, the development of cultural diversity and the strengthening of international peace and stability.

The Charter establishes the need to coordinate the actions of States to create safe and crime-free cyberspace, which, as we believe, is of crucial importance in protecting human rights and freedoms from international organised crime.

The "Open State" project implemented in many countries expands the right of citizens to discuss issues concerning practical activities of public authorities and contributes to improving the efficiency of their activities. The use of digital technologies opens up new prospects to implement the targets of the "open government". It hence ensures comprehensive consideration of public opinion when the government makes socially significant decisions. This creates a new direction of communicative interaction between a person and the state, which increases the level of a person's legal personality, its ability to exercise its rights and legitimate interests.

An important direction of using new information and telecommunications systems is associated with the expanding introduction of "digital medicine" technologies into the practice of medical institutions of a state, which give access to the achievements of leading medical clinics in the implementation of medical measures online, the organisation of advanced training courses for medical personnel, as well as individual medical consultations for individual citizens.

A pronounced socially significant aspect of digital technologies is their significant effectiveness in the implementation of the educational process using telecommunications means.

An important feature of the fourth industrial revolution is the formation of a new basis for the development of the entire society, a new way of life and the digital economy. However, in these conditions, there is a tendency to reduce jobs. At the same time, there is a growing need for qualified personnel with knowledge of modern technologies. The growth of unemployment exacerbates social tension in society and requires the development and implementation of a new concept of social security of the population and provides for its significant expansion.

So, along with the positive aspects of applying new information technologies in public life, there are also negative trends. In particular, the instrumentalisation and the formal teaching of politics and law lead to a break from their moral foundations, alienation of a person and entail a colossal threat to the unlimited power of the technocratic bureaucracy over the course of social development, which is also expressed in the dynamics of the human rights system. These trends observed in the socio-political life of the political and legal sphere have not yet become a fait accompli, but they have the potential to turn into reality. As Jurgen Habermas (2007) notes: "The politician becomes the executive body of

the scientific mind, which under specific conditions carries out the objective pressure of the techniques and auxiliary means, as well as optimal strategies and management prescriptions" (Habermas, 2007, p. 139).

The Internet and other telecommunications networks play an increasing role in the formation of an extra-spatial and timeless form of personal identification. It moves the centre of the human socialization system from the real environment to the virtual environment. These phenomena serve as a prerequisite for the emergence of narcissism and the mythologization of social life, and the collapse of the integral system of personal identity. In contrast to these negative trends, it should be pointed out that the true identity of a person can be formed only in the conditions of real joint work in a specific subject environment in live human communication and in space-time intervals.

Personality and Its Rights in the Context of Globalization

The globalization of communication processes based on digital technologies is changing life orientations, interests and values, as well as the psyche of the individual. This dynamic is due to the fact that with the advent of global connections through the Internet, traditional mechanisms for transmitting moral values in local elements of society are being destroyed: in the family, educational institutions and labour collectives. At the same time, the spatio-temporal, "vertical" (from generation to generation) transmission of socially significant moral information, value orientations, folk traditions and customs are replaced by timeless and extra-spatial forms through Internet technologies. Consequently, there is a threat of the emergence of an autonomous individualized personality and the negative self-identification of a person (Beck, 2000).

The problem of identity and its perception by the individual himself in the conditions of digital technologies is of interest from the perspective of both philosophy and individual or social sciences, including law. Self-identification of a person is directly related to the formation of individual and social legal consciousness, the development of models of law-abiding behaviour and legal culture in general.

A man as a person is immersed in a system of multifaceted and multilevel social relations, and therefore the identity of a person acts as a comparative characteristic of people in the integrity of a qualitatively defined social environment. Therefore, it is necessary to recognize that the industrial revolution – which destroyed the traditional foundations of society – also changes the essential qualities of a person and his value orientations (Pashentsev, 2021).

The task to counter negative trends emerging in the new digital reality requires the intensification of work on the cultivation of folk traditions, customs and moral values of people, such as patriotism, collectivism, brotherhood, equality and justice, etc., while strengthening the freedom of will of the individual.

In this regard, the need for the development of new approaches to the study of legal consciousness and legal psychology in legal science is becoming more acute. On the other hand, the existing regulatory framework does not meet the emerging prospects for studying the brain. Approaches to legal policy, legal consciousness, law-making, the implementation of the law, etc., also require a radical update. The fundamental question here is to what extent the individual retains the freedom of its will and to what extent intelligent machines influences the human consciousness and controls people.

It must be said that these studies, although the results are striking in their significance, are at their initial level in terms of the volume of data obtained: science today has not yet given decoding of possible neural connections and their significance in the behaviour of the simplest living objects with several dozen neurons. It is appropriate to note here that the human brain consists of more than 100 billion neurons. About the

same number of stars includes our Galaxy, i.e. the visible part of the Universe. Interestingly, the use of the modern Hubble space telescope gives this estimate, respectively, the number of Earth-like planets in our Galaxy is estimated by a number with eighteen zeros. Each neuron is connected to about ten thousand other neurons. Therefore, even only paired neural connections are equal to ten raised to the power of 15. This is the number of the simplest "thoughts" that can arise in the human brain. This circumstance makes us understand that the ongoing research of neural connections is still in an embryonic state.

However, today there are "mundane problems" of the correlation of human rights and the rights of supervisory authorities to access and use confidential information recognized as such by international acts and included in the fundamental human rights, and reflecting the generally significant problem of the dialectical relationship of personal, public and state interests.

UN General Assembly Resolution No. 68/167 of December 18, 2013, "The right to privacy in the digital age" states that the pace of technological development, along with the expansion of people's rights to access information, simultaneously "increases the ability of governments, companies and individuals to track, intercept and collect information that may violate or infringe on human rights, especially the right to privacy, enshrined in Article 12 of the Universal Declaration of Human Rights and in Article 17 of the International Covenant on Civil and Political Rights...".

The Resolution notes the possibility of access and use by the supervisory authorities of States of confidential personal information in compliance with their obligations under international human law. Fundamental human rights and freedoms, such as the inviolability of private life, the right to secrecy of correspondence, telephone conversations, freedom of speech, freedom to receive and disseminate information, as well as the obligations of States to protect human rights, are enshrined in international legal acts and the Constitution of the country. In connection with this circumstance, there is a subjectively perceived priority of individual rights in the state-established system of correlation of rights, duties and duties. Turning to the general philosophical interpretation of this problem, we cannot but recognize the legal and moral significance of this issue. The essence of the emerging problem is reduced to the establishment of the limits of the legal boundaries of the individual's rights, the functional framework of his legal status (Malakhov & Aznagulova, 2021). We believe that an adequate answer to this question can be established by clarifying the meaning and significance of the legal status of the individual, its functional role in sociological praxiology, where the central concept is activity and where human freedoms and rights as their substantial basis have the unity of the physical and spiritual.

In the light of the above, the interpretation of the concept of meaning, the clarification of its epistemological role in socio-political and legal discourse is of particular importance.

From the point of view of understanding the legal status of an individual, the meaning and its meaning should always be considered in close connection with the question of the essence of law as such. A holistic, systematic approach to the knowledge of the legal status of an individual allows us to delve deeply into their deep essence, the historically determined meaning and meaning of norms, to find out their universal value.

It seems to us that we should pay attention to the essential point that the legal status of an individual as a social phenomenon has a political character and reflects concentrated, mutually agreed personal and state interests. Therefore, the clarification of the meaning and significance of the legal status of an individual involves the establishment of cause-and-effect, spatial-temporal, political-economic, socially-conditioned connections in the existence of the national state and humanity as a whole.

The significance of human rights is their praxeological characteristic and consists primari-

ly in the fact that in their functioning, they give a qualitative certainty of society as a moral unity, concrete integrity. At the same time, the actual human rights themselves, filled with concrete content at each historical moment, represent an integral formation in the system of public relations so that the possibility of progressive, stable development of society as a multidimensional and multilevel phenomenon is based on the dialectical unity of the rights and duties of a person and a citizen. This is achieved by a certain structural organization of basic human rights and freedoms.

The Structure of Human Rights in the Digital Age

The structure of human rights is determined by the structure of the legal system and society itself. The formula "what is society – what is law" has been practically implemented since ancient times. The content of human rights is connected with the main sphere of public life: material and industrial, economic, political, social, spiritual, cultural. It is the sphere of material production that has a determinative influence on the whole set of human rights. This connection also determines the diversity of human rights in terms of their essence, significance and types of guarantees.

The central place in the structure of the legal status of an individual is occupied by his rights. When systematizing them in legal science, the concept of three generations of human rights is sometimes used: personal (civil and political), socio-economic and cultural, collective (abstract-universal human rights), which have found political and legal recognition in the course of civilizational development. With a systematic approach to the status of the individual, it is human rights that are the system-forming factor around which all other components crystallize. This point is of fundamental importance since the status of an individual is, first of all, a complex multi-level functional system that interacts through many channels with all spheres of public life and structural components of the legal system of the state.

Referring to the concepts of "the structure of society", "the structure of law", "the structure of human rights", etc. in the political and legal discourse, it is necessary, first of all, to give an interpretation of the concept of the structure itself.

Many researchers correlate the concept of structure with the concept of a system from a modern point of view, although they do not reveal the hierarchical subordination of these two concepts, which gives rise to large differences in the content and scope of the concepts of "structure" and "system". This fact creates considerable obstacles for clarifying both the concept of the legal system itself and its structure and, consequently, the meaning of the legal status of an individual. The main disadvantage of this approach is the uncertainty of the boundaries of the concept of a legal system when its content can be set subjectively in contrast to its objective social foundations, which have a praxeological and axiological essence. More reasonable, in our opinion, is the definition of the structure as a certain aspect, a side of the system itself.

The structure of the legal system of society is not completely determined by its elemental composition, a formal indication of the existence of relations between them, stability, integrity (which in itself is very important). We believe that to determine the structure of the system, one of the main issues is to clarify the spatial-temporal hierarchy of its components and the hierarchy of the legal system itself in the system of public relations. With such a substantial approach, the structure appears as an internal form of the system.

Discussing the issue of the structure of the legal system, we can state that the components of the legal system, as its essential parts, in interaction with each other and the external environment, determine the way of existence of the system as a whole. Then, we can understand the structure of the legal system as its internal form,

the way of existence of the content of system. D. A. Kerimov (2001) holds a similar point of view, arguing that "the structure is nothing but the internal form of the whole, then, consequently, its elements are moments, connections, blocks of the organizational structure of this whole" (Kerimov, 2001, p. 197).

Being a substantive approach, our position on the structural composition of the legal system requires clarification in relation to functional systems, which can also include the external side of the legal system because their structural organization, as a rule, contributes to a certain achievement of the target result. However, the internal form of the legal system, being its essential feature, as a way of existence of its content, is devoid of internal dialectical contradictions and has no internal reasons for the development. Therefore, we consider it necessary to include in the content of the structure of a social phenomenon an additional feature that defines a hierarchical, logical-functional and value line-the relationship between the components of the system, which, in our opinion, can be achieved only by introducing the feature "conscious human activity", which is expressed in the corresponding components of the legal system. Such an approach would mean that the legal system, for example, includes not only ontological and epistemological aspects but also has praxeological and axiological content, since value as such has a certain meaning only in the practical activities of people and their associations (Mises, 2004, p. 334). Thus, the legal status of an individual becomes a subordinate factor in the formation of the integrity of the legal system itself, where the latter belongs to a higher hierarchical level, which in turn represents part of more general integrity – national society.

The central place in the structure of the legal status of an individual is occupied by his rights; when systematizing them in legal science, the concept of three generations of human rights is sometimes used: personal (civil and political); socio-economic and cultural; collective (abstract-universal human rights), which have found political and legal recognition in the course of civilizational development. With a systematic approach to the status of the individual, it is human rights that are the system-forming factor around which all other components crystallize. This point is of fundamental importance since the status of an individual is, first of all, a complex multi-level functional system that interacts through many channels with all spheres of public life and structural components of the legal system of the state.

To define the concept of a system as a key problem of the system approach, it is necessary to search and formulate its system-forming factor – an integral and decisive component of it. There are reasons to believe that the system-forming factor is an essential internal element of organic systems that characterizes its purpose – a functional role in the composition of certain integrity. Therefore, we can say that the meaning and significance of the legal status of a person concretize its place in the legal system of the state and, in interaction with morality, connect it with social reality, where it acquires a higher ontological content in the hierarchically existing order of phenomena, and the need for its implementation, introducing an additional point to the stability of the latter.

Therefore, the consideration of the categories of meaning, system, structure from the political and legal point of view allows us to establish the hierarchical relationship of a person, society and the state. This leads to an understanding that the legal status of an individual is not self-sufficient in the entire system of public relations, and human rights, concretized in each historical epoch, are the essence of his good as one of the necessary elements of the sustainable functioning of society itself.

The emergence and development of human rights in different epochs and in different societies went inextricably with the genesis of the principle of formal equality, which underlies the libertarian-legal understanding of the law and the state, based on the Hegelian definition of law as

the existence of freedom (Nersesyants, 2017, p. 144).

In the practical implementation of relations in the triad "man-society-state", it is not a formal commitment to the idea of freedom, development and transformation of it in the specific historical conditions of material production and the spiritual state of society into a life-affirming force of legal views, moral beliefs, but the unity of morality and law-into the fundamental and highest principle of the public and personal life of people. It is in this direction that Kant's thesis that human rights are "the most sacred thing that God has on earth" can be implemented (Kant, as cited in Alekseev, 2015). This thesis acquires a special meaning and significance due to the ambiguous nature of the influence of digital realities on the moral and legal state of the individual.

In this regard, we can state the fundamental role of the principle of formal equality for the full implementation of the idea of human rights in the conditions of modern technological development. The active use of this principle, including as a methodological basis, allows us to find the facet that is important for the full realization of rights and freedoms, their protection from unjustified restrictions with the help of modern digital technologies.

Conclusion

The dialectic of the universal and the specific is clearly reflected in the system of human rights. It is important to find a balance between universal rights and freedoms that have been enshrined in international law and an individual's traditional legal status that corresponds to the values and historical development of each particular national culture.

In the context of modern technological development, the digitalization of social relations is becoming a challenge to the idea of human rights, a threat to individual freedom. In this regard, it is necessary to develop and implement new legal mechanisms that would guarantee the full implementation of fundamental rights and freedoms, would ensure the required balance between individual freedom and public security. The resolution of emerging contradictions between the social life, world and global consequences of the introduction of new technologies and the implementation of legal regulation of naturally emerging new relations put on the agenda the development and implementation of a long-term research program for the development of legal policy and legal ideology aimed at modernizing the regulatory framework for regulating economic, political and social spheres in the modern world.

In this context, the legal consolidation and practical implementation of the idea of formal equality become particularly important. It is the formal equality guaranteed by the current law that makes it possible to ensure the full implementation of the idea of human rights and freedoms in the conditions of new technological challenges.

Technological development, including digitalization, does not cancel or change the fundamental legal idea – the idea of human rights, technological development preserves it as a fundamental legal value. By creating new risks for it, they also create new opportunities that allow ensuring the implementation of human and civil rights and freedoms on the basis of the principle of formal equality.

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THE PRINCIPLE OF DELIBERATION AS A KEY BASIS OF STATEHOOD IN MODERN RUSSIA

Abstract

The development of statehood is predetermined by a great variety of factors. In modern society, citizens are developing an increasing willingness to fully participate in political and legal processes jointly with the state. Today the ideas of deliberative democracy attract the close attention of legal theorists in this aspect. The subject of the research is the key aspects of the philosophical and legal treatment of social relations in the sphere of realisation of the principle of deliberation in modern Russia. The purpose of this study is a multilevel analysis (general legal, philosophical, technical/legal) of the principle of deliberation, with substantiation of its significance as a key foundation of statehood in modern Russia. The research results confirm the initial hypothesis and evidence that the goal of the study has been achieved. The correlation of state and public interests in terms of deliberative interaction is of fundamental importance for the development of Russian statehood.

Keywords: Russian statehood, deliberative democracy, deliberation principle, self-regulation.

Introduction

The need to search for efficient ways of development of the state, law and society increasingly permeates the modern legal theory and practice. The modern stage in the existence of the Russian state is characterised by the reformation of all spheres of social life. The introduction of digital technologies in a broad range of social processes, including legislative activity, has a significant impact, which engenders the need to find due ways of participation of people at large in rulemaking (Pashentsev, 2019, pp. 5-13). The formation of statehood along with the purposeful incorporation of governmental entities into the world economic and political space conditioned the increased importance of legal issues in the life of the society. The presented study seems to be quite timely and relevant in this aspect; its purpose is a multilevel analysis that includes general legal, philosophical, technical/legal aspects of the principle of deliberation, with the justification of its importance as the key basis of statehood in modern Russia.

In defining the terminological range, it is necessary to note the following. The term "deliberation" is etymologically based on the Latin word "deliberare", which means to evaluate (in the ideological sense), contemplate, consult or heed the advice. Joseph M. Bessette (2011), a scholar credited with introducing the term "deliberative democracy", based this concept on the importance of "debating on social and political issues throughout the U.S. development history as a process of discussing problems (deliberative process)".

Moreover, as believed by J. Habermas (1992, p. 50), one of the most famous scholars who made a significant contribution to the development of this legal phenomenon, it is the emerging autonomous associations of the public that serve as subjects of spontaneous opinion for-

mation, penetrating each other through the organised acquisition of people's loyalty. At the same time, the grounded idea of a nation's sovereignty correlates with the communicative conditions for the discursive formation of opinion and will. Thus, deliberative democracy is based on the conviction that the individual is capable of shifting from the role of client to the role of a citizen of the state, that he/she is willing to compromise and even to give up some of his/her preferences if they get in the way of reaching agreement (Zaitsev, 2013, p. 31).

The contribution of the article to the philosophy of science lies in the fact that this study reveals new regularities in the development of scientific knowledge and complements the substantive elements of existing patterns, in particular, various forms of continuity of scientific knowledge, as well as the development of digitalisation processes in the modern society and their impact on the specifics of doctrinal development.

The contribution of the article in the methodology of science lies in the use and perspective optional application of the systemic method of scientific knowledge in relation to the analysed legal phenomena, in particular, in respect of synergetically predetermined self-organising systems. The systemic analysis of dialogical deliberative interaction between the state and representatives of modern being-transformed society for the purpose of development of the Russian statehood is also essential.

Methodology

During the work on the stated problem, the following methods were used: dialectical, systemic, comparative/legal, historical/political, formal/legal. The choice of methods is accounted for by the need to analyse the genesis and transformation of deliberation and the doctrinal views in respect of this phenomenon, the importance of studying the diametric positions, the experience of social and, particularly, legal regulation of this subject area within the Russian society, the need for acculturation processes in the globalising legal reality.

Discussion

The development of modern society, which is proceeding quite actively, entails the extension of forms and methods of interaction between the state and the society as well as the development of joint decision-making procedures. In addition, the crisis of state/society interaction implies a revision of the existing postulates; in this aspect, the ideas of deliberative democracy are becoming increasingly widespread and accepted among a number of different concepts. In the context of the current crisis of state/society power relations, this concept appears to be an efficient way to restore the dialogue of these global communities.

The quite high relevance and demand for ideas of deliberative democracy today is predetermined to a greater extent not by the fact that it is really an efficient modern tool for achieving the common benefit and solving a number of problems, but by the fact that our society today is ready for the realisation of deliberation procedures to a greater extent than in the previous period of its existence. The modern society is referred to as informational for no coincidence; in terms of contemporary philosophy of law, one can speak of the emergence of multi-substantial platforms for discussing information flows, relevant forms and methods of influencing decisions, their philosophical, legal and socio-cultural mediation. Thus, contemporary society increasingly implements the tools of influencing governmental legal institutions.

Virtually any democratic participation in the life of modern society is predominantly based, as recorded in recent years, on the explicit or formal principle of deliberation, since nowadays it is not so difficult to obtain and process the information obtained in the course of discussion aimed at the solution of some problem significant for the state or the society.

The substance of deliberative procedures is

revealed in the theory of communicative action, during which an exchange of opinions in various discourses takes place. It is assumed that the process participants can adjust and change their opinions under the influence of each other's arguments, which leads to a consensus. The key accent in the analysed concept is made not so much on the dominance of the majority rule – although this fact is not refuted – but on the mechanisms of achieving power by the majority in the course of which different social communities come to a consensus. The core component of these mechanisms is communication.

At the same time, any communication in the process of realisation of deliberative democracy procedures serves as a kind of background for both the conflict and the compromise. The balance of interests, in this case, varies between the urge of the state to limit the range of permissible actions and the natural desire of the society, represented by groups or individuals, to extend the framework of legal permission. A. V. Polyakov (2014, p. 139) points out rightly that law itself is considered in this case as a sphere of human interaction and mutual understanding, consent and compromise, freedom and responsibility, equality and justice. Law is not always the result of the utmost agreement and the pinnacle of justice; still, its necessary baseline prerequisites are minimal agreement and justice.

There is no denying that the democratic existence of the society has nothing to do with the anarchic rejection of the organising power of the state and with the abusive, excessive violation of active social positions. But at the same time, in the conditions of contemporary legal reality, the role of the state is becoming increasingly contested both within its power organisation and at the international level. States are forced to evolve in a more open and interdependent world. Therefore they experience a fundamental transformation of their underlying rationality. The state is increasingly competing with the social sphere (Osvetimskaya, 2014, pp. 161-162). This competition is primarily based on consensus and compromise.

J. Morley (2010, pp. 6-7) rightly notes that one of the most important issues of the compromise is setting a boundary between reasonable caution in developing beliefs, reasonable restraint in expressing them, reasonable slowness in trying to realise them – and disguised insincerity, self-delusion, unconstrained hypocrisy, carelessness and cowardice. Indeed, it is difficult to set the boundaries of the compromise, its permissibility and limits, especially in the legal and political sphere.

The compromise is a result of the agreement with a formal adversary; at the same time, the difference in views remains but is sacrificed for the sake of the result – elimination of confrontation, cessation of a conflict. Accumulation of contradictions leads to fixation of persistent serious disagreement, which is indicative of the formation of a negative result – a conflict. However, both the compromise and the conflict are specifically valuable since they represent equitable means of active, though not always positive, development of the legal reality. Reaching a compromise is accompanied by process of accommodation – adaptation, passive or active transformation of views and behaviour patterns. An important condition for fruitful, efficient accommodation and compromise is reconcilability, mutual tolerance of other people's ways of life, behaviour, demands, attitudes, interests, opinions, ideas. It is tolerance that is a democratic principle inseparable from the concepts of pluralism, particularly those traditional for modern Western Europe. In the Western tradition, tolerance and conscious perception of innovations are a manifestation of the strength of a personality and society.

It seems pertinent to note the essential difference between the terms "compromise" and "consensus". The latter seems to be a certain ideal, "topmost goal", with no contradictions in views and no formal opponents, while it permits achie-

ving unity of ideas, aspirations and means of their realisation.

At the same time, the approaches in the interpretation of the compromise, particularly legal compromise, are different, which is natural for science as a living and evolving phenomenon. For instance, A. V. Kayshev (2005) defines the criminal-law compromise as "a means of the state to satisfy its interest in achieving a goal to establish justice through a waiver of its right or its obligation to punish a person who committed a crime, subject to the latter's strict obeyance to the law". N. I. Makoveev (2000) fairly notes that the compromise in the specific politological sense is defined as "a system of interaction in the "domain of politics", basically representing a process of reaching a political agreement (voluntary, voluntary-compulsory or strictly forced) and its result, always based on concessions (not always equivalent, but always mutual) between two (or several) political actors, aimed at handling specific objectives by each party involved in this interactive system.

Deliberative processes are aimed at achieving a compromise rather than consensus. It is natural for a multipolar society and a complexly structured state to have contradictions in views, attitudes, stereotypes and goals, which gives rise to irreconcilable positions of the communicating parties: "state-society", "part of society – part of society", "state – part of society". It is only the reciprocity of aspirations, readiness to withdraw from the elements of dogmatic beliefs, high level of self-awareness and self-organisation of actors involved in communication and interaction that allows achieving a positive result – proceeding from the conflict to productive cooperation and collaboration.

The normative model of deliberative democracy of J. Habermas (1992, pp. 194-195) relies on the ideal of a community of free and equal individuals who determine the forms of their life in society through political communication. In conformity with this model, it is not the decision expressing the allegedly formed will of people (according to the formula of some politicians: "I know what the people want") that is legitimate, but the one discussed vigorously by people at large. At the same time, political communication itself should rationally form the will of its participants and not just reflect their political predilections.

Thus, a number of positive aspects of the analysed concept of deliberative democracy should be noted:

- the decisions made by legislative and executive authorities, if supported by broad segments of the population, are more viable and tend to be realised more efficiently than unpopular measures;
- the authorities' turn to public opinion enables them to gain a deeper understanding of issues at hand, to analyse different points of view and to take most balanced decisions that would satisfy the interests of the majority of citizens while also taking the minorities' interests into account to a certain extent at the same time;
- being involved in a broad discussion, people can change and variate their opinions, which contributes to better reasoned (more rational) decision-making rather than impulsive in case of voting (whether it is direct vote or voting in a representative body);
- involvement of the population in open and free discussions, the results of which are taken into account in making governmental decisions, which contributes to the formation of the due social base of the civil society, strengthens the reciprocal trust of citizens and governmental institutions, makes social relations more stable and predictable. For instance, in recent years, certain expertise has been becoming increasingly relevant in the post-soviet space: this kind of expert examination is carried out not only by experts and public authorities but also by the public. This represents the public evaluation of projects – a specific public policy with activities maintained on the border between the experts' domain and the

civil society institutions' competence (Lyakhovich-Petrakova, 2011, p.37).

Electronic democracy is also promising when computers and computer networks are used to realise the essential functions of the democratic process, such as the spread of information, communication, expression of citizens' common interests, influencing decision-making (Bashkarev, 2008, p. 25).

Consequently, the below premise is true, voicing that the introduction of deliberative democracy principles in the public mentality and in the work of political institutions of our country contributes to the gradual awakening of their feeling of involvement in the social and political processes, engendering the desire to eradicate the political shortcomings, primarily through one's direct participation in the social justice discourse and active collaboration with the authorities in this domain (Uglov, 2010, p. 12).

At the same time, the citizens should be ready for active participation in the life of the society and the state for self-regulation. The political environment of the country is a complex and, to a certain extent, self-organised system.

The conceptual ideas about the self-organisation of systems initially emerged in natural sciences. The sphere of natural science exploring self-organising systems was called "synergetics" (Kurdyumov & Malinetsky, 1989). I. Prigozhin, a leading representative of this scientific trend, proposed to treat self-organisation as establishing order in a system (Prigozhin & Nicholis, 1990, p. 25). Self-organisation in the classical cybernetic sense of this word is a process of structuring the system, controlled from within this system. At the same time, synergetics puts an emphasis on spontaneity, the immediacy of the self-organising nature of a system. Self-organisation means a transition from an unorganised system to an organised one, or transition from a low level of the system's orderliness to a higher level (Sorokin, 2007, p. 346).

The first attempts to apply the synergetic approach allowed some authors, among other things, to come to a conclusion on the need and relevance of curtailing the sphere of the regulatory impact of the state, since the future will represent the scene of self-regulation of social processes. According to G. V. Maltsev (2010, p. 99), "social regulation or self-regulation – this is a flawed alternative". The point is that the ratio between the regulatory (governing) nature and the basics of self-regulation in different dynamic systems is formed in a different way.

Self-regulation is a phenomenon that is projected in the sphere of humanitarian knowledge onto a wide range of objects. It is important to keep in mind that self-regulatory processes within the framework of deliberative development of socio-political communication represent an element of institutionalisation of the civil society in present-day Russia.

Traditionally, the Russian society represents a society of mobilisation/communitarian, "closed" type. The specifics of the mobilisation-type society involve overcoming the dichotomy of the private interest and the public benefit by means of state coercion. Mobilisation means the quality of social life characterised by no inconsistency in social existence at the individual, group and state level, for the purpose of meeting meta-social and supra-state objectives within the framework of communitarian integration (Nikiforuk, 2001, pp. 104-108; Baranov, 2003, pp. 18-19). That is, we can recognise the need, with a fair degree of certainty, for the prospective formation of a policy of "conflict-free existence" of all entities in the space of political communication that reflects a multitude of heterogeneous interests.

A certain established practice of using the mechanisms of self-regulation, as well as the readiness to obey their requirements, is inherent in the Western tradition. Modern Russia is successfully introducing the basics of self-regulation into its political life through the principles of deliberative democracy.

However, there are many pitfalls in this concept that are often overlooked and make a number of progressive deliberative practices ineffi-

cient or even formal. This assertion is true in the context of both classical and post-classical legal science.

Thus, for instance, considering a particular case of the deliberative process, it can be noted that in terms of law-making, this is an issue of formalising the multi-channel discourse maintained by the public and transferring it into the political plane of legislative decision-making. From this perspective, modern law is shaped and refined in the process of interactive, continually renewed dialogue between the parliament and the society (Lapaeva, n.d.).

At the same time, it should be noted that excessive participation of citizens in this process, even within the framework of legal communication, may also have certain negative consequences. Similar conclusions can be drawn in considering the achievements of deliberative consensus – to what extent the result of public communication will be unbiased and reflective of realities of public discourse, given that the level of professionalism of the actors of discussion will be far below the professionalism of public authorities. It seems it will not meet the requirements of appropriateness in all cases.

Bertrand de Jouvenel (2011, pp. 342-343) rightly notes that opinions and interests should not be confused: "if no relevant fundamental distinction is made, then the power will turn into a plaything of interested stakeholders who, under the guise of opinions, stirring passions, compete for the votes of the majority which acts as a judge of what they are not competent in".

It is hardly possible to place the two types of power distinguished by J. Habermas (1992, p. 50) on the same level – the power born in the process of communication and the administratively applied power. For an additional argument, let us turn once again to the opinion of Bertrand de Jouvenel (2011, pp. 342-343), who, in the context of one of the problems dwelled upon above, focused on the fact that the fundamental ideal was not to replace the despotic will of a monarch by the despotic will of a ruling mass of people as a supreme authority. Applying the meaning of the mentioned position to modernity, it should be noted that the decisions formulated by social structures within the communicative discourse will not be devoid of a certain share of subjectivism and selfish motives by analogy with a number of state-power entities.

However, despite the noted positive effect of realisation of the legal phenomenon under study, one should note the bipolarity of external manifestation of the deliberation processes versus a wide range of manifestations of social life. In addition, the possibility of the impact of negative phenomena on deliberative processes should not be excluded, namely:

First, incompetence of entities – participants of social communication, as well as their excessive formalism, passivity or submissiveness in decision-making. This was pointed out by J. Habermas (2010, p. 160) despite adherence to his own deliberative concept. He emphasised that obedience can be hypocritically feigned by individuals or even entire groups for purely opportunistic reasons, or practised for their own material interests, or accepted as something inevitable because of personal weakness and helplessness.

Second, the state-wide level of deliberative democracy procedures is not always promising; it has certain prospects where democratic institutions are closest to the citizens – in local communities (Mochalov, n.d.). In these conditions, the range of problems to be solved will be quite narrow, the category of communicative discourse actors will be quite specific and homogeneous; therefore, this will contribute to a greater level of objectivity of decisions to be taken.

Third, the conditions for efficient use of deliberative democracy procedures are not always present. In Russia, it is impossible to equate the Internet users and the bulk of the politically active population. In addition, the mentality features, the development trends of legal nihilism, and the improper level of technical literacy of the population in this sphere play quite a significant role.

Fourth, there is a significant impact of the so-called "new despotism" that represents sophisticated and refined forms of manipulating society with the use of modern communication technologies, mass culture and political processes. It does not resort to overt violence, suppression of individual rights, abolition of democratic institutions; the democracy structure is preserved, but its content is emasculated (Bashkarev, 2008, p. 29).

Fifth, the use of deliberative procedures can serve as an opportunity to delay important decisions. Much likely, this list can be continued.

At the same time, one should have in mind that the deliberative principle is undoubtedly not just a philosophical/cultural and political/legal concept, but rather a well-founded legal reality, despite the fact that a number of scholars do not assess its potential positively, referring to it as inapplicable, difficult to realise, inefficient, etc. The development of post-industrial society provides quite stable prospects for its existence. Consequently, a positive result of the introduction of deliberative procedures in the Russian legal reality will be yielded gradually, in a constructive way. The realisation of the deliberation principle carries a potential for new ways of interaction between the state and the society and for the achievement of common benefit.

Results and Conclusions

1. In order to build a deliberative democracy, it is important to have a possibility to variate and change one's opinion through a system of arguments, which leads to a consensus of the participants of a process involving discussion of social, political, legal innovations, dispute resolution.
2. The accent in the concept of deliberative democracy is placed not on the dominance of the majority rule but on the mechanisms of achieving power by the majority in the process of which different social communities come to a consensus.
3. In achieving the goals of deliberation, the balance of interests varies between the urge of the state to limit the range of permissible actions and the natural desire of the society, represented by individual groups or individuals, to extend the framework of legal permission, which determines the focus on pursuing this competitive struggle through consensus and compromise.
4. The boundaries of the compromise in the legal and political sphere, its admissibility and limits require careful analysis and elaboration in order to increase the prospective efficiency of deliberative processes. At the same time, it should be recognised that both the compromise and the conflict are specifically valuable since they represent equitable means of active development of the society.
5. A due condition for fruitful, efficient deliberation is acceptance of a compromise expressed in reconcilability, mutual tolerance of other people's ways of life, demands, attitudes, interests, opinions, ideas.
6. Deliberative processes in the society in real-life conditions are aimed at achieving a compromise, not consensus, because consensus implies the total absence of contradictions in views, factual achievement of unanimity of concepts and aspirations, i.e. represents a certain ideal, a "topmost goal".
7. The concept of deliberative democracy manifests itself in support of decisions taken by representative and executive authorities by broad segments of the population, which makes them more viable.
8. The deliberative approach enables a broad range of individuals to gain a deeper understanding of topical issues, to analyse different perspectives, to engage in wide-ranging discussions, to change and vary their own opinion, which contributes to more rational and socially meaningful decision-making.
9. Owing to the deliberative approach, the social framework of the civil society is formed, and the reciprocal trust of citizens and power

institutions is strengthened.

10. The prerequisite for the establishment of deliberation is the citizens' readiness for active participation in the life of the society and the state for self-regulation.
11. The synergetic approach is of special importance for understanding deliberative democracy since it allows to actualise the need for curtailing the sphere of the regulatory impact of the state, to recognise the prospective efficiency of self-regulation of social processes.
12. It is necessary to recognise the need for the prospective formation of a policy of "conflict-free existence" of all social entities in the space of political communication that reflects a multitude of heterogeneous interests.
13. At present, the Russian Federation is successfully introducing the principles of self-regulation into its political life through the principles of deliberative democracy, which evidences the acceptance of significant innovative doctrinal and practical concepts of prospective development by the society and the state.

The above makes it possible to formulate a number of working assumptions reflecting the basis for the development of deliberative democracy in the modern Russian state:

- the procedures for the realisation of the deliberative democracy principles must be subsidiary to the activities of the governmental authorities and in no way may be equated with them, except for certain cases which, like any exception, merely confirm the rule;
- it is necessary to develop a specific detailed mechanism for introduction and realisation of the concepts, practices and principles of deliberative democracy in the legal life of the society; otherwise, the realisation of this political/legal phenomenon, with its due constructive orientation, will not be possible;
- the most important areas for the use of deliberative democracy procedures in Russia are public discussion and public expertise;
- it is necessary to fix the legally defined limits for the use of deliberative democracy procedures in official statutory regulations with regard to the specific impact of a number of factors that are determinative for the level of development of the state and the society at a certain stage of their existence;
- in view of the determinative influence of maturity and self-organisation of the society on the efficiency of development and realisation of deliberative processes, it is necessary to develop a strategy for introducing the idea of active political participation into common perception.

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THE AESTHETIC DOCTRINE OF LAW (AESTHETICS OF LAW) IN THE CONTEXT OF THE DEVELOPMENT OF NBICS TECHNOLOGIES

Abstract

The development of NBICS technologies is one of the factors of transformation of the mechanism of social regulation, including law, which acts as a means and as an object of socio-economic modernization. The scientific search creates new contexts in the study of law, serves as a prerequisite for rethinking its essence and role in the life of modern society, determines the formulation of a number of questions, including the consequences of technological progress for the legal existence of a person. In line with this kind of research, new areas of research have been identified – "legal cognitology", "functional identifycation of law". One of the promising ideas is an appeal to aesthetics, more precisely, to the regularities of the development of law, which can be learned through the methodology of this field of knowledge. The subject of the article is the methodology of knowledge of the law. The purpose is to establish the possibility of expanding the methodology of knowledge of law through the methods of aesthetics and NBICS technologies. The result is a reasonable hypothesis that the development and implementation of NBICS technologies allow us to apply aesthetic methods to the establishment of the regularities of the genesis of law.

Keywords: philosophy of law, law, legal order, NBICS technologies, aesthetics, aesthetics of law, intuitive social interface, beauty, expediency.

Introduction

It is traditional for humanitarian discourse in philosophy and culture that ethics and aesthetics are in a certain dialectical unity. This circumstance was noticed by even the most prominent representatives of ancient philosophy, including Pythagoras, Plato, Aristotle, etc. In our time, this relationship also does not escape attentive observers.

Similarly, law and ethics have been in dialectical unity with each other throughout history. The philosophical problems of ethics are a special section of the knowledge of philosophy of law, and the legal ones belong to the theory of law and state. And if ethical approaches in law have become the basis for the formation of some ethical-philosophical and legal concepts (for example, the concept of natural law, ethical-legal concepts in Russian religious philosophy, etc.), the views of prominent domestic (N. A. Berdyaev, S. L. Frank, I. A. Ilyin, P. I. Novgorodtsev, V. S. Solovyov, E. N. Trubetskoy, B. P. Vysheslavtsev, etc.) and foreign (R. Dvorkin, L. Fuller, G. Hart, G. Hegel, I. Kant, G. Kelsen, J. Mariten, etc.) thinkers, then the use of aesthetic approaches in jurisprudence until recently was limited exclusively to admiration for the beauty of legal maxims belonging to ancient Roman lawyers.

Despite the fact that morality and law implement related functions, jointly ensuring the formation and maintenance of public order, no attempts have been made so far to investigate the genesis of law and the legal order on the basis of

the methodology specific to aesthetics, its main principles and approaches, categories of beauty and harmony.

It seems that the need for knowledge of the law and the legal order from the standpoint of aesthetics has always existed. However, the possibility of a full-fledged implementation of this approach appeared only today, when convergent technologies (NBICS technologies) were developed, and their introduction into the field of humanitarian knowledge began.

The subject of this study is the methodology of cognition of law. Traditional jurisprudence is characterized by a very limited methodology, mainly including such special methods of cognition of legal reality as doctrinal (formal-legal), historical-legal and comparative-legal approaches.

The increasing complexity of social life opens up new aspects of legal reality, posing scientific problems not only of a purely legal but also of an aesthetic nature to researchers, the insufficient study of which at the present stage requires the expansion of the methodology of knowledge of the law, including through methods specific to aesthetics.

The purpose of the authors of this article is to establish the possibility of expanding the methodology of knowledge of law through the methods of aesthetics and convergent technologies (NBICS technologies), as well as to determine the prospects for this direction of development of the general doctrine of law and the legal order.

This article puts forward and substantiates the hypothesis that the development and implementtation of NBICS technologies allow us to apply aesthetic methods to the establishment of the regularities of the genesis of law and the legal order. This approach will significantly expand the cognitive tools not only of the philosophy of law but also of jurisprudence itself, providing an alternative position for understanding legal phenomena, processes and categories.

Results and Discussion

The development of NBICS technologies, also called convergent, and their widespread introduction into various spheres of public life serve as one of the factors of transformation of social regulation, including law, which acts not only as a means but also as an object of socio-economic modernization.

Metamorphoses, occurring with the law, are projected in the legal doctrine, stimulate the interest of scientists to the questions of the evolution of law, the peculiarities of its current stage and the future.

The scientific search in this direction creates new contexts in the study of law, actualizes and exacerbates its philosophical problems, serves as a prerequisite for rethinking its essence, role and significance in the life of modern society, determines the formulation of a number of questions concerning, first of all, the consequences of technological progress for the legal reality and legal existence of a person.

Along with this, the scientific search contributes to the expansion of the methodological tools of legal science, the search for new approaches and methods of cognition of law, the drafting of theoretical constructions that develop, supplement and integrate existing concepts of legal understanding: sociological (Kudryavtsev, 1978; Yavich, 1976; Kazimirchuk, 1970), libertarian (Nersesyants, 2002), integrative (Lazarev, 2004), in order to create a rational picture of the law, adequate to the modern realities of law and its being.

In line with this kind of research, new areas of research have been identified (Khabrieva & Chernogor, 2020), including "legal cognitive science" (Chernogor, Emelyanov, & Zaloilo, 2021b, 2021c), functional identification of law and its system elements (Chernogor, Emelyanov, & Zaloilo, 2021a), etc. One of the innovative and promising ideas, according to the authors of the article, is an appeal to a seemingly unrelated

problem – aesthetics. More precisely, we are talking about the regularities of the development of law, which can be learned through the methodology of this field of knowledge.

I. Brodsky, in one of his interviews, speaks directly about this, calling aesthetics the mother of ethics, emphasizing that a person with taste will not make the mistakes that a person without taste makes (Tyurin, 1994). The first part of this statement reflects the essence of the regularities that will be discussed below. At the same time, it is true not only for ethics but also for the law closely related to it. However, its second part significantly narrows the area through which the relationship between aesthetics and social regulation is traced. It is impossible to limit the effect of the laws of aesthetics and the expression of regularities that have an aesthetic nature exclusively to the realization of taste. Almost all aesthetic categories in one way or another can and should be used to characterize the law, reveal its essence and cognition of the genesis.

In this regard, the authors are impressed by the position of Losev and Shestakov (1964), who emphasized that the object of aesthetics is an expressive form, no matter what area of reality it belongs to. By absorbing and concentrating the specifics of any socio-historical concrete things, any expression of social existence can become a source of aesthetics, a milieu for its refraction.

One reservation should be made here regarding the specifics of the meaning of the category of form in relation to the law. In jurisprudence, there is a stable concept of "form of law", which, as a rule, is identified with the concept of "source of law". In this case, we are talking about the consolidation, the external expression of legal norms, the forms of which are laws and other normative legal acts, judicial precedents, legal customs, contracts of normative content, etc. However, the expressive form of law and the expressive form of legislation are somewhat different.

In the context of the correlation between the content of law (legislation) and its form (in the traditional sense of jurisprudence), it should be attributed to the content, since it reflects the internal structure of a legal norm (legislative provision), its structure, accessibility to the understanding of subjects of law. There are grounds to speak about the expressive power of law in the case when its norms are easily perceived by people, almost on an intuitive level.

In the modern world, it is increasingly possible to hear the concept of "intuitive interface", the interaction with which is simple and clear, which makes it equally accessible for perception and use by a wide range of people, different users with different levels of experience, and does not require the use of special knowledge.

The first intuitive interface was developed in 1976 for the Apple-1 personal computer. It seems that, ideally, the law should become a kind of "intuitive social interface" that ensures the interaction of people without the need for them to obtain special legal knowledge. It is when the law reaches such an expressive form that it will be permissible to talk about its real beauty.

It should be emphasized that the authors do not claim primacy in the issue of recognizing the law as an "intuitive social interface". This direction in the development of the philosophy of law appeared long before the development of Apple-1 and the concept of "interface" itself. Back in the early 20th century, Petrazhitsky (1908), revealing the essence of law through its consideration as a special psychological phenomenon, emphasized that legal communication, like any other, is accompanied by a variety of active and passive experiences. They determine the behaviour of a person. At the same time, the subjective rights of some persons are the debts (legal obligations) of others assigned to them. Objective law itself is a relationship between active, expressed in subjective rights, and passive, reflected in legal obligations, psychological processes occurring in the minds of participants of a legal relationship. As a result, it was concluded that it is necessary to distinguish between positive components of the law, established by

people, and its intuitive components, reflected in the human consciousness. Positive law is formulaic and dogmatic, and it is not capable of self-development. Intuitive law, on the contrary, ensures the adaptability of the legal order to a specific situation. It is precisely this that is the basis for the self-development of the legal order through the correction of positive law.

The significance of a person's aesthetic ideas for the ordering of social relations can be illustrated by one historical episode. In the first half of the fifth century, the Huns were led by two brothers – Bled and Attila. Having decided to strengthen their power, expand their subordinate territory and get additional income, they organized a campaign to the Byzantine province of Illyria. The captured loot was rich, but its division did not quarrel with the brothers. However, among the captured slaves, there was a jester, whose antics amused Bled very much, terribly irritating Attila. The quarrel between the brothers, which was based on aesthetic differences, ended with the death of Bled. Attila became the sole head of the Huns, and Europe shuddered from their invasion (Maenchen-Helfen, 2014). At present, it is difficult to judge what European history would have been if it had not been for the described differences in the aesthetic ideas of the two brothers and their results, but their ethical and legal characteristics are obvious.

It is advisable to start the analysis of law from the standpoint of aesthetics with two simplifications at once, without which the justification of the need to apply the methodology of aesthetics for the knowledge of legal phenomena will be difficult. The first of them is that aesthetic ideas are ideas about beauty. The second is that beauty is an objective reflection of expediency. The latter simplification assumes that people like what is convenient, practical and can be used without unnecessary difficulties. In other words, the beauty of law is the highest level of expediency of its norms and their combination, the degree of harmonious correlation and interaction of contradictory elements in its structure. Let us emphasize once again and the above theses are the result of simplification. However, the law as an expression of social existence is much more complicated, like everything else in this world.

Until now, the aesthetics of law has been limited predominately to admiration for the masterpieces of ancient Roman legal thought, reflected in the statements of Gaius and Ulpian, Paul and Papinian, as well as other famous Roman lawyers. At the same time, representatives of legal science did not seek to establish general regularities and principles of the genesis of law through the knowledge of its aesthetic component. Indeed, it is very problematic to do this since the aesthetics of law has the features of a huge and often quite spontaneous subjective-human life affirmation. The law generally reflects only those processes of integration and differentiation, convergence and divergence that characterize social development at a certain historical stage. Only some representatives of legal science addressed this problem within the framework of sociological and integrative approaches to understanding law (Petrazhitsky, 1909; Durkheim, 1996; Gurvich, 2004; Carbonnier, 1986; Lazarev, 2016).

The noted "spontaneity" in the genesis of law leads to a mixture of various concepts and theories, approaches and methods, legal institutions and families that have a constant tendency to differentiated functioning with an undoubted need for integration, at least in their holistic perception. It is the constant combination of seemingly multidirectional processes of differentiation and integration, cooperation and competition, convergence and divergence in social life that stimulates legal construction, makes it purposeful, determines the need of society for awareness of legal realities.

However, this inconsistency is the cause of certain chaos in the knowledge of the law. One of the means of overcoming it is the development of the aesthetic doctrine of law (aesthetics of law). The aesthetics of law allows us to reveal its essence not through the analysis of particular norms and institutions, systems and families, in-

terests and subjective rights, but through the consideration of it as an integral phenomenon in which measure and harmony, catharsis and Kalokagathy, grace and imitation, taste and ideal can be distinguished.

Someone who begins to immerse himself in the knowledge of law may suddenly be struck by his proximity to various moral and religious systems while simultaneously opposing legal norms to them. Such proximity and opposition, however, should not be understood in the literal sense. It is necessary to be aware of the incredible complexity of all aspects of interaction within the mechanism of social regulation. In the context of the aesthetics of law and the processes of convergence and divergence taking place in modern society, modern constitutional reforms and the most important legislative changes can be presented in a completely different light. A new spirit is increasingly reflected in the aesthetics of law, which ensures the perception of many legal concepts in a much more secular and subjectivistic meaning than they are represented in religion and morality.

The aesthetics of law is based on the primacy of beauty: the beauty of law as an integral system and the beauty of its separate norm. Undoubtedly, the law is based on coercion, the highest form of which is physical violence – ignoring the will of a person through a negative impact on his body, allowing even death. However, this circumstance does not prevent us from admiring the depth and content of the statements of ancient Roman lawyers or particular norms of modern law.

For a long time, the statements of ancient Roman lawyers and the provisions of Roman law, fixed in a different form, could only be compared in their expressive form with mathematical formulas, having an equally capacious and precise meaning. Their logic met the requirements of completeness, independence and consistency, and the content was within the limits of necessary and sufficient. It is no coincidence that the founder of the historical school of law, G. R. von Hugo, wrote that "there are no writers who, as far as the sequence of conclusions is concerned, would so deserve to be put on a par with mathematicians as the Roman jurists" (as cited in Hegel, 1990, pp. 66-67).

With the help of their sayings that have come down to our days, ancient Roman lawyers solved a variety of tasks to ensure public order. One of these tasks can be designated by a rhetorical question: "Quis custodiet ipsos custodies?", which can be translated as follows: "Who will guard the watchmen themselves?". It has a deep and fundamental meaning. Even the very fact of its setting allows us to ensure the stability of legal order. Only the adjustment to the formation of increased social responsibility among government representatives allows us to get closer to overcoming the contradiction in social development that is reflected in this statement and similar ones. Due to the fact that the control of these persons is extremely low, social requirements for them increase many times. It is this approach that underlies a significant number of extant monuments of Roman law.

The second task is also inseparable from the considered one – to fill the professional activity of a lawyer with moral content, to prevent him from turning into an automaton from the law or into a two-faced cynic who covers the satisfaction of his personal needs with legal activity. This problem is usually solved by establishing a relationship between "jus" ("law") and "lex" ("legislation"), on the one hand, and "aequitas naturalis" ("natural justice") and "aequitas" ("justice"), on the other.

If legal positivism postulated the rejection of meta-legal categories and principles in law (Bergbohm, 1892), then Roman lawyers, on the contrary, sought to translate into reality the high concepts of good and justice, to make them a fact of legal existence, the basis of everyday human life. First of all, the relevant legal maxims are addressed to the judge as the key subject ensuring legal order. Here it is fair to recall another Latin legal saying: "Sublata veneratione magistratuum,

respublica ruit", the translation of which may mean that the loss of respect for judges destroys the state.

But the representatives of the ancient Roman legal community have left us a heritage of not only capacious and accurate legal maxims. Their merit in the development of an expressive form of law is much deeper and more fundamental. It was in ancient Rome that the foundations for structuring law and its systematization were laid. Thousands of years before the adoption of system analysis as a scientific method, Roman lawyers applied it first to legal customs and then to the norms of positive law. Guy's "Institutions", "Institutions", "Digests", and other codes of Justinian are examples of how the reasonable application of systematization and structuring allows strengthening the expressive form of social regulation. It is no coincidence that the structure of "Institutions" and "Digests" is the basis for the systematization of modern continental (Romano-German) law.

It should be emphasized that as an integral system, modern law throughout the world is at the stage of its transformation due to a variety of circumstances, which does not make it as beautiful as Roman law of the classical period. If modern law is a transforming system, then classical Roman law is a stable one. It is this stability achieved as a result of the final design of ancient society that allows us to assess the full depth and perfection of legal thought of that period, which allowed Roman law to survive its institutional basis – the Roman community – and form the basis of the legal systems of most modern states.

The instability of modern law has quite objective prerequisites. They are connected with the complication of its system, the appearance, along with domestic (national) law, of international law, which is a relatively independent system that actively interacts with national law, and the complicated interaction between various national legal systems. In addition, the instability of modern law is caused by the current social transformation, which causes numerous critical statements in its address. At the same time, if we analyze such statements about the domestic legal system posted on various social networks, the most common claims relate not to legal norms themselves but to modern legislators and law enforcement officers. They are accused of immorality and lack of education. Therefore, modern critics of the domestic legal system should see a way out of this situation in the education and training of future lawyers, the formation of their extensive knowledge of all sciences, mainly philosophy and mathematics. It is enough to recall that the general principles of thinking in jurisprudence and mathematical science, as already noted with reference to Hegel above, have common roots. However, at the modern technological level, expressed in the emergence of NBICS technologies (nanotechnologies, biotechnologies and genetic engineering, information and communication technologies, cognitive technologies, including cognitive neurotechnologies, social-humanitarian technologies), the interaction of law and mathematics acquires completely new forms and directions, the awareness of which is possible, including through the cognitive tools of aesthetics.

First, for the aesthetics of law, the most significant is not only the form of law. Its main content is the depth and completeness of the reflection of social relations, which are achieved in the process of their ordering.

Secondly, the law is a carrier of social wisdom, a kind of code of the accumulated experience of mankind, which is the basis for the legal programming of social behaviour. By influencing the individual and public consciousness, law, being properly ordered and structured (which is primarily what its beauty is expressed in), provides a deeper and more complete ordering of social relations. Samples of this aspect of legal influence are always "convex", which is reflected in the immutability of the relevant legal acts for a long time. Such an example is the Constitution of the United States of America, adopted at the end of the XVIII century but still relevant today. It is appropriate here to recall the

civil codes of some European states (for example, the Code of Napoleon or the German Civil Code). Developed in the XIX century, they, having ensured the transition from feudalism to capitalism, from an agrarian society to an industrial one, retain their regulatory potential even in the conditions of the current technological revolution, which presupposes another cardinal restructuring (reformatting) of the social order. It would not be superfluous to mention the Constitution of the Russian Federation. Developed in the early 1990s during the deepest crisis of Russian statehood, it retains the ability to solve the tasks facing it in modern conditions (Khabrieva, 2016).

Thirdly, only the achievement of a modern technological level has allowed us to approach the realization of the aesthetics of law, free from the corresponding influence of morality and religion, from the need for direct application of moral and religious norms in legal regulation. The law should occupy an independent place in the individual and public consciousness, free from "sacred crutches" and ethical foundations. Law becomes a truly universal social regulator, addressed to humanity as a whole and not to individual communities – territorial, professional or religious. At the same time, it continues to need external sources of legitimacy.

History has demonstrated the vulnerability and – in some ways – the danger of the approach of supporters of legal positivism, who have attempted to establish internal sources of legitimacy in law. An example of such an error was the appearance of totalitarian political regimes in the first half of the XX century. And further social development refuted the theoretical models of the positivists.

As a direct illustration of the danger of developing the legal order exclusively on the doctrinal basis of legal positivism can be considered the decision of the Federal Constitutional Court of Germany, in which it was stated that "the idea that the constitutional legislator can settle everything at his discretion would mean a return to legal positivism free of any values, which has long been overcome in legal science. The period of the national socialist regime in Germany showed that the legislator could also establish injustice. The Federal Constitutional Court considered it possible not to recognize the quality of law for the national socialist "legal" norms since they so clearly contradict the fundamental principles of justice that a judge who wanted to apply them or recognize their legal consequences would have made an illegal decision instead of a just one. ...Once established, an injustice that clearly violates the fundamental principles of law does not become a law by virtue of the fact that it is applied and enforced in practice" (Federal Constitutional Court of Germany, as cited in Alexy, 2011, p. 34).

It is the analysis of law as an integral system, as well as its particular norms and institutions from the perspective of aesthetic categories, that allows us to establish the main directions for the introduction of these technologies into legal reality. In a certain sense, we can talk about the presence in it of its own, and quite accurate, "geometry", which subjectively proceeds from a person's sensory perception of justice and legality, without which the emergence of a truly effective mechanism of legal coercion would be impossible.

At the same time, a person's subjective perception of the sources of the legitimacy of law can also be described mathematically. Aesthetic categories, reflecting the qualitative aspects of law, can be measured in some way; that is, they are presented in quantitative indicators. A "projective geometry" may appear, which, although it describes human feelings, may nevertheless have the accuracy which is specific to the mathematical sciences as a whole. Thus, the subjective sensitivity of the legitimacy of law, reflected in the aesthetics of the latter, being indifferent to specific social relations, can have its own scientific description that translates the legal impact to a new technological level. In this regard, the connection between science and the sense of beauty

can be characterized by the words of Leonardo da Vinci, who argued that philosophy and wisdom are only fine art (Losev, 2017, p. 7).

With regard to the choice of a method for measuring the qualitative aspects of law and the legal order, their representation in quantitative indicators, one should also not lose sight of the cognitive possibilities of aesthetic analysis. They are very versatile and allow you to get more than unexpected results.

For example, Petrovskaya (2021), studying photogeny in the works of J. Epstein on the example of the preserved materials of the latter's documentary film about the eruption of Mount Etna in 1923, "La Montagne infidèle" ("The Infidel Mountain"), states that physicists are well aware of the nature of the interaction of heat and gravity. So, heat resists gravity that attracts objects to the Earth. Moreover, gravity acts on an inert mass, that is, on passive bodies: they either receive motion or transmit it to others. But heat is an element that transforms a substance, causing a change in its internal properties (transformation). Fire is the real agent of transformation or revolution, and it is transmitted not by an image but by means of self-referential signs, which together form the material semiotics of forces through a set of correlations.

Borrowing the metaphor that fire is an agent of transformation (revolution) allows us to put forward a hypothesis about the agents of transformation of the legal order, which in modern conditions are technologies, and first of all, NBICS technologies. Their introduction accelerates social interaction. That is, it acts as an appropriate analogue of heat (fire). Therefore, this analogy contributes to the construction of a mathematical model, which, in turn, will either conditionally confirm or refute the hypothesis put forward.

This is a fairly general approach to understanding the possibility of introducing NBICS technologies into the sphere of law through the use of aesthetic categories in its cognition.

Conclusion

As a result of the conducted research, a scientific hypothesis was put forward that the development and implementation of NBICS technologies allow us to rethink and apply aesthetic methods to the establishment of the regularities of the genesis of law and the legal order.

This circumstance is a prerequisite for the transformation of the entire system of social regulation, primarily ethics and law. In relation to the knowledge of the latter, there are problems of philosophical, legal and methodological levels. Without their solution, special legal issues related to the rethinking of legal security, protection and regulation of public relations cannot be correctly posed. Therefore, the role of law in the life of modern society cannot be determined, and the legal reality cannot be presented in a relevant way. The legal existence of the person himself cannot be revealed.

The modern cognitive process aimed at forming a general doctrine of law and the legal order objectively needs to expand its methodological tools. The authors consider aesthetics to be a necessary direction of such expansion, that is, a section of philosophy containing ideas about beauty.

The author's argumentation of the proposed hypothesis is based on the idea that a truly scientific approach to beauty allows us to consider it as a reflection of expediency in the device of something. This statement also seems to be true in relation to law, which allows us to distinguish a special section of the philosophy of law – its aesthetics (aesthetics of law). It is based on the primacy of beauty – the beauty of law as an integral system and the beauty of its separate norm.

The achievements of modern aesthetics allow us to solve the cognitive tasks facing it through mathematical modelling, the main direction of development of which is precisely NBICS technologies.

Thus, the proposed approach will signifi-

cantly expand the cognitive tools not only of the philosophy of law but also of jurisprudence itself, providing an alternative position for understanding legal phenomena, processes and categories. The assessment of law and the legal order from the position of their beauty and expediency on the basis of modern mathematics and convergent technologies seems to be the way that will allow us to identify new patterns of social regulation and prospects for its development.

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THE PHENOMENOLOGICAL METHOD IN THE ETHICS AND LEGAL PHILOSOPHY OF THE XX CENTURY

Abstract

This paper analyzes the essence of the phenomenological method as it is used in certain theories in ethics and legal philosophy. The purpose of the paper is to provide a full study of phenomenology to determine its place in modern philosophical thought.

The paper used methods of the history of philosophy, especially method of rational reconstruction, and based on interpretation of the classical phenomenological texts (E. Husserl, E. Levinas, A. Reinach).

The main result of the paper is the justification that the unity of logic, ontology and ethics became the ground of application of the phenomenological method in the field of legal and ethical knowledge. Therefore the ideas of E. Levinas's ethical phenomenology were the basis for understanding ethics as the "first philosophy" in a phenomenological context.

The main conclusion of this paper is that the ethical dimension of responsibility for the actions of the subject and their consequences expands the horizons of phenomenological reduction and allows us to reveal the essence of legal reality in a new way.

The paper was carried out within the framework of the HSE research project "Ethics and Law: correlation and mechanisms of mutual influence".

Keywords: phenomenology, ethics, legal philosophy, a priory knowledge, reality, transcendental subject, phenomenological reduction.

Introduction

Phenomenology in modern philosophical knowledge is a classical direction of research in which all the key areas of the humanities and social sciences have been developed. Despite the complex conceptual apparatus and the specifics of the application of the phenomenological method, the understanding of the features of the relationship between consciousness and human behaviour is largely formed in the context of phenomenology. The appearance of the phenomenological method was a reaction to the radical changes in the sphere of philosophical understanding of reality that occurred in the 20th century under the influence of both major scientific discoveries in the natural sciences and the development of analytical philosophy. Phenomenology is formed in continental philosophy as an alternative to scientism in the field of epistemology and an attempt to reveal the nature of consciousness and the ways it constructs being, taking into account the creative activity of a person.

The purpose of this paper is to reconstruct the key features of the phenomenological method and its application in the field of ethics and legal philosophy, since it is in these areas that the most profound philosophical understanding of the regulators of human activity and the normativity of ethical and legal prescriptions is carried out. To achieve this goal, the ideological and methodological guidelines of not only classical but also realistic phenomenology will be analyzed.

The Essence of the Phenomenological Method

The philosophical context, within the possibility to study the specificities, essence and content of the phenomenological method, comprises the conditions for the formation of phenomenology as philosophical teaching and movement. These include the formation of psychology as a field of scientific knowledge and the philosophical understanding of logic and the ways of its development in the 20th century.

The fame of empirical studies of human behaviour, as well as attempts to explain the work of the mentality, consciousness, and the nature of mental states, at the turn of the late 19th – early 20th centuries, led to the separation of psychology into an independent field of scientific knowledge. During this period, the appeal to consciousness as a source of any knowledge in the spirit of the Kantian tradition, taking into account new experimental approaches in science, could not but entail logical criticism in terms of raising questions about the validity and scientific nature of the conclusions proposed by psychology on fundamental philosophical questions. As noted by R. Ingarden (1975), "in the first edition of this work he described phenomenology as "descriptive psychology" in the sense of Brentano" (p. 10).

Meanwhile, scientists from other sciences, when turning to psychology, sought not to be limited only to the empirical level of knowledge. F. Brentano, who had a great influence on the formation of E. Husserl's philosophical ideas, was the first to turn to descriptive psychology, based on the description of mental experiences and sensory experience, and attempts to describe the work and process of consciousness. From F. Brentano's point of view, descriptive psychology was to become not just a part of philosophical science, but its foundation, determining the content and order of research of other disciplines (Brentano, 1995, p. 4; Moran, 2000, pp. 39-40). Such a hypothesis has caused serious controversy in the philosophical community, and the emergence of phenomenology is becoming a way to find answers to the question of the status of psychology as a science. It is no coincidence that R. Ingarden (1975) notes that "it is not quite clear what Brentano himself understood by "descriptive psychology," especially in the period when Husserl listened to his lectures in Vienna" (p. 10).

Another important premise for the formation of phenomenology and its specific method of cognition was the research of E. Husserl in order to identify the philosophical foundations of logic. A specific feature of his philosophical reflections, which differed from the arguments of logicians and mathematicians of the turn of the 19th-20th centuries, who discussed the nature of new forms of logical analysis in various types of non-classical logic, and on the program of logicism in the philosophy of mathematics, was his appeal to the study of the process of consciousness, ways of reproducing objects in thinking and mental "awareness" of the content of philosophical categories (Ingarden, 1975, pp. 5-7). For example, thinking on the concept of number, E. Husserl questioned its definition as a set of its constituent units. The formation of the concept of "number" is the result of a complex long-term work of consciousness, which cannot be accepted a priori and should be at the centre of scientific research.

In general, the formation of E. Husserl's phenomenology in the methodological aspect is associated with a philosophical understanding of the relationship between psychology and the studied sphere of consciousness with other branches of scientific knowledge. In fact, already in one of Husserl's first works, "The Philosophy of Arithmetic", one can find his ideas of a priori ("pure") scientific knowledge, devoid of logical and psychological premises (Husserl, 2003). And "Logical Investigations" is devoted to the fundamental problem of substantiating theoretical knowledge with a critique of psychologism and theories that affirm the identity of the logical and mental (Costa, 2009, pp. 68-69). However, Hus-

serl justified the purpose of phenomenological research in a different way.

He sought to develop a new way of philosophical reflection based on the explication of consciousness, which sets the horizons of knowledge of the world. During the life of E. Husserl's system of his philosophical views on the content of the phenomenological method, its foundations and methods of application changed underwent qualitative changes, but in general, phenomenology in the understanding of its creator can be defined as a strictly scientific philosophy "about the phenomena of consciousness as pure entities forming the world of ideal being", about "self-evident logical principles" (Moran, 2000, p. 95) that make it possible to purify consciousness from empirical content, which is carried out using a multi-stage method of phenomenological reduction (Husserl, 2001b, pp. 81-85). Thus, theoretical propositions absolutely do not need any realistic content to be attributed to them. The research itself presupposes the knowledge of the possibilities, conditions and prerequisites for the existence of a phenomenon, regardless of whether it is empirically real or not: "this concept of consciousness can be seen in a purely phenomenological manner, i.e. a manner which cuts out all relations to empirically real existence" (Husserl, 2001b, p. 82).

Husserl extends this argument to all spheres of knowledge, including the field of values and normative regulation of human behaviour. It is the a priori conditions of the given phenomenon in consciousness, which are cognizable due to the intentionality of acts of consciousness, that are the subject of phenomenological analysis (Cairns, 2013, pp. 23-24). It should be noted that in the field of ethics and philosophy of law, Husserl's followers will further interpret the specifics of the application of the phenomenological method in different ways. Basically, these interpretations will go beyond the classical understanding of phenomenology as a transcendental philosophy, which is especially noticeable in the philosophical views of E. Levinas, R. Ingarden, N. Hartmann and others.

The installation of the phenomenological method does not consist in establishing a connection between the a priori and the empirical but in the reverse movement – from visible phenomena to their reproduction in the form of a priori entities in consciousness: "this relation of the phenomenal object (that we also like to call "conscious content") to the phenomenal subject (myself as an empirical person, a thing) must naturally be kept apart from the relation of the conscious content, in the sense of an experience" (Husserl, 2001b, p. 84). Therefore in the context of phenomenology, the use of the term "existing", "real", "real" will have a different meaning than in the concepts of analytical philosophy or in existentialism. Husserl believed that in the process of analyzing intentional acts of consciousness, it is possible to intuitively comprehend the truth, to achieve "apodictic evidence". Therefore, all types of objects and phenomena accessible to consciousness fall into the field of phenomenological analysis.

The transcendence of phenomenology was justified by Husserl by the fact that it is the "Pure Self" and intentional acts of consciousness that are the main object of philosophical research (Husserl, 1983, pp. 55-56). Such a subject is transcendental because, unlike an empirical subject, it is understood as a unity of intentional acts in the stream of consciousness, the transition from one act of consciousness to another. The transcendental subject is not subject to change, is not subject to causal dependencies. The path to the knowledge of the "Pure Self" lies through phenomenological reduction.

The understanding of the process of scientific cognition will be similar because it is the cognizing subject who is able to reveal the essence of the phenomena being studied. His consciousness "clarifies" the connection between the elements of the object being studied. As D. Moran (2000) notes, "Husserl understands phenomenon as 'what appears as such'; in other words, everything that appears, including everything meant or

thought, in the manner of its appearing, in the 'how' (Wie) of its manifestation" (p. 127). A slightly different understanding of phenomenology is offered by S. Priest (1991), who claims that "it is the practice of observing and characterizing the contents of experience just as they appear to consciousness, with a view to capturing their essential features" (p. 183). In this case, the experience will act as a link between the intentionality of consciousness and empirical reality, which is not of great importance in classical phenomenology.

The essence of the phenomenological method consists in describing what is given to consciousness with evidence, "is the attempt to produce presuppositionless descriptions of the contents of experience, without any prior commitment to the objective reality of those contents" (Priest, 1991, p. 183). The purpose of this description is to search for universal a priori structures of consciousness, the establishment of which is carried out through phenomenological reduction (Husserl, 1983, pp. 131-132).

The first type (or preparatory stage) of phenomenological reduction is the epoch (from the greek ἐποχή – "stop"). The epoch is accomplished by leaving the "natural attitude" that is the state of pre-phenomenological awareness of phenomena (things, concepts, subjects), in which things accessible to consciousness are not questioned, are recognized as data with evidence. Husserl describes the procedure to the epoch as follows: "thus, the entire natural world, which constantly "exists for us", is "at hand", and which we always remain there in accordance with consciousness as "reality", even if we decide to enclose it in brackets … rather, I use the "phenomenological ἐποχή", which also completely disconnects me from any judgment about the spatio-temporal actual being" (Husserl, 1983, p. 61). Thus the "natural attitude" is an ordinary position when the scientist's mind habitually assumes the existence of a world external to consciousness. By questioning what is given with apparent evidence, the subject commits an epoch-encloses the world in phenomenological brackets, in which the question of the truth or falsity of judgments and assumptions about the world remains unresolved.

As a result of the epoch and the conclusion of the world in phenomenological brackets, the act of consciousness that constitutes the world remains intentionality as a property of consciousness to be directed at an object. In Husserl's understanding, intentionality (a term that he borrowed from F. Brentano) is the very a priori structure of consciousness that is free from emotive, psychological, social and other factors. Husserl describes the ways of representing an object in the context of intentionality: "we must distinguish, with respect to the intentional content taken as the object of action, between the object as it is conceived and the object (period) that is conceived. In each action, the object is represented in a certain way, and as such, it can be the object of various intentions, evaluative, emotional, desirable, etc." (Husserl, 2001b, p. 113).

The second stage is the commission of eidetic (from the greek εἶδος - type, appearance, image) reduction, the main purpose of which is to free the emotive phenomena of consciousness, psychological, social and other factors, to open the way to the "inner essence" of the phenomenon, the way to phenomenology as an eidetic science. D. Cairns (2013) in particular notes: "I can affirm the Eidos' material object as a subject and affirm its solutions, including extendedness, as a predicate, and constitute in the original proof of the eidetic essence: "the material of objectivity presupposes extendedness"" (p. 240).

The third stage of reduction is a transcendental reduction which involves the conclusion of the consciousness of the conscious person himself, his psychological reality in phenomenological brackets in order to reject the identification of the objective and the psychic: "the ego has something as an intentional object of its presentation" (Husserl, 2001b, p. 101). Transcendental reduction opens up the possibility of comprehending semantic connections, and the sphere of analysis

of consciousness becomes the semantic shades of perception, memory, fantasy, doubt, acts of will, etc.

When considering the phenomenological method, it is necessary to note the status of the carrier of consciousness. It is an individual subject capable of committing an epoch and acting as a source of transcendental subjectivity. However, as noted by S. Priest (1991), the status of the transcendental ego, which does not manifest itself within the limits of ordinary experience, but is its condition, was never finally resolved by E. Husserl (pp. 207-208).

Nevertheless, the implementation of phenomenological reduction is possible on the basis of the "principle of principles" formulated by E. Husserl (1983): "If we need the norms prescribed by the phenomenological reductions, if, as they demand, we exclude precisely all transcendences, and if, therefore, we take mental processes purely as they are within respect to their own essence" (p. 147). This principle is called the principle of evidence and openness to new experience, but it means that things are subject to research in the quality that they are given to us.

To implement such a "principle of principles", it is necessary to choose appropriate methods taking into account the specifics of the forms of cognition. E. Husserl, in "Logical Investigations", distinguished the following forms of cognition: "categorical contemplation" and "discretion" (essential discretion). Later in a revised form, Husserl's forms of cognition were developed in the philosophical and legal theory of A. Reinach as "essential vision" and "essential discretion".

The next element of the phenomenological method is the essential analysis, which differs from the description of facts. The content of the essential analysis is an appeal to words and their meaning for the knowledge of things. Finding support in language, essential analysis clarifies what is already available in experience. The limitations of the essential vision are overcome by the essential discretion, which clarifies, discovers and sees new entities when directly addressing things (Reinach, 1983, pp. 1-5).

Later in realistic phenomenology, an attempt is made to rethink the key features of the method of phenomenology in the classical version. In particular, the ontological orientation of phenomenology will mean the assumption of an autonomous world in relation to the subject. A peculiar program of realistic phenomenology was the report of A. Reinach "On Phenomenology", read in Marburg in 1914. A number of arguments were expressed in it, which served as the basis for the development of the phenomenological movement in the future.

Reinach notes that phenomenology as science studies only existing objects, which means that existing existence, both potential and hidden phenomena, is recognized as knowable. He introduces the concept of a priori knowledge, which is based on the knowledge of entities. Unlike laws derived from facts (which is characteristic of such spheres of knowledge as physics, biology, mathematics), essential laws are necessary since they are derived from the essence of the objects themselves. Such a process of cognition does not depend on external conditions. A priori cognition is universal, and the task of phenomenological reduction is to clarify it and "highlight" a priori relationships.

Following E. Husserl, A. Reinach recognizes that the source of a priori knowledge is the consciousness of an individual subject. Since the world is recognized as a correlate of consciousness, phenomena already contain the entire set of knowledge about cognizable phenomena. The phenomenological method is intended to help in the study of the essences of things, which, in turn, leads to the formation of philosophy as a strict science (Varsegov, 2008, p. 153).

The Method of Phenomenology in Ethics: E. Husserl and E. Levinas

The phenomenological method was deeply reflected in the field of ethics in the early works

of E. Husserl. For example, ethics issues are discussed by him in lectures delivered in different years and included in the corpus of Husserlian texts: "Lectures on Ethics and Axiology" (1908-1914), "A Priori Axiology and Ethics", "Social Ethics", "Introduction to Ethics" (1920-1924). However, Husserl justifies the fundamental ethical ideas already in "Logical Investigations", distinguishing between normative and theoretical disciplines. He turns to the concept of good and gives it a rather abstract definition: "the term" good "naturally functions in the widest sense of what is in any way valuable" (Husserl, 2001a, p. 34). Thus if we focus on the status of the cognizing subject, then it is he who acts as a source of normativity forms the meaning and values that provide the basis for evaluating ethically significant actions. The phenomenological description of the connection between values as ideal entities and subjective experiences of these values allows us to apply the concept of the intentionality of consciousness more deeply in the field of ethics. After all, the very perception of values and moral imperatives implies immersion in the world of human consciousness. Consciousness, being "consciousness about something" that is consciousness always directed at some object, reveals to a person what is transcendent to consciousness. In the case of moral values, this means the allocation of a semantic object in the act of consciousness (value) and the act of consciousness itself (evaluation of actions from the point of view of value). The value is revealed to the subject immediately, with apodictic evidence, and it is precisely this "openness" to consciousness that phenomenology should describe (Loidolt, 2009, p. 54). Each act of evaluating actions necessarily corresponds to a correlated value, regardless of whether it has empirical grounds. Phenomenological ethics, with the help of "essential analysis" and other procedures of phenomenological reduction, should break through to the values themselves, showing their cognition as a phenomenon.

Husserl's phenomenological ethics is also based on the belief that it is the special status of the subject that makes it possible to make sense of the knowledge of the world. The world does not exist by itself, it is the world of the subject himself, and for the subject, it gets meaning in the intentional acts of consciousness that characterize subjective experiences (Husserl, 1983, pp. 51-55). Thus a person acquires responsibility for those moral imperatives that accompany his behaviour for the state of the world in which he lives.

In phenomenology, ethics has a normative nature that is it is the teaching of art (science, construction, etc.) which covers not only moral norms but also the goals of human behaviour its motives and means (Ferarello, 2015, pp. 4-5). Thus the subject of phenomenological ethics turns out to be broad and includes both ways to achieve higher life goals (like Aristotle's ethics or Lon Fuller's "morality of aspiration") and rules that allow the subject to ensure a reasonable arrangement of his life. Its instrumental character is combined with the formation of knowledge about the soul and its abilities. In his Lectures on Ethics and Axiology, Husserl draws attention to such types of experience as evaluation, choice, motive, goal, desire, that is, the characteristics of a rational understanding of subjectivity (Trincia, 2007, p. 169).

The normativity of ethics was originally laid down in Husserl's understanding of the nature of logic. So, for the formulation of a normative judgment, he introduces the concept of a "basic norm", which acts as the basis for rationing future assessments of actions (Husserl, 2001a, pp. 25-26). The basic norm is the basis for assessments, but not the assessment of the actions performed.

However, along with this, Husserl uses the concept of "technical teaching" in relation to ethics which combines the practical significance of actions (the proportionality of achieving goals with the help of means) and a system of rules for achieving life goals. It is obvious that there is a relationship between the normativity of the

"basic norm" and the "technical teaching", which ensures the unity of phenomenological ethics, its integration into the phenomenological perception of the world. No one value can be realized without the participation of the subject. The subject both evaluates and implements values by performing actions. Therefore, in Husserl's classical phenomenology, ethics is essentially a universal mechanism for evaluating actions, goals and means. Ethics formulates ethical principles and moral imperatives that relate to the subject and indicate to him how he needs to act. This understanding of ethics in phenomenology brings it closer to the classical ethical teachings from the era of Antiquity to the Modern time.

Phenomenological ethics is developed as a fundamental philosophical theory in the teachings of E. Levinas. He is concerned not with the epistemological side of phenomenology but with the philosophical understanding of human-to-human relations in order to overcome domination and violence. Speaking about the idea of intentionality, he suggests interpreting it more broadly, that is, abstracting from the natural position, when the fate of a person is to be in the world among people and objects, go to philosophical reflection on the meaning of the "natural position" and the world itself (Crowell, 2012, p. 565). Nevertheless, in the works of Levinas, one can see a deep interest in the development of the phenomenological method and its means of cognition. "The presentation and development of the notices employed owe everything to the phenomenological method" - this statement of Levinas (1969) is expressed in his attempts to give a detailed analysis of not only the procedures of phenomenological research but also their further development (p. 28). Since the source of all concepts in phenomenology is the experience of describing the facts of consciousness, these concepts themselves do not create any absolute principles of cognition. There is no universal truth in phenomenology, and there are no pre-selected concepts for achieving it. However, Levinas then introduces the author's interpretation of the intentionality of consciousness and phenomenological reduction, taking the first steps towards his own teaching about "ethics as the first philosophy". The main aspect of intentionality is the premonition of the possibility to go beyond being due to the fact that consciousness transcends itself and turns to something outside of it, forms meaning (Feng, 2008, p. 551). But in this case, the world is a secondary and derived structure. Phenomenological reduction in its content is violence committed by a person against himself in order to achieve pure thinking, namely, the understanding that the beginning of being lies in the world of consciousness. Thus, a person opens his consciousness from the point of view of giving meaning to things, turning it into a transcendental consciousness (consciousness "before the world").

Levinas introduces the concept of the Other into phenomenological ethics (Crowell, 2012, p. 566). Violence retreats in the face of Other since resistance to violence is an ethical resistance. The other, addressing the "I", enters into a communicative situation with him, into a situation of dialogue and demands for an answer to his request. Ethical treatment of the Other implies an attitude towards him as an ethical subject and not a projection of being (Levinas, 1969, pp. 23-24, 51). Levinas emphasizes the importance of his new argument – the origins of humanity and humanism lie not in the understanding of one's own individuality but in the perception of Another as an equal. The ethical "I" asks the Other for the right to life and its existence, apologizing to him for this: "questioning the Identity of the Other ends with a positive movement – the responsibility of the "I" for the other and before the other" (Vdovina, 2009, p. 204). Therefore, a person is responsible for his right to exist not before an abstract moral law but in fear for Another (Nuyen, 2001, pp. 435-436). Levinas replaces "Consciousness about" in the classical formulation of Husserl with "living something" to express spiritual life in terms of the subjective experience of consciousness. In addition, it is impossible to

hold, know or grasp the Other since such behaviour will become an analogue of domineering domination.

Another essential element of Levinas' phenomenological ethics is the concept of a Person. The face symbolizes the Other against the background of being, which does not imply any separation of consciousness or pure "I": "The face of the other constantly destroys and surpasses the plastic image presented to me, goes beyond it" (Feng, 2008, pp. 556-557). The face is not from the world itself, but it enters the world without being an object. The existence of one for the sake of the other is such an ethical attitude Levinas deduces from the concept of a Person in his relationship with Another (Kenaan, 2016, p. 487). An ethical attitude is the ability to take the place of another, see the situation and take responsibility not for yourself but for another. It is obvious that the horizons of phenomenological ethics in Levinas argumentation are significantly shifting towards a new understanding of humanism and the establishment of new connections between theoretical and practical ethics, which are difficult to find in the works of Husserl.

Phenomenology of Legal Reality by A. Reinach

In legal philosophy, the most noticeable influence of the ideas of phenomenology and the phenomenological method can be traced in the papers of A. Reinach and N. N. Alekseev. Reinach outlined his own phenomenological and legal views in the fundamental work "A Priori Principles of Civil Law".

The concept of a priori grounds in law was developed by A. Reinach in the midst of philosophical and legal discussions between supporters of legal positivism and natural law theory. Opposing the positivists in their view of the nature and emergence of law A. Reinach notes that positive legal provisions differ significantly from scientific provisions, at least in "what is decisive for the development of law are the given moral convictions and even more the constantly changing economic conditions and needs" (Reinach, 1983, p. 4), which makes it impossible to argue about the truth or falsity of the provisions of positive law. Also, from a scientific point of view, it makes no sense to talk about the scientific nature of positive law since it is too variable, which is why it cannot be universal.

In the context of the procedures of the phenomenological method, in particular the epoch procedure, A. Reinach substantiates the thesis that legal entities, for example, such as obligations or legal requirements, like houses and trees, have their own independent being: "legal entities such as claims and obligations have their independent being, just as houses and trees do. To this latter, we can ascribe all kinds of things which we can find in the world outside of us through acts of sense perception and observation" (Reinach, 1983, p. 4). But unlike the houses and trees that we perceive from the world, legal formations are phenomena of a special order.

A distinctive feature of legal entities (which cannot be attributed either to natural objects or to "ideal" objects, such as numbers) is their temporality (a certain duration in time). The phenomenological analysis is intended to reveal the essential connections between legal entities that have temporality.

R. Yuriev wrote that the criterion separating legal entities from physical, natural objects is also causality. When cognizing objects of the physical world, causality does not give us an idea of necessity in itself since any consequence can become an independent given. "Therefore, the difference between a legal phenomenon and a natural and physical one is that it cannot be understood a priori as self-awareness" (Yuriev, 2010, p. 120). Illustrating his argument A. Reinach (1983) writes about obligation and demand-legal entities that logically assume a reference to their primary source – the basis for which the promise acts (p. 9).

With this approach, it is not the cause-and-effect relationships that are available to cognition

but the relations of the modality of the "state of affairs". This corresponds to Husserl's "eidetic discretion", which assumes that if there is any subject (legal education), then there are also many "states of affairs" (modality) in which the subject reveals itself to consciousness. Thus, "We shall see that philosophy here comes across objects of quite a new kind, objects which do not belong to nature in the proper sense, which are neither physical nor psychological and which are at the same time different from all ideal objects in virtue of their temporality" (Reinach, 1983, p. 6). It is important to note that the a priori nature of law, according to A. Reinach, is not mystical; it is universal and is revealed through specific phenomena.

The most important provision of A. Reinach's concept is his introduction into theoretical circulation of the concept of a social act, which acts as one of the a priori foundations of civil law.

Turning to the phenomenological way of the subject's awareness of his activity, A. Reinach writes that the Self (the transcendental Self) internally constitutes an action. He calls the acts of constituting spontaneous actions that precede the behaviour of the subject the manifestation of the act outside. These include decision-making, forgiveness, approval, and others.

A. Reinach also calls social acts a kind of spontaneous acts, the condition for the existence of which is the need for their attention from another subject. In other words, the social act includes the internal spontaneity of the phenomenological constitution and the external communication of the spontaneous act to the addressee with the receipt of a message from him about the acceptance of the act. The social act includes three stages:

1. a spontaneous internal act of consciousness preceding an external action;
2. an external expression of the action – an appeal to the addressee;
3. awareness of the action and, as a result: the formation of a non-phenomenological legal reality of requirements or obligations in the individual's mind (Reinach, 1983, p. 19).

Having determined the essential features of a social act, A. Reinach illustrates its variety with the following judgment: a special connection between subjects is generated, for example, by a promise that is a social act, which acts as an a priori basis for demand and obligation.

The establishment of a social act as an a priori basis of civil law gives A. Reinach a tool for studying other legal phenomena of civil law – property, possession, representation, which receive an interesting interpretation through the prism of a phenomenological-realistic approach.

Fundamental to the nature of property rights in A. Reinach is the understanding of competence, which is found in contrast to absolute and relative rights, in that the action with which it is associated (whatever it is expressed) generates an immediate legal consequence: the emergence of a claim and obligation, their change or termination (Zelaniec, 1992, p. 163). For rights, in turn, the legal consequence of the mode of action contained in them is completely irrelevant.

A. Reinach (1983) believes that the a priori basis of absolute rights and their transition from one person to another can be determined only through competence. Property relations are generated not by a promise, as in the case of an obligation and a demand, but by the transfer and provision of the owner, which are also recognized as a social act (pp. 52-53). But the mandatory condition for the transfer is competence. A. Reinach also calls the granting of rights (for example, in the case of representation), refusal and renunciation social acts.

Having decided on the sources of absolute property rights, A. Reinach asks about the primary source of the property itself. Enclosing in phenomenological brackets the emotive, psychological, ethical, historical and genetic prerequisites that led to the formation of the institution of property, A. Reinach proceeds from the fact that in the phenomenological analysis, only the definition of those conditions that are necessary to essentially constitute belonging should matter. In

the course of his arguments, A. Reinach (1983) concludes that "the relationship between a person and a thing which is called owning or property is an ultimate, irreducible relationship which cannot be further resolved into elements" (p. 6). The essential primary source of property is the creation, the creation of a thing as such.

Continuing the phenomenological analysis A. Reinach correlates competence and social acts, convincingly proving that social acts cannot be the primary sources of competence. In fact, the source of competence is always the person as such – the subject. The subject can carry out social acts, and this is his fundamental competence, which is inseparable from him and cannot be transferred to another person. It forms the ultimate basis, which alone makes it possible to establish social and legal relations. As S. Shevtsov (2009) notes, A. Reinach tried to "discover an ontologically independent source of law" (p. 217). Thus in Reinach's legal philosophy, we can find the specifics of applying the phenomenological method to legal reality and its original reflection in the concepts of phenomenology and its cognition procedures (Textor, 2013, p. 574). However, being a supporter of realistic phenomenology, the external world of being is not "taken out of brackets" by him when implementing phenomenological reduction.

Conclusion

Phenomenology as a philosophical direction is characterized by the presence of a specific methodology for cognizing the essence of phenomena. The origins of the phenomenological method, its content and procedures were laid down as in the early works of E. Husserl, where the normativity of logic became a way to justify the unity of logic, ontology and ethics. This argument will be developed in the ideas of E. Levinas' ethical phenomenology and will become the basis for understanding ethics as the "first philosophy" in a phenomenological context. The ethical dimension of responsibility for the actions of the subject and their consequences expands the horizons of phenomenological reduction and allows us to reveal the essence of legal reality in a new way. Using the example of the philosophical theory of A. Reinach, it was shown that the phenomenological method could serve as a basis for rethinking the philosophical categories of cognition of legal reality, revealing the content of legal relations. Thus, the study of phenomenology in modern conditions contributes to the increment of philosophical knowledge about the transformation of the understanding of the subject in modern continental philosophical thought.

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GENESIS AND HISTORICAL SENSE OF THE MOTTO "LIBERTÉ, ÉGALITÉ, FRATERNITÉ"

Abstract

The study is devoted to the formation of the motto of the French Revolution – Liberté, Égalité, Fraternité. The hypotheses as to its emergence are considered, notably the invention of the triad by J.Locke, F.Fénelon, French enlighteners and Masons. Based on the analysis of the texts pertaining to the alleged authors of the motto, it is concluded that its spread was taking place only during the Revolution. The meaning of liberty, equality and fraternity is seen as an expression of the fundamental values of the Modern Age; the interdependence of these concepts is demonstrated.

Keywords: liberté, égalité, fraternité, Enlightenment, Masonry.

Introduction

Known for the French Revolution, the triad "Liberté, Égalité, Fraternité" (Liberty, Equality, Fraternity) is still considered one of the most succinct expressions of the underlying values of modern European culture, a cornerstone for the legal regulation of social life (Inkova, 2006; Jimena Quesada, 2017). Although fraternity has turned into solidarity (Borgetto, 1993), revolutionary ideas, particularly the same fraternity, are generally subject to criticism, for example, from a feministic perspective (Gomez, 2017), the motto remains relevant and finds its application in the most unexpected areas (Chapelier, 2008). Its reflection in the works of authors with very little in common is studied (Lizárraga, 2020; Heller, 2018). The question of the triad origin has been repeatedly raised (Iacometti, 2017). In 2019, Ángel Puyol undertook a fundamental study on how the most mysterious third member of the motto was formed. However, the views on the specific historical circumstances of the triad origin differ, and the purpose of this study is to check the most common hypotheses.

The First Hypothesis. The English Roots of the French Motto

There is an opinion that the French borrowed the famous triad from John Locke (Gritsanov, 2002, p. 1103). One can confidently argue that Locke's *Two Treatises of Government* does not contain such a phrase. However, there is no doubt that the idealization of the limited English monarchy and the concepts justifying it was very widespread in French society of the 18th century, and many statements of the figures of the Revolution are entirely in tune with Locke's ideas. Therefore, it will be justified to turn to the legacy of the English philosopher to find out what he meant by those concepts.

"The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will or restraint of any law, but what that legislative shall enact, according to the

trust put in it. Freedom then is not what Sir Robert Filmer tells us, Observations, A. 55. liberty for everyone to do what he lists, to live as he pleases, and not to be tied by any laws: but freedom of men under government is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as freedom of nature is, to be under no other restraint but the law of nature" (Locke, 1689b, sect. 22).

Let us note that liberty is neither tied by any laws nor opposite to it, unlike what Robert Filmer was proclaiming, but liberty is the opportunity to abide by the law and only by it. "…For law, in its true notion, is not so much the limitation as to the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under that law…" (Locke, 1689b, sect. 57). Liberty, therefore, is contrasted with the desire of an individual. It is not antinomy, oxymoron or paradox. In this way, liberty is meant by an opportunity to follow the voice of reason. Limiting the desire, the law, no matter what it was (natural, innate, political one), is reasonable by definition.

Locke, however, does not declare any desire knowingly false. He suggests that there are some desires planted in man by God, namely those desires expressing the natural law in addition to any personal conscious intention. The judge determining the naturalness of the desire, i.e. its legitimacy, is the true mind: "…for the desire, strong desire of preserving his life and being, having been planted in him as a principle of action by God himself, reason, which was the voice of God in him, could not but teach him and assure him, that pursuing that natural inclination he had to preserve his being, he followed the will of his maker" (Locke, 1689a, §86). Otherwise, the mind makes it possible to discover how this or that desire is inherent in the entire human race. A positive answer leads to the recognition of the desire as natural, reasonable, legitimate. To realize this desire is to be free. So the natural aspect is identified with the social one.

Indeed the Enlightenment pathos is quite noticeable in the ideas of Locke: remove everything that interferes with the mind, and man will become free. As soon as he becomes free, he will become happy because what is other happiness than the opportunity to live by his mind? At least two controversial assumptions underlying this construct are apparent. The first one is the unity of the individual and collective mind. The second one is the unity of the nature of a person in his mind. One can say that both assumptions express the same conviction in the supremacy of the mind, and this supremacy automatically implies the unity of both the concept of mind and all manifestations of reason. For Locke, these assumptions are no less evident than for us. Moreover, their controversy is obvious to the English thinker. After all, if things were so simple, where would the unreasonableness, such a detrimental to a man, come from? The cause of all troubles is the limited individual human mind, which has yet to be introduced into the true mind.

This fundamental limitation of the individual mind leads to an entirely new understanding of the natural state that we accredit to Locke compared to both Thomas Hobbes and ancient thinkers. In the *Republic*, a Platonic dialogue, Socrates assumes a kind of initial state of man when people live separately and cannot provide themselves with everything necessary. Hobbes does not believe in any such historically rooted state, but he suggests it as a methodological principle. Locke, like a considerable number of his predecessors, states that the natural state did take place. Moreover, it still does. Besides, it is pretty relevant in actual existence. It is Locke who is just redefining the natural state. From a social perspective, the existence of a person is entirely public, not wholly autonomous, because only in social existence the mind can fully manifest itself. The natural state of man supposes a lack of

political power but the presence of a single society. "Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the state of nature" (Locke, 1689b, sect. 19). A natural state would be perfectly good if it were possible to introduce everyone into a true mind. Then political power would not be required. Hence originates Locke's genuine interest in the education challenges. The pedagogical system is an alternative, but at the same time, it is an addition and the foundation of the political system. One can also recall that Locke (1728) does not suggest any "naturalness" in education: even the schedule for visiting the restroom is under regulation.

It is curious that as a result, the transition from a natural state to a political one by Locke is devoid of the ontological drama that Hobbes's reasoning features. If the latter believes that a man needs to abandon himself to create himself, then Locke considers this transition as a refusal in one respect in the name of acquisition in another. Namely, a person refuses judicial and executive power in favour of guarantees of property rights. However, since a person renounces these types of power only to protect his property and some other relations (family, master, etc.), he retains his natural liberty, and then the political state brings him only benefit. In other words, it has been good in a natural state, and in a political state, it becomes even better.

Based on natural similarities, equality, according to Locke, is expressed in the fact that no one can be the ruler of another man without his consent. The clarification as to "without his consent" means that the master, even after becoming as such, i.e. acquiring certain rights to dispose of the servant's actions, remains in an equal position with the servant since both are bound by the terms of a freely concluded contract. At the same time, Locke provides for the possibility of falling into service and slavery as a punishment for a crime. This provision contradicts the desire of the servant, but only his individual one. After all, by committing a crime, violating a reasonable law, it knows or may know by its reasonable nature about the consequences. Therefore, the desire to avoid negative consequences for oneself is unreasonable, and this desire contradicts liberty. However, liberty is just about the punishment, including in the form of obedience to someone else's will.

Thus, equality is an "equal right that every man hath to his natural freedom, without being subjected to the will or authority of any other man" (Locke, 1689b, sect. 54). However, there are unreasonable beings, including the human species, which, due to their unreasonableness, cannot be free, and therefore cannot be equal. They simply have no subject of equality. Reasonable men have power over unreasonable beings. It is hardly possible to call Locke's position on this issue relatively consistent. He proposes to introduce some unreasonable beings into the true mind, and this introduction is the responsibility of a reasonable man. It is impossible to introduce others into the mind, but one can distinguish two categories among them. The feeble-minded should be taken care of, and the animals should be used. Locke does not justify such a division.

Locke's reasoning on this topic, as in some other issues, strongly resembles the Aristotelian approach. Aristotle also links liberty, equality and the mind. The Greek thinker distinguishes between master and political power. The master power is exercised over creatures relating to the mind only so much as to understand orders (slaves), and the political power is exercised over intelligent creatures as such. In the latter case, we deal with equality since the one who manages and the one who subordinates are the same person with the correct form of politics. According to Aristotle, the whole always precedes the part, and society is primary in relation to man. Only in society does a man become himself; Aristotle coined the famous definition of a man as a political being – only in a free society, a man can be free. Hence a potential natural slave with a potential natural master is freed only by entering

into mutually beneficial symbiosis. Together with Aristotle, Locke sees the unity of human relations as the basis of a person's intelligent and free existence. However, according to Christian and new European views, Locke ultimately distinguishes a person from the world around him. For him, the fact that Aristotle puts pets and women on the same level of reasonableness is incomprehensible. In other words, one can say that Locke stands for women's rights and, in this regard, is "more open-minded". Although, on the other hand, Aristotle connected all elements of the world with "friendliness" and love, Locke considered that similar feelings could take place only between people, and the rest of the world was given to men for use. From here, it seems that there is one step to the murder of an illegitimate child proclaimed by Immanuel Kant because the born is not in the law, not in mind, and not a person at all. Note that neither Locke nor Kant is usually accused of inhumanity.

Summing up, one can say that all reasonable beings are free and equal (at least, humans), and the degree of reasonableness is determined by the readiness to consider the other as free and equal to oneself. Locke says nothing about the fraternity, although, in our opinion, such a concept would quite fit into his construct. Nevertheless, since for the English philosopher, in the end, to justify the right to property, which does not have much in common with fraternal relations, matters most, there is no place for reflection on this topic. Thus, although John Locke can be recognized as the spiritual father of the Enlightenment, the famous formula does not belong to the English philosopher.

The Second Hypothesis. The French Roots of the French Motto

Some sources call François de Salignac de La Mothe-Fénelon as the author of the formula of Liberty, Equality, Fraternity (Inkova, 2006, p. 3). Unfortunately, we could not find an exact reference to where the archbishop of Cambrai cites this phrase. Our search did not give a positive result. Moreover, it seems that the thinker, famous throughout the world in the 18th-19th centuries, was not very fond of triads of various kinds, preferring much more extensive lists to them.

Perhaps, in *The Adventures of Telemachus*, the most famous work of Fénelon in secular circles, there is a fragment that allows us to talk about some tripartite grounds for the correct organization of society. Telemachus participates in an intellectual contest: competitors must answer three questions. Questions, like the answers to them, are contained in the book of laws of Minos, and only the judges have access to it. The winner will become a king; that is, it is assumed that questions affect the very essence of government. The questions are the following: "Which man is the freest?"; "Who is the most unhappy?"; "Which of the two ought to be preferred – a king who is invincible in war, or a king who, without any experience in war, can administer civil government with great wisdom in a time of peace?" Thus, it turns out that liberty is the very beginning of public life. The correct answer is the following: "The freest of all men, …, is he who can be free even in slavery itself. …In a word, the truly free man is he, who, void of all fears and all desires, is subject only to the Gods and reason" (Fénelon, 1806, p. 72). It may seem that Fénelon does not care about the issues of political or social liberty.

However, Fénelon is not indifferent to social challenges at all. Recall that the question of "internal liberty" is posed precisely in connection with establishing the principles of governance. The monarch, just like his subjects, must be free (in the specified sense). According to Fénelon, the fact that there is parity is clear from the answer to the second question – "Who is the most unhappy?" "The most unhappy of all men is a prince who thinks to be happy by rendering other men miserable" (Fénelon, 1806, p. 73). One can cite *The Adventures of Telemachus* and other works of the archbishop multiple times to confirm his commitment to the idea of equality. Let

us cite only an extract from one letter from Fénelon: "If you want to be the father of the little ones, be as follows: belittle yourself and become equal to them, go down even to the lowliest sheep of your flock, in the ministry that is higher than a person, nothing can be mean" (Fénelon as cited in The life of Fénelon, 1801, pp. 299-300). We are talking about Fénelon treats a church ministry as a secular service. Thus, equality lies primarily in the equality of "liberty of the heart". However, for the Cambrai teacher, property equality is evenly important.

Fénelon recognizes only one form of inequality between people – inequality in education. Nevertheless, it exists so that the educated should be the wise leaders and mentors of the uneducated, not being a source of additional benefits for the first ones. Here are the words he addresses to his very young pupil – the grandson of Louis XIV, Duke of Burgundy: "You imagine that you are greater than me; ...; but as for me, I am not afraid to say, as you force me to this, that I am greater than you... You would have found it insane if someone had taken credit for the fact that the heavenly rain had made his harvest fruit-bearing without irrigating the crop field of his neighbour; you would no longer be prudent if you wanted to praise your birth, which adds nothing to your dignity. You cannot doubt that I am not superior to you in enlightenment and knowledge" (Fénelon as cited in The life of Fénelon, 1801, pp. 32-33). A similar idea can be found in *The Adventures of Telemachus*. When describing another ideal society, which should serve as a model for the heir to the French throne, Fénelon (1806) writes: "They are all free, and all equal. There is no distinction among them, but what is derived from the experience of the wise old men, or the extraordinary wisdom of some young men…" (pp. 121-122).

So if one tries to express in two words the meaning of the first questions from the book of laws of Minos, then only the following ones come to mind – liberty and equality. How about fraternity? Nowhere to be seen. If we turn to the wording of the third question, it will become clear that fraternity has nothing to do with it. Who is better: a king who knows how to fight or the one who wisely rules in a time of peace? None of them is ideal, according to Fénelon. However, the king that can wisely rule in a time of peace is still better. At least he knows how to support those of his generals skilled at waging wars. This third question is not easy to narrow down to one word, yet it seems that there is such a word – enlightenment. In *The Adventures of Telemachus,* one can find clearly trace the path from one element to another. Telemachus goes through various hardships and understands that being a slave by social status does not yet mean being a slave in the soul, and vice versa – to be called free does not mean to have true liberty. Having perceived liberty, Telemachus learns the equality of people regardless of their social status and well-being, equality of human dignity. After this stage, the future king of Ithaca acquires knowledge of the art of governance.

So does Fénelon speculate on fraternity? The archbishop speaks a lot about the relationship between parents and children as the basis of society. Parental relations connect the pastor and the flock, ruler and subjects. Love is one of the central elements of Fénelon's theological views (Fénelon, 1820-1821), and this love, first of all, is parental. Hence, indeed, it is easy to conclude that the flock and subjects have fraternal relations, and since people are equal in dignity, those who, in a sense, are fathers, in some sense, are brothers as well. However, as our research shows, Fenelon neither brings the fraternity to the fore nor makes it the third member of the triad of fundamental social values.

Researchers often point to the common ideas of enlighteners who, in one way or another, refer to all members of the famous triad (Ozouf, 1997). Let us see what *L'Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers* – "sum of the French Enlightenment" – and Jean-Jacques Rousseau, the enlightener who gained the highest reverence among French

revolutionaries and created the most integral social teaching.

L'Encyclopédie contains articles on each of the members of the triad. The texts that interest us almost entirely belong to Louis de Jaucourt. Thirteen articles are devoted to different meanings of the word "liberty": here is liberty in painting, liberty in commerce, and liberty in iconography, etc. Jaucourt focuses on its meaning in the field of morality. At the same time, morality, based on the text of the article, should be understood in the sense that Georg Hegel will give it in contrast to ethics. This liberty has little social significance. Moreover, according to Jaucourt, people are not "born and remain free," as *La Déclaration des Droits de l'Homme et du Citoyen* (the Declaration of the Rights of Man and of the Citizen, hereinafter – The Declaration) stipulates. "La liberté réside dans le pouvoir qu'un être intelligent a de faire ce qu'il veut, conformément à sa propre détermination" (L'Encyclopédie, n.d., liberté). The mind is both the basis and the limiter of liberty. However, different beings are reasonable in different ways. The mind may not take place yet – this state relates to children (Jaucourt associates it with the physiological immaturity of the brain), the mind can sleep (the brain needs it from time to time), the mind can be sick (speaking about mentally disordered people). All of them are not free.

A completely different approach is demonstrated by Jaucourt when it comes to natural, civil and political liberties, that is, when the analysis of liberty begins not with the qualities of a free subject but with the conditions of its existence. These four types of liberty are logically related and imply equality of subjects in liberty. Natural liberty consists in the possibility of not obeying any master. This has long been a blissful state. Civil liberty is the transformation of natural liberty in society and consists in the ability to abide only by the law. The best laws are those that guarantee the safety of every citizen, which is expressed not only in criminal prosecution for crimes but also in the fact that no one, including the ruler, can intimidate another. This is political liberty. In other words, the loss of absolute natural liberty can be compensated only under conditions of equality before the law, ensuring the inviolability of the person and his property. The English roots of Jaucourt's approach are apparent, although he directly cites Charles-Louis de Secondat, Baron de Montesquieu, but not John Locke. The encyclopedist writes about the country in which the primary goal of the constitution is to establish political liberty, about the beautiful genius of England. Compared to Locke, in *L'Encyclopédie*, one can note a more differentiated approach to the concept of liberty. (This approach, however, was not merit of Jaucourt alone. For example, Guillaume-Thomas François Raynal distinguished between natural liberty (human liberty), civil liberty (liberty of a citizen) and political liberty (liberty of the people). A little later, we will consider a similar difference in the reasoning of J.-J. Rousseau.) On the other hand, *L'Encyclopédie* does not provide a single and consistent idea of liberty, even though one person wrote articles about it. "Liberty of the soul," which, we repeat, is of primary interest for Jaucourt, does not relate to the types of "social" liberty.

The fraternity acts as a civil correlate of natural equality. According to Jaucourt, the natural people's affinity for each other is based on natural equality: "the duty of mercy, humanity and justice" (L'Encyclopédie, n.d., Egalité). Fraternity, on the other hand, is associated with a natural factor and moral liberty. The appearance of this concept demonstrates how in the "naturalistic symbolism of unity" (Iavorskii, 2007), under the guise of "naturalistic symbols," the destruction of a pan-natural idea was happening in the heart of educational ideology. Nature with all its symbols, including fraternity, was not really decisive for new thinking. It was needed to justify the possibility of a different reality – Communication. While the idea of Nature was working for Communication, it was developing to become rich in detail. As soon as Nature made Commu-

nication redundant or began to contradict it, it was mercilessly discarded. The filling of the concept of fraternity with no consanguineous and affinitive content and even its implicit opposition to natural equality by Jaucourt is a vivid but by no means the only example. One can find the same motives, sometimes even tragic (or tragicomic), in the reasoning of J.-J. Rousseau.

In *Du Contrat Social ou Principes du Droit Politique* (The Social Contract), Rousseau makes a remarkable conclusion from the reasoning on the critical topic of his predecessors. Since the political state is essentially different from the natural state, all fundamental social characteristics of a person cannot be considered as the constants independent of these states' change. In other words, if Locke believes that the political state should guarantee the observance of natural liberty, then for Rousseau, such a thesis is meaningless. According to Rousseau, the political, civil state gives rise to political, civil liberty, which is not identical to natural ones. By concluding a social contract, people exchange their natural liberty for a political one. On the one hand, Rousseau's logic follows that of Locke, who claimed the historical existence of the natural state. On the other hand, Rousseau returns to the complexity of Hobbes with his dialectic of physical and political bodies. "The total alienation of each associate, together with all his rights, to the whole community" (Rousseau, 2017, p. 7). Removing oneself from this whole, that is, acting by one's own will, turns out to be a crime, a violation of the terms of the contract and civil liberty. Hence, a well-known consequence is inevitable: such a violator "will be forced to be free" (Rousseau, 2017, p. 9).

Accordingly, both equality and unity arise here. Rousseau does not consider natural equality as a compelling argument. Rousseau reasonably observes that in a natural state, people are not equal – neither in their physical capabilities nor in their mental ones. Equality can only arise in a civil state. Note that Rousseau brings to the end this Locke's thought and expresses one of the fundamental provisions of the new European civilization: people are equal in rights because they are equal in law. Here comes another consequence indicating not the main path of European thought but often a branch. Equality means that an individual possesses nothing – no property, no rights, not even his own life. However, as Rousseau liked to say, no one would sanely agree to such terms of the contract. The agreement concluded by the madmen is not valid. Moreover, "ascending to the original contract" is the principle that Rousseau makes the methodological basis for checking the reasonableness of existing laws. (In two hundred years, John Rawls will apply this principle.)

People alienate their property and life only on the terms of receiving them back. However, like liberty, these acquired gifts are no longer identical to the donated ones. The political body creates guarantees for a person's life in ordinary conditions, but in extreme ones, this life may be taken since, in essence, it belongs not to a person but to political society. The same happens to things. Everyone is guaranteed property, but it completely differs from that one in a natural state. If all property belongs to society, then equality of rights means that society will allocate an equal amount of this property to everyone. Rousseau replaces the formal equality of Locke with the material one. At the same time, Rousseau justifies material equality not based on the principles of law, with all due respect for them, but taking into account the suitability of such a division for society. "Do you want the state to be solid? Then make the wealth spread as small as you can; don't allow rich men or beggars. These two conditions are naturally inseparable: any state that has very wealthy citizens will also have beggars, and vice versa. And they are equally fatal to the common good: one produces supporters of tyranny, the other produces tyrants. It is always between them that public liberty is put on sale: one buys, the other sells" (Rousseau, 2017, p. 26).

Finally, let us turn to the concept of fraternity.

Rousseau constantly uses the word "unity." The unity of the people is both a prerequisite and the result of a social contract. However, for all the importance of unity, it cannot claim status equal to liberty and equality, which Rousseau declares as the basic principles of the state. The word "fraternity" in *Du Contrat social* is not actually used. However, one can find the expression "all men are brothers" when it comes to Christianity. "By means of this holy, sublime, and genuine religion all men, as children of one God, acknowledge one another as brothers, and the society that unites them isn't dissolved even at death" (Rousseau, 2017, p. 71). However, from Rousseau's point of view, the challenge is that such a perception of fraternity does not correlate with political unity. Rousseau expresses the idea that after a century gained scandalous fame thanks to Friedrich Nietzsche – Christians are slaves. However, Rousseau spoke about slaves only in the social sense. People become slaves because they do not worry about the political system, which is what tyrants of all stripes enjoy. Christianity is "a holy, sublime, and genuine religion," and the Kingdom of God is beautiful, except it is not of this world. Furthermore, like all the abovementioned figures, Rousseau is concerned about the possibility of liberty and equality already in this world. Thus, he was not the one who introduced fraternity into the revolutionary formula.

Our study again leads to a negative result. However, French thinkers are much more interested in a fraternity than their English colleagues and predecessors, the idea that enlighteners or even F. Fénelon himself coined the motto "Liberty, Equality, Fraternity", which turns out to be a myth.

The Third Hypothesis. The Masonic Roots of the French Motto

It is widely claimed that the motto "Liberty, Equality, Fraternity" has Masonic roots (Webster, 2001; Porset, 2012). Nesta Helen Webster believes that this phrase was born in the secret society founded in France by Martinez de Pasqually, a native of Portugal (Spain?). According to the English researcher, the formula "Liberty, Equality, Fraternity" is mentioned as the "holy trinity" in *Des Erreurs et de la Vérité* – the book published by Louis-Claude de Saint-Martin, a Pasqually's disciple, in 1775 (Webster, 2001, p. 6).

The book published in France under the pseudonym "Le Philosophe inconnu" made a great impression on contemporaries. We are not interested in a complete set of studies of Louis Claude de Saint-Martin, including revelations about mathematics, physics, pharmaceuticals, philology, music, etc., but only his ideas on the subject of our research.

Saint-Martin liked triads. He has many of them, starting from the fact that he rejected the universal misconception about the existence of four elements (a controversy with Jakob Böhme), having left only three. However, one requires a remarkable ability to read between the lines to find the ideas of liberty, equality, fraternity, even elevated to the rank of the Holy Trinity, while analyzing the legacy of Saint-Martin. Either the reasoning of the free philosopher does not contain such expressions (Amadou, 1974), or the very spirit of his teachings completely rejects these principles.

De Saint-Martin is, indeed, interested in liberty, and at the very beginning of his work, he already gives it a definition: "The true particularity of the free creature is the power to stay self-intentionally in the law prescribed to it, and maintain its strength and independence, resisting by goodwill those obstacles that seek to divert it from the exact implementation of this Law" (About Misconceptions, 1785, p. 21). This refers to the Single Law expressing the Universal Beginning. Freedom is autonomous. Where external circumstances determine acts, there is no liberty. That is, by freely refusing to follow the Law, without resisting external temptations, we lose our liberty. So, in fact, this happened in the act that since the time of the Blessed Augustine

of Hippo is called "the Original Sin". From that moment, a person was plunged into the Evil Beginning. Being in the material world is a punishment. Furthermore, here there can be no liberty – what kind of liberty the prisoner has! Since there is no liberty, then, according to Saint-Martin, all the assumptions of supporters of the theory of social contract collapse. (Saint-Martin's work does not mention a single name, but it seems that he mainly criticized Rousseau.)

A similar story occurs with equality. In the primitive state, people did not have power over each other, but they owned creatures of the lower order. The fall from the Beginning deprived them of power, which may belong to free beings. However, on the other hand, it made it possible to establish power similar to the prison order. "However, in the state of purification, to which man is now exposed, not only does he have the convenience to regain his ancient power, which would be enjoyed by all men, without having a kind of creature in his allegiance; he also may acquire another right which he was not aware of in a primitive state, that is, the right to rule over other people..." (About Misconceptions, 1785, p. 277). People more intelligent, closer to the Beginning, should become overseers of those who are completely captured by physicality. The king "must use over them all the rights of slavery and succumbing; rights as righteous and essential in this case as incomprehensible and insignificant in any other circumstance…" (About Misconceptions, 1785, p. 278). Of course, in this state, neither the subjects have the right to resist oppression, however cruel and unrighteous it may be, nor the rulers have the right to cross the boundaries defined by the Beginning. It is utterly unimportant for us that Saint-Martin has apparently believed that the true rulers are Masonic masters, not ruling monarchs at all. This does not change the substance of the matter, which can be expressed by the formula "lack of liberty and inequality".

As for fraternity, concluding his work, Saint-Martin deeply observes that "all people are C-H-R" (About Misconceptions, 1785, p. 534). However, the discovery of unity in Jesus Christ, whom he called the Great Reasonable Cause from the very beginning, did not add anything to the reasoning already given. Here one can instead see the connections with the Gnostic motives of unity in the primal man than the rationale for the idea of fraternity.

Curiously, Pasqually's disciples did not accept the Revolution. Saint-Martin himself spent the time of the "triumph of Liberty, Equality, Fraternity" in Switzerland and returned to his homeland only shortly before his death in 1803. Here is how Arthur Edward Waite, a Martinist of the 20th century, assesses the Revolution: "...Suddenly the doors slammed, the meat grinder of the French Revolution put an end to all dreams and the era itself..." (Leman & Waite, 2005, p. 145).

Michel Borgetto (1993; 1997) believes that the revolutionary formula gained popularity only by 1793. "However, this triad never represented an exclusive and a fortiori official motto of the regime, and the revolutionaries always refused to single out a single motto to express the spirit of the institutions they created" (Borgetto as cited in Latour & Pauvert, 2007, p. 269). At the same time, one should note that already in 1790, during the feast of the federation on July 14, soldiers, according to Camille Desmoulins, promised each other liberty, equality, fraternity (Bosc, 2010), and in December of that year, Maximilien Robespierre (1866), as a matter of course, invites the National Assembly to draw this phase on the chest and banners of the National Guards. In the documents of the Revolution, only fraternity remained an unofficial element.

Conclusion

In summary, whatever the ideological sources of the formula "Liberty, Equality, Fraternity" – English political thought, modernist views of the Catholic clergy, the philosophy of enlighteners, Freemasonry or spontaneous folk creativity – the values of liberty and equality were extremely

common in the 18th century. The diversity of approaches to understanding liberty is not only not surprising but simply inevitable. This was remarkably noted by Charles-Louis de Montesquieu (1955, p. 283): "No word receives so many different meanings and makes such a different impression on minds as the word "liberty". The first call it an easy opportunity to depose the one they endowed with tyrannical power, the second defines it as the right to elect someone to whom they should obey, for the third, it constitutes the right to bear arms and to commit violence, the fourth see it as a privilege to be under the rule of a person of their nationality or abide by their own laws. For a long time, certain people took liberty for the custom of wearing a long beard. Some understand it as the known form of government, excluding all others". Obviously, such diversity could not but lead to a split between the advocates of liberty regarding its implementation in life.

However, let us note that Montesquieu, in his list, which should give an idea of differences in the understanding of liberty, provides only the characteristics of political liberty. His thought cannot leave the main path: liberty requires a specific organization of society. François Guizot wrote about this epoch: "A man is not occupied by personal liberty but by a citizen's liberty; he belongs to the association, he is dedicated to the association, he is ready to sacrifice himself to the association" (Guizot as cited in Gérald, 1981, p. 26). Ideas, like Fénelon ones – a man is free in God – look hopelessly outdated. However, the same atavism is the recent calls to preserve the liberty of the Gallican Church, the liberty of cities or the liberty (privilege) of the nobility. The meaning of association is changing, the subjects of liberty are changing, and liberty is presented as one for all. Two fundamentally different understandings of freedom now provide two answers to the question: what is the value of civil status – human liberty or the liberty of society? Their unity in social practice is beyond doubt. Hobbes described their conceptual inseparability. However, theoretically and even practically, it is evident that these values are still different. Locke defends the priority of individual political liberty; Rousseau champions that of public liberty. There is no doubt that revolutionary reality was oriented towards the ideals of the Swiss philosopher. Moreover, the figures of the Jacobin terror, his victims and his heirs unequivocally preferred public liberty (Pimenova, 1992). In this sense, Guizot was undoubtedly right.

Nevertheless, from our point of view, we are talking about the necessary stage of self-denial, which passed individual liberty. The fundamental texts of the era prove the fact that this is true: "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression" (Art. 2 of the Declaration). Even the Feasts of Reason (Les Fêtes de la Raison) became a reminder that the only reasonable law of liberty is not to affirm universal unity but to stipulate that "liberty consists in the power to do anything that does not injure others" (art. 4 of the Declaration). The revolution began when the deputies of the Estates-General refused to vote on the principle "one estate – one vote", strongly preferring the individual's liberty to the liberty of the corporation, affirming the equal dignity of all deputies, as well as those whom they represented.

So, it seems to us that, in the Modern Age, we are talking about individual liberty, which, as a prerequisite, implies a complex of political and social and economic freedoms. Liberty substantially means the possibility of choosing himself and formally (in terms of expression) – the opportunity to do everything that does not violate another person's liberty. The formal side of liberty requires recognition of the equality of all human beings. Equality is, therefore, the same opportunity for all people to act. The substantial sameness is taken out of consideration; that is, the so-called material or actual equality can be recognized only if it is qualified as an external condition for the realization of liberty, in other

words, during formalization. For example, for Aristotle, the inequality of reasonableness entails different degrees of liberty. For the Modern Age, the inequality of reasonableness must be overcome wherever possible: through compulsory free education, equal access to information sources, etc. This is necessary so that a relatively less reasonable person should enjoy the same liberty as a relatively more reasonable person. Thus, liberty and equality, in this understanding, are completely inextricable, while they may be substantially incompatible with other concepts.

At the same time, one should not be surprised that the statement of liberty and equality, the pathos of individualism, both in philosophical texts and revolutionary practice, usually took place without the fraternity. A. Gérald (1981) emphasizes that the Jacobins were the Society of Friends of Liberty and Equality, but not brotherhood, fraternity trees were planted separately from liberty trees, and fraternity is generally associated with terror. Louis Blanc, not without reason, argued that the bourgeois revolution was much closer to the motto "Liberty, Equality, Property", and supporters of the Christian origin of the concept "fraternity" speak about such words as almost prohibited for revolutionaries (Ozouf, 1989, p. 160). Nevertheless, we claim that the third member of the formula appeared there by no means accidentally, and over time its meaning was only crystallizing. The reasons were repeatedly said: the realization of liberty and equality is impossible alone. It is not that people need each other to survive. Fraternity is necessary because free and equal people from nature are not brothers at all. The extraordinary reasoning of Locke, becoming the official ideology of Europeans, could displace, but not destroy, the Hobbesian (Calvinian, etc.) confidence that a man is a wolf to another man (homo homini lupus est) in the natural state. A free person will surely use his liberty to deprive another man of it and take advantage of his equality to receive privileges. For Locke, a social contract is an opportunity to avoid some "inconveniences" of the natural state; for Rousseau, it is an opportunity not to degrade entirely compared to the natural state; for Hobbes, it is the need for self-preservation in artificially created unity, in which, let us recall, "a man is God to another man". This closely resembles the reasoning of K. Lorenz that we are doomed to become moral precisely because we are not taking care of each other by nature. The only fraternity can save liberty and equality.

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SOME METHODOLOGICAL PROBLEMS OF PREVENTING CRIMES AGAINST POLITICAL RIGHTS IN MODERN DEMOCRATIC STATES (PHILOSOPHY-LEGAL DIMENSION)

Abstract

This article is devoted to the problems of prevention of political crimes and crimes against political rights, which were in the focus of attention of the thinkers of the ancient world. The thinkers of ancient Greece developed many methods of preventing political crimes both on the part of representatives of political power and on the part of ordinary citizens. Modern realities demand to return to the problems identified in the ancient period and to consider the problems of preventing political crimes and crimes against political rights in the context of a modern democratic state. The problems of preventing political crimes and crimes against political rights in modern legal, democratic states are particularly acute in the process of forming state elected bodies, that is, in the process of citizens exercising their political rights. Based on a comprehensive analysis and taking into account modern democratic foundations around the world, it is proposed to expand the range of political crimes and, as prevention of one of the cornerstone problems – the problems of preventing political crimes, to provide for criminal and/or constitutional responsibility for (radical) evasion of the election program at the highest legislative level.

Keywords: democracy, political rights, political crimes, crimes against political rights, the right of politics, political corruption.

Introduction

From ancient times to the present day, the problems of the formation of state elected bodies have been and are under the close attention of specialists. Even before BC, thinkers of the ancient era had already begun to think about the right and wrong forms of government, about the role and qualities of rulers on which the development and prosperity of society and the state depended (Mirumyan, 2004). For example, Plato, in the dialogue "Politician", has already begun to characterize politics as a royal art, for which he considered the ability to control people to be decisive, that is, the availability of appropriate knowledge. Moreover, appreciating political knowledge and political art, he functionally separated political art from military, judicial and oratory art. If he considered the task of judicial art and judicial power to be the preservation, protection and implementation of laws, then by political art, Plato meant the ability to intelligently organize and control national life (Plato, n.d.). However, if Plato considered it reasonable to include women in the ruling class of the state, considering that they have the same virtues and abilities as men, except for the difference in physical strength between the average woman and the average man (Martin, n.d.), another thinker of ancient Greece, Aristotle, did not grant civil rights to women and all those who, due to lack of wealth, leisure and education, are not capable of reasonable independent decisions. Aristotle considered as a citizen only those who were entitled to participate in the legislative and judicial power of the state, which could be elected to any public office since for this it was necessary for citizens to have practical knowledge of the political or-

ganization of society and the life of the policy both as a subject and as an official. Since every citizen, according to Aristotle (1999), is a "particle of the state", the state should be engaged in the education of all citizens, forming appropriate citizens who are obliged to take an active part in public affairs, showing political or cognitive activity. From the analysis of the approaches of ancient Greek thinkers, it follows that since antiquity, the problems of political maturity and political knowledge have been in the focus of the attention of the sages. And if Plato attributed the requirement of appropriate knowledge only to those who claim political power, then Aristotle raised the bar by demanding political knowledge from all citizens who will elect their rulers.

Despite the fact that the concept of "democracy" in the ancient and modern understanding differ somewhat, however, the problems of political maturity of society, political activity and relevant knowledge and qualities for both those claiming political power and for citizens are particularly acute in modern democratic, legal societies and, in particular, transitional states. If in ancient city-states political power was formed directly (Mirumyan, 2004), that is, we were dealing with direct democracy, but in modern times we are dealing with political power, which, on the basis of free elections, passes from one democrat to another (Harutyunyan, 2021). From this point of view and in this context, both problems related to the realization of political rights and political crimes acquire a fundamental character. Legal regulation, including criminal law, of the above-mentioned problems at the highest legislative level, is important both for the normal formation of state elected bodies, and during the transfer of political power, and in the process of governing a particular political force.

The Role of Political Rights in the Modern Democratic States

In the modern world, it is difficult to imagine a state that, at least at the level of the declaration, is not democratic. This primarily applies to developing countries, as well as post-Soviet countries.

Both in the Constitutions of many modern states and the Constitutions of the Republic of Armenia and the Russian Federation, their constitutional characteristics are fixed at the highest legal level. For example, Article 1 of the Constitution of the Republic of Armenia states that the Republic of Armenia is a sovereign, democratic, social, legal state (Constitution of RA, article 1; 203), and article 203 - that articles 1, 2, 3 and 203 of the Constitution are not subject to change. Article 1 of the Constitution of the Russian Federation perpetuates that the Russian Federation - Russia is a democratic federal state governed by the rule of law, with a republican form of government, and Article 135 (Constitution of RF, article 1;135) establishes that articles 1 and 2 may be reviewed exclusively by the Constitutional Assembly. It follows from the above that the path of democracy chosen by the peoples of the Republic of Armenia and the Russian Federation has no alternative; that is, the highest state authorities and local self-government bodies are elective. The very concept of "democracy" provides that power in the State is exercised by its citizens in equal rights and on the basis of the consolidation of these rights in the Constitutions. This, in turn, means that in a modern democratic, rule-of-law state, political rights are among the most fundamental rights. It is no coincidence that Article 2 of the Constitution of the Republic of Armenia and Article 3 of the Constitution of the RF state that "Power belongs to the people. The people exercise their power through free elections, referendums (Constitution of RA, article 3; Constitution of RF, article 2)", that is, the people are the sole bearer of political power (in this case, the people should be understood as citizens) and exercise their power by exercising their political rights.

Political rights and freedoms are not only recognized by the state but also protected by it since the significance of constitutionally enshrined

rights is expressed in the fact that it is their implementation that ensures the declaration of the state as democratic and legal. Article 3 of the Constitution of the Republic of Armenia and Article 2 of the Constitution of the Russian Federation state that a person, his rights and freedoms (including political rights) are the highest value that the state protects the fundamental rights and freedoms of person and citizen. Moreover, the Constitution of the Republic of Armenia perpetuates that public power is limited by the fundamental rights and freedoms of man and citizen, which are directly applicable law (Constitution of RA, article 3).

Since political rights are in one way or another connected with the participation of citizens in the socio-political affairs of the state (for example: through political elections) or legal influence on the state power, the ruling elite (for example: through strikes, mass protests), it should be noted that political rights, in turn, are determined within the framework of the "Right of Politics", that is, the right to participate in politics, which serves as a guarantee of a kind of influence on the part of citizens and civil society as a whole, on the state and on the activities of political figures (Harutyunyan, 2018).

There is a gap in the modern political science and legal literature regarding the rights related to politics, and, therefore, there is still no unambiguous approach to the concept of "The Right of Politics" in professional literature. Based on this, we propose the following definition.

The law of politics is a system of norms expressing the political rights of citizens of the state, determined by public authority and protected by state coercion, which is characterized by formal certainty and which, on the one hand, regulates political relations, on the other hand, ensures the functional activities of public authorities.

Political rights, on the other hand, are norms of behaviour of citizens in the sphere of state administration, which are enshrined in the Constitution of a particular state, as well as in other laws and by-laws.

That is, in essence, the concept of "The right of politics" is broader than the political rights of a particular citizen. Moreover, political rights are just a constituent of the concept of "The Law of Politics". However, it should be noted that since political rights are related to the right of citizens to participate in government directly or through their representatives, therefore, these rights, unlike other rights, belong exclusively to citizens and from this point of view can be considered civil rights.

It follows from the above that political rights arise in specific circumstances and have the following features:

- political rights and freedoms arise for a person from the moment of taking citizenship in accordance with the established procedure.
- from the moment they reach the age of majority (suffrage)
- political rights belong to every citizen equally, i.e. the right to 1 vote in elections or referendums belongs to 1 citizen;
- political rights and freedoms are not related to the legal capacity of citizens but to their dispositive capacity.
- the state ensures the realization and guarantees the observance of the political rights and freedoms of citizens.

Among the political rights, the following fundamental rights should be noted:

- the right to vote (here it should be noted both the right to be elected to state authorities and local self-government and the right to elect representatives to state authorities and local self-government and thereby manage the affairs of the state;
- the right to participate in the referendum;
- the right of citizens to unification, the right to form parties with other citizens and join them (according to this right, citizens unite in trade unions, public associations to protect their interests; citizens dispose of this right voluntarily, forcing anyone to join or stay in an association is not allowed);

- the right of peaceful assembly, organization of rallies and demonstrations, marches and picketing (citizens can use this right only to protect their rights and interests and only in a peaceful form, armed rallies and gatherings of citizens are not allowed).

Political rights and freedoms are guaranteed at the highest legal level and belong exclusively to all citizens, regardless of gender, nationality and race, who have reached the age determined by laws for the exercise of these rights. No one may be deprived of these rights, except in cases established by the Constitution and laws.

It follows from the above that any obstruction to the exercise or realization of political rights can be qualified not only as a crime against the constitutional rights and freedoms of man and citizen but also against the foundations of the constitutional system and the security of the state.

Concepts of Crimes Against Political Rights and Political Crimes

Before proceeding to the definition and consideration of the concepts of crimes against political rights and political crimes, it is first necessary to consider the concept of "crimes" in general. As you know, the concepts of "crimes" and "punishments" are fundamental concepts of criminal law in general (Avetisyan & Chuchaev, 2014). In the Russian, Armenian and professional literature of other states, "Crime" is defined as a legal concept, the general features of which are defined in the norms of the General Part of the Criminal Codes.

According to Part 1 of Article 18 of the Criminal Code of the Republic of Armenia, it is indicated that a crime is considered to be a culpably committed socially dangerous act, which is provided for by the Criminal Code (The Criminal Code RA Article 18, part 1, adopted on April 18, 2003, 2015). In accordance with Part 1 of Article 14 of the Criminal Code of the Russian Federation, a crime is a culpably committed socially dangerous act prohibited by the Code under threat of punishment (The Criminal Code RF Article 14, part 1, adopted on June 13, 1996, 2021). It clearly follows from the above that a socially dangerous, illegal and guilty act of a delinquent person, for which criminal punishment is provided, can be considered a crime. Part 1 of Article 28 of the Criminal Code of the Republic of Armenia and Part 1 of Article 28 of the Criminal Code of the Russian Federation, which lists the types of guilt, states that guilt manifests itself both intentionally and by negligence (The Criminal Code RA Article 28, part 1, adopted on April 18, 2003, 2015; The Criminal Code RF Article 24, part 1, adopted on June 13, 1996, 2021).

Crimes directed against political rights, we propose to define as follows: A crime against political rights – (a political crime) is a culpably committed socially dangerous act that is directed against the realization of political rights and is provided for by the criminal code of a particular state. If, in the case of other crimes, guilt can manifest itself both intentionally and through negligence, then in the case of crimes against political rights, there is only direct intent.

The world of politics as a whole, as a subsystem of public life, is the object of criminology research, and in particular, one of the developing branches – political criminology (Zorin, n.d.).

Despite the fact that in modern political science and legal literature, there is no unambiguous approach to the concept of "political crime", in criminological literature, a political crime is understood as a crime associated with obvious actions/inaction that harm the interests of the state, its government or political system. However, the founder of the term "political criminology", D. A. Shestakov (1992), suggests dividing political crimes into two groups:

1. crimes against the State and its officials;
2. crimes of the State and its representatives against the population.

From the logic of the presented approach, it can be concluded that the first group of political crimes includes crimes against the foundations of

the constitutional system and the security of the state, which manifest themselves in the form of acts encroaching upon public relations, ensuring the inviolability of the foundations of the constitutional system and the security of the state, the normal functioning of state bodies belonging to various branches of government, as well as the interests of public service and service in local self-government bodies. Crimes against the order of governance, which are defined as socially dangerous acts that encroach upon the normal management activities of public authorities and local self-government bodies, can certainly be attributed to this group (Tsagikyan, 2017).

The second group of crimes includes crimes against the constitutional rights and freedoms of man and citizen, which are provided for by a special part of the Criminal Code and are defined as socially dangerous acts that infringe on the rights and freedoms of man and citizen documented by the state enshrined in the Constitution. Among the crimes that affect the political rights and freedoms of citizens, first of all, it should be noted the obstruction of the exercise of the electoral right, the work of electoral commissions or the exercise of their powers by a person participating in elections (the Criminal Code of RA, article 149), obstruction of the exercise of electoral rights or the work of election commissions (the Criminal Code of RF, article 141), falsification of election documents, referendum documents (the Criminal Code of RF, article 142) falsification of election results or voting (the Criminal Code of RA, article 150); voting more than once or instead of another person (the Criminal Code of RA, article 153).

Despite the fact that Shestakov's concept is acceptable to many scientists dealing with this problem with certain reservations (Gilinsky, 2002; Ward, 2005), however, there are also opposing opinions. For example, V. S. Ustinov considers political crime as a set of crimes that are committed with the aim of forcibly seizing state power only by armed means. And as the fundamental types of political crimes, he notes parties, movements for the forcible seizure of power, the forcible creation of a new state, the annexation of the territory of another state (military coup) and the unconstitutional displacement of the legitimately elected government (coup d'etat) (Ustinov, 1993).

Without distinguishing state crimes from political crimes, it should be noted that they relate as part and whole. If a State crime means the criminal activity of States and representatives of the ruling authorities, in the process of which both domestic criminal laws and norms of international law are violated, then both the State and the population can be the subject of political crimes. In this context, a political crime is broader than a state crime. Moreover, from this point of view, State crime is only an integral part of political crimes. In addition, we propose to expand the range of subjects of political crimes, stating that the subjects of political crimes can be not only the state, the population and representatives of the ruling elite, but also all political forces and figures. In this context, the approaches to the definition of political crimes by G. N. Gorshenkov (1999) are more acceptable, according to which political crime is considered as a set of criminally punishable acts chosen as means to achieve political goals and V. V. Luneev (2004), who believes that political crime is a socially dangerous struggle of the ruling or opposition political elites for power or for its illegal retention. According to Gorshenkov's definition, a political crime should be understood as all those criminally punishable acts that are aimed at both the arrival and retention of political power. And Luneev, unlike Gorshenkov, puts purely political motives at the root of political crimes, believing that this is the criminal activity of the ruling elite and/or those claiming power, whose goal is to obtain or retain political power. As for the expansion of the range of subjects of political crimes, this proposal is conditioned by modern realities and, in particular, the political realities of transitional States. In our deep conviction, it is far from accidental that the intellectual qualifica-

tion of rulers, and in the case of Aristotle, political knowledge and education of citizens were fundamental requirements for both rulers and citizens, that is, voters. This problem is more acute, especially in modern times, but considering the fact that in modern conditions democratic, legal states cannot deprive politically undeveloped citizens of the right to vote or the right to run for one or another electoral post, modern states must find appropriate solutions in order to avoid irreversible consequences after political elections.

It is no secret that in countries in a transitional period and in developing countries where there is no stable middle class, most citizens have low political, civil and legal consciousness. If we add to this the possibility of using radical political technologies and manipulative tools during the election race, then the fact of political illiteracy of citizens often serves as a tidbit for unscrupulous political forces and political figures who, during election campaigns and during government, often make unrealistic, unrealizable, sometimes anti-state promises, receiving votes.

Undoubtedly, the above-mentioned way of coming to power and retaining power is both unconstitutional and undemocratic. Consequently, the rule of law must prevent all possible political crimes. In order to prevent taking advantage of the politically underdeveloped citizens of transitional states during their coming to power and abuse of political power, the manifestation of political negligence in the process of government, we propose to equate evasion from the election program with political crimes. The solution can only be the legislative consolidation and criminalization of the evasion of a political force or a political figure from the election program and pre-election political promises. Moreover, if, as a result of the bias of election promises, great damage has been done to the state and society (for example, as a result of a sharp change in defence policy or a radical change in foreign policy), then it is necessary to provide for constitutional responsibility for a political force that may be banned in this country.

A slightly different manifestation of political criminality is political corruption, the specifics of which require radical political reforms (Amundsen, 1999). If Corruption is defined as a socio-legal, political, economic and moral phenomenon, expressed in the use by a civil servant or employees of commercial and other organizations of official powers and opportunities of their official status for selfish purposes in personal, group and corporate interests, or the provision of such benefits and advantages to these persons by individuals and legal entities (Tsagikyan, 2006) hence "Political corruption is the use by a person holding a public office of the state powers and rights entrusted to him, official position and status in the system of state power, the status of the public authority he represents, for the purpose of illegally extracting personal and (or) group, including for the benefit of third parties, political benefits (political enrichment)" (Nisnevich, n.d.). It should be noted here that, unlike other types of political crimes, political corruption is latent and often remains invisible (Kwon, 2015). It follows from the definition of political corruption that the ultimate goal of political corruption is also political gain, that is, coming to political power. That is why we face political corruption more vividly in the process of coming to power, which can be conditionally called electoral corruption. Electoral corruption takes place especially during political elections when certain politicians (mainly politicians of the ruling power) suppress their political competitors and distort the free will of citizens. Politically corrupt actions are accompanied by violations of legal acts, sometimes laws and the Constitution. Political corruption also takes place when politicians in every possible way abuse the laws that they have adopted themselves, ignore and circumvent them, and in the future, such laws and decisions that express their private political and not only interests are adopted under their protectorate. Ultimately, political corruption is constantly increasing and eventually leads to a complete deformation of the elec-

toral process, turning it into an imitation of free elections, and corrupt politicians, those who came to power in an "unfair" way, prevent the further realization of the remaining political rights of citizens already at the stage of using power. This, in turn, as a rule, leads to an authoritarian regime, which tempts the existence of any political rights, and the opposition turns into a political prop or, as they say, into a pocket opposition.

Conclusion

Summarizing the above, it is difficult to state that political crimes, unlike other types of crimes, are distinguished by their complexity and multilayer nature – this is a collective phenomenon that penetrates into all spheres of society's life with a domino effect, destroying all stable mechanisms of peaceful cohabitation. In order to warn and prevent political crimes, modern legal, democratic countries at the highest legislative level should consolidate those political forces: political parties, political blocs, interest groups, individual political figures, after coming to political power, in addition to functional obligations, should bear programmatic responsibility. This requirement may, on the one hand, keep political figures from irresponsible political promises; on the other hand, ensure a guaranteed calm pre-election and post-election state.

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THE LEGAL STATUS OF AN INDIVIDUAL IN RUSSIAN SCIENTIFIC, POLITICAL AND LEGAL DOCTRINES

Abstract

The article explores the notion and peculiarities of the legal status of the individual in the Russian scientific, political and legal doctrines in the context of Philosophy of Law. In the given research, the author, based on the study of the materials of the history of legal-political thought, not only reveals the peculiarities of the legal status of the individual in the Philosophy of Law but also implements versatile, holistic, systematic (methodical) analysis of content and of the concept "legal status of the individual".

Summing up the investigated issues, the author came to the conclusion that the scientific views and developments of Russian jurists (from the end of the 18th century to the beginning of the 20th century) had a tremendous impact on the development of the legal status of the individual, and civil society, as well as the relationship between the state and the individual.

Therefore, theoretical and practical research of the problems of the development of the legal status of the individual in the works of famous Russian jurists in the context of the philosophy of law makes it possible to understand the current situation of human rights in the theoretical and legal, and even constitutional and legal aspect.

Keywords: legal status of the individual, Russian jurists, reforms, natural human rights, interests, the freedom and equality of people, public relations.

Introduction

In modern philosophy of law, the concept of "the legal status of the individual" has been studied in depth and comprehensively by European and Russian well-known jurists and philosophers, who have endowed this concept with unique nuances and features. The legal status of the individual is a complex, social, legal phenolmenon that has manifested itself in different ways in different historical periods and social formations. Consequently, it is natural that the legal status of an individual and its structural elements are investigated both by the modern philosophy of law and by branch sciences and special legal sciences (constitutional law, criminal law, criminology, etc.). *According to the generally accepted definition, the legal status of an individual is his actual state in a given society and state, which to a greater or lesser extent (depending on the form of government and political regime of the state) is reflected in law* (Ayvazyan, 2008, p. 12).

According to E. Lukasheva (2011), since the 17th century, one of the most important components of European civilization has been the idea of human rights, which has never been included in the political conception of Russian scholars and therefore has not been able to capture the public consciousness and become the goal of society (pp. 68-70).

In our opinion, E. Lukasheva's idea that Russia cannot belong to any particular type of civilization, including the European civilisation, is subjective. Despite the fact that Europe preceded Russia with its progressive ideas, Russia did not stand on the verge of universal development. Moreover, from our perspective, modern jurists

are exaggerating, noting that the positions of Russian jurists have been decisive in the process of shaping world liberal views (Alekseev, 1995). The conducted research shows that the political and legal concepts about the interaction between the state and the individual are developed in pre-revolutionary Russia in the same way as in the West, but with certain features. It is obvious that the pre-revolutionary Russian legal consciousness was not far from the political processes regarding the legal status of a person.

It should be noted that Russian legal thought originated, developed and was seriously influenced by the practice of Western European theory. However, it has had endowed with its own liberal-legal traditions concerning the concept of the legal status of the individual, human rights, relations between humans and state. Moreover, the idea of the legal status of the individual in state and society developed within the framework of the liberation process, the main task of which was the abolition of serfdom.

V. Bagdasarov (1996) rightly pointed out that the dissemination of ideas about the inalienable nature of human rights was initiated in the leading social strata (pp. 44-45).

Nevertheless, the implementation of human rights was more related not to the development of civil society but to the programs and actions of the state. At the same time, special attention was paid to the right to intellectual property and the doctrine of limiting the power of the state in favour of human rights.

Analysis of Main Ideas about the "Legal Status of the Individual" from the 18th to the 20th centuries

It is noteworthy that from the end of the 18th century to the beginning of the 20th century, basic doctrines and structures for the protection of individual rights were established and developed in Russia. They were based on the ideology of world-famous representatives of the philosophy of law and received their special reflection in law enforcement practice. Russian legal scholars have found a connection between human rights and specific historical conditions, socio-economic relations, the social structure of society, traditions, civilization, legal awareness and ethics. However, it was necessary to overcome the disregard for the theoretical experience of previous generations of Russian political thinkers, well-known scholars and lawyers, while not excluding the views of the representatives of the autocratic-conservative ideology, which were based on new socio-economic and political processes in the country.

Thus, K. Leontev and L. Tikhomirov were active opponents of any manifestation of individual rights, freedoms, and universal equality, arguing that the individual should not claim rights in order to preserve the vitality of the state and society (Tomsinov, 2015, pp. 25-30).

It should be noted that according to M. Katkov and K. Pobedonoscev, individual rights and freedoms were paternalistic in nature, where an impartial monarch personally exercises legal control over the relationship between state bodies and society. Consequently, the rights of the individual automatically followed from the rights of the monarch, personifying the nation and society. The harmony of the interests of the state and the society can be achieved by combining them. Therefore, the rights and freedoms of the individual can be achieved by combining them with the rights and freedoms of the monarch. These basic ideas did not deny the recognition of the permissible limits of individual rights and freedoms in civil law in the field of property rights.

The reforms adopted in Russia in the middle of the 19th century (abolition of slavery, land and procedural reforms) had a revolutionary impact on the legal status of the individual, freedoms, as well as on the formation and development of the ideas of a legal, social state.

It should be noted that during that period of time, a number of Russian jurists (A. D. Gradovsky, V. M. Khvostov, B. A. Kistyakovsky, M.M.

Kovalevsky, N. M. Korkunov, P. S. Novgarodtsev, G. F. Shershenevich, B. N. Chicherin, N. S. Polienko, A. N. Radishchev) developed and presented various theories of the legal (constitutional) state and the legal status of the individual.

Russian scientists, cooperating with European jurists, presented neoliberal approaches to human rights and the legal (constitutional) state. Simultaneously they established theoretical ideas of a new generation of rights wish reflected global trends of the role of the state in the process of ensuring human rights.

It should be noted that in the works of A. D. Gradovski, the protection of inalienable and natural human rights was not accompanied by a corresponding criticism of the existing regime. The freedom of the individual was presented quite feasible within its framework. In his publications, there are none of those angry invectives against the "lawlessness" of the Russian order. However, according to A. D. Gradovski, the fundamental human rights are based on the civil rights of the person, are fundamental and inalienable (Gradovsky, 1885., pp. 112-113; Tomsinov, 2015, pp. 110-112).

N. Korkunov emphasizes the principle of formal equality of legal norms, where people must exercise each other's rights and obligations. Moreover, the obligation to exercise someone else's interest has an advantage. N. M. Korkunov's views on the nature of law coincide with the psychological theory of L. I. Petrazhitsky. In this context, the legal obligation remains only as long as there is someone else's interest for which it is established (Korkunov, 1898, p. 102).

The evolutionary development of the political regime of the bourgeois constitutional monarchy led to the establishment of the Parliament at the beginning of the 20th century and the granting of political rights to its nationals.

It is obvious that society often raised questions about inalienable and inviolable human rights, and the philosophy of law continued to develop in a liberal way. Therefore, the adoption of liberal laws (1905-1906) was not an initiative of the government but a result of the revolution, pressure of the society (1906-1907).

The rights of citizens were proclaimed in the October Manifesto, and a number of laws enshrined the scope of human rights and guarantees for their realization. These include the right to privacy, property rights, right to liberty of movement and freedom to choose the residence, the right to freedom of expression, the right of peaceful assembly, the right to freedom of thought, conscience and religion, etc.

The idea of equality of the people in pre-revolutionary Russia was analyzed in numerous works of A. Radishchev. From the standpoint of natural law, he developed ideas about the freedom and equality of people in their natural state, their right to life, property, the right to a fair trial, freedom of expression etc. (Shchipanov, 1951, pp. 297-301; Yeritsyan, 2011, pp. 114-115).

The peculiarities of a person's legal status, based on the equality of people, have a special place in B. Chicherin's legal and political concepts. In particular, by comparing liberal approaches of Kant and Hegel, B. Chicherin substantiated the idea of justice, equality of the people. He represented a person as a creature with metaphysical freedom and rational will, who stands at the base of all public relations (Chicherin, 1900, p. 55).

In other words, B. Chicherin opposed the idea of limiting the activities of the state to the protection of the law but also did not accept the idea of the complete subordination of private activities to state power. Moreover, B. Chicherin distinguished two meanings of law: subjective and objective. He defined the subjective right of the person as a moral opportunity, as legitimate freedom and the right to demand something from the government. The objective right was revealed as the law defining those legitimate freedoms. According to B. Chicherin, the developed civil society is a guarantee that the state would not violate the legal limits of its activities and would not invade the field of private relations, and in this case, politically free citizens will become partici-

pants in state power through elections (Tomsinov, 2015, p. 27). B. Chicherin considered the recognition of man as a free person as the most important step in the historical course of civil society, in the achievement to a degree where the political regime becomes truly democratic. B. Chicherin justified the need for reform of Russian autonomy, the progress of the country towards civil society and the rule of law (in the form of a constitutional monarchy). The goal of all these reforms is the freedom of the individual and the improvement of society (Chicherin, 1900, p. 225).

It is noteworthy, the opinion of P. Novgorodts, the leader of the ideology of the revival of natural rights in Russia, that the pursuit of individual freedom, equality and justice does not depend on historical or sociological preconditions (Kornev & Borisov, 2011). The primary source of human rights is the objective ideal of universal, eternal love, right and goodness, similar to Hegel's "absolute idea" and Kant's "categorical imperative". P. Novgorodtsev's researches on human rights and freedoms included new ideas of the relationship between the individual and state powers. Those researches led to the theoretical justification of the existence of socio-economic human rights, which were based not only on the right to a decent life but also on state obligation to protect this type of rights. According to P.I. Novgorod, the state is obliged to eliminate obstacles to the development of human rights and freedoms, as well as to provide financial support for their implementation. Society, according to Novgorod, has always faced the dilemma of "public harmony" or "freedom" (Novgorodtsev, 1991, 235-242). Making a choice in favour of the inalienable dignity of the human being, equality of rights and freedoms of the people, he confirmed that the respect for and protection of the basic rights and freedoms of the human being and the citizen should be the duty of the public power. However, P. Novgorod justified the idea of free social development but did not substantiate its ultimate goal.

Therefore, it is the moral duty of every individual to invest his efforts in the "uncertain future perspective", to promote the moral principle of "free universalism", to the realization of the "idea of free solidarity of all", where freedom and equality of individuals are combined with their unity.

Russian jurist, philosopher N. Berdyaev considered human rights and freedoms to be spiritual rights and absolute values based on duties to God (Berdyayev, 2010, pp. 326-328).

Furthermore, in the new concept presented by N. Berdyaev, "person" was distinguished from "individual". According to Berdyaev, "individual" is a naturalistic, biological, sociological category, and "personality" is a spiritual category. Therefore, a person is a particle of the Universe, society, state and is an independent "world" (Yeritsyan, 2011, p. 120). Moreover, the person is above the state, and God created man in his own image. In its turn, the state is devoid of the divine, and it will never reach the kingdom of God. Since freedom is, first of all, the freedom of the individual, the person acts as a being who limits the power by preventing its illegal steps. According to N. Berdyaev: the violation of human rights by the state and society and its replacement with the right of ownership as a socio-economic right is unacceptable. Consequently, the conflict of individual rights and interests of the state and society must be solved in favour of the individual and his inalienable rights (Yeritsyan, 2011, p. 123).

It is obvious that N. Berdyaev's ideas are based on human rights and freedoms, their guarantee and implementation, smoothing out contradictions between spiritual and material values in society.

It is noteworthy that the merit of Russian natural law lies in the enrichment of the classical concept of human rights, the affirmation of personal values, the axiological identification of problems, as well as the substantiation of human socio-economic and cultural rights.

Proponents of legal positivism, which spread

in Russia in the second half of the 19th century, believed that human rights were based on positive norms (laws).

Thus, Shershenevich replaces the metalegal concept of human rights with the concept of "subjective law". Subjective law follows from objective law, the source of which is the state power. Therefore, the freedoms of citizens are "donated" by the state. Therefore, the positivist theory of the subjective rights of the individual, in the political sense, fights against the abuse of powers of state bodies and other illegal actions.

Representatives of legal positivism, developing the theory of subjective law, came to the conclusion that subjective human rights lead to a clear consolidation of the integrity of human rights in the law.

Based on this theory, sociological, legal positivism was established in Russia in the second half of the 19th century. M. M. Kovalevsky notes that the state and law derive from the same source, pursue the same problem, meet the same requirements – human solidarity.

According to M. M. Kovalevsky (1889), the state and law proceed from the same sources, have the same problems. Moreover, M. M. Kovalevsky emphasized that human rights are the result of social evolution, the assimilation of the historical experience of real, public needs and demands. The realization of human rights (including judicial protection of citizens' rights, the implementation of social obligations of the state to the person) is connected with the idea of a real rule of law. In this case, such a model of the state contradicts the role of "the night watchman state" represented by Hobbes.

N. V. Mikhailovsky was not a supporter of the concept of free will and did not deny the laws of historical development. V. N. Mikhailovsky's ideal is a fully and comprehensively developed personality. Moreover, society should consist of individuals who are capable of mutual understanding, mutual respect and common efforts to achieve happiness (Lossky, 1991, p. 105).

Describing the ideas of Russian legal thought from the end of the 19th century to the beginning of the 20th century, within the framework of the studied topic, Baghdasarov noted: "Different concepts of human rights stem from their individualistic or collectivist (group) spirit, which is reflected in the struggle of liberal-democratic and even totalitarian tendencies" (Bagdasarov, 1996, p. 74).

It is known that individualistic concepts, when solving the problems of the relationship between the right of the individual and the state, consider the interests of the society derived from individual interests, giving preference not to the interests of the state but to the interests of the individual. According to collectivist concepts, the rights and interests of the collective society prevail over the rights of the individual.

Supporters of this concept criticized those bourgeois-democratic rights, the principles of the rule of law, which are designed to ensure human rights, and also ignored the fundamental nature of the system of fundamental rights of the individual, denied the right of ownership and the principle of separation of powers, parliamentarism, etc.

At the beginning of the 20th century, the socialist doctrine became more widespread in Russia, whose followers were: V. I. Ulyanov-Lenin, A. V. Lunacharsky, S. V. Plekhanov, L. D. Trotsky, Yu. O. Martov and others.

The objective of the socialist ideology of that period was to carry out radical reforms based on the denial of bourgeois-democratic values and institutions based on the working class.

Within the framework of the legal status of a person, manifestations of individuality were mildly denied, limiting individual human and citizen rights and giving preference to collective rights.

Nevertheless, the noted theory emphasized the need for a moral and judicial point of view of the legal status of the individual, the coexistence of social relations, the precise consolidation of

the legal status of a person at the state level and the process of its implementation.

It is worth noting that the development of the idea of human rights in the post-revolutionary Soviet system was particularly influenced by the concepts of Marx and Engel on human rights. They, considering man as a "result of history" and simultaneously leading the political and civil life of the subject, define the natural rights of the individual as historically formed bourgeois-democratic rights and freedoms, where the individual and the citizen are private owners (Marx & Engels, 1955, pp. 390-392; Kazanchian, 2020).

It should be noted that the developed socialist doctrine of human and civil rights was entrenched in the Soviet Constitutions of 1936 and 1977. Along with personal rights, the political rights of citizens were also established (Constitution, 1936, articles 125, 126; Constitution, 1977, articles 48-51, 97, 100).

The 1977 Constitution gave a more detailed interpretation of political rights. In contrast to the constitution of 1936, the right of every citizen of the USSR was emphasized to take part in the management of state and public affairs, the right to criticize the work of state bodies. The responsibility of officials and other persons was established for the prosecution of criticism or evasion of its acceptance. Changes have taken place in the electoral law. In the 1977 Constitution, the age limits of passive suffrage were lowered: to all Soviets - up to 18 years (previously for the Supreme Soviets of the Republics - 21 years), to the Supreme Soviet of the USSR - up to 21 years (before that - 23 years). The right of citizens and public organizations to participate in the preparation and conduct of elections was also emphasized. There are provisions on the possibility of electing a citizen to no more than two Councils on attributing election expenses to the state account (Kukushkin & Chistyakov, 1987, pp. 310, 332-334).

The conducted research shows that the idea of Russian legal scholars about the equality of all before the law was reflected in constitutions only in a narrow sense, granting privileges to the citizens of the country. Thus, the 1977 Constitution enshrined the equality of all citizens, regardless of not only nationality and gender but also regardless of origin, social and property status, education, attitude to religion, type and nature of the occupation, place of residence and other circumstances. It is obvious that equality has become absolute. It was also a great achievement that the constitution entrenched the equality of men and women not only in rights and obligations but also in the possibilities of obtaining an education, profession, career advancement, etc.

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Conclusion

Summing up the results of explored issues and considering the legal status of the individual as a dynamic phenomenon of philosophy of law, we concluded that Russian philosophers and jurists have had a significant contribution to the study of the legal status of the individual. Moreover, the principles and characteristic features of the legal status of the individual, which were presented by famous Russian jurists from the end of the 18th century to the beginning of the 20th century, became the basis for the further development of doctrines on the legal status of an individual, not only in the context of the philoso-

phy of law but also in the system of political doctrines. It is obvious, the peculiarities of the legal status of the individual and its basic elements are of great importance for the development of a democratic legal state, as well as for the equitable relationship between the state and the individual.

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THE INFLUENCE OF THE RULING ELITE ON POLITICAL ACTIVITY IN THE CONDITIONS OF DESTRUCTURING THE ESSENCE OF THE PHILOSOPHY OF LAW

Abstract

Different policy actors have different influences on the process. Most do not directly participate in political life: a particular layer of people called the political elite is more likely to get involved in it. From a philosophical point of view, the political elite is mainly defined as a minority of society, a somewhat independent, relatively privileged group (or a set of groups) that has the appropriate psychological, social and political qualities and is directly involved in the formation and implementation of political decisions related to the use of state power or influence on it. The main goal of the article is to characterise the negative influence of the ruling elite on the formation of political activity in the context of revealing its possibilities of destructuring the essence of the philosophy of law itself. The methodology was based on the main historical and theoretical research methods that made it possible to achieve the set goal. As a result of the study, the main elements of the negative influence of the ruling elite were characterised, its place in the philosophy of law was determined and which destructuring consequences it has.

Keywords: philosophy, elite, legitimisation, destructuring, philosophy of law.

Introduction

The ruling elite consists of three interrelated elements: the bearer of power is the political elite; the bureaucratic elite includes representatives of the administrative apparatus; the communication and spiritual elite are representatives of mass media, science, culture, clergy. The political elite is opposed by the counter-elite, an oppositional social group that fights for the right to join the elite, seeks to seize power, proposes its own alternative strategy for the development of society, and whatever the consequences of the elite and the counter-elite are all part of the philosophy of law (Wakeling & Savage, 2015).

The problem of political leadership and elite theory in the philosophy of law has a long history. The word “leader” - leader, leader. Even in Antiquity, the leader was considered a person capable of making history. A specific social situation requires its leader. In each historical period, some theories determined a particular type, image and tasks of the leader. In the political aspect, political leadership is a socio-political process in which one and sometimes several people take on and perform the role of leader of a particular social group, socio-political organisation or movement, state or society as a whole.

Another thing is known. The social significance of the political elite and political leadership depends on the level of political culture and activity of the citizens of society. This is where the field of implementation of specifics is time to examine more closely (Friedman & Reeves,

2020).

In general, the issue of studying the influence of the ruling elite is a common phenomenon. Furthermore, there is even a so-called theory of elites. Elite theory is a worldview and philosophical concept of the role and significance of a particular group of people, a small, close-knit part of society (the elite), and its impact on various spheres of economics or politics. This system characterises the evolution of scientific and social achievements (transformations) due to the combined efforts of a small group of participants linked by common goals and characteristics (Cunningham & Savage, 2015).

The 21st century is a period of social transformation, numerous models of political development, and different approaches to interpreting history. Power relations have played the role of stratification and class formation throughout the history of human society. It is the elites that generate and affirm norms, values, and culture. The elite's power is rooted in the set of ideas and ideologies inherent in a particular era. The personal abilities of the elite allow it to occupy strategic positions in government structures and act effectively to implement the ideas and ideologies it professes. From a philosophical point of view, the elite is, to some extent, a mirror of the era, its wealth (Monteath & Schimpfössl, 2019).

The article's primary purpose is to characterise the negative influence of the ruling elite on the formation of political activity in the context of revealing its possibilities of destructuring the essence of the philosophy of law.

Methodology

To achieve this goal, we have used several methods that shape our methodology for studying the negative influence of the ruling elite on the formation of political activity in the context of its possibilities of destructuring the essence of the philosophy of law, namely some formal-logical, systemic, structural and institutional research methods. Also, methods of general analysis and synthesis, abstraction and analogy were used. Historical methods of analysis are used.

Research Results and Discussions

Now the "elite" is viewed by representatives of various scientific specialities and practices, expert environments from different angles, in different scientific and worldview planes. Such significant attention to the elite phenomenon is explained by the fact that a significant number of representatives of society (despite their excellent political and social status) understand that the fate of the nation depends on the actions and position of the Ukrainian elite. There is also the belief that elite inability is the critical problem of all shortcomings. Therefore, it is not surprising that in the last decade, almost a third of the respondents, among the dominant factors that divide the citizens of different regions, named the political elite - which was stated in the course of the survey by every third respondent (He, 2018).

Since the era of Antiquity, the entire philosophical, scientific world has been interested in the problems of the formation of the political elite because the aristocratic (and later simply the popular) elite was the basis for the formation of state power. Philosophy in ancient times became the basis of all applied sciences and the basis for research. Therefore, on the day of Antiquity, the elite concept was clearly formulated by the philosopher Plato. In the dialogue "State", the philosopher constructs an ideal state system in which society consists of three complementary social strata (Hayo & Neumeier, 2014):

1. rulers-philosophers;
2. warrior guards;
3. agricultural producers and artisans.

These states correspond to the three parts of the soul: reason, will and feeling, as well as the three basic virtues: wisdom, courage and moderation. The primary condition of the fourth virtue – justice (common to all) - is that each group does its own thing and does not interfere with others.

In the Middle Ages, where the starting point of all thinking was the Christian religion, which proclaimed the equality of all people before God, the ideas of elitism did not have a significant basis for research by the philosophers of that time (Barr, 2009). Despite this, we find specific elitist ideas in the "church fathers". In particular, the systematisation of the Christian political concept – "On the rule of lords/kings" outlined his vision of a hierarchical society, according to which to rise above one's state is a sin since God establishes this division. Philosophers, drawing an analogy between man and power, noted that as the human body depends on the soul, the secular power must obey the spiritual and recognise God's will. Since the representatives of God on Earth are the ministers of the church, headed by the Pope, they are the highest executions of society. In the Renaissance, there was a departure from the theological interpretation of the role and place of the ruling stratum in government. The most prominent representative of the socio-political thought of this period was Niccolo Machiavelli, who was one of the first to declare the need to differentiate and balance the power of the ruler, the nobility and the people. He, unlike his predecessors, abandoned the idealisation of political mechanisms, deciding to explore the mechanisms of real politics (Pakulski, 2018).

It should be noted that even though anthropocentrism dominated in the Renaissance and, accordingly, individualistic motives in the work of thinkers are strengthened, the philosophers of that era created the image of a political leader and formulated the concept of a substantial initiative minority manages society.

Meanwhile, in the 19th century, classical political ideologies emerged, whose representatives considered the population's participation in government in different ways. Thus, although the ideologists of conservatism allowed certain modifications, as the philosophers of that time noted, the priority of continuity over innovation.

Nevertheless, the supporters of liberalism, among other things, advocated the admission of representatives of the "third estate" - the bourgeoisie - to govern the country. The ideologists of socialism criticised both the feudal and bourgeois formations, proposing instead a new order characterised by a high level of social justice and equality. The views of the classics of Marxism who believed that the masses played the decisive role in the social development of humankind, and not the elite, had a significant influence on the development of political thought. Furthermore, they came up with the idea of building an anti-elite society. This, in their opinion, will be achieved as a result of the proletarian revolution, the establishment by the ruling (working) class of the dictatorship of the proletariat and subsequent reforms. As a result, people will live in a communist society, in which, as in the primitive communal society, there will be no division into classes (Markoff & Montecinos, 2001).

End of the 19th century - the beginning of the twentieth century. A kind of "challenge" led to "answers" - the first serious attempts to systematise and generalise the disparate ideas of elitism appeared.

Based on value theories in the 60s of the twentieth century. The democratic theory of the elite ("democratic elitism") became widespread. They tried to combine the theory of elites with the theory of democracy, which contradict each other in a certain way. In their opinion, democracy does not eliminate elitism and is characterised not by the absence of the elite but only by a new mechanism for recruiting the elite - competition and the level of control over it by the masses. Moreover, the preservation of democracy depends on the elite, which plays the role of a stabilising factor since it opposes the anarchic tendencies that are characteristic of the masses. Today, this theory appears to be the most widespread in the West, requiring a separate detailed study of its genesis.

It is common knowledge that the political elite is defined by two criteria: the functional one that assumes those who are elected or those who govern us, and the value that covers those worthy

to rule. Ideally, these criteria should be maintained. The essence, philosophy and goal of democracy are precisely in bringing society closer to this ideal: democratic institutions are introduced so that, on the one hand, those who are worthy to rule, on the other, so that those who are worthy to rule have such an opportunity. This political elite, which grew up under the conditions of the union state, did not form as a real elite and therefore turned out to be incapable of solving national tasks.

Concerning their group (community), the following main functions of the political elite are distinguished (Lefkowitz, 2020).

1. Formation of the political and philosophical (ideological) foundations of the development of society as a whole and the direction of movement of the group, represented by this elite.
2. Development of political strategy and tactics and mechanisms for implementing the political will of the group given.
3. Political representation of the community in relation to the subjects of politics and the authorities.
4. Regulation of activities for the political representation of their group (community), strengthening or limiting its intensity.
5. Selection and preparation of the personnel reserve of the community.

So, the elite develops the ideology and basic principles of political strategy (goals, objectives, general calculations of benefits and public expenditures) and tools for its implementation (coercion, agitation, etc.), indirectly leading the overall political practice.

The political elite of the ruling class includes, as a rule, top management cadres and ideologists (intellectuals, bohemians, clergy). They are selected mainly from representatives of their condition, and they are significant material and social positions.

At the same time, two opportunities for replenishing the political elite are often realised (Aitamurto, 2012):

- the transition of some ideologists and politicians to the service in a "more progressive" (promising in terms of career) state;
- constant selection of talented individuals from conquered states by providing them with privileges and professional and material growth opportunities.

In addition to these social groups, the elite includes family members of influential persons from economic, administrative, and political circles. By the way, the mechanisms of family and personal ties, patronage significantly affect the way the elite functions, and this should be taken into account in the analysis of public life and when planning political actions.

In the modern world, the political elite is represented by the former party, trade union, Komsomol functionaries, as well as representatives of the nationally democratic strata. The first, having come to power in the absence of perfect laws, basically began to satisfy their own interests, following the principles of the morality of the old Communist Party nomenklatura: admiration for those who are at the highest level of power and disregard for those who are below the power. The latter, lacking professional skills and management skills, showed helplessness in solving complex social and economic problems, as a result of which they practically left the political scene, but did not forget, guided by the morality of the "new bourgeoisie" and its disregard for the law, to enrich themselves personally.

The essence, purpose and role of political elites is currently a debatable thesis in the realities of many countries. The very fact of their presence is still in question. In terms of philosophy, the main feature of the elite feeling is heightened responsibility (Bühlmann, Benz, Mach, & Rossier, 2017).

The main problems of the formation of the elite and the political class of the countries of Eastern Europe, in particular Ukraine, are advisable to include (Zhang & Meng, 2018):

- oligarchization of elite groups, their alienation from other strata of society and transforma-

tion into a closed privileged caste. This process was most striking during the transition from communist-nomenclature totalitarianism to post-communist-nomenclature neo-totalitarianism;

- the negative influence of the phenomenon of the "party of power" – special institutions, which are characterised by a high degree of mutual responsibility and clan obligations, a tendency towards authoritarianism, a combination of the nomenklatura and oligarchy, the state apparatus and property;
- de-ideologisation of party programs of political parties and movements contributes to the growth of electoral support;
- a gradual decrease in the permanent public "war of elites" and their consolidation around the possibilities of using state-administrative resources in order to satisfy their selfish interests by monopolising specific segments of client-patronage networks, their change and redistribution;
- the desire of a large number of people to join the elite and acquire a significant social status, despite the lack of the necessary natural talents and possible potential, by obtaining a prestigious education or profession or "enrolling" to a passing place on the party's electoral list, supposedly open the way to "a brilliant career";
- creation of favourable conditions for the purposeful manipulation of the consciousness of the broad masses of the electorate due to the neglect of the law, the dominant role of the individual over society in the conditions of total computerisation and globalisation.

As we have already noted, the elite plays a decisive role for any society because it performs certain functions inherent only to it. Among the general functions of the world's national elites, scientists distinguish the following: transfer of experience and information accumulated by the nation and humanity; creator and bearer of knowledge; creation of reasonable opposition to various kinds of dubious social transformations, ideas of sustainable development, innovative and adaptation processes; active promotion of domestic experience and knowledge in the global information space; leadership in shaping public policy and culture, etc.

Regarding this, it must be stated that the activities of the managerial elite today are generally not sufficient to solve specific problems because they do not rely on the solution of socio-economic problems, but mainly on the satisfaction of their interests, which in fact do not run away with state needs and the solution of problems of state development. Regarding that, today, numerous issues remain unresolved, primarily related to the security of the state, as a result - an increase in the unemployment rate, an increase in inflation, an increase in the level of migration of the working part of the population due to unemployment and low wages, an increase in the level of crime, the closure of small and medium-sized businesses. This infers the development of a global influenza pandemic and the like (Fukuyama, 2016).

So, the elite has not yet been able to break out of the clutches of an outdated worldview, the rhythm of modern global civilisation transformations is not felt, this is true, in our opinion, the statement corresponds to the management actions of the elite and allows us to conclude its effectiveness.

As a result, the functioning of this management system, in our opinion, is not only ineffective, but also accompanied by numerous violations and non-compliance, namely: the adoption of laws in compliance with the principles of democracy, the preservation of integrity. state borders, ensuring low-quality economic and social conditions for the development of the population.

So, we can conclude that the domestic elite, namely its development and formation in a modern state, has a wrong structure, is associated primarily not with the order established by law, but with the prevailing informal procedures for entering power, because most of the representatives entered the power structures, namely, the

state administrative apparatus, were actually recruited from business people who have significant material resources and help to satisfy the interests of power structures, as a result - the formation of wrong relations with the suspension, avoiding dialogue with him and solving problems in their favour.

Summing up, it is advisable to note that there are no uncontrollable societies, and indeed there cannot be. Just as state formations cannot exist without their elite and political class, however, in order to solve the above problems, their formation and creation must be carried out deliberately. This will be facilitated by the entry into them of a significant share of the middle class. The representatives of this class become the main factors of socio-economic development, the basis of the political class and form the political elite. However, there is a significant threat so that their assimilation does not occur during their entry into power, their transformation into a quasi-elite, which, having acquired real elitism, will be able to reformulate its previous value priorities and orientations.

It will be essential to use more broadly the approaches of meritocracy - a new philosophy and mechanism for the formation of the elite through its saturation, selection and circulation of honest, talented and capable people. Creation of appropriate social and political "elevators" for this. There is no need to restrict freedom of speech and introduce censorship on criticism of the government, its individual representatives and political parties, which ultimately do not comply with the European standards and international norms and the totalitarian regimes proper. Representatives of the political elite and the political class must consciously and honestly adhere to the principle declared by W. Churchill: "The difference between a statesman and a politician is that the next elections guide a politician, and a statesman is oriented toward the next generation".

The compliance of the legal elite with the challenges of the time should be a guarantee of the spread of fundamental values in the development of society. The respective guarantees are (Davoine, Ginalski, Mach, & Ravasi, 2015):

- the ability to understand the essence of the processes that take place in the state, and to assess contemporary events from the point of view of the basic values and historical prospects of the state and have the quality of a historical vision of the possible prospects for the development of the state and law;
- the ability to carry out communication and interaction between the authorities and the people, to be tied to the fate of the state and to equip life in their country. We must look for strength in the depths of the people, and there is at the genetic level historical and national consciousness, sincere concern for the fate of the country and the people. For the legal elite, its ability to identify with society, its history and culture are essential. Otherwise, the state is threatened with the loss of sovereignty - first "soft" subordination to another culture, and then complete dependence on foreign intervention. The experience of many countries has shown that such a problem is especially acute in periods of profound changes, self-determination of peoples in transitional eras, accompanied by significant national losses, landslides in national values, destructtion of stereotypes, habitual ideas, established structures.
- to participate in the definition and implementtation of long-term tasks of the state. Domestic and international experience shows that introducing alternative methods of dispute settlement and the justice system is a practical prerequisite for resolving legal disputes. At the same time, among the main problems facing the institutionalisation of the practice of mediation, modern researchers and lawyers name: the imperfection of the legal framework for mediation; lack of qualified professional mediators; low level of legal culture of the population; low level of trust in such a service: insufficient level of awareness of citi-

zens about mediation, its advantages as an alternative to legal proceedings, and the like.

- to realise that one of the main reasons for political, economic, and legal instability is society's low level of legal culture. In current conditions, democratic changes in the legal culture of a society are the basis for changing the legal culture of the political elite. Under the pressure of democratisation processes, it is the moral dimension of the functioning of the political elite that should become a determining element in the formation of partnership relations between the government and society, a factor in stimulating the high professionalism of government bodies. The main source of the formation of the legal culture of state authorities and modern Ukrainian society is its own legislative and law enforcement practice of the state;
- act as the central conductor of fundamental legal values based on scientific achievements and comply with European and international standards. The starting point in the processes of forming the legal culture of society and the legal socialisation of citizens should be a system of new values compared with the eclecticism of the transitive stage. It seems that it is the value-based and only on the basis of it - the normative content of law - that leads the progressive development of public legal consciousness and legal culture.

The professional activity of representatives of the legal elite should ensure the high-quality functioning of the legal system, the main goal of which is to establish justice. The legal culture of modern society combines the features inherent in the public consciousness of the past (the prevalence of collectivist sentiments and the priority of social rights in the value system) and the features of Western liberal legal consciousness (the priority of individual freedom).

Conclusion

Despite the persistence of theoretical disputes around the concept of "elite", scientists are unanimous that a minority and a majority can be distinguished in any society, and the first part plays a much more significant role in society than the masses. It should be borne in mind that the elite, in contrast to the oligarchy and aristocracy, which are also characterised by the presence of the elect, is obliged to recognise the public. The elite should be understood as a relatively small social stratum that unites relatively closed groups that occupy high positions in the hierarchy of status and power, access to which is limited by a mechanism of rather strict selection, can create samples of social needs and behaviour, and carry out predictive activities in society; under the political elite, we propose to consider a relatively small structurally integrated privileged group or a set of groups that is a minority of society, has unique socio-psychological qualities, values, vision, attitudes and occupies a high social position, which gives it the opportunity, having the necessary power resource potential, to be the subject of preparation and adoption or influence on the adoption / non-adoption of strategic decisions and dictate. As a result, the rules for organising life in society. The problem of the genesis of the political elite has gained relevance since ancient times and is in the field of vision of modern scientists-philosophers.

As a result of the study, the main elements of the negative influence of the ruling elite were characterised, its place in the philosophy of law was determined and which destructive consequences it has. Further research requires the study of ideology and philosophy, the introduction of the political activities of the ruling elite in individual countries of the world.

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THE CONVENTIONAL NATURE OF LEGAL VALUES

Abstract

The article is devoted to the problem of the nature of legal values, the solution of which is of fundamental importance for the construction of legal theories, in one way or another based on the category of "value". The purpose of this article is to present and substantiate a theoretical model of legal values in the context of a socio-axiological approach to law, involving consideration of the conventional nature of legal values, as well as to characterize the structural and functional relationship of legal values with the legal order and legal culture.

When analyzing modern law, the authors use a socio-axiological approach to law, combining sociological and axiological methodology. At the same time, the authors proceed from a materialistic understanding of values. The article also uses general scientific and private scientific research methods.

The authors come to the conclusion that law within the framework of modern philosophical and legal analysis from the standpoint of the socio-axiological approach appears as a system of conventional values formed and transformed within the framework of legal discourse. Theoretical understanding of the conventional nature of such values provides an opportunity to consider many aspects of modern legal theory from a new perspective.

Keywords: legal values, conventional values, socio-axiological approach to law, legal discourse, legal order, social classes.

Introduction

Currently, in a situation where the modern state is increasingly resorting to legal regulation of public relations, and "state regulation" and "legal regulation" are becoming almost synonymous concepts (in this sense, the legal character of the modern state should be stated), special requirements are imposed on the quality of legislation. Moreover, the quality of legislation is assessed both from the standpoint of juridical technique and from the standpoint of its compliance with the interests of people and their associations. And in this regard, the question arises about the legitimacy of the legislation. This issue unfolds in both legal and political contexts. Indeed, in the conditions of a modern rule-of-law state, the stability of the political order and the effectiveness of the political system of society are closely related to the stability of the legal order and the effectiveness of the legal system. Accordingly, the quality of legislation, considered from the point of view of its legitimacy, is fundamentally important for the state.

These circumstances make it necessary to address our problem – the problem of legal values as the substantive basis of the legislation of the modern state.

The legitimacy of legislation in the conditions of a modern state-organized society (characterized, in particular, by such phenomena as the rule-of-law state and civil society) directly depends on how much it reflects the legal values of this society. Thus, juridical norms that do not meet the legal values existing in society give rise to the phenomenon of a legal form devoid of

proper legal content – the phenomenon of "non-legal law" (Nersesyants, 1997). And legal relations that develop outside of any value criteria lose their legal quality unless, of course, their very existence is considered the only criterion for determining their legal quality. The key here is primarily the category of "legal value". That is, the study of legitimacy, which has a practical expression, inevitably leads us to a more general, fundamental theoretical problem – the problem of the nature of legal values. This problem in modern legal science is among the discussion and, at the same time, extremely relevant.

Research Methodology of Legal Values

Currently, the category of "value" is often filled with different content (Marchenko, 2011, pp. 301-326). We should agree with the idea that "although value issues are present in many works on the philosophy of law (domestic and foreign), there are no specialized works on legal axiology, a fundamental philosophy of values in relation to the state and law has yet to be created" (Marchenko, 2011, pp. 303-304). We suppose that it is the axiological methodology, considered as scientific rather than philosophical and legal, that is able today to compensate for the shortcomings associated with the analysis of legal values that are characteristic of sociological and positivist approaches to law.

Values understood in the context of a sociological approach give us a constructive perspective on the consideration of law as a system of values of a special kind, a system determined in a certain way by objective social ties and relationships. This understanding is also characteristic of the proposed socio-axiological approach to law, which is in demand due to the fact that modern politically organized society is based precisely on legal values.

At the same time, the analysis of the nature of legal values makes it necessary to turn to the axiological methodology, which, in turn, is seriously discredited in modern legal science. This is due to the following points: association of axiological methodology with philosophical problems; attribution of all axiological issues in law to the discourse of natural law theory, which is not very popular in modern conditions (with the exception of the issue of quasi-religious idealization of natural human rights in constitutional law); conviction in the variability of values, the perception of them as something that can be arbitrarily invented, changed, etc.; inability to determine the specifics of legal values (the specifics of law at the level of legal values); difficulties associated with the description of the mechanism of influence of values on human behaviour. It is possible to overcome a kind of "inferiority" of axiological methodology by putting it "from head to foot", that is, by embedding it in the materialistic paradigm of cognition.

It seems quite obvious that the modern study of social phenomena, which include both law and legal values, is possible only within the framework of the scientific paradigm of cognition, namely, within the framework of the materialist paradigm. Today, the most developed philosophical materialistic method, we believe, is dialectical materialism. It appears as a completely relevant, or rather the only suitable (of course, in the system of the presented cognitive model) method of cognition of law as a system of values - values formed in the context of a certain material environment of people's lives. At the same time, values do not arise arbitrarily and are not the fruit of any abstract theory of "reasonableness" or "naturalness" but appear to be really natural derivatives of social relations. These values are formed in certain material conditions of people's lives, are derived from them as their consequence (Marchenko, 2011, pp. 307-308).

Thus, dialectical materialism and the materialistic understanding of values (and, in particular, legal values) brings legal axiology to a new level, radically reconciling it with scientific knowledge and depriving instability of the arbitrariness of idealistic constructions.

The result of combining sociological and axiological methodology based on dialectical materialism is a socio-axiological approach to law, which is one of the most relevant for the analysis of legal values.

Socio-Axiological Approach to Law

Most modern studies tend to consider the law, one way or another, as a system of norms, both in a narrow (norms-rules – models of behaviour) and in a broad (norms – standards of behaviour) aspect. This is a functional and instrumental approach to law, the heuristic potential of which, as we believe, has already been developed in many ways (Bergel, 2000, pp. 78-96). In its most articulate form, this approach is presented in legal positivism (Kelsen, 2015). One way or another, we are talking about a norm model (legal positivism) or a norm viewed in the reproducibility of legal relations and behavioural models in legal practice (sociological, legal theories). R. Dworkin's (1977) concept should be recognized as a special direction, which shifts the emphasis from the norms themselves to standards such as principles and strategies. At the same time, first – the values, and second – the considerations of expediency and reasonableness.

The socio-axiological approach to the law does not exclude the recognition of the importance of the study of formal and normative aspects of the law. He recognizes the pluralism of the legal understanding and considers the law only in a certain perspective.

This approach implies a methodology that assumes a focus on certain cognitive paradigms based on meaning-forming ideas, and it is characterized by certain principles (requirements for cognition) and methods.

Model of socio-axiological methodology:

Cognitive paradigms: the paradigm of development (progress); the paradigm of conditionality of social values by the interests and needs of social actors; the paradigm of cognizability of legal values.

Meaning-forming ideas:

a) the law can be represented not as a "system of norms", but as a system of special values and ideas, the legal specificity of which is determined by their conventional nature, as well as the formation and possible revision within the framework of a special public legal discourse;
b) the legal values are conventional values developed as a result of legal discourse, which is defined in a semantic sense by the antinomies of the idea of law, such as the antinomies of justice, order, freedom, responsibility;
c) a conventional fact should be considered directly as an act of forming a legal value or its change (transformation). A conventional fact of a normative nature is the basis of law-making; a casual conventional fact is a basis for determining the value of value for a specific situation in the activities of a law enforcement officer, especially a judge. This fact creates a value (and/or meaning) on which a rule or a specific decision is subsequently based;
d) the conventional fact forms the right at the ideological and value level. It acts as a natural result of legal discourse and is expressed in a compromise "combination" of various interests and needs of social actors (and above all class interests);
e) the main social actors whose interests determine the formation of legal values in the process of legal discourse are social classes. In their understanding, we proceed from the classical definition formulated by V. I. Lenin (1970): "Classes are large groups of people who differ in their place in a historically defined system of social production, in their relation (mostly fixed and formalized in the law) to the means of production, in their role in the social organization of labour, and consequently, in the methods of obtaining and the size of the share of social wealth that they have. Classes are such groups of people from which one can appropriate the work of another, due to the difference in their place in a cer-

tain way of social economy" (p. 15);

f) legal values, forming a kind of axiomatics of legal consciousness, find visual expression in constitutions, legislation, judicial decisions and juridical practice. Unwritten legal principles can also refer to these values, but they are nevertheless important for the legal system. In complex cases within the framework of juridical practice, legal values often need adjustment or additional interpretation, which has more juridical than political significance. Subsequently, in the case of general recognition, such adjustments and additions become significant in the context of the general system of legal values of the society.

Principles (requirements for cognition): the principle of science; the principle of historicism; the principle of objectivity; the principle of taking into account cultural differences; the principle of understanding values as having a social nature; the principle of priority of the sociological vision of law (the principle of priority of the sociological method is the most important principle within the socio-axiological approach).

Methods: dialectical-materialistic method, sociological method; axiological method; system method; logical method; method of cultural-axiological analysis; method of socio-axiological analysis; method of comparative axiological analysis; method of discourse analysis.

Thus, the socio-axiological approach, without claiming the status of "the only true one", represents a certain angle of consideration of the law and legal phenomena, which, we believe, is very much in demand in legal theory today. The legal understanding based on the socio-axiological approach allows us to consider law as a valid and objectively existing (in the sociological sense of the word) phenomenon, depending on the logic of legal discourse and the balance of the actual needs of social actors. Within the framework of this approach, the law is presented as a system of values with significant specificity (unlike other social values).

The System of Legal Values in the Vision of the Socio-Axiological Approach to Law

The consideration of law as a result of a social agreement has a long history, dating back to the writings of ancient thinkers. So, Cicero considered law to be a system-forming element of the state (res publica); it was a civil-type right generated as a result of private relations of free residents of the Roman polis – citizens (Cicero, 1966, p. 20). The idea of the contractual nature of law will be further developed in the works of modern thinkers who have taken a course to use the scientific paradigm of cognition as an avant-garde model of thinking. The concept of natural law developed by the classics of Modern times (Grotius, Spinoza, Montesquieu, Rousseau et al.), moving away from religious scholasticism, allowed us to correctly grasp such a moment of law as conventionality. However, the main problem of this approach lies not in the fact that the nature of legal values is considered as an abstraction outside of legal relations, which can determine a conventional fact (we believe this approach has a right to exist), but in the idealistic methodological foundations of the approach itself. The theory of natural law, methodologically based, often, on the idealistic philosophical tradition of understanding legal values and law, due to this, can be articulated as a separate philosophy of law, capable of generating meanings, but not establishing objectively existing patterns and features of the development of the legal system (which does not correspond to the modern materialistic scientific paradigm and separates such a philosophy of law from the system of scientific knowledge).

Today, one can also find other clearly logically structured philosophical systems, including those that use or even rely on a certain understanding of the nature of legal principles, which at the same time are a kind of descriptive models that are not rooted in empiricism and do not cor-

relate with any scientific knowledge. There is an obvious "isolation" of such philosophical concepts from scientific ones. This "isolation" is compounded by the fact that such concepts often come from an idealistic philosophical tradition, whereas the modern scientific paradigm is materialistic.

In turn, if our intellectual search seeks not to reproduce a multitude of meanings (such as the world of "post-truth" or "post-truth"), but to the truth, then we must proceed from a scientific, and therefore materialistic understanding of the phenomena around us. Such an understanding should be systematic and consistent; therefore, seriously reduced materialism in its positivist presentation is also not considered relevant for understanding legal values. As already noted above, dialectical materialism, developed on the basis of Hegel's idealistic dialectics within the framework of Marxist doctrine, should become the methodology of cognition of the nature of legal values (Lenin, 1973, p. 43).

At the same time, we cannot limit ourselves to analyzing the traditional set of Marxist views on the law. Thus, a number of philosophical and theoretical constructions of the Marxist kind have already been well understood and rethought. For example, the position of E. B. Pashukanis is quite interestingly considered in connection, in particular, with the libertarian concept of V. G. Grafskiy (2009). However, Marxism is developing, and the Marxist philosophical and legal tradition should not be regarded as a quasi-religious dogma. Marxism should be considered as a developing system of knowledge and a modern methodology. In this sense, the socio-axiological approach to law can give a new impetus to the Marxist philosophy of law. Marxism, with its materialistic approach, socializes legal axiology and, in fact, within its framework, the socio-axiological approach to law makes it possible to comprehend many important legal problems of a philosophical nature, among which is the problem of the nature of legal values.

So, the socio-axiological approach to law (which correlates very well with Marxism) presupposes the idea of law as a system of legal values with a certain specificity. What specifics of legal values are we talking about?

Firstly, the legal values of society are objective, valid and not accidental. They exist with necessity and correspond to the interests and needs of a particular politically organized society (social actors). These values are formed and changed in the process of legal discourse.

Secondly, it is possible to define legal values as a result of legal discourse defined by the "antinomies of the idea of law" (Radbruch, 2004, pp. 86-91), which form legal (always conventional) meanings and values in conditions of close interrelation and competition. It is necessary to distinguish the antinomies of order and justice, freedom and responsibility, as well as related antinomies of justice and responsibility, freedom and order, freedom and justice, order and responsibility. The whole system of legal antinomies of different levels forms a general structure of legal discourse, within which legal values are formed and revised.

Thirdly, the specificity of legal values is expressed in their conventionality, relativity, cultural indifference. Legal values are synthetic and conventional, they are, as it were, "superstructured" over absolute values, and it is precisely because of this that one can find an understanding of legal values as "inauthentic" and a return to "genuine" values is associated with religiosity (Malakhov, 2013, p. 104).

At the same time, the conventionality of legal values does not exclude inequality and class struggle. It can be assumed that in most modern bourgeois rule-of-law states, the class struggle is latent and is being pushed into the sphere of legal discourse. This discourse generates conventional values and meanings, but these values are the result of a temporary consensus - a temporary reconciliation of class contradictions.

Fourth, it is necessary to distinguish between legal values proper and values expressed through

law. One can agree that "in a modern state, the ideal of political and public life depends on constitutional or constitutional-legal values" (Baranov & Ovchinnikov, 2018, p. 82). However, the point of view according to which "...constitutional values are fundamental socially significant ideals, benefits, ideas and priorities enshrined in the Constitution of the Russian Federation or deduced in the process of interpreting its norms..." (Baranov & Ovchinnikov, 2018, p. 83) focuses not on the legal discourse itself, but on the Constitution as a political and legal document, a formal Constitution (Kelsen, 2015, p. 279). We suppose that the fact that these values are contained in the Constitution is not the basis for their legal quality, but rather a confirmation of the legal quality of the Constitution itself, its compliance with conventional legal values accepted in society, which can be called a "valid constitution".

Fifthly, behind each norm-model of behaviour, there is a certain value content, principles and other standards (norms in the broad sense of the word or simply legal standards) that refer directly to value. For example, the principles of law orient a person's behaviour to a certain value more mildly than the norms-models, but both the principle and the norm-model of behaviour have a value content. The difficulties associated with describing the influence of legal values on people's behaviour are difficulties associated with their functional analysis. They constitute a separate subject of theoretical research.

One should be aware that the inability to understand and imagine law as a system of legal values entails a refusal to comprehend law in its essence. The most radical expression of the idea of the primacy of norm over value is the concept of Kelsen (2017), where he makes a value judgment dependent on the norm, and it acts as a judgment about what corresponds or does not correspond to the norm. Such a formalized approach does not allow us to analyze the value level of law. Rather, he, assuming that the norm is the source of value, reduces the value to the level of a "superstructure" over the norm. On the contrary, the transfer of the perception of law from the normative to the value aspect suggests that the approach under consideration will contribute to a more meaningful perception of it in the context of social goals (goals and interests of social actors).

Law, as a system of values, does not lose its class nature, but it can no longer be considered solely as an instrument subordinate to the will of the ruling class or a legal form into which this will "flows" (although this aspect is important for scientific analysis). Here we are dealing, though not with an equal contract, but with a compromise.

Formation of Conventional Legal Values in the Context of Social Contradictions

We believe it is important to form an understanding that when we talk about the interests of social actors on the scale of a politically organized society, the most socially significant are the antagonistic interests of classes. That is, it is necessary to speak here first of all about class contradictions, about contradictions of class interests.

Today, among many approaches to the analysis of social phenomena, the class approach is distinguished by its solid materialistic theoretical basis, but at the same time, it is discredited by quite active criticism and alternative ideological and theoretical constructions that have long become the "mainstream" of modern liberal legal ideology. In the conditions of postmodern rejection of the systematic theoretical reflection of social processes and phenomena, the class approach is often ideologically presented as archaic (Baudrillard, 2006). However, we think that it is he who is able to become the basis for understanding the realities of modern law and order and the unique phenomenon of the bourgeois rule-of-law state.

The class approach to law cannot be reduced

to the content of most post-Soviet textbooks on the theory of state and law. And, being fundamentally Marxist (it is with the concept of Marx that class theory is associated in scientific discourse today), it should not at all proceed from a dogmatic perception of the works of Marx himself and authoritative Marxists and neo-Marxists. It should conform to modern realities and the modern level of humanitarian scientific knowledge. That is why being a supporter of the class approach to the law does not at all mean categorically sharing the well-known thesis of the Communist Party Manifesto that "law is the will of the ruling class raised to statute" (Marx & Engels, 1929, p. 498). This thesis contains some truth, but it forces us to distract from the important and even unique role of law in modern late capitalist society.

At present, as throughout our history, the main driver of the progress of society is the class struggle. It is definitely possible to speak about the class of owners who own the means of production and carry out exploitation – on the one hand, and the class earning their living by labour (workers) - on the other (we deliberately do not use the category "proletariat" due to the fact that today fierce disputes are being conducted around such a definition of the exploited class and this issue requires separate consideration). If the right is conceived from the point of view of content as a system of values, then it will be a system of conventional values reproduced as a result of legal discourse, which is conceived from the standpoint of class theory as a discursive form of class struggle.

Indeed, the modern capitalist rule-of-law state demonstrates its "vitality" precisely because it is legal. This is due to the fact that the legal ideology is the leading one in the "ideosphere" (Zinoviev, 2004. pp. 223-224) of the society. Legal ideology is characterized by a discursive ideological mechanism and assumes the reproduction of its content – the generation of values and meanings through legal discourse. It is into the space of this discourse that the modern state is displacing the class struggle.

Modern politically organized society can be characterized as informational. In it, information becomes an important resource of power, as Toffler (1990) rightly noted.

Accordingly, the importance of the ideological sphere of society today is extremely high. And when the main social contradictions are pushed into the information sphere in modern society, this indicates the extreme importance of legal discourse. It is he who becomes the "arena" of the class struggle, which is temporary (precisely in discourse). It seems to lose its antagonistic character.

The class struggle, pushed into the sphere of legal discourse, allows the modern state (which acquires the quality of a legal one) to remove the problem of a real – forceful class struggle and offer an ideological struggle. At the same time, the state gets a unique opportunity that provides (potentially) an evolutionary transformation of capitalist society into a socialist society, bypassing the forceful forms of class struggle. Thus, despite the fact that conventional legal values represent a kind of result of a "social contract", the subjects of which are classes – dominant and suppressed, and initially the "negotiating" positions of classes in public legal discourse are not equal, as the situation changes and the success of the class struggle against oppression, the system of legal values expressing the balance of interests of social actors changes, which gives rise to the assumption of the possibility of a smooth transformation of society in accordance with the change in the "alignment of class forces". This is possible only on the condition that social actors and, in particular, the state itself are guided by the legal discourse and the legal values generated by this discourse. That is, here we are talking about the fact that the state should formalize these values in legislation, and in any case, ensure that the content of legislation does not contradict legal values. It should be noted that the situation described above allows the State to verify its legal policy and legislation with a system of con-

ventional legal values. Here lies the main criterion for distinguishing a legal law from a non-legal one: a legal law expresses the legal values of society, and a non-legal one contradicts them.

In case of refusal of any social actor in the conditions of the rule-of-law state and civil society from conventional legal values in their activities, such a social actor is at best marginalized. If the state refuses to orient its legal policy on legal values, it loses its legitimacy. The system of legislation also loses legitimacy due to the fact that laws lose their legal content.

Indeed, as Bourdieu (1993) noted, classes can exist as "classes on paper" – that is, as a set of people who relate to the means of production in a certain way, objectively having common needs (but not always aware of them), nevertheless they do not always act as a social actor (which Bourdieu emphasized). A sociologist, according to the French author, can "see" classes, and the "visible" classes themselves are not able to act as actors; they represent only an abstract possibility of the appearance of a class as a group (Bourdieu, 1993, p. 59). We believe that his position does not reflect the actual state of affairs, although it is a very dangerous "arrow" of criticism released into class theory. Of course, in order for classes as a set of people to act as a collective social actor, this set of people must form a class consciousness, awareness of their interests and needs in the context of the interests and needs of the antagonist class. Nevertheless, today ideological technologies and technologies of manipulation of consciousness complicate the process of realizing these needs, and the separation of "conscious" and "unaware" becomes an increasingly important issue, which seems to be "superimposed" on the differentiation of the "proletariat" and "capitalists". The discursive class struggle thus involves those who are aware and act consciously in their own interests and in the interests of their class – social actors, as well as those who are not aware of the class nature of their actions and acting in the interests of representatives of another class or consciously acting in the interests of another class – agents. History knows examples when representatives of the ruling class (for example, Engels) acted from the position of workers, but much more often, workers act as agents of the ruling class. In the legal discourse, we see a kind of purity of the class struggle, where it is not even the subject of the struggle and his understanding of what is happening that is important, but a clash of ideas expressing objective class needs and interests that give rise to legal values and principles. At the same time, in the space of the discursive form of class struggle, in a certain sense, perhaps temporarily, but class antagonism is overcome (due to the fact that discourse presupposes mutual recognition, and legal discourse focuses on compromise and conventional results).

In addition to denying the very fact of the existence of classes, many modern researchers consider the thesis about the defining nature of the class struggle in the development of society to be absurd or unconvincing. This is because the class struggle today is increasingly acquiring a relatively latent form, but at the same time, it has not disappeared anywhere. It continues to be an important factor of social progress, and at the same time, a source of significant social risks and threats to social stability. In turn, when the State expresses conventional legal values through legislation, this contributes to solving the problem of erosion of legal and political systems. On the contrary, if the modern rule-of-law state is entirely an instrument for carrying out the "will of the ruling class" and the legislation expresses the pure will of this class, which does not coincide with the legal values of a politically organized society, then the erosion of the legitimacy of the state, its legislation, legal and political systems of society will inevitably occur. This will mark the return of forceful, "archaic" forms of class struggle, which can be very destructive in modern conditions.

Only legislation based on legal values can fulfil the task of consolidating society, as well as maintaining a "peaceful environment" (Leist,

2002, pp. 40, 122). That is, to fulfil an important task of the state.

Conventional Legal Values and the Law Order

The category of law order is one of the most important in legal research. Today, in a modern politically organized society with a continuing capitalist system, where the main regulatory regulator is law, the study of the law order becomes urgent not only from a legal but also from a political point of view. The law order in modern conditions becomes the basis – a kind of "core" of public order. Moreover, it should be noted that it is formed not only through juridical norms.

We can talk about the law order of the modern late capitalist society at three interrelated levels. One of the levels is a system of conventional legal values, and another is a system of norms-models, standards of behaviour, and the third is legal relations. These levels seem to be built on top of each other and ideally should correspond to each other in order to avoid various problems. Thus, legal norms that do not meet the conventional legal values existing in society give rise to the phenomenon of a legal form devoid of proper legal content – the phenomenon of "non-legal law" (Nersesyants, 1997). And legal relations that develop outside of any value criteria lose their legal quality unless, of course, their very existence is considered the only criterion for determining their legal quality. From the point of view of the socio-axiological approach to law, the basic level here is the level of conventional legal values, which form the ideological foundations of modern society. A number of researchers rightly raise the question of legal values as the "mental basis" of law order (Glukhareva, 2019, p. 67).

With the complication of social relations, the clash of different cultures, the law orders mediated by a particular system of values, there is a need for such social regulators that allow for safe and effective interaction of social actors in accordance with the newly established objective circumstances. The role of such a social regulator, with its inherent specific system of values, is performed by law. In this regard, the criticism of the understanding of morality as a kind of spiritual foundation that consolidates the whole society is absolutely fair. In his now-famous polemic with Lord Devlin, Hart objects to Devlin's thesis that the right should protect morality while not going beyond the fundamental postulates of bourgeois ideology (Hart, 1962). Devlin's position related to the fact that the law should protect morality, in our opinion, has a number of shortcomings that are fundamental.

One of the disadvantages is related to the perception of law as something that can potentially be a means of protecting moral values. Here we see a rather narrow version of the instrumental-positivist understanding of the law. Whereas, being considered from a different perspective – from the standpoint of a socio-axiological approach - law appears to be a different (in many respects fundamentally alternative, but partly meaningfully similar) system of values. Accordingly, both law and morality can be considered as systems of values of different quality, as well as different systems of norms and standards of a different kind. Accordingly, it is necessary to raise the question, not whether the right should protect morality but whether morality should be provided by means of state coercion (including juridical means). Of course, our statements are relevant only if the right recognizes its own value content (socio-axiological approach). C It should be noted that there are also more subtle approaches suggesting a meaningful connection between law, legal awareness and morality. Thus, V. P. Malakhov (2020) notes: "...law without legal consciousness is exclusively a power regulator, legal consciousness without connection with the current law is pure moralization, sometimes mistaken for natural-legal consciousness" (p. 20). Nevertheless, we believe that law and legal consciousness have their own value bases, and in this sense, legal consciousness,

even if it is presented in isolation from the legal "power regulator", does not lose its proper legal quality.

The second drawback is related to ignoring the Marxist thesis about the class character of morality (Hart (1963) does not object to the understanding of morality as a kind of "invisible bonds" of social relations either). We believe that the perception of Devlin's approach to morality, where morality is characterized by Hart (1963) as the "cement" (p. 48) of a politically organized society, is fundamentally erroneous. Morality, not a meta-cultural phenomenon, within a multicultural and poly-religious society, is no longer able to perform the role of "cement of society" or "invisible bonds". Nevertheless, the most important thing is that morality, perceived as a system of values, always has a class character. Morality is imposed by the ruling class on society as a whole, as "recognized by all", but implicitly it always expresses the interests of this class. During periods of aggravation of the class struggle, morality is all the more incapable of fulfilling the function of consolidating society; since its class character becomes obvious, the difference between the ruling and exploited classes and their moral standards becomes obvious and very contrasting. Accordingly, it is possible to raise the question that the morality of the ruling class needs not "protection of the law" but state protection, but at the same time ensuring this protection only exacerbates class contradictions and can even lead to a crisis and delegitimization of state power. It should be noted that many capitalist fascist-type states relied on protecting the morals of the ruling class; the last century shows a number of supporting examples of this (the regime of Nazi Germany, the Franco regime in Spain, the fascist regime in Italy, the Salazar regime in Portugal, etc.). It is not by chance that Chantal Delsol (1995) uses the characteristic "ethocratic state" (p. 102) in relation to states of the corporate-fascist type (for the sake of justice, it should be noted that she considers Nazi Germany separately outside this category, calling it a "racist state" (pp. 54-101)). The French thinker notes that the ideology of ethocratic states has in common a negative attitude towards social rationalism and an appeal to religious and moral values, which, in her opinion, generates a political form preceding fascism "...which can be called an ethocratic dictatorship" (Delsol, 1995, p. 103). Law as a system of universal (within the framework of a certain politically organized society) conventional values that form a "peaceful environment" (Leist, 2002, pp. 40, 122), removing the severity of the class struggle, is precisely the "cementing" ideological foundation that this society needs and which it cannot find in the system of moral values and standards.

Within society as a whole, as well as the international community, the law is a universal and necessary means of consolidating and minimizing dangerous forms of class struggle since neither religion nor morality are able to reconcile class contradictions. It is here that the functions of law are most in-demand. At the level of a modern politically organized society, there are no other grounds for consolidation besides conventional legal values and other foundations of social order besides the legal order.

Conventional Legal Values and Legal Culture

The problem of understanding the relationship between law and culture is one of the most interesting. Within the framework of the socio-axiological approach, we depart from the assertion that moral, religious and other values are directly expressed in law. All these "organic" values are an element of society's culture and undoubtedly play a role in the process of law formation. However, their role is mediated by legal discourse, in the "cauldron" of which conventional legal values are "smelted". They are not "organic" to culture and act as a kind of "metacultural" or "transcultural". Thus, the concept of "legal culture" itself, if it is considered within the framework of a socio-axiological ap-

proach to law, then the concept of "culture" is not understood here in the traditional sense, but rather, it means "metaculture". In fact, metaculture is a synthetic culture of law, which, nevertheless, is associated with absolute non-legal values, but the latter are expressed to varying degrees indirectly through conventional legal values.

In a broad sense, legal culture presupposes the very existence of legal discourse in a politically organized society. In this sense, modern state-organized societies of the Western type are based on a "legal culture", and their system of values is a system of legal values formed conventionally on the basis of legal discourse. Even if we talk about legal values in a monoethnic and monocultural state, they already acquire a potentially relative (disputed) character and, as it were, "breakaway" from the culture in the traditional sense of the word.

The problem of legal education is also related to the problem discussed above. In the context of the socio-axiological approach to law, legal education is significantly different from moral, religious and other types of education. Legal education is a completely different kind of ideological activity since, unlike the above-mentioned types of education, it focuses not on absolute – "organic" – values of culture, but on the relative – "synthetic" – legal values of the supra-cultural plan.

If in slave-owning and feudal societies, the core of ideology was moral, religious and quasi-religious values, in early capitalist societies, religious, moral and patriotic quasi-religious values were also preferred, today this situation has changed. "Natural" values in the cultural sense of the word are organic for a certain people or nation (in bourgeois states); they are deeply rooted in culture and appear self-evident to those who are integrated into this culture. Nevertheless, they implicitly contain the interests of the ruling class, which are positioned as universal. Historically, the developed methods of ideological work consisted in the translation, direct or symbolic reproduction of the content of social relations that actualize these values. These direct methods have always been the basis of ideological work. Nevertheless, "absolute" values, despite their "naturalness", have a number of disadvantages, among which is the inability to change. These values are either shared by members of society, or they are disappointed in them (the latter is fraught with social upheavals and, as a rule, is associated with a change of ideological paradigms or an aggravation of class contradictions). It should also be noted such disadvantages – inherent, for example, in moral values as an uncompromising class character, when it becomes obvious, these values cease to be perceived as "common".

Understanding the specifics of legal values is an important condition for understanding the content of the law, the "idea of law", and its logic. Legal values are closely related to social compromise and to the interests of social actors; they are rational in nature. Accordingly, they can and should not only be known but also understood. As a consequence, legal education requires a greater ideological resource since the introduction of "inorganic" values into consciousness requires great efforts.

Thus, the problem of law as a transcultural phenomenon is closely related to the problem of "legal culture". In fact, the only way to establish a politically organized society in conditions of a plurality of cultures without mutual suppression of these cultures is the formation of a politically organized society based on legal values, which requires the development of legal discourse as a basic mechanism of meaning formation.

Conclusion

Summing up, it should be noted that, in accordance with the socio-axiological approach, the law is considered as a system of conventional values formed in the context of a certain political environment on the basis of a legal discourse focused on the contract.

The legal value should be understood as a

conventional "synthetic" value, which is the product of the coordination of the materially determined interests of various social actors (primarily classes) in the process of public legal discourse. Being conventional (artificial, synthesized within the framework of legal discourse), relative in nature, legal values are able to unite the most diverse society into a single politically organized structure. Thus, legal values are able to create a "peaceful environment" (Leist, p. 40), to form a meta-culture. In turn, the law as a system of values is being "completed" and revised in public legal discourse, which is determined by changes in the material conditions of society, the development of social relations that determine a certain configuration of interests and needs of social actors and, above all, the dynamics of class interests. This "convention" is very dynamic.

Today, one of the important problems of state legal policy is the problem of conceptualization of the legal order. The modern legal order within the framework of the socio-axiological approach is considered as an order based on legal values that are conventional in nature. It is based on a kind of "social contract", more precisely, public agreement on legal values. The system of legal values, which acts as the basic level of law and order, is formed in the process of legal discourse, but once formed, it can be changed in the same discursively conventional way. In the process of legal discourse, this "convention", which forms a system of conventional values, is constantly being "renegotiated" (in terms of changing or deactualizing existing and the emergence of new legal values), remaining, in general, a fairly solid foundation for the stability of the legal order.

In modern society, in conditions of multiconfessional, multicultural communities (and the international community is no exception here), we need a "synthetic" meta-culture formed on the basis of conventional legal values, which are often "organically" not close to each individual culture in the space of meta-culture (and that is why they are perceived as unnatural, even almost alien). Nevertheless, conventional values are really important due to the fact that only based on them can constructive social integration be ensured (often, on the contrary, absolute moral, religious and quasi-religious values in modern society are used as the basis for the integration of destructive groups and criminal communities on the principle of the sect). This is the case when conventional legal values in a modern politically organized society have (and should have) priority over all others (this also applies to values in the field of human rights). We see such a picture today at three levels: national, international-regional and international global.

The conventional nature of the legal values on which the modern legal order is based also makes it meta-cultural, although this does not mean the complete absence of the influence of culture (cultures) on the specific content of legal values and, accordingly, on the legal order itself.

The phenomenon of the rule-of-law state determines the stability of the modern capitalist way of life. Social actors and, in particular, the state itself are guided by legal discourse and legal values. The rule-of-law state should legalize - formalize the conventional legal values in the legislation and orient its legal policy on the conventional legal values of society. Otherwise, the legislation of such a State loses its legal quality, and it itself loses its legitimacy.

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AXIOLOGICAL ASPECT OF LEGAL CONSEQUENTIAL THOUGHT OF THE LATE 18th – EARLY 20th CENTURIES

Abstract

This article is devoted to a comprehensive review of the axiological measurement of legal consequentialism, analysing the ideas of law theorists representing the utilitarian and close to utilitarian branches on the view of values essential for society and state development. The purpose of the article is to identify what value is key for legal consequentialism as a whole, as a theory based on the significance of the result of legal actions, as well as for legal utilitarianism, which necessitates maximising utility. The article focuses on content analysis of key trends in the main legal doctrines of legal consequentialism. In these trends, the authors single out the main concepts, bearing in mind their value for legal science.

The conclusion section of the study generalises the categories that appear valuable for legal consequentialism and formulates the common values of legal consequentialism. The authors justify the need for preserving the axiological aspect of rights and freedom of man and citizen, for ensuring the principles of equality and justice, the humanistic basis for legal activity and the unacceptability of rejecting the said values for a utility or other maximisation.

Keywords: axiology, consequentialism, legal consequentialism, utilitarianism, legal utilitarianism, utility, value, classical utilitarianism.

Introduction

In post-nonclassical rationality that centres around the subject of cognition, his/her interests, needs, and values, the axiological approach to studying social phenomena appears especially relevant. With its growing focus on the essence and hierarchy of legal values, legal science is also not an exception (Tsintsadze, 2013). The utilitarian analysis occupies a special place here for being oriented towards analysing utility maximisation by the cognition subject and satisfying the needs he/she may have.

Due to the specificity of the research matter, cognising the essence of legal values is impossible without a well-grounded philosophy. Comprehensive analysis of the essence of legal values is still poorly reflected in academic literature, even compared with other categories of legal philosophy. Legal researches very often focus more on the definition of legal values for the results of such studies to be considered in practice to protect such values against infringement. At that, firstly, the nature of legal values as a deeply philosophical category is significantly underestimated. Secondly, even if this category is analysed, such studies do not reflect the collision between the nature of legal values and the essence of utilitarianism[1].

Nevertheless, to a certain extent, the issues of the axiological characteristics of law have been recently recognised in the philosophical, legal discourse, and the general theory of law. This is

[1] Thus, utilitarianism can justify lawlessness, arbitrariness, injustice in relation to certain people, if this maximizes the utility of others.

a complex but, at the same multifaceted and methodological relevant task, the fulfilment of which may bring modern law to a new level of perceiving legal reality. Reference to axiology in the legal category of consequentialism studies is brought about by a series of interrelated problems concentrated around the question of the effectiveness of law in the postmodern age.

One such problem is the estimation of values in the context of consequential legal thought. Obviously, a rational person is expected to prefer major values and avoid minor ones, questioning the axiological theory on the perception or opposition to the consequential approach. On the one hand, the consequential approach allows creating a methodology for estimating the subjective utility of categories and goods, which are valuable for that subject. On the other, opponents of such an approach may suggest that a real ethical deed must be motivated by the concepts of honour, duty, and other noble moral stances as opposed to one's individual aspiration to happiness.

Considering the above, the objectives of this research are as follows:

1. to determine the categories that bear any value in the context of legal consequentialism and to conduct a critical estimation of such;
2. to analyse the axiological approach described, first, in the doctrines of the classical legal utilitarianism, and, second, other philosophical and legal doctrines of the 19th and early 20th centuries based on the principle of achieving results.

The contribution this article makes to the philosophy of law is determined by the achieved results that represent the substantive content and external expression of law within the framework of the principles of consequentialism. This article presents an analysis of the nature of legal values both within the framework of utilitarian and non-utilitarian consequential concepts of the period of time slightly longer than the "lengthy nineteenth century"[2].

[2] Is I. Ehrenburg's term, which coined for the 125-year period comprising the years 1789 through 1914.

Analysis of Sources and Recent Research

In this research, existing works on the philosophy of law and the history of legal doctrines have key significance. Special attention, however, is paid to classical utilitarianism (utilitarianism by J. Bentham and J. S. Mill) as doctrines that are the product of philosophical thought (Malakhov, Mailyan & Sigalov, 2017, p. 23) and that laid the theoretical foundation for the appearance of all successive doctrines based on the need for utility maximisation, as well as the achievement for the subject of another significant result.

The axiological aspects of utilitarianism as defined by J. Bentham are reflected in the works of N. Rosenblum (1978), H. L. A. Hart (1982), G. J. Postema (1986), A. N. Ostroukh (2002), J. Dinwiddy (1989), J. H. Burns (2005), P. Schofield (2010), A. Perreau-Saussine (2004), and others.

The axiological aspects of utilitarianism as defined by J. S. Mill are reflected in the works of N. F. Alican (1994), R. Crisp (1997), W. Donner (1991), A. Ryan (1990), J. Skorupski (1989), H. Hollander (1985), T. Mawson (2002), and others.

The period chronologically following classical utilitarianism, the development of ideas by J. Bentham and J. S. Mill, and the axiological aspect of legal concepts based on the utility maximisation are reflected in the studies made by J. Anomaly (2005), K. J. Arrow (1963), N. B. de Marchi (1972), H. Hovenkamp (1993), E. Kauder (1965), G. Stigler (1950), and others.

Also worth noting is that a large contribution to the research of issues related to the axiological aspect of legal researches was made through studies in the fields of social philosophy, philosophic axiology, structural ontology, and cognition methodology by W. Windelband, J. Habermas, O. Hoeffe, A. A. Ivakin, W. Dilthey, M. S. Kagan, I. Kant, H. Rickert, L. N. Stolovich, V. P. Tugarinov, E. Fromm, A. Yu. Tsofnas, as well as

the authors of sociological theory and postmodern philosophy J. Baudrillard, P. Bourdieu, A. Giddens, J. Derrida, J.-F. Lyotard, and M. Foucault.

Without due regard to the aforementioned researches, it is impossible to consider the issues related to the axiological aspect of legal utilitarianism or other legal thought domains. Therefore, taking into account the achievements of Kantian and post-Kantian philosophy of law, it is possible to continue the researches that combine legal utilitarianism and legal intuitivism on a rational and metaphysical basis (Kolosov, 2021).

At that, it is important to notice that, apart from the neo-Kantian tradition popular in legal science that presents values as independent from both the subject and the object, the concept of the value and the problem of its relationship with the subject may have a broad range of different interpretations. The concept of value was studied from the point of view of the psychological approach by A. Meinong and G. Santayana and in the context of "naturalistic" axiology by R. B. Perry and J. Dewey. M. Weber and E. Durkheim implemented the sociological approach in axiology in an attempt to comprehend the sociological issues from an axiological point of view.

A strong impulse to the development of axiology was given by phenomenology, and the works of E. Husserl, M. Scheler, N. Hartman, G. Ingarden, G. Shpet, and M. Dufrenne led to the discovery of one of the milestone axioms for the modern understanding of values – the intentionality of axiological attitude. The phenomenological interpretation of values transformed into different representations brought up by the existentialists (J.-P. Sartre, A. Kamu) and hermeneuts (H.-G. Gadamer, P. Ricreur), as well as M. Heidegger (who refused to belong to either).

The majority of the researchers listed above define the concept of "value" by highlighting their basic characteristics that are somehow inherent in various forms of their existence: "significance", "normativity", "utility", "essentiality", etc. Similar to other trends of legal thought, legal utilitarianism expresses the concept of value in the characteristics relevant for the subject of law, defining his/her state, attitude towards various manifestations of the existing reality that influence him/her directly or indirectly. Emphasis is placed on the relationship between the concepts of "value" and "utility".

Therefore, it is quite fairly stated that, on the one hand, the emergence of value is related to some objects, phenomena, their properties, and capacity of satisfying the needs of people and society, and on the other, value functions as a judgement that is subsequent from the estimation of an existing object or phenomenon by people and society. There is a need for some reference point here, a coordinate system, or at least, common principles for such estimation. And these basic categories, although not indisputable in their content, are suggested by legal utilitarianism.

Despite a noticeable increase in researches focusing on legal axiology, some general issues still remain unsolved:

1. What can be considered legal values with regard to the emphasis on such claims by legal utilitarianism and other legal doctrines?
2. What are their meaning and objective?
3. How do legal values emerge and function?
4. What is their hierarchy, how should legal values be assessed, and is it possible to use the achievements of legal utilitarianism for such assessment?
5. By what means do values of law and legal values penetrate into the regulatory sphere of legal reality?
6. Are legal values and values of law immediate legal regulators?

This way or another, these and many other issues of legal axiology require adopting new approaches at the philosophical-legal and general legal theoretical levels. A proper study of these issues in the context of legal consequential' ideas appears to open the specificity of the dynamics of values in the legal sphere from a different perspective.

What is Valuable for Legal Consequentialism?

The fact that the emergence of values is caused by human needs is stated by many axiological theories. The maximisation of utility, being the main objective of any human life and achievable through the satisfaction of needs, enjoyment, and happiness, is the underlying concept of legal utilitarianism. The diversity of human needs to a certain extent determines the diversity of values related to all possible varieties of social relations regulated by law or morals. Therefore, it can be stated that every person has a set of values related to human needs in a diversity of regulated social relations.

At that, this set of values is not equal to the human set of values, as some forms of social relations, the aspiration for which is claimed by the values may satisfy different needs of a person. Therefore, the correlation of the set of values with the set of human needs may be only presented through an invariant structure of the values system manifesting only the values that are common to all people. On the one hand, people's needs are extremely diverse, with the common ones being only basic human needs; on the other hand, legal utilitarianism relies on the statement that everyone aspires to maximise their utility, also through the satisfaction of a maximum number of current subjective needs in the fastest way possible.

Correlating these two trends to maximise utility for the maximum possible number of people without reducing the utility of others, or, according to J. Bentham, ensuring the greatest happiness for the maximum possible number of people, is the main task of a lawmaker and law-enforcer in the utilitarianism framework.

Another key axiological problem of legal consequentialism, including legal utilitarianism – the objectivity of value, carries a principal meaning, also for the philosophy of law. It is hard to dispute that a man has no other way of judging the value of anything or a phenomenon apart from evaluating them. This thesis underlines the statements of many philosophers for whom value equals estimation, or, according to M. Heidegger, for whom "considering a value is an estimation". The works of the fundamental ontology author are often quoted by followers of the subjectivist vision of values to support their arguments. According to M. Heidegger (1993b), "if a value being continuously referred to is *not* nothing, its existence must be enrooted in being" (p. 183).

The axiological principle of classical utilitarianism is extremely eudaemonist: "Ensuring the greatest happiness of the greatest number" (J. Bentham). Therefore, the common final criterion of evaluating people's thoughts and deeds, the maximisation of utility due to the need to achieve pleasure or ensure happiness (depending on the utilitarianism branch). In this situation, the task of a rational person would be to find a "balance between pleasure and suffering". Utilitarianism is limited to a quantitative "calculation" of values – "felicific calculus" ("moral arithmetics"), similar to the receipts and expenditures calculation done for maximising profit.

However, it does not deny any qualitative criteria of evaluation (especially in J. S. Mill's doctrine). For example, in classical utilitarianism, spiritual values are considered superior to physical ones, intellectual pleasure to bodily pleasure etc. The utilitarian "calculation" of values is widely used in new utilitarianism and pragmatism (Dewey, Gems, Schiller), in phenomenology (Smart, Emerson, Branyat), in the "theory of justice" by J. Rawls, and in the "technology of behaviour" by B. Skinner.

Value as a judgement, as estimation, is always considered through the prism of a logical subject-attitude-object chain, which means they need for subjectification of a value only something that has been evaluated can become a value. Based on the aforesaid, the object cannot be a value as such, as value is always subjective. On the other, such an approach was mistaken according to M. Heidegger (1993a), who claimed

that "at last, it is time to understand how precisely through the characterisation of something as 'a value' what is so valued is robbed of its worth. That is to say, by assessing something as a value, what is valued is admitted only as an object for human estimation. ...Every valuing, even positively, is subjectivising. It does not let beings: be. Rather, valuing lets beings be valid solely as the objects of its doing" (p. 94).

That said, it is often subjectivism that is perceived as a dominating axiological concept in the philosophy of law. In the great diversity of different explanations of value and its role in law, the works of N. N. Alexeev, P. M. Rabinovich, N. Nenovsky, V. S. Nersesyants, and others are of special interest. The works of these outstanding law philosophers have many things in common since they reveal only one of the many aspects of value in law, which is valuable as a utility and a need. As such, subjectivism as a dominating axiological concept reaches its peak in legal utilitarianism.

Axiology focuses (with rare exceptions that do not, however, change the general picture) on the psychological phenomenon alone. In such a view, values are something that satisfies (or has a capacity to satisfy) needs, whatever they may be. Therefore, need already exists, so to say, before its encounter and contact with value. It is only left to find what can satisfy it and become valuable in this sense.

Only in the abstract analysis needs are primary in relation to the means of their satisfaction. In fact, values, even in the psychological sense, are not something associated with present needs but something that creates or is capable of creating them. Needs are oriented not as much towards objects as on values, and the satisfaction of such is about being connected to these values. Needs are the means of actualising values; there is nothing human in values, and the word "value" is just a senseless multiplication of notions.

Legal utilitarianists defined happiness as a "balance of satisfaction and non-satisfaction" established by the mind in unity with inborn feelings and instincts. This is an anticipation of the future positivist sociology, "calculation" of good and evil in the non-positive and new utilitarianism (Weber, Nowell-Smith, Hare, Smart).

As a result, legal utilitarianism, in general, comes to the following conclusions:

1. Individuals have needs and wishes in consuming some goods (including social goods manifested through legal regulations[3]), proper law exercise mechanism for authorised subjects, social order, etc.). However, the intensiveness of these needs and wishes declines as the consumption of these goods increases;
2. People react to stimuli comparing the "difference" of utilities, i.e., for any action, we compare the utility (pleasure) it may bring to the number of expenditures (suffering) it may cause;
3. Exercising certain legal policies, the state may control people's behaviour by measuring and further practical exercise of socially justified rewards for the socially desired activity or punishments for the socially undesired and (or) socially hazardous activity, but the state, at the same, also exists in the context of maximising its own utility;
4. Generally, the similarity of the individuals' needs to be determined by the evolutionary process (Darvinism effect) (Kolosov, 2019), the presence of pleasures and sufferings as "interim" results of decision-making allows comparing the level of utility of satisfying the same needs between different people, revealing, therefore, the most efficient legal norms from the utilitarian perspective.

[3] Legal regulations are good because, for example, in providing certain rights and freedoms, establishing a certain mechanism of legal regulation, they satisfy the needs of certain individuals whose utility function includes these goods (therefore, increasing utility), as well as certain social groups, the great majority of the population, or the nation as a whole. Thus, for example, the safety of an individual, protection of an individual from infringement on his / her life, health, property (and so on), is ensured through prohibition of such infringement established by criminal, administrative, and other laws and regulations, as well as the existing system of the law enforcement bodies.

These ideas resulted in quite a complete and consistent theory of individual decision-making and a corresponding model for exercising national policy, including legal policy. The theory is based exceptionally on the consumption of goods required for a person to satisfy his/her daily needs. Law is only required to optimise this consumption process in a way that would be the most useful for the greater number of people, i.e., maximise its utility.

In 1970, The Consumer Society by J. Baudrillard was published. It claims that consumption makes a man lose his creative essence, alienate from it and turn into a consumer. J. Baudrillard (2020) remarks, "As a consumer, man becomes solitary again, or cellular – at best, he becomes gregarious (watching TV with the family, part of the crowd at the stadium or the cinema, etc.)" (p. 115). Man is a small atom in a huge social system, exposed to the influence of mass media, fashion, advertising, and different stage performances. Man gets absorbed in an imaginary world, at the same time striving to escape through it, which is stimulated by unrestricted material consumerism, mindless fascination with mass culture, vulnerability to different addictions.

As an atomised and isolated subject, man gets overfilled with "sincere faith in consumerism", and "the rising generations are now inheritors: they no longer merely inherit goods, but the natural right to abundance" (Baudrillard, 2020, p. 21). In other words, the fascination with consumption is seen as natural, and the number of consumed items becomes a criterion of success. By the way, at present, the legislative and other law-making practice in the Russian Federation is oriented towards increasing the number of enacted legal regulations. But does a greater number of legislative acts and other regulations usually correlate with the quality of life and achievement of happiness?

As such, happiness, self-creation, and self-identification of man, as a result, according to legal consequentialism, are caused by his consumption capacity, but it must then raise a question on driving this consumption, on developing a mechanism for its distribution, control, and regulation. This creates both the background and the excuse for the bureaucratic machine that provides such consumption. However, the creation of such with a purpose to maximise consumption may stand on one scale, while freedom may be pushed out to the other. There may be nothing blameworthy in the first, as restricting some rights to guarantee such goods as security, stability and order, for providing the greater utility of other goods may become available as consequences of the previous legal solutions. However, the choice of the "scales" is a matter of values in the given community[4].

This way, based on the above, the following may be concluded.

The foundation for social life governed by legal regulations is values that basically do not exist in reality. Values are the matter that connects people and reality as a fragile bridge for their transition into the preferred reality, associated with maximising utility (or any other result, significant for the subject) manifested in pleasure or happiness (depending on the utilitarianism branch in question).

Values are what one should look up to regardless of their voluntary nature; this is why it is valued, not self-identification of the subject, that underlie freedom. Values only make sense as absolute reference points, as milestones. In attempting to make values relative, we dissolve the meanings and ideas they represent, replacing them with practical motivation; here, values are nothing but their costs. In such a "practical" community, everything is rational but fruitless.

Values are forms, not content. Values are absolute in their form and are therefore unchangeable. It is only their content that can change, that can be connected with value as their form in any voluntary way. On its own, value is an invariant spiritual state of people from the perspectives of their dominants, archetypes etc. Changing the

[4] This process goes back to modernism, which is pointed out by F. Jameson (2019, pp. 183-184).

attitude to values means changing the people.

Axiological Approach of Classical Utilitarianism Philosophers

According to the utilitarianism concept, the main axiological principle that should be followed is the principle of utility. It represents an endorsement of those actions that increase utility or decrease suffering: the first considered as "right" and the latter – "wrong". Given the division of actions into two "categories" by J. Bentham, the principle of utility becomes a moral imperative that should be followed in different domains, including legal activity, and ethics is defined as the art of managing people's actions for producing the maximum amount of happiness. Correspondingly, the law should establish such a mechanism for regulating social relations that would maximise the utility of the majority of people and minimise their sufferings, thereby ensuring "the greatest happiness of the majority".

Just like J. Bentham, J. S. Mill relied on the need for achieving happiness as a foundation of his moral and political philosophy. According to J. S. Mill (2013), happiness is the only goal of human life because happiness is what people actually desire (p. 137). "This, being, according to the utilitarian followers' opinion, the goal of human activities, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts of human conduct" (Mill, 2013, p. 61). According to J. Bentham and J. S. Mill, striving for happiness is a fundamental given of human nature. Happiness here acts as a fundamental value. This is why striving for happiness is the foundation of the principle of utility introduced by classical utilitarianists that "considers the greatest happiness of all those involved to be the true and right goal of any human action" and that is "the only genuine goal, the only imperative goal that is desirable from all perspectives".

The moral universality of classical utilitarianism (according to the general classification by Apressyan (2016) manifests itself through the principle of utility that expresses universality as an absolute and defines ethics as knowledge-oriented towards the search for moral truth. The prevalence is associated with constant changes in the structure of values. Generalisation constitutes the very method of moral estimation through which every deed must be correlated with the principle of general utility. In this regard, unlike J. Bentham, J. S. Mill does not deny the significance of universality, completing it with the "universal experience", i.e., the experience of entire mankind as a species. Thus, an imperative is formed, which, in contrast to the categorical imperative of I. Kant determines the global utility by the maxima of behaviour. This is the source of normativity for the most utilitarian theory that also creates normativity "outside the theory", formulating a general principle of action that ultimately appears as a value.

The source of normativity and recognition of the ethical system, including utilitarianism, lies in the proof of what exactly is *desirable*, i.e., what forms the final goal (and the only goal served as a criterion for morality). J. S. Mills (2013) draws an analogy between the observability of physical phenomena such as light and sound and the object of human desires: "The only proof capable of being given that an object is visible is that people actually see it. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable is that people do actually desire it" (pp. 137-139). Relying on this analogy, he claims that people's final goals that form the notion of a moral good can be derived from their actual goals. Therefore, in utilitarianism, happiness is the only goal of human life because happiness is what people actually desire (p. 137). "This, being, according to the utilitarian followers' opinion, the goal of human activities, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts for human conduct..." (Mill, 2013, p. 61). Therefore, happiness that is primarily identified by utilitarianists in their observation

of human conduct is further promoted to a moral imperative.

For J. Bentham, the source of moral categories, as such, is beyond the sphere of his interests; he manifests them on a pragmatic ground, proceeding from the needs of legal practice and law-making activities. In his definition of the principle of utility, J. Bentham emphasises that this principle is applicable to any actions, including those related to the exercise of statutory and legal regulation.

From *An Introduction to the Principles of Morals and Legislation* by J. Bentham and his other works, we may conclude that in order to comply with the principle of utility, the legislative regulation must rely upon the following:

1. New laws must only be enacted in situations where they increase people's happiness compared to other alternative draft laws or the situation of total absence of the law regulating the given domain of social relations;
2. Laws must be rigorously followed (unless the law clearly causes the suffering of many people)[5];
3. Laws must be recognised as invalid and replaced with new ones if the old laws do not comply with the principle of utility.

Thus, the main value of legal utilitarianism is utility-maximisation. The law must facilitate such maximisation, not obstruct it.

The Value Approach in Non-Utilitarian Theories of Legal Consequentialism

After classical utilitarianism, a significant role in creating the environment and conditions for the development of consequential legal thought was played by R. Jhering. He was known as the German Bentham because his line of legal thought had a specific socio-utilitarian orientation and was even called social utilitarianism (Seagle, 1945, p. 71), although it is not utilitarianism in a strictly formal sense. While other works on the philosophy of law were mostly focused on the search and definition of the nature of law, R. Jhering drew everyone's attention to the relevance of the rule of law as a legal category. He emphasised the social purpose of the law and insisted that the law must be brought into conformity with the variable social situation for the law to comply better with the current social relations and to make legal regulation more socially beneficial. His thesis was that the protection of individual rights is dictated only by social considerations. What is known as "intrinsic rights" is nothing but social interests protected by law. The well-being of people is not the ultimate goal; it is recognised as such only to the extent to which it promotes the general well-being of society.

R. Jhering's social utilitarianism is a link between J. Bentham's individual utilitarianism and two important branches in the 20th-century legal science: "jurisprudence of interests" in Germany and sociological jurisprudence (sociological law school). Having written *The Spirit of the Roman Law at the Various Stages of Its Development*, one of his main treatises, R. Jhering developed a theory according to which the essence of rights is an interest protected by law. It brought him to the search for the purpose of rights. As a result, he defined the purpose of rights as a creation of laws, the foundation of which will rely on practice. Every action, including one that entails the legal fact, is performed with a specific purpose. The fundamental philosophy of law by R. Jhering is based on the theory of psychological causality. The physical world is completely subject to the laws of cause and effect. At the same time, all the actions of the subjects of law have always been guided by a concept of goal. Therefore, interest is a compulsory condition for any action, and the goal is the "creator" of a law.

In a certain sense, in contrast to utilitarianism, an idealistic concept of values is affirmed in German classical philosophy.

Kant's idea of values is based on the principles of the opposition of the two capacities of

[5] This is only an overview of J. Bentham's law, not a "call" to ignore the laws that do not comply with the principle of utility.

human existence: the world of nature and the "realm of ends". In the world of nature, everything obeys the law of necessity, although people's actions, observed by the philosopher as subordinate to nothing but their will, are actually determined by their sensual needs. Keeping up with Aristotle's tradition of correlating ends and means with ultimate ends, I. Kant suggests that in the realm of ends, a man becomes an intrinsic value (personality is an end for itself).

At the same time, I. Kant introduced the principle according to which the right to happiness must be considered as *quid Juris* (a matter of law). Contrary to the stereotypical perceptions of the analysed trends in philosophical and legal thought, Kantian philosophy is well aligned with consequential legal thought, including legal utilitarianism. A certain synthesis of legal utilitarianism and legal intuitivism is a given in post-Kantian philosophy of law and in modern trends of utilitarianism. Doubtlessly, there are some separate contradictions between the Kantianism-based philosophy of law and legal utilitarianism (Kantianism refers to the motive and intention as the root causes for the individuals' conduct (principle of will), while utilitarianism refers to nothing but maximising utility (principle of utility). Along with that, R. M. Hare (1995) wrote that "it is common to think that there are two schools in the philosophy of morals: Kantian and utilitarian and that their positions are opposed to one other. Thinking so demonstrates a superficial knowledge of both" (p. 18)[6]. N. N. Vitchenko (2006) remarks that in his opinion, I. Kant's categorical imperative is well aligned with classical utilitarianism, especially with J. S. Mill's theory that postulates a general principle addressed to everyone and oriented towards everyone's well-being (pp. 11-12).

Kant's idea of value as a moral absolute that determines the genuine, nominal essence of man brought the philosophical understanding of human value to a qualitatively new level, and his concept of opposing the world of nature and the "realm of ends" became a starting methodological mindset for many further researchers of values (R. Lotze, H. Rickert, W. Windelband etc.).

Following Kant's methodological postulates, R. Lotze distinguishes between the "world of phenomena" (which functions as "things in existence") and the "world of values" (which belong to the realm of "worths", significance). The being of a value is, therefore, of a non-material, spiritual, and idealistic nature. Since the value is reflected in the conscience, and the subject's conscience may be exposed to various subjective factors, according to R. Lotze, everything he considered as temporary, coincidental conditions or some individual manifestations of the soul are of less value. While the greatest value of all is that in which "the spirit becomes free in exercising its actual purpose... that is something pleasant to the constant mood of an ideal soul" (Stolovich, 1994, p. 125). Thus, it is necessary to strive for this, including within the legal sphere.

The same vision of idealisation of values is supported by the representatives of the Baden school, neo-Kantian philosophers W. Windelband and H. Rickert.

W. Windelband continues developing the ideas of I. Kant and R. Lotze on the need to find the being of values outside the empirical reality. According to W. Windelband (1904), "value presupposes general validity and is universally obligatorily recognised" (p. 298). In this regard, the task of philosophy is to comprehend "universally significant values". Philosophy "regards them not as facts, but as norms" (Windelband, 1904, p. 298). In this regard, the task of law is to implement the values learned through philosophy in real social relations.

In H. Rickert's concept, the being of values exists both outside the objects of cognition (surrounding reality) and outside the subject of cognition. He distinguishes between the object of estimation, the act of estimation, and estimations themselves (Fedorov & Blagova, 2016). Unlike W. Windelband, H. Rickert does not admit any

[6] Apart from that, R. M. Hare (1993) substantiated the suggestion that I. Kant was also an utilitarianist.

normativity or imperativeness of value. Value becomes a norm only when it begins relating to the subject of cognition and obeying its will. However, value does not belong to the immanent world of the cognising subject; it is a phenomenon of an independent and transcendent nature. The transcendent nature of value reveals itself in its "self-pressure" (Rickert, 1913, p. 56), which is blurred when the imperative quality is imposed on it. Opposing value to the objective reality, H. Rickert notices that as far as value is concerned, the question of whether it exists or not cannot be asked. The only characteristic value acquired or missing is validity. Therefore, the problem of values is the problem of their validity (gelten) (Rickert, 1911, p. 54).

Perception of value as a transcendent phenomenon may be fraught with some danger. A sacralisation of values may cause a reigning subject ruling the society to monopolise the right to the reproduction of values, presenting to the society his interests instead. Besides, S. Frank remarked that the "genuine and the deepest prerequisite of despotism lies in the idea of infallibility, a mystical, peculiar idea of possessing the absolute truth" (Frank, 1910, p. 146). According to V. V. Ilyin, from the praxiological point of view, idealisation of values may cause violence, "connection of the imperative with the existing through terror and destruction of 'practical humanism'". The author remarks that "absolutism, moralism is unacceptable in the interpretation of values; consistent attitude to values is determined by their obeyance by humanity. The source of values is not the mind, but the life and its needs" (Ilyin, 2005, p. 11).

Another important area that influenced legal theory was marginalism. In this regard, H. Hovenkamp (1993) puts forward the thesis of the marginalist revolution in legal thought. Neoclassicist forward-looking standards of value greatly contributed to the uncertainty and open-endedness of legal policymaking. Eventually, the doctrine appears according to which the average person was nothing more than the state's reification of a standard that its decision-makers wished to impose. "The most general and important implication of marginalism for legal thought was its destruction of the concept that law could be either private or self-executing" (Hovenkamp, 1993, p. 358).

The influence of marginalism on all spheres of public life, including the sphere of law, is difficult to overestimate. In *The Way of Law*, O. W. Holmes testifies to the position that the essence of law lies in the implementation of "marginal restraint" from committing socially undesirable and dangerous acts. When focusing on the result of both the citizen and the state, the law must adopt such norms (and ensure their observance) that minimise negative consequences and encourage positive behaviour. For instance, the purpose of punishment is to give people a motive for legitimate behaviour. O. W. Holmes presented a convincing argument in favour of limiting deterrence as the goal of bringing to legal responsibility, including criminal liability, which is further traced in the works of G. Becker dedicated to the analysis of non-economic, including legal, institutions. O. W. Holmes actually revised the existing system of individual incentives of common law, taking into account the achievements of marginalism.

The materialistic explanatory model emphasises the objects of values. Values identify certain properties of things. Following the traditions of B. Davanzati, J. Locke, T. Hobbes and other thinkers of the Enlightenment Period, a group of modern researchers bring the understanding of values to their property of utility, "goodness" of both material and spiritual objects. V. P. Tugarinov (1960) gives the following definition: "Values are the phenomena (or aspects of phenomena) of nature and society that function as goods in the life and culture of people belonging to a certain community or class as reality or ideal" (p. 3).

N. Nenovsky (1987) explains the objective nature of value with two circumstances: first, with the fact that the properties of the object that

allow a man to satisfy his needs objectively exist for that man; second, with the fact that human needs themselves have material (social) grounds (p. 26).

However, limiting values to needs is hardly reasonable. Needs and interests can be determined by objective psychophysiological factors. As a rule, the satisfaction of such needs mutes the psychophysiological reactions to possessing a particular thing for a certain time or forever. However, when the subject matter is the value of an object for man, the intention of the subject's conduct becomes absolutely different: then, the subject strives not to possess the object and not to be a part of it, but to restructure his life processes in accordance with the properties of the object the subject imposed on that object and made them relevant.

Neither idealistic nor materialistic explanation models cannot fully reveal the mechanism of axiological perception and development of values. On the one hand, values always become the subject matter of discussion when dissatisfaction with existence takes place. In this regard, values become material as far as their genesis is concerned. On the other hand, the conceptual, semantic meaning of values is always idealistic. Although materialism claims that human thinking bears the function of reflecting the surrounding reality, thinking hides a big creative potential. In this context, the axiological imperative differs from the imperative specific to a legal norm. Legal norms and legal values belong to different levels of legal being. If legal norms are material from both their genesis and the final goal points of view, the legal values are only material as far as their genesis is concerned. The idealistic nature of value and its unreachable nature to a certain degree provides its sustainability and system-forming capacity.

Conclusion

This study was carried out to formulate the following general values of legal consequentialism:

1. The ultimate principle of exercising any legal activity – achievement of the most valuable result for the subject of activity;
2. Pleasures and sufferings are motivations for human conduct ("two sovereign masters") in legal utilitarianism. They rule people in exercising legally relevant actions, and this is therefore what the law must rely on according to utilitarianism;
3. According to utilitarianism, justice and injustice are associated with individual utility (or other results), i.e., pleasure, suffering, and, subsequently, the happiness of specific people;
4. Exercising its state policy, legal regulation and law enforcement, state bodies must make all efforts to maximise the values of the population resident within a certain territory, which is how utilitarians define happiness.

More and more often, modern law is considered in the context of adaptation to the new conditions of social functioning. It is well-known that in such moments of significant social changes, the axiological vision of life gains special importance. It actualises questions about the objective meaning and external expression of law as a social and personal value; about the definition and nature of legal values, their relations with the values of law, legal regulations and principles; on the search for mechanisms and principles of interaction between different legal values and values of law. All these determine the urge of systematic axiological studies of law, as they are directly related to the problems of its functioning.

When society and citizens are presented only as components of the human spirit, it becomes extremely problematic to talk about any metaphysics of respect for external reality. With this in mind, the values of society, the values built as a result of public policy, matter. Modern legal values require, firstly, the recognition of objective autonomy and the objective value of civil society and the individual. The employment of

an axiological approach and anthropological methodology, in the long run, determines the need for preserving the axiological aspect of rights and freedoms of man and citizen, ensuring the principles of equality and justice, the humanistic foundation for legal activity and unacceptability of the domination of a cynical, purely pragmatic approach for the sake of maximum utility, if it allows for infringement of interests of any third persons.

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MYTHOLOGISATION OF LAW BY HISTORICAL CONSCIOUSNESS

Abstract

The main objective of this article is to substantiate the fact that historical consciousness as a form of social consciousness is full of the mythologisation of law.

The main hypothesis is that only such forms of law as customary law and international law may be considered historical phenomena. Standalone in law, mainly subjective law is not actually a historical phenomenon; therefore, any historical interpretation of it leads to mythologisation.

The subject of this study is the mythologisation of law, found in the content of several legal concepts and being present in correlations with basic historical concepts.

The complexity of the problem posed is that the very phenomenon of history outside historical consciousness, especially in our time, is constantly subjected to serious mythologisation.

The result of the study is the statement that historical legal understanding is not connected with the understanding of the nature of law and does not reveal its essence. The methodological consequence of this for legal theory is the need for concentration on the understanding of the development of law not as a historical, but only as a social process, and for the law itself – as something that exists and makes sense only in the present.

Keywords: mythologisation, myth, historical consciousness, law, form of law, correlation, legal concept, history, legal understanding, legal consciousness.

Introduction

Legal understanding in the context of forms of social consciousness has an important aspect: these are forms of a mythologisation of law and everything that is functionally connected with them in public life. Legal understanding is necessarily connected with mythologisation, with its individual characteristic features.

Since only legal consciousness is capable of expressing an understanding adequate to the nature of law by itself, the refraction of law not in the legal consciousness is already a process and a peculiar mechanism of mythologisation.

We proceed from the fact that mythological consciousness is the most ancient, original form of social consciousness, directly expressing its syncretism. The thesis that all forms of social consciousness are, to one degree or another, forms of mythological consciousness is based on this. The mythologisation of law is immanent to all forms of social consciousness.

Forms of public consciousness may be distinguished by their degrees of significance, saturation with a mythological component. Historical consciousness is one of the earliest and most vivid incarnations of mythological consciousness. It is connected with answers to primordial questions on where and why everything comes from (original, prehistoric consciousness), whether they relate to society, humanity, space, the universe, spirit, law, or justice.

Historical mythologisation is organically woven into all moral, political, religious, philosoph-

ical, etc., myths. Moreover, myths do not form and do not exist outside their historical component.

General Characteristics of Historical Consciousness

To tackle the problem under study, we will restrict ourselves to three characteristic features of historical consciousness:

a) first, historical consciousness is a background for legal consciousness, similar to a planetary one (Malakhov, 2020). It is not functionally connected with legal consciousness. Nevertheless, where legal consciousness is devoid of a semantic historical background, rationalisation of law dominates in it. It comes down to the implementation of reflective and modelling functions, and its reflexive potential is nullified.

   Elements of historical consciousness actualised in legal consciousness allow limiting (keeping within) its rationalism and practicality (functionalism);

b) the concepts through which historical consciousness reveals itself (and there are not many of them) are abstract and universal since they express properties that are universal for all moments of social life. In this, historical concepts are similar to philosophical categories.

   The key concepts that characterise historical consciousness and express its nature are time, the future, the past (concepts reflecting the temporal moments of history).

   All historical mythologisations, including rights, are mainly associated with these concepts. The reason lies in the duality of these concepts: they have their own non-historical "doubles", and it is far from always possible to reflect on their mutual substitution. And on the point of view of logic, the historical and the non-historical are not subsumptionally related but are opposites. These two fundamentally different semantic contexts are often mixed up in scientific analysis. Therefore, an appeal to history often turns out to be, in fact, not a historical study at all.

   Direct meaning in historical concepts is intertwined with allegory, interpretation, transfer to conventional reality, i.e., in this sense, they are also substantively dual. They are symbolic in that they have a well-defined and distinguishable symbolic expression, designated by means of the same semantic form, something that is not the content of these concepts. Historical consciousness is symbolic and associative. So are its concepts.

   Historical concepts are interpretive. The main meaning of historical interpretations lies, on the one hand, in being in the presence of the historical past, and on the other, in the transformation of this historical past into the future. Historical interpretations are tendentious and therefore poorly scientific;

c) history is neither positive nor negative, neither bad nor good. It is just the way things are, something that is accomplished. Therefore, historical consciousness cannot be characterised as value-based consciousness. There are no historical values, and history as a whole cannot be a value.

   Allegorically speaking, historical consciousness is a "reservoir of social values", but not their "creator".

Historical Consciousness in the Context of the Main Forms of Law

When raising the question of the correlation between the key concepts of historical consciousness and legal concepts, it is necessary to decide in what sense the latter can acquire a historical interpretation.

The answer lies in defining the connection between the historical and the legal, which determine the understanding, on the one hand, of history, and on the other, of law. As the entire concept list of legal consciousness is built from the concept of the legal (Malakhov, 2020), the entire

semantic apparatus of historical consciousness is built from the concept of the historical.

The sought correlation will be adequate in so far as the law itself is a historical phenomenon. And it is as much a historical phenomenon as within its framework a historical person is considerable, and within its framework, society is distinguishable as historical.

It is impossible to unambiguously resolve the issue of the expressiveness of legal concepts in the framework of historical concepts, historical consciousness without addressing the distinction between forms of law (Malakhov, 2018b, pp. 50-58; Lanovaya, 2014, pp. 69-121).

1. Subjective law is not a historical phenomenon and therefore has no historical development in the strict sense of the word. Within its framework and according to its logic, everything to which it refers appears as real (present or quasi present, existing, constructed) and functional.

The fact that subjective law constructs a reality still to take place does not yet make it an area of the future in the historical sense. By itself, the past and the future within the framework of subjective law do not yet speak to the existence of a historical reality dimension. It only reproduces itself, its existence, in the form of what should be, and this is far from being the same as the future. For subjective law, the past is everything that has ceased to function as unnecessary, and the future is fantasies, which are more or less scientific.

Subjective law overcomes the possibility of the historical through the absolutisation of the imperatives and formal foundations of legal life. Of course, both the content and the meaning of laws tend to change or disappear. However, their imperativeness is not related to the content. It is self-sufficient, and therefore these changes are safe for the system of subjective law, including the system of its action.

Only changes affecting law, in general, are historical. But such changes are fundamentally illegal, being of a general social nature. There are no conditions for historical change in subjective law itself.

Since subjective law is unhistorical, its arbitrariness in its changes, reincarnations, etc., is understandable. The impulse to arbitrariness is that the base of the vectors (there is no single vector for subjective law) is in the law itself. Arbitrariness is only a starting point from which law can be directed anywhere. It actually got rid of its dependence on reality and returns to reality only in the form of its construct, stimulus, or compulsion.

Subjective law exists only in the present and in relation to the present. Arbitrariness makes it "condescending" to reality, or even "disappointed" by it.

Subjective law does not create history but more or less distant and expected consequences. Objectively, changes in law and legal life may, of course, be historically significant, but for legal understanding, this is not essential.

It is important to understand that law, understood and existing outside of historical time, is deprived of sociality. Sociality is redundant because it is not instantaneous, like reality, and not necessary, like the natural existence of a human being (Malakhov, 2021, pp. 161-169). As a consequence of the unhistorical nature of subjective law, the mechanisms of tradition and culture that organise social life derived from it are preserved only as components of legal ideology.

The domination of subjective law in giving the state a legal form makes the state itself impossible as a historical and cultural phenomenon. Society then also loses its historical vectors, compensating for them with hypertrophied rationalism, practicality, concreteness, etc.

If the state in its legal form is impossible to be as a historical and cultural phenomenon, but with this, it does not cease to be an immutable reality, then with a person, everything is much more complicated: a person can certainly be turned into a party, a function, etc., reduced to them, but only in an abstract way. Such a person is not just conventional but fictitious. Therefore, not being historical (indistinguishable as a historical be-

ing), a person is inevitably withdrawn from the sphere of subjective law and turns into a legal myth (Malakhov, 2013, pp. 84-90). It is impossible to divide a real person's characteristics the same way it is for the state or the law. It is impossible to make a real person one-dimensional (one-sided). A person is either a whole one or no one. Subjective right chooses the latter for a person.

But there is no history where there is no man either: history is the time of man, human time. Subjective law contradicts the historical being of a person.

The conclusion follows from the above that if the question of the correlation of historical and legal concepts is raised, then it will be far-fetched[1].

2. Customary law is historical in nature. As a mechanism for transferring the past to the present, customary law is characterised by at least the following:

First, the only direct sources of customary law are customs and traditions, not patterns, standards, habits, which are only external forms of customs.

Second, arising "spontaneously, in a natural way" (Lanovaya, 2014, p. 106), customary law is devoid of a creative moment. Law-making mechanisms do not function in it. In legal life, the law does not grow. It only manifests itself, reproduces itself, for it exists by definition "from time immemorial".

Third, customary law and customary legal life are pithy identical. Violating customary law means leaving legal life, while, for example, violating subjective law allows and forces to stay in legal life, changing its nature for oneself and undergoing the consequences of this change.

3. International law is also historical in nature. Moreover, international legal thinking is the closest thing to historical thinking. The importance of elements of historical thinking in international legal thinking is inversely proportional to the degree of governmentalisation, juridicalisation of the international legal sphere (degree of transformation of international law into interstate law (Malakhov, 2018a, pp. 207-224).

International law is people's customary law but is fundamentally different from customary group law. First, it is a mechanism for transferring the present into the future (therefore, in its essence, it has always been and is now the right of force). Unlike subjective law in which a similar mechanism operates (but it is not historical), international law does not generate specific (although often large-scale) consequences but determines people's history. The operation of international law leads to the creation (paving) of peoples' history as their destiny.

Second, the past for international law is not customs, traditions, legal events, but values, sacralised and at the same time self-evident (which gives them universality and absoluteness). And these are not legal but general cultural values of people's lives.

4. Individual law, although not formal but organic, is still not a historical phenomenon and is not reflected by historical consciousness. It is replenished historically only through ties with customary law. Individual lawfully exists in the present. Paradoxically, those societies in which it is developed and significant are inevitably secularised and gradually lose their historical potential; they drop out of history[2].

Correlations of Historical and Legal Concepts

Moving on to correlations between basic historical concepts (time, the future, the past, chronicle, historical fact, event, history, tradition) and legal concepts, it is important to take into account that only customary and international law are historical in their nature. Therefore, correlat-

[1] Therefore, in particular, the history of law and the state is far from being real history, but more often is just a sequence of processes, relations, states, etc. in their physical time.

[2] This statement is quite consistent, for example, with F. Fukuyama's (2015) conceptual idea regarding the end of history precisely in its western version.

ed legal concepts are included in the semantic apparatus of precisely these forms of law. And a completely different nature of the correlations of historical concepts with legal ones in the context of legal law.

It should also be borne in mind that the meanings of legal concepts in the modern era are losing their historical dimension. This is expressed, in particular, in the terminologisation of the language of legal thinking. G. Marcuse correctly noted: "Functional language is a "radically anti-historical" language" (Marcuse, as cited in Bensaid, 2016, p. 90). The accuracy of thought expression thins the cultural and semantic range of legal concepts to the limit. The latter is still trying to preserve the philosophy of law.

Finally, it is important to remember that the verbal designation of these concepts is not limited only to the historical context, which can create confusion in discussions to do with historical phenomena. Sufficient definiteness is introduced by the connection of these verbal designations with the basic historical concept of the "historical": historical time, historical event, historical personality, etc.

1. The concept *of time* forms the background meaning of all other concepts included in historical consciousness. Historical consciousness is temporal but not spatial. Connection to space (territory) is a non-historical act, even in connection with time.

Humans have a fundamental ability to live not only in physical or biological time but also in social time, i.e., in the duration of coexistence, filled with meanings (senses, signs), which makes a person a historical being. The same can be said about the time characteristic of society.

Social time is always historical. Historical time is the background for all the forms of social time. Being devoid of historicity (and the tendencies towards this in the modern world are quite obvious), social time becomes multi-vector, indefinite. Existing concepts of social time testify to its non-historical understanding. Only historical consciousness "straightens" and directs social time, making it definite.

One can talk about history and culture when time is much slower than a person's life. Humans, being historical beings, are timeless (instantaneous), and therefore time does not bother them. When time coincides with a person's life or becomes less than it, the person ceases to be a historical being and turns out to be t*e*mporary, and time frightens him.

The concept of time correlates primarily with the concept of the *term* (in the legal aspect). Different points such as years passed, duration, tempo, saturation, direction, limit, etc., are expressed in this concept. Within subjective law, all these concepts acquire quantitative characteristics, devoid of sociality signs. In subjective law, there is only physical time and only as a subjective condition of its reality. Time, as a period, is empty. It is a pure duration, a receptacle for anything, a segment of the present, artificially cut out of the general flow of social time.

Having signs of normativity and templeteness, the period is a convention, a value abstracted from the person in his or her individuality (i.e., in his or her reality), and therefore its social message practically loses its meaning. The essence of mythologisation here, firstly, is in recognition of the attributiveness for the social period in its various forms (moral, political, economic, even religious). Secondly, the essence is in attributing to the period the significance and sufficiency of relative, conditional, arbitrary moments as a quantitative measure of responsibility. Thirdly, it is in the confidence that, in this case, the quantity necessarily goes over into the desired quality[3].

The transfer of the properties of legal time from customary law to legal law is the mythologisation of law.

Lastly, in historical terms, the law is characterised not in its individual elements or processes but as one whole. Therefore, the influence of the historical factor on applicable law is difficult to

[3] For reasons other than the law of dialectical logic about the transition of quantitative changes to qualitative ones.

grasp. The scale of historical time and the scale of legal time, despite the fact that the latter may be quite significant, are still disproportionate.

2. *The past* is the past. It is also something saved, stored, and not just passed. However, it is not just and not only one of the characteristics of time. It is also timelessness, eternity, and a form of existence filled with meaning.

The past does not exist in legal time. Law is not a keeper of time; time for it is rather an inevitability than a necessity.

The line of reasoning, the opposite of historical consciousness, is best expressed by the actualism principle, the only possible way of knowing and understanding the past. It implies the imposition of the current state, the conceptual and semantic structure of theory, and mass consciousness on the past, no matter how distant it may be. Actualism is a means of finding oneself in the past (but not finding the past in oneself). And this is a form of mythologisation.

The past is correlated, at least, with the concepts of norm and experience. They are the most common forms of accepting and saving the past.

The norm in this connection is the multiplication (replication) of a single past, as the possibility of its revival in relationships, and not just in the imagination. In law, this singularity is discarded, and only the possibility of repetition is absolutised. Mythologisation begins at the moment when this possibility acquires categorical nature and primacy in relation to the reality of legal relations. Therefore, the legal concept of a norm does not coincide with the general concept of a norm as an expression of normal states.

In customary and international law, a norm has the meaning and functionality of a custom, not an imperative. It is a kind of middle line that marks normal as legal. It does not draw, as in subjective law, a clear boundary between compliance and non-compliance with the norm. Mythologisation of law here is precisely in this clarity of the boundary, which makes the responsibility fully certain and the arbitrariness of law enforcement.

Experience is the accumulation of not only normal (positive) forms and means of social life but also a negative past, which, in essence, is the defining vector of law.

Experience is not always successful. "Experience, if you take it in its pure form, is terrible," wrote A. F. Losev. – now (that is, in civilisation) – experience is well-ordered. But take experience in its pure form, and it will be hell" (Losev, 1991, p. 392). The primacy of the negative, which determines the absolutisation of relations within rules, mythologises law as a means of overcoming this negativity.

Experience is also a form of accepting the past but in two opposite senses: as a model and as a warning, instruction, edification, which is symbolic but not factual. The negative is not rejected but mutated. Countering negative experiences is itself negative. This explains the steady movement of law towards organised violence, the constant threat of the use of force.

In this case, the mythologisation of law goes through the recognition of the negative experience as being a positive one (for example, justification of violence, including being a form of persuasion) and the ability to reproduce the past in the present (the illusion of using experience). In fact, this is just one of the arguments for keeping the line on overcoming possible negativity in social relations.

3. *The future* in the most elementary sense is a time that will surely come, and in this sense, it already exists. It is neither due, nor obligatory, nor well-known, nor unpredictable, nor accidental. It is inevitable, but at the same time most likely a fantasy, imagination, determined by the present (being accepted or rejected). "We promise ourselves anything that is impossible in the present to come in the future. The future that we have promised ourselves cannot become the present. We dream of coming in the future to exactly what we are leaving now. Over time, we move away from the present and somehow hope to return to it. However, when the past no longer exists, the place for the early can only be in the

present" (Bibikhin, 2002, p. 397).

The future is determined only negatively in the context of historical consciousness. It is actualised only in a negative way. That is why it is most often frightening (the consequences of the past experience). It is for this reason that V. V. Nabokov called the future "a charlatan at the court of Chronos".

When everything that exists is, in any case, better than what does not exist, but it may come unexpectedly, the future is discarded or remains only as a present that has not yet come, i.e., already indistinguishable from the present. This gives the idea of the end of the story.

From this, it is quite clear that the concept of the future is correlated with the concepts of responsibility and law.

Responsibility in this correlation appears as an uncertainty of the future regarding an individual or society.

In the historical dimension, positive responsibility (of a nation, country, individual) cannot be legal. It is only a moral (conscience) responsibility. As for negative responsibility, it appears as a dropout from historical time, namely, on the one hand, as a loss of the past, and on the other, as a real or illusory definiteness of the future. And all this is possible in the timelessness of the present, no matter how long it may be.

In this regard, there is an age-old problem of responsibility in the form of punishment. Punishment extremely simplifies, oversimplifies responsibility. Its results, therefore, never meet expectations.

When punishment touches an individual, its deep meaning is preserved only if that person remains in the historical dimension, i.e., must and can take up the preparation of his or her future. This work, in addition to simple consciousness and recognition of responsibility, consists of compassion (and not just physical and mental suffering), repentance, forgiveness, purification. Does the modern punishment system give a person such an opportunity to remain a historical being? That is a big question.

Mythologisation of law lies in the belief that punishment objectively solves the problem of responsibility, the degree of its severity being directly proportional to its effectiveness, that the drop out of legal time forced by punishment has a positive meaning for the individual.

When punishment touches a group of people, it drops out of history, loses its identity. Appealing to conscience or bringing a nation, people, country to justice is a purely political discourse, devoid of adequate meaning but ingrained in the mass consciousness. Law has absolutely nothing to do with this. And the punishment is no different from revenge, which only reproduces the ancient talion, throwing modern society into the archaic. Mythologisation of law here is of the most radical character, i.e., it comes to a complete distortion of its essence and nature.

Law in the historical dimension is thought to be a framework of the future (order, legislation), making its legal existence definite. In reality, the law eliminates the future. More precisely, it identifies the future with the present, gives the instantaneousness of the present an indefinite duration (this is the normative meaning of law). It turns out that law becomes t*e*mporal, which radically changes its essence. According to G. Pomerants (Pomerants & Kurochkina, 2000), the imperativeness of law, which, from the point of view of understanding the nature of legal law, in its unconditionality and obviousness, turns into the consecration of violence, the domination of will, convention, relativity, impermanence, development (unrestrained differentiation, carrying negativity).

Mythologisation of law here is in endowing the imperative force of law (its taboo nature) with convention in the admission of their compatibility. Law turns from a principle of activity into its instruction, a regulation. Combined with the desacralisation of laws, this flutter of meaning forces the ontologisation of laws, turning lawmaking into magic, breaking the law into taboo.

4. *The historical fact is* the result of cultural

selection. An empirical fact is only a skeleton on which a historical fact is built. Transformation of the former into the latter is a challenging and often fictitious process. Action, deed, process become historical facts, firstly, due to their connection with events (with the possibility of this binding), i.e., with what the consequences, significance, value, etc., are obvious, allowing facts to settle in the historical consciousness. In other words, their meaning lies in being included in a specific spiritual state of a person. Secondly, they give stability to events, giving them a measure (framework) of interpretation. Thirdly, it is a historical given, the value of which lies in its existence according to the laws of objectivity. Fourthly, they are the points of support for historical assessments and interpretations, but not the support itself (events are).

The concept of a historical fact is correlated primarily with the legal concepts of status and deed because they are essential for characterising law from the point of view of its givenness, manifestation.

In the context of this correlation, *status* reproduces all the essential features of a historical fact. It is important not only as an established, outwardly defined, and outwardly changeable fact but as a kind of social and spiritual state of a person, which is the result of his or her self-organisation and self-realisation. Rights, duties, or other elements of status are not determinative. Status in its entirety is determinative, as a legal "embodiment" of a person in his or her functionality, which is a condition for his or her activities within the framework of what is permissible (by law, state, etc.).

Mythologisation here is associated with the recognition of the status to be sufficiently conditional, its external certainty, and the lack of connection between rights as elements of legal relations to human rights. This leads to the existence of status only as a specific form of not only the legal but in general social dependence of a person, accidental for him or her, and not essential. Status is an absolutisation of the present. It is purely instrumental.

A deed in the historical context is not instantaneous and not purely subjective (responsibility for a deed is therefore always relative), i.e., it is never occasional, as it is done consciously. A deed is a quintessence of a state, conditions, etc., inherent in a person, the fruit of work on oneself, or a developed attitude to life conditions, circumstances, etc. A person appears through it in integrity and not only in momentary connection with reality. The impact is the core of the deed. A deed is impossible without impact and exists only as an action, i.e., physical fact.

Mythologisation lies in the absence of a significant difference between deed and action. A deed cannot be separated from a person, but an action can. Therefore, in arguing that a deed, not a person, should be judged, it is, in fact, not the deed that is being judged but the act. First, such a modern court is not much different from the court of King Cyrus across the sea. Second, if it is a trial over a deed, then it is a trial over a person, and this can be perceived as a legal lynching.

5. *Events* are the key points of history. History grows in their interconnectedness. History is awareness (reflection) of the event that is happening. It would be well to "think of an event not as a miracle that arose out of nowhere, but as something that is historically conditioned, as an articulation of the necessary and the accidental, as a political singularity" (Bensaid, 2016, p. 39).

The correlation of the concept of an event with the concepts of human rights and crime is interesting.

A human right is an event of public law, legal life, in the sense that it, not the existing normative system, is what binds together a person's actions, imparting to him or her legitimacy not in a formal-universal but content-individual sense. It transforms (or restores) a person into a historical subject, i.e., into personality (personality – a person's historical scale). The reality of human rights gives eventfulness, a historical dimension to his or her activity, and all law.

Mythologisation, in this case, is associated with the recognition of the ability and duty of the law to ensure a person's rights (right). The inclusion of human rights in the system of rights provided and ensured by the regulatory system dissolves them and transforms them into a set of what is permitted. In essence, however, human rights are a knot of an individual legal life, not a life dissolved in general.

A human right is a positive event. In contrast, *crime* is a negative event. As an event, it acquires meaningfulness, non-randomness, becomes a synthesis of related facts. As an event, it is only capable of being the subject of a legal assessment. Crime eventivity returns temporality to responsibility (punishment), pulling a person out of the "embrace" of timelessness.

As an event, crime is socially significant. It is an expression, an outburst of something supra-individual, non-situational. It is a characteristic not so much of a deed and even a person, but of sociality, the state of society, or local education. From this point of view, one can understand the meaning of the tradition of mutual responsibility, collective responsibility, etc.

As an event, crime is fatal. And its consequences, as well as the legal reaction to it, are uncertain.

The attitude to crime exclusively as to a fact, while, as a rule, to a physical act, not as to an event, mythologises law in the sense that, first, it presents it as an institution with a completely unlimited field of action, extremely radicalising law, making it omnipresent. Second, it makes any deviation from existing obligations and prohibitions a crime in principle. Third, it deprives the crime of the social moment.

6. *Chronicle is* a stringing of facts on the physical time vector, latently transforming their often simple sequence into a causal (or some other kind of non-random) connection. Thus, on the one hand, facts (singularities) are given the meaning of events (symbolism, non-randomness, and repetitiveness) and, thus, a completely different significance; on the other hand, events appear as facts. This mechanism of mutual substitutions within the historical consciousness is the main source of the mythologisation of law, its internal inconsistency.

In light of the above, there is a correlation between the concept of a chronicle and the concepts of court and legal practice. In them, the dialectic of facts and events is manifested most clearly.

The court is a truly legal way of relating to reality. It reflects the nature of nothing else but the law.

Transformation of an event into a fact is the entity of the court in the chosen context. Mythologisation of law (and the loss of the legal nature by the court) appears when a fact is deprived of its historicity. This is especially true for the institution of the court in the countries of the Romano-Germanic legal family.

In the countries of the Anglo-American legal family, there is a possibility to preserve the historical background. Hence the possibility of endowing single facts with normative potential, which, to some extent, makes the idea clear that the law is happening in the courts. However, this opportunity is not always realised, not in an inevitable way. Precedents do not happen as often as they seem to happen, although a great amount of them have accumulated. There is no smooth, gap-free transition from singularity to normativity. The moment of arbitrariness in it, on the one hand, profanes the court to a certain extent, but on the other, it is the possibility of the emergence of law. This is another mythologisation that is the representation of arbitrariness as law.

Legal practice, as well as a chronicle, is such a coherence of facts that acquires eventfulness. It is difficult to pass from a complex of facts, even a large one, to generalisations, without an initial setting. Passing from a complex of events to generalisations is easy. Their sequence is already a tendency, even a pattern. Legal practice makes sense precisely as a logical line uniting many actions. In a historical context, legal practice is an area of the possible, within necessity and ob-

ligation.

In this case, the mythologisation of law is seen in support of its change in legal practice; it is an adaptation to reality. Practice, as reality, is contradictory; however, the law on this basis must not be the same. It must not follow the practice; otherwise, it turns into a control mechanism and then a manipulation mechanism.

7. From the point of view of historical consciousness, *tradition* is the basic mechanism of social life, including legal life. The method of reproducing the past in the present, contained in it, makes tradition familiar to myth.

Characterising the legal culture in a historical context, we can say that it is a synthesis of the traditions of legal life, the operation of law, lawmaking, etc.

The concept of tradition is correlated with the legal concepts of legislation and the legal system, which also reflect the methods of reproduction of law.

Legislation is the materialisation of legal (and political) traditions. The enlightenment of tradition in it is a sufficient and recognised basis and explanation of rationality, expediency, justice, etc., all its designs and changes. In this case, legislation is not only the scale of ordinary life, the Everest of imperatives but also an organic part of legal consciousness. A person (as a legal entity) thinks with laws (being a legislator on his or her own) and does not think only about how to fulfil it or not to fulfil it, obey it or resist.

Mythologisation of legislation lies in the attitude towards it only as a form of law. If law and legislation are actually identified, then it is not the form that is saturated with content, but the law itself turns into the form.

Legislation turns out to be a legal entity only in its form of expression, process, state, etc. But in essence, it is a political phenomenon. Legal consciousness is inevitably alienated from the legislation. All this is the result of the historical component being washed out. There is no one in legislation. That is why, of particular note, the legislation does not have in itself any restraints to endless renewal, differentiation, obstacles to the bureaucratisation of law, etc.

The legal system is a vivid embodiment of legal tradition. It is a historical and cultural phenomenon, i.e., it does not exist outside its historical and cultural dimension. It is not an ideal construction, but the integrity of legal life, determined by legal traditions. The legal system comprises the past in the present, not being a conceivable background, but active, the present. This is the right existence.

The law is the core of the legal system in the social aspect, while legal consciousness is the core in the historical and cultural aspects. It is a reservoir of legal culture, the keeper of legal traditions.

Mythologisation of the legal system (and law) lies in the fact that, although it belongs to cultural phenomena in legal theory, it is nevertheless understood and taken into account and constitutes an object of interest precisely as a social phenolmenon. As a result, the legal system is perceived as controlled, adjusted, subject to deliberate alignment, etc. In fact, it is the legal existence of people in the historical dimension. It develops objectively and fully corresponds to the nature of the legal. Therefore, the legal system always has a specific history.

8. *History* in a non-historical (metaphorical) sense is the past as something that happened, visible in the present (for example, the legal system). It is the awareness of the time in which we ceased to be but were ourselves or through our ancestors. And history is also the future, visible in the present. It is the consciousness of time when there are no us yet, but where we are not random (social strategies, foresight, utopias are built from it).

History allows us to explain the present with the past as something that happened not in vain. The future cannot be explained by the present. Historical consciousness is not modern.

Historical consciousness is inertial by nature, lagging behind, eternally appearing in the already non-existent time. “Consciousness limps

behind history, struggling to catch up with it" (Bibikhin, 2002, p. 278). Thinking, as fiction, serves as a counterbalance to this. History is a tale about a world other than reality, the unification of everything that came true and the imaginary. Relying on history as on the past is a mythologeme of historical consciousness.

Defined by history, people are free with respect to the present. The phenomenon of freedom becomes understandable only in the context of historical consciousness. Torn away from historical existence, people become slaves of the present and fall into a cycle of necessities that make freedom impossible, untenable, or destructive.

Right in the context of historical consciousness is an updated legal culture, the legal tradition in action.

The above does not apply to subjective law. This does not make it, of course, flawed, ineffective, etc. It is just not its dimension. Thus, for example, sociological, legal thinking, built on the description and explanation of the real legal life outlined by this law, is inadequate. Dogmatic legal thinking (described as positivistic) is adequate.

In the studied context, the mythologisation of subjective law is obvious since, as previously noted, it is non-historical; it is, therefore, impossible and inadequate to build an understanding of the law on analysis of continuity, tradition, etc. It is completely in the present, denial of both the past and the future. The reason is simple. It is the desire to be associated with the life of society and ideological means combined with natural law. The essence of mythologisation is in attributing the history of law in general to subjective law (in the concept), in identifying a simple sequence, coherence, and consistency of its structure as a whole and individual element.

Legal consciousness in the historical dimension is the spiritual history of law. Only referring to it, its content, allows one to catch the historical motive in the current law.

In subjective law, the concepts of law and legal consciousness are not identical. Legal awareness is not attributable to law. In all other forms of law, the concepts of law and legal consciousness are identical, and only under this condition does law become a historical and cultural phenomenon and crystallises not in the legal system formally but in the legal system meaningfully. As such, attempts to introduce the problem of legal consciousness into the modern general legal theory are untenable.

Mythologisation of legal consciousness consists, firstly, in identifying it with the law as a whole (in the concept), secondly, in exaggerating and distorting the role of legal consciousness in subjective law, and thirdly, in identifying legal consciousness with reflection, and therefore on closing it in conceptual structure, making it, in particular, indistinguishable from scientific consciousness.

Meaning of Historical Legal Thinking

Historical legal thinking appears to be closest to the sociological one in the sense that it proceeds from an appeal not to essences but to reality. At that, such an interpretation of historical legal understanding is mythologised, and its key mythologeme is "the past is the genetic code of the present". For comparison, the key political mythologeme in the context of historical consciousness is "the present is not an inevitable consequence of the past". Adoption of the first makes law teleological. The adoption of the second is the consecration of the politicisation of law, leading to the distortion of its essence (this does not apply to subjective law). These ideas are incongruous.

Natural law has no history (Waldron, 2020), and therefore natural law understanding and historical legal thinking are also incompatible, although naturalness and historicity appear to be organically linked.

The following are rightly significant ideas that are considered as mythologems that charac-

terise historical consciousness:

1. history is the consciousness of the present as fate;
2. history is the rationality of the random (unique), "possible within the necessary";
3. history is the lives of the dead told by the living;
4. history is continuous and irreversible;
5. history is the coherence of the meanings of events;
6. the future grows out of the present but is determined not by it, but by the past;
7. reality is not historical; history is not valid.

With their appropriate interpretation, they quite clearly express the principles of legal life and the organisation of law.

Conclusion

Mythologisations of law, developing within all forms of social consciousness, without exception, are refracting (and transforming) in legal consciousness, complicating its content. And this all makes it quite difficult to understand the problem.

By the very sense of legal consciousness, the mythologisation of law synthesises formations. However, "untwisting" these synthesised myths to see their components formed within various forms of social consciousness seems an impossible task. However, the impossibility of reflecting on the multicomponent nature of legal myths does not make them less significant. Their realness and effectiveness lie in their integrity, multidimensionality, and voluminosity. Legal consciousness is valuable and real as a flow of spirituality but not as a mechanism that divides it into components.

All that has been mentioned about historical consciousness in general and about the most distinct correlations of historical and legal concepts, as well as about ideas characteristic of historical consciousness, makes it obvious that historical consciousness is extremely saturated with a mythological component. History does not cease to be mythology in a certain sense.

Myth, in general, is the transformation of reality into history and history into reality. This mostly happens when something starts to go wrong, not in accordance with the desired, assumed, etc., way.

History is the connection of symbols (presented as events), not facts. And this connectedness becomes historical meaning.

Symbols are the basic mythological component of historical consciousness. It can be rightfully called a symbolic consciousness. And as such, it is actually a way (art) to imagine reality.

Demythologisation of law is impossible without the loss of its historical being (consciousness), without replacing it with scientific thinking, and without disabling legal consciousness (which, willingly or unwillingly, the general legal theory seeks to do). But then, simultaneously with the elimination of the mythological component from the law, both law and legal consciousness are destroyed.

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DIALECTICS OF PHILOSOPHICAL PILLARS OF THE LAW AND DEVELOPMENT DOCTRINE

Abstract

This article analyses the philosophical foundations of the Law and Development doctrine, which has been used as a practical tool since the 1950s in many countries in an attempt to improve their socio-economic conditions. Since the adoption of the UN Resolution on Sustainable Development Goals in 2015, most countries have been making efforts to achieve it. We emphasize two philosophical-legal traditions in Law and Development under consideration, which in many respects display antagonistic attitudes to each other: liberal legalism and the ideas of postmodernism philosophy, in particular, the ideas of post-development. The dialectics of this contradiction is revealed in an attempt by liberal legalism to spread itself beyond the western legal systems. Postmodernism, which has been influenced by left-wing political and legal doctrines (neo-Marxism), is aimed at taking into account the interests of local cultures and more equitable distribution of global public goods as a development priority. Following the logic of G. F. Hegel, the evolution of Law and Development can be presented as the spiral reflecting the interaction of law and development theories that began to unwind in the second half of the XX century and continues its upward movement to the present moment.

Keywords: Law and Development doctrine, liberal legalism, post-development, postmodernism, sustainable development.

Introduction

The study of the deep foundations connecting philosophical and legal theories and ideas in the field of socio-economic development of the world community is one of the most vital problems of modern social science in the light of the fact that many issues on the global agenda continue to remain unresolved, new challenges and threats are appearing, as well as cross-cultural interactions are becoming more acute. The current global problems primarily comprise food security issues, including the problem of hunger and poverty in all its forms, environmental and climatic threats, international security issues, human development and opportunities for quality education, clean water and sanitation, decent works and economic growth, sustainable cities and peace, justice and strong institutions, etc. To solve most of the pressing problems on the global agenda at the beginning of the new millennium, a program of collective actions of the world community was developed. It was approved by the heads of states and governments of 193 countries of the world and enshrined in the Resolution "Transforming our World: the 2030 Agenda for Sustainable Development" adopted by the UN General Assembly in 2015.

The movement towards the development of the program of collective efforts to combat global challenges began shortly after the formation of the United Nations in 1948. At the beginning of 1949, the doctrine of Law and Development, which initially studied the political and legal aspects of providing international assistance for socio-economic development in Third-World

countries, was established. Since its foundation, the doctrine has combined many philosophical and legal ideas, theories and principles. In the 1960s, a research group was established at the International Legal Center (1974) to research the interaction between law and development in developing states. The participants of the group called for expanding the field of legal research, cooperation between legal scholars and sociologists in the study of Law and Development for a deeper analysis of the problems related to the interaction of law and socio-economic processes. The research in the field of Law and Development is characterized as an interdisciplinary field that goes beyond the traditional legal doctrine.

The philosophical basis of Law and Development is geopolitical concepts based on the teachings of social evolution. In a brief summary, they cover the following arguments. Social development is carried out intermittently and unevenly. For this reason, some countries are developed in economic, political, legal and cultural terms. Other states are backward. The proximity of backward and developed states can be dangerous for the latter. It is argued that backward states are sources of social tension and international conflicts, wars, revolutions, a "hotbed" of dangerous diseases and crime. To prevent the negative geopolitical consequences of such a neighbourhood, it is proposed to develop a mechanism to help backward countries in their economic and legal development (Kuzmenko, 2009).

An important component of the geopolitical concept under discussion is the doctrine of the socio-state ideal, which in the future should be approached by any backward country. According to this ideal, a developed state should have a market economy, a democratic regime, the rule of law and guaranteed human rights. Therefore, the goal of Western countries is to accelerate social evolution in backward states via economic, political and legal mechanisms. The above-mentioned philosophical concepts later developed into the ideology of liberal neocolonialism, which was the ideological basis of Law and Development.

Many researchers have paid attention to various philosophical aspects of the Law and Development doctrine. D. Trubek and M. Galater (1974) presented liberal legalism as the philosophical and legal basis of Law and Development. The reaction to the first impulse in the attempt to establish Western legal systems outside their traditional agglomeration was numerous concepts related to the philosophy of postmodernism, which asserts multiplicity and, therefore, does not present an opportunity to combine various ideas into a single theory, except for using the umbrella concept of "post-development" for their nomination. This article attempts to link the key philosophical principles that underlie Law and Development and analyse the history of their interaction in different periods.

The Genesis of Law and Development

The emergence of the theory of development in the West occurred shortly after the end of the Second World War. In the inaugural speech delivered on Capitol Hill on January 20, 1949, Harry S. Truman, who was elected for a second term as US President, announced the US intention to "making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas" (Truman, 1949). This appeal was formalized in the "Point Four Program"[1], which was named after the number under which the proposal of the head of state was located in his solemn speech.

In 1950, the US Congress adopted the Act for International Assistance, under which a specialized structure was created within the US State Department – the Technical Cooperation Administration (TCA). In the 1950s, the TCA launched the work of the Mutual Security Agency, which implemented projects in 35 countries in Asia, Africa and Latin America. In 1961, the United

[1] See collection of documents of the Point Four Program, which is covering the years 1948 through 1953, on President Harry S. Truman's Museum & Library. Website: https://www.trumanlibrary.gov/

States passed the Foreign Assistance Act[2] (2003), which united all existing development programs abroad under the auspices of the US Agency for International Development (USAID), whose activities continue to the present day.

In the late 1940s, the idea of providing international development assistance to the United States was not new. A few years before the "Point Four Program", the country had adopted "The European Recovery Program" (G. Marshall's Plan), which assisted in establishing postwar peace by providing substantial financial and technical assistance to Europe. Unlike Marshall's Plan, the "Point Four Program" combined two ideas: providing international development assistance and spreading freedom in its American sense. The adoption of the Law on International Assistance and the beginning of the implementation of development projects abroad shows the intensified confrontation between the United States and the USSR for influence in the Third-World countries at that time and the beginning of America's struggle against the spread of socialist regimes.

In addition to political motivation in the implementation of programs aimed at providing international development assistance, there was a significant economic component, implying the need to create markets for the export of goods produced in the United States. Today, the representative offices of the USAID (United States Agency of International Development History, 2021) are engaged in promoting America's foreign policy by supporting democratic societies, expanding the free-market zone and creating conditions for a national business in more than 100 countries around the world. This motivation has been confirmed in empirical studies of law in other countries. For example, the program of assistance to Lesotho, located in Southern Africa, was recognized by the Canadian government a few years after its completion as a mistake, whereas the real interests of the North American country had commercial goals (Ferguson, 1994).

In the middle of the XX century, academic communities, which began to study the processes of development in Third-World countries, started to thrive in the United States, while development itself formed a separate scientific field (development studies). The first attempts to identify the theoretical basis for development projects were made by economists. The theory of modernization, based on the idea that all nations go through the same stages in the process of their development, has become the basic model of economic development in Third-World countries. Subsequently, developing societies need to borrow the institutions of developed states in order to prosper.

In the early 1960s, lawyers joined the study of development science. Several American universities launched academic research on projects for the development and interaction of law and socio-economic progress in Third-World countries. Soon enough, the practitioners of implementing development programs discovered the inconsistency of the idea of modernizing societies according to Western models and faith in the possibilities of transforming developing countries with the help of the ideas of liberal legalism that were the basis of the theory was lost. As a result, Law and Development fell into decline even before its representatives were able to unite forces to create a strong research field.

Fundamentals of Liberal Legalism

As noted above, the philosophical foundations of Law and Development are represented in liberal legalism, in particular, in J. Rawls' "A Theory of Justice" and the principle of rationality. Liberal legalism is distinguished by such ideas as individualism, egalitarianism, universalism, meliorism. The paradigm of liberal legalism includes a number of provisions on the role of law

[2] An Act to promote the foreign policy, security, and general welfare of the US by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes (Preamble).

in public relations and the interrelationships of legal systems and development processes. This paradigm contains the following prerequisites. First, it was believed that society consists of individuals and mediated groups in which individuals voluntarily organize themselves and the state. At the same time, the state was presented as a structure through which individuals formulate the rules of general self-government through group participation. Secondly, the state exercises social control and carries out changes through the law, which is a set of universal norms for all individuals who are in the same position. Thirdly, it was assumed that laws were developed to achieve social goals and implement social principles. No single group dominates the process of developing legal norms, and no group has any advantages in the rule-making process. The fourth premise implies the existence of the principle of universal equality before the law. The fifth point of the paradigm of liberal legalism presupposes the existence of a legal system that applies, interprets and changes laws. And the last premise is connected with the fact that the behaviour of social authors mainly corresponds to accepted norms.

In the system of values of liberal legalism, special attention is paid to property rights, the ideas of equality, freedom, justice, independence, democracy, the principle of separation of powers, market economic relations and the system of ensuring civil rights. The theoretical basics of deontological liberalism in Rawls' "A Theory of Justice" were founded in the XIX century, in I. Kant's philosophy. Deontological liberalism, which asserted the morality of an act by fulfilling a duty, gave way to utilitarianism and was revived in the United States in the second half of the XX century. According to J. Rawls (1971), the highest virtue of public institutions is justice, and if laws and institutions are not fair, they should be rejected. Among the main public institutions, the scientist ranked the institutions of constitutional liberal democracy with a pronounced social policy and the functions of distributing benefits, which are reflected in private property, a free market and the protection of rights and freedoms.

The institutions of constitutional liberal democracy in "A Theory of Justice" of J. Rawls' principles follow from two grounds: (1) the principle of equal freedom, according to which every individual should have an equal right in relation to a general system of equal fundamental freedoms, correlated with the freedom of all, and (2) the principle of honest equality of opportunities, which believes that social and economic inequalities should be organized in such a way that they simultaneously serve the benefit of the least prosperous part of society. Thus, according to the views of J. Rawls, people born in different social conditions should receive equal access to public goods. B. N. Kashnikov (2004) notes that as a result of the implementation of "A Theory of Justice", fair institutions appear: the constitution, which enshrines fundamental rights and freedoms; the economic and social structure, containing mechanisms for overcoming injustice; the impartial application of fair rules and laws by judges and officials.

The paradigm of liberal legalism showed little interest in non-state forms of legal and social order in Third-World countries, where there was a tendency for non-formalized legal systems. The legal model of liberal legalism assumed the presence of social and political pluralism, while in most Third-World countries, social stratification was combined with authoritarian and totalitarian political systems. Instead of the power of state institutions in most Third-World countries, the power of the tribe, clan or local community was often stronger than the power of the state. If the model assumed the reflection of the interests of the majority of citizens, then the realities of the countries of Asia, Africa and Latin America revealed the imposition of legal norms by a relatively small group of the ruling elite. The judicial system in Third-World countries did not correspond to the proportions of the ideal model either. In the model, the independent subject of

social control was considered, but, in fact, it was not as significant as in the US legal system.

As a result, criticism of liberal legalism has contributed to the assertion that the model does not reflect reality not only in Third-World countries but also in the United States itself. Thus, the model of liberal legalism was an obstacle to understanding the social role of law in the United States and Third-World countries. Development assistance to Third World countries in the field of law initially focused on ensuring access to legal education and providing legal assistance to vulnerable segments of the population. Numerous projects in this area, in particular, did not bring the expected results and did not have a noticeable impact on public relations. This was due to the fact that an increase in instrumental rationality in legal processes, combined with state regulation of economic life, can contribute to the economic prosperity of only a small elite stratum, while for the rest of the population, the situation is changing not for the better, but for the worse. Gradually, it became clear that solving the problems of poor countries based on the export of an idealized model of the US legal system is inadequate for the task at hand.

D. Trubek and M. Galanter (1974) noted that the revision of the basic prerequisites of the paradigm of liberal legalism among researchers of Law and Development occurred as a result of the practical accumulation of knowledge about the structure of legal life in Third-World countries and the cumulative effect of the negative application of the model in practice. Scientists identified four factors that caused the change in the paradigm of liberal legalism:

- improving empirical knowledge about the legal reality in developing countries;
- loss of faith that the model of liberal legalism accurately reflects the role of law in the United States;
- growing doubts that American society can serve as a model for Third-World countries;
- the awareness that politicians in the United States and Third-World countries are not adherents of the values of liberal legalism.

The appeals of supporters of liberal legalism to provide legal assistance for development were based on the idea that the United States can and should act as a model for developing countries. The opponents of this approach in the Third-World countries in the early 1970s presented the theory of dependence, which assumed that the US policy in the field of development and academic support for these projects by American universities is a reflection of their desire for political and economic hegemony over the Third-World countries. In the second half of the XX century, representatives of postmodernism, political feminism and the Frankfurt School opposed the ideas of liberalism, which as a result, led to the modification of Law and Development.

The Influence of Postmodernism

The reaction to the desire of the West to include the former colonies in its own orbit was the theory of dependence, which explained the failures of modernization projects by the subordinate position of the Third World countries in relation to the great powers. In political terms, the reaction to development assistance programs in 1961 was the creation of the Non-Aligned Movement, which united countries that adhered to the principle of non-participation in military blocs and alliances.

In the late 1980s, as a result of the failure of western development policy, as well as under the influence of the ideas of postmodernism, a post-development movement appeared which criticized the basic theory of development based on the principle of economic efficiency. As a result, post-development has modified the traditional (western) concept of development, primarily aimed at achieving economic growth. These processes have found support not only in the works of a large number of scientists from developing regions but also have become widespread in the West.

A. Escobar (2018) criticized the use of an

economic approach in the implementation of development programs. Deconstructing the development, A. Escobar gave preference not to global but to local projects implemented in local communities. According to the scientist, it is necessary to realize multiplicity, implying the existence of different worlds in many parts of the planet, which are under threat of extinction due to the implementation of the idea of development. Later, A. Escobar (2020) introduced the understanding of development through the concept of "pluriverse policy" aimed at creating plurality, which shows that the world consists of many worlds, each of which has its own exceptional value. Thus, the pluriverse policy was declared to be the key to the necessary social transformations that would allow overcoming global crises.

A well-known Iranian diplomat, who represented his country at the UN for many years, M. Rahnema, noted that the post-development era should free the world from the illusions that accompanied the development project and start searching for new grounds for further movement since the ideas of progress and development had disastrous consequences for the life of many national societies. In his opinion, the end of the era of development should not be considered as the end of the search for new opportunities for change and for genuine regulatory processes that can generate new forms of solidarity. The end of the development era only means that the binary mechanical, reductionist and self-destructive approach to change has ended. M. Rahnema (1998, pp. 397-400) also drew attention to the concept of contemplative passivity "Wu-Wei", the philosophy of which would be useful to take into account in the process of forming a new development paradigm. The author also hopes for the emergence of new leaders who will be able to rethink modern management in the spirit of this concept since the era of post-development needs to create a new aesthetic order that will replace the modern perception of reality. In order to create such an aesthetic order, it is necessary to find new paradigms that would substitute the outdated concepts of progress and development.

According to W. Sachs (2010), the Euro-Atlantic model of development cannot be universal and suitable for distribution throughout the world since it has developed and formed in certain, in many respects, exceptional conditions. This model is not able to maintain justice on a global scale, and accordingly, it cannot remain the guiding concept of international politics. In order to achieve prosperity for all citizens of the planet, a different approach, which will include environmental issues and other problems, is needed.

S. Latouche (2009) proposed the concept of a "degrowth" of society. In his opinion, in the developed world today, people consume much more than is necessary for life. The discussion of the degrowth project began at the end of the twentieth century in anti-globalization and green movements, whose supporters began to actively form network communities and spread their practices through individual and collective actions. Supporters of the concept of "degrowth" reject the idea of growth because the natural environment, future generations, human health, working conditions of workers and the countries in the Global South suffer from it. In their opinion, a cultural revolution that would put the development policy on new foundations is needed. S. Latouche (2004) also considers "degrowth" as a local project that includes political innovations and economic autonomy. The author sees the solution in the concept of eco-municipalism, which implies the implementation of the principle of local ecological democracy, in which important decisions are made by small communities of people living in these territories. With such a system, many eco-municipalities make up an ecoregion that implements the principle of a polycentric and multipolar network. Degrowth society sets high barriers to unfair competition but also greater openness to similar communities. As the scientist claims, the formation of local communities according to these principles is already beginning to occur in the north of Italy in

the Tuscany region. Another example of the concept is the slow food movement, which unites about 100,000 small agricultural producers from around the world in the fight against product standardization.

G. Rist (2008) drew attention to the fact that the social constructions common today in the form of market laws appeared relatively recently, and before their appearance, people had been doing without them for a long time. The author believes that the state in which the achievement of development requires great sacrifices and at the same time guarantees only temporary prosperity of a few is not fair. Nevertheless, the idea of development has been preserved and continues to exist, even if it has been reduced to achieving the Sustainable Development Goals within the framework of international institutions.

The theory of post-development, which appeared as a critique of the classical paradigm, tried to develop ways of alternative movement of society. Despite the efforts that were directed by the ideologists of post-development at shifting the classical paradigm, they could not achieve the desired result, but they had a noticeable impact on the classical concept. The main principle of the classical concept of development, based on economic growth and efficiency, has not been overthrown but has been supplemented by other important indicators, such as caring for people and the environment. As a result of the criticism of development projects from developing countries and the failures of many programs in this area, representatives of the Law and Development movement turned to the search for new approaches to achieving socio-economic progress.

The revival of the doctrine of Law and Development was associated with the emergence of neoliberal economic theory in the 1980s. After the collapse of the Warsaw Pact and the end of the existence of the USSR, numerous development projects based on the ideas of the Washington Consensus came to Eastern Europe. The transition period in Eastern Europe allowed international organizations, primarily the World Bank, the International Monetary Fund, the International Bank for Reconstruction and Development, as well as agencies and non-profit organizations, to implement many projects in the region. During this period, development became a "big business", which revived interest in the problems of Law and Development on the part of the academic community.

At the turn of the century, there were changes that modified the principles of international development. At the end of the XX century, scientists, along with the dynamics of economic growth, began to include in the theory of development various non-economic parameters that measure social well-being, such as environmental protection, human capital development, etc. Based on these principles, in 2000, the UN adopted the "Millennium Development Goals" (MDGs), designed to improve living conditions in developing countries. In 2015, these goals were significantly expanded, resulting in "Sustainable Development Goals" (SDGs). Compared to the MDGs, the SDGs were significantly expanded. In addition, their implementation was meant not only in developing countries but in all countries of the world. Y.-S. Lee (2020) believes that at the moment, the concept of sustainable development represents a new paradigm of international development. Currently, the international development agenda consists of many directions that form a polyvariant landscape, which opens up various ways to choose the optimal mechanisms for regulating the processes of international development.

Conclusion

The contemporary Law and Development is the result of the evolution of the doctrine, which synthesized various aspects of classical and critical philosophical and legal thoughts. The doctrine is not static; the search for new paradigms that allow us to successfully transform the social environment and get closer to solving the global

problems of humanity is constantly continuing. In this regard, Law and Development, as one of the programs of empirical legal research, can assist in the study of law in action in specific socio-economic conditions. The analysis of development policy shows that attempts to spread legal orders outside of one's own legal culture can cause the opposite effect, which can lead to changes in the system that has seen this process.

It is quite obvious that in this regard, a philosophical and legal understanding of both the geopolitical significance of the Law and Development doctrine and many other problems is necessary. First of all, it should provide answers to such questions as: "Is liberal democracy the best political regime for developing countries?"; "Will the transition to market-based economic mechanisms configured according to the Western model be effective from the point of view of production in states that have relatively recently moved away from the appropriating economy?". The expediency of the expansion of legal values (in the form of the rule of law, as well as the legal protection of individual interests and human rights), historically unusual for collective communities based on tribal relations and ancestral customs for centuries, also raises many questions. In general, only a philosopher can assess the final prospects for the total legal acculturation of some non-Western civilizations.

At present, we have to state with regret that a deep philosophical understanding of Law and Development is almost completely absent in non-Western legal literature. Therefore, all of the above problems are still waiting for their objective researcher, who looks at the problem not only as a liberal legalist but also from the point of view of postmodern philosophy.

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VALUE AND REGULATORY FOUNDATIONS FOR DIGITAL TRANSFORMATION OF MODERN SOCIAL RELATIONS: THEOLOGICAL AND CONSERVATIVE LEGAL ASPECTS

Abstract

This paper examines the value-normative transformation of the modern social system and analyzes the impact of digitalization processes on social relations and their development. The content of the article substantively analyzes the key areas of digitalization of social relations; the authors mark out in each of these areas positive and negative effects on the sustainable development of the socio-cultural integrity of society. The empirical material used in this work includes expert assessments and analytical materials related to the digital transformation of traditional religious systems and the value-normative foundations of society. The research perspectives presented in this paper evaluate and interpret all the events and processes under consideration from the conservative legal point of view, from the standpoint of the significance of the socio-cultural environment, sustainable traditional institutions and values for coding and predicting the digital transformation of society in the 21st century.

In the conclusion of the study, the authors substantiate the adequacy of the doctrinal and legal model of society's development called "digital etatism" from the perspective of ensuring stable socio-cultural development and the integrity of the social system.

Keywords: big data, blockchain, state, artificial intelligence, politics, law, religion, traditions, digitalization, evolution.

Introduction

At the present time, digitalization is a key driver of the development of social relations, politico-legal, spiritual and cultural life of modern societies. Digitalization is a very complex and multi-level phenomenon of the modern era; it affects almost all spheres of institutional organization and types of social practices and transforms public and private human activity, exerting a significant impact on changes in the worldview and value-normative structures of society.

Current practice shows that radical changes are taking place in society with regard to value-normative preferences (Avanesyan, 2019) and the moral foundations of social interaction (Khabrieva & Chernogor, 2020); there is a steady increase in the importance of digital technologies as the foundation of the contemporary socio-economic, political, legal and cultural life of society (Baldwin, 2018). Moreover, there is a loss of public confidence in the basic institutions and traditional formats of private and public interaction.

Digitalization has drastically changed the traditional spiritual and moral foundations of civilization and is transforming the religious institutions and cultural dominants of social systems. In the overwhelming majority of cases, these changes are justified in public discourse as qualitative changes that contribute to improving public interaction and creating more mobile and conven-

ient tools for public and private interactions. For example, it is noted that "digitalization and, partly, robotization of traditional religious associations have become integral factors of everyday life, the objective and purpose of which is to organize and accomplish the mission for which they were created – the missionary or communicative activity of the religious community. To help people find themselves in the world of innovative technologies and social upheavals" (Akhmedov, 2021, pp. 15-16).

This work substantively analyzes the key areas of digitalization of social relations and identifies its positive and negative effects on the sustainable development of the socio-cultural integrity of society. The empirical material used in this work includes expert assessments and analytical materials related to the digital transformation of traditional religious systems and the value-normative foundations of society. Consideration of these value-normative foundations serves as the basis for the conservative legal modelling of adequate state policy avenues in the field of social relations' digitalization. This is related to the research optics presented in this work, viz. all the events and processes under consideration are evaluated and interpreted from the conservative legal point of view, from the standpoint of the significance of the socio-cultural environment, sustainable traditional institutions and values for coding and predicting the digital transformation of society in the 21st century.

The Main Areas of Digitalization: Theological and Conservative Legal Interpretation

In this part of the article, we identify and substantively examine four main areas of the digital transformation of social relations and also analyze the positive and negative effects that arise in each of these areas.

1. *Digitalization and automation of key public institutions and sustainable types of practices associated with the translation of analogue information into the digital format, and the digitization of standard analogue processes and of formalized routine and monotonous procedural activities, etc.*

The key positive trends in the development of this area are simplicity, ease, speed and efficiency of storage and use of data, information and acquired knowledge; instant access to the achievements of mankind (cultures and civilizations), which significantly enriches the worldview of people, contributes to the development of tolerance and respect, improves the process of working out and making socially significant decisions; simplifies many routine processes, frees up social time and resources, and provides mobility of interaction and quick exchange.

Moreover, many traditional religions use digital technologies to disseminate undistorted information and meaningful interpretation of the value-normative and moral foundations of a particular religious teaching. Islam, Orthodoxy, Catholicism and Buddhism quite actively use new communicative formats both within their communities and for the fulfilment of messianic ministries (Smirnov, 2017). In general, it should be noted that many traditional institutions are changing their communicative format in view of the fact that the life of modern people is changing dramatically, and so are their ways of world perception and forms of existence. In this regard, innovative technologies do not so much transform traditional institutions as "the tradition itself draws them into its structural fabric" (Chistov, 1986, p. 46), turning innovations into a traditional instrument of social interaction.

In turn, the following negative trends should be marked out: the insecurity of data, hidden information, as well as a high potential for manipulating this information, and most importantly, the impossibility of public control and the influence of various communities on automated processes (for example, bureaucratic procedures, automation of electronic document flow, autonomous expert evaluation of financial, social or other reliability, etc.). Also, from the viewpoint of con-

servative legal thinking, the biggest common threat of this area of digitalization is that there emerge effects of the shadowing of public-power processes and various power-managerial decisions based on autonomous algorithmic (expert) systems, which ultimately leads to the formation of a digital shadow elite, and of hidden tools of digital power domination, including the spread of effects of power abuse, digital dominance, etc.

2. *Ensuring the openness of the processes associated with the organization and actualization of public authority, a high level of information awareness and accessibility of available public services* that are provided by various organizations and institutions (religious, political, economic, legal, etc.), as well as convenience and comfort of social participation and action, interactive nature and mobilization of social resources. In addition, one of the main reasons for technological changes is the focus on ensuring, with the use of digital technologies, a high level of transparency (openness) and online accessibility of public institutions in society, particularly public authorities, the formation of effective mechanisms of public influence and control over the functioning of these mechanisms, as well as the development of cultural and political institutions' commitment to improving the quality of public services and social responsibility.

Moreover, innovative forms ensure people's effective involvement in the social process, in the activities of certain social institutions, whereas innovative technological solutions expand civic participation and ways of collective interaction. Network digital forms of integration are a powerful tool for integrating and articulating social expectations, social and collective needs, public and private interests.

At the same time, this technological orientation, from a conservative legal point of view, supersedes the basic socio-cultural and spiritual-moral foundations of the functioning of public institutions in society and replaces the civilizational orientation of these institutions to the technological requirements and needs of the development of technical systems. This leads to the formation of the so-called transhumanist transformations of social and spiritual nature and to systemic institutional distortions, i.e. when the existing social institutions do not perform or do not properly implement those functions and tasks for the implementation of which they were actually created (Mamychev, Mordovtsev, & Ovchinnikov, 2015). For example, "thanks to the blockchain functions, it is planned so that people themselves will vote and approve changes in the main documents of their religion (influence their value-normative, semantic and dogmatic provisions, transforming them for the modern era of digital transformation – authors' note), collectively determine their own spiritual mentors and honestly collect and track cash flows for the needs of their church and congregation" (Tsentzura, n.d.).

The focus on the formation of convenient digital services and platform solutions creates the illusion of space of choice and spreads the effect of primitivization of religious and other spiritual and moral systems: "if we consider the religious situation in terms of the "religious economy theory", its own omnicanality is also revealed, that is, an approach to communication with a consumer of religious services in which clients choose the most convenient channel for receiving a religious product: an Internet resource, a mobile application, an ordinary visit to church" (Smirnov, 2019, p. 143).

On platform solutions, projects for the formation of digital religions, new "technological symbols of faith" emerge on a systematically regular basis, as well as projects for digital salvation of man and digital immortality (Zabiyako, 2012) related to the digitization of consciousness and connection of people to a new digital reality, which is usually guided by general artificial intelligence. Moreover, similar ideas are put forward by some members of the academic community, various popularizers of science, representatives of IT corporations, etc. For example, Professor Dimitar Sasselov of Harvard Universi-

ty believes that "Our wishful hope for continuity and preserving our identity runs contrary to the realities of our planetary existence... If our future is to be long and prosperous, then we need to develop artificial intelligence systems, in the hope to transcend the planetary lifecycles in some sort of hybrid form of biology and machine" (Brockman, 2017, p. 37).

In the opinion of Professor Frank Tipler of Tulane University, it is innovative technologies and, above all, artificial intelligence systems that will solve all the problems of mankind (violence, conflicts, limited resources, etc.) and overcome the biological limitations of man: "Eventually it will be the AI's and human downloads (basically the same organism) that will colonize space... A human download can think as fast as an AI, and compete with AI's if the human download wants to" (Brockman, 2017, p. 40).

In the same way, Paul Davies from the University of Arizona (USA) believes that "Designed Intelligence will increasingly rely on synthetic biology and organic fabrication, in which neural circuitry will be grown from genetically modified cells, and spontaneously self-assemble into networks of functional modules. Initially, the designers will be humans, but very soon they will be replaced by altogether smarter DI systems themselves", and then "instead of sidelining themselves, humans modify their brains (and bodies) using the same technology as when creating AI", which in consequence will lead to two scenarios: either people "subsequently hand over this enhancement management to DI, achieving a type of superhuman status that can exist alongside (yet remain inferior to) DI"; or "one can imagine DI and AHI (augmented human intelligence) merging at some point in the future" (Brockman, 2017, p. 50). Similar versions with the emergence of a new subject of history are presented by the famous Israeli Professor of History Yuval Harari from the Hebrew University of Jerusalem. In his view, the development of digital- and biotechnologies will lead to a new evolution circle and the emergence of new creatures - Homo Deus, with new ideological and value-normative foundations (Harari, 2017).

The socio-legal basis for the new creatures is evolving within the framework of the concept of somatic rights, which is often called "human rights of the fifth generation". They are designed to record the possibility and ability of people to freely and responsibly make legally significant subjective decisions and actions regarding their own bodies with the use of a wide range of achievements in the field of biotechnology, genetics and other innovative technologies (Kruss, 2000). In this aspect, "somatic rights, which are closely related to the physiological essence of man and are dependent on scientific progress, are a product of society's development and require an appropriate mechanism of legal support" (Potseluev & Danilova, 2015, p. 7). And, above all, this regulation should include moral foundations since the uncontrolled growth of technological innovations can generally raise the question of human identity, giving rise to new socio-technological or biogenetic entities, the evolution of which was discussed above.

Let us mark out another group of negative trends arising from the development of this area of digitalization, viz. a change in value-normative preferences and an increase in the importance of digital technologies as the foundation of the modern social system and its various processses (political, legal, cultural, economic, spiritual, etc.). This also entails a loss of public confidence in traditional social institutions and traditional formats of social interaction.

3. *Implementation of technologies of blockchain, big data and oriented machine learning (artificial intelligence systems) in modelling and forecasting social processes and various social events (economic, political, legal, etc.),* including the use of these technologies both at the level of expert systems (collection, processing and presentation of data for making power-managerial and other socially significant decisions) and at the level of legitimizing the results of political, legal and other activities.

It is obvious that recent technological changes significantly improve the quality of building models of social development based on a huge array of data (using Big Data technologies), as well as algorithmically generated analytical and expert materials (autonomous expert systems based on designed artificial intelligence). This makes it possible to formulate fairly objective and adequate socio-political forecasts, socio-economic strategies, sociocultural models and specific programs for improving various spheres and sectors of public life in a rather mobile way.

In addition, machine complexes and algorithmic solutions ensure objectivity in decision-making, filtering out cultural, historical, ethnic and other prejudices, clichés, etc., and blockchain (distributed ledgers) and big data technologies will be able to ensure the authenticity of data and information and improve the system of anticipatory lawmaking and socio-political forecasting and the system of taxation, health care, social security, education, etc.

As a negative trend from the development of this area of digitalization, we should mention a number of contradictory and risky practices which are intensively developing in modern public life and form a whole range of threats to the spiritual and cultural security of the nation.

First, software packages and digital autonomous algorithmic systems replace the real sociocultural process with virtual events and digital processes, algorithmically constructed information, digital pastors, politicians, etc. Currently, algorithmic solutions make it possible to simulate any social processes in the digital space and experience a variety of experiences. It is important to emphasize that according to the Thomas theorem, if men define situations as real, they are real in their consequences (social, psychological, emotional, etc.). At the same time, the digital space is focused mainly on the experience that radicalizes spiritual, moral and socio-legal restrictions existing in a particular society, creating worlds and situations in which the user can have an "exciting experience" of overcoming all restrictions and the emotional effect of his illusory power, which leads to fundamental gaps between the current socio-cultural reality and the digital one. The latter also dents the importance of basic social institutions, social responsibility, etc.

Second, this is the virtualization and illusory nature of the social process, where real human voices, opinions, public/civic positions are lost in an "avalanche" of digital bots and fakes, generated comments, etc., which leads to the complete disappearance of such phenomena as "public opinion", "social expectations" and so on. In this context, S. V. Volodenkov rightly notes that "working with comments on publications, managing the perception of a message using tools of commentary activity is becoming widely used mechanics of digital manipulative and propaganda practice. Moreover, this manipulative and propaganda practice actively uses cyber simulacra - virtual personalities that function in social media and simulate the representation of real-life network users" (Volodenkov, Voronov, Leontyeva, & Sukhareva, 2021, p. 26).

Another example of the destruction of the social system's moral foundations is the system of cyber simulacra of Matt Liston, the ex-founder of the Augur digital platform, who publicly claims that the digital religion "0xΩ" (Zero x omega) he has created is not aimed to conflict with the traditional religious systems, but, on the one hand, it takes traditional forms and techniques of religious experience and transfers them to the digital environment, replacing religious institutions with digital simulacra; and, on the other hand, it represents the experience of free interaction of "adepts" outside the system of religious dogmas, spiritual and moral restrictions, and so on. Thus, the main feature of this cyber-religion is that "it is universal, all-embracing and practically invulnerable and gives almost equal rights to all believers. This favourably compares it with the other religions, with their division into priests-leaders and obedient flock, the complex and often corrupt hierarchy, taboos and dogmas. Here, the voice of every parishioner is important

and can be heard, used to express one's opinion, without the risk of getting lost in the crowd" (Martynenko, 2018).

In the framework of the conservative legal aspect, it should be added that there is another negative trend in this area: regimes of democratic legitimation (an allusion to the ideological and conceptual foundations of a democratic regime and an adequate institutional and legal embodiment of the democratic idea) is replaced with socio-technological legitimation (argumentation through the discourse of convenience, interactivity, forward-mindedness, etc.), which ultimately leads to the destruction of the value-normative and institutional foundations of the modern principles, mechanisms and regimes of the rule-of-law state.

4. *Digital forms and interactive methods of public-power and other social communication in the individual-society-state system, as well as 24/7 online monitoring and control over any social processes, events, social tensions and conflicts.*

It is also one of the leading areas of digitalization, which was initially associated with fundamental changes in the social organization and its qualitative improvement thanks to innovative technologies. The main orientation of the technologies is associated with the involvement of society in making various managerial decisions in the framework of various public institutions (public, religious, political and other organizations, as well as, primarily, in the framework of the functioning of public authority institutions). In addition, innovative digital technologies should have a positive effect on ensuring mass participation in the discussion of socially significant initiatives; they are to ensure comprehensive control over the functioning and performance of various social institutions and of public authorities and their officials.

Another positive effect from the introduction of digital technologies is associated with the formation of convenient digital public services, other public and state interactive platforms and sites. For example, it is no coincidence that this area is becoming today the main one in the digitalization of traditional religious systems. For example, Orthodoxy is introducing various mobile applications (an electronic prayer book, an interactive Orthodox calendar, Orthodox messengers, etc.), digital platforms and services (Russian Orthodox Church Online, Father Online, and Mother Online). Islam actively uses social networks for development and communication; there are various Internet portals and Muslim services which provide undistorted information about Islam, its spiritual and moral values and norms; "there are a lot of applications in the App Store and Play Market, ranging from those that remind of prayer times and help determine directions to Mecca to those in which one can read the Quran and various Hadiths" (Tsentzura, n.d.). An even wider variety of services, digital platforms and algorithmic applications are used in Catholicism and Buddhism.

It appears that this tendency will be expanding and deepening since, according to Vakhtang Kipshidze (2017), Chairman of the Synodal Department for Church Relations with Society and the Media, "modern society is of informational nature; the ROC cannot ignore information technologies. Just as in his time the St. Apostle Paul went to the Roman forums to be heard, so modern successors of the apostolic authority are called to appear where their word can be heard. IT is a means to put your word across".

Let us mention another positive trend in this area of digitalization of social organization - this is the creation and implementation of autonomous algorithmic systems of oriented machine learning that ensure social, political and legal order, the prevention of socio-political conflicts and illegal actions (machine monitoring systems, predicative law and justice, etc.).

The negative trends in this area of digitalization of social relations are as follows:

- development of the effects of prejudice of artificial intelligence systems and machine failures/errors in oriented machine learning,

which entail massive discrimination of citizens (on the grounds of gender, race, ethnicity, religion and other social attributes), defragmentation of the socio-cultural integrity of society and a more radical "digital stratification" of society;

- targeted dissemination of contextual and individualized information, news, fakes, etc. that are not reliable or impartial, while digital public services create a distorted picture of public reality, the illusion of easy control, real importance and significance of public participation;
- development of manipulative technologies focused on the creation of imaginary contradictions, information construction of public opinion and social problems/conflicts, accentuation through digital media of the attention of society, target groups and individuals on "profitable" problems and possible ways for their solution;
- prevalence of commercial interest in the development and implementation of end-to-end digital technologies. In this regard, Adam Greenfield (2018) rightly notes that "a developer's commercial interest so often overwhelms any concern they may have preserved for ethical behaviour, or concern or the fortunes of anyone affected by the tools they bring into being. It surfaces and makes plain the violence that has always been implicit in the power to see and the power to sort. Most specifically, it demonstrates how assumptions that have framed urban experience since humans beings first gathered in cities are being undermined by newly emergent technical capability" (p. 324).

Therefore, the absence, first of all, of social and legal control and a decline in the importance of spiritual and moral standards allow for the increasing introduction of various algorithms for "group event detection" or determination of "space-time clusters of rebellion", "scalable anomaly", "preemptive control", and so on (Greenfield, 2018, p. 325), which are presented as effective systems for ensuring social and legal order, but basically, they cover the commercial interests and goals of the digital shadow elite.

Conservative Legal Modeling of Areas of Digitalization of Social Relations

As mentioned above, the digitalization of social relations in its essence and focus is not a transient process of transition from analogue instruments and information sources to innovative digital forms and methods of communication, but a more fundamental process affecting the key institutional foundations and worldview structures of society. Moreover, in contrast to the previous industrial revolutions, which also significantly transformed social institutions, value-normative structures and determined new vectors of development, etc., the fourth industrial revolution, "following the same path", at the same time brings about a fundamentally new thing - the creation of a new dimension or a new type of reality in which social processes and events unfold (Schwab, 2019).

So, unlike the previous eras, when the daily life of people proceeded in biological, physical and intercommunicating (religious, socio-cultural, national, etc.) realities, our epoch is shaping the fourth- dimension - digital reality. According to many researchers and analysts, starting from the late 20th century, there have been increasingly distinct tendencies associated not only with the formation of a new digital format (measurement) of the life of society but also the processes of adaptation of a new digital reality to other dimensions of human life. First of all, this is seen, on the one hand, in contradictions and conflicts between the socio-cultural reality (its value-normative, institutional and other foundations) and the digital reality (new electronic forms, technological principles and norms, digital culture, etc.); and, on the other hand, in their interaction and convergence. In the latter case, we are talking about the fact that in contemporary society, there is the convergence of socio-cultural and

digital forms, practices and methods of interaction, and end-to-end technologies (the Internet of things, virtual and augmented reality) do not "dis\place" and do not "replace" value-normative structures, but, on the contrary, they are intertwined with them, and, as a result, both the former and the latter adapt and use each other's resources.

Whereas in the early 21st century, the overwhelming majority of the processes of social relations' digitalization were interpreted negatively as the main threat of destruction of the value-normative framework of society, the intensified introduction of digital technologies into the daily life of society and increased confidence in them have changed the perspective of their assessment. Even conservative public institutions are beginning to view digital reality as an integral and significant dimension of the modern social life of people, organizations and the state. For example, the Catholic theonormative doctrine interprets the digital space as the main sphere and form of human life and identifies its positive and negative effects. Thus, in his third encyclical, "Caritas in Veritate", Pope Benedict XVI characterizes the digital environment as an expanding space of people's everyday life today: "The digital space is a reality in the lives of many people today... Technology - it is worth emphasizing - is a profoundly human reality, linked to the autonomy and freedom of man" (Pope Benedict XVI, n.d.).

In general, this perspective of considering digitalization is dominant in the traditional value-normative worldview structure. In other words, it is usually interpreted as: first, a certain transitional process, which marks the transit of social organization from one qualitative state to another, the transition from industrial development to digital; second, as a process of changing analogue technologies to end-to-end digital tools, in which the usual forms of social communication and instrumental ways of human life are changing and expanding due to the introduction of innovative end-to-end digital technologies.

In the first case, digitalization is viewed primarily in the instrumental aspect as a process that is quite "traditional" for industrial revolutions; it presupposes the replacement of "old" tools used in social life by new technologies. Each industrial revolution creates more and more perfect and effective tools of production, communication, data collection and processing and expands sensory, bodily, mental and other abilities and skills of a person. And the modern stage is not particularly different in its directionality from the previous ones, since it is focused on the technical transformation of human instruments, where "man is perfecting his own organs, whether the motor and sensory, or is removing the limits to their functioning" (Freud, n.d.). This is a new circle of human change "not so much biologically as technically" (Mazin, 2018, p. 46), of perfecting technologies that improve or functionally replace man.

In the second case, the emphasis is on the formation of a new, digital reality of the development of society, religion, politics, law, etc. Here digitalization is interpreted as a broader concept; it is not limited to a set of processes associated with the development, implementation and operation of digital technologies and tools. This concept reflects these processes plus the formation of new ideas, values, attitudes, forms and models of relations, institutions, etc.

Nevertheless, it is important here that any technology and any tool created by man can be used either for a good cause or for a bad cause; the key factor holding back the development and spread of the above-mentioned negative trends is an adequate system of social and legal restrictions and the spread of general spiritual and moral standards, general and professional deontological (moral and ethical) codes in the field of digital transformation of social relations. Vakhtang Kipshidze (2017), Chairman of the Synodal Department for Church Relations with Society and the Media, righteously states that "any technology can be used for the greater good; therefore we use IT to the extent that it contributes to our goal

of Christian ministry. At the same time, there are technologies that, unfortunately, can certainly be used to destroy human dignity. If the task of technology is to absorb a person's consciousness, limit his communication to the virtual world, deprive him of the beauty of contemplation of God's world and of living human communication - then, alas, this is no longer a tool, but a trap for human freedom".

In the socio-legal design of the future development of society, end-to-end digital technologies and innovative forms in the organization of social interaction radically change (not evenly yet in different spheres of society) the political, legal and economic landscape of society's organization and "introduce" new differentiation and delineation of people who are connected not so much with socio-cultural statuses, material or symbolic resources as with access to information resources, innovative technologies, "points" of information exchange, etc.

At the same time, all these technologies and innovative forms do not completely erase or destroy the socio-cultural forms of organizing stability and socio-cultural integrity, sustainable traditions, spiritual and moral standards and requirements. On the contrary, it is necessary to model and implement mechanisms that ensure the processes of adaptation of the socio-cultural foundations of society and new digital forms of evolution of social systems. We believe that today socio-cultural forms, on the one hand, are much in demand in the process of structuring and identifying online communities, the virtual world and interaction in augmented reality; on the other hand, digital systems and algorithms (in the process of machine learning), in addition to the "*digital trajectories of development*", also receive "digitized sociocultural peculiarity of the evolution of specific social relations" (Sociocultural (archetypal and mental) foundations of the public-power organization of society, 2020).

Therefore, we maintain the position that in modern society, there is a convergence of socio-cultural and digital forms, practices and methods of interaction, and end-to-end technologies (the Internet of things, virtual and augmented reality) do not "displace" and do not "replace" socio-cultural and spiritual and moral images, representations, symbols, stable forms and practices, but, on the contrary, are intertwined with them and, as a result, both the former and the latter adapt and use each other's resources.

In this regard, the most adequate doctrinal basis for the development of the state and society in the digital era is the so-called "*digital etatism*". This doctrine assumes that digitalization processses unfold in a certain national and cultural environment and that complex algorithmic systems designed in society should serve the purposes of this environment and ensure its safety and integrity. This stimulates the development of national digital platforms that use information networks to monitor, prevent and counter various risks, challenges, and threats.

Unlike global digitalization and digital unification projects, it is substantiated herein that the emerging national networks should be controlled and regulated within the sovereign jurisdiction of a particular state since it ensures, on the one hand, protection of citizens' and organizations' data from their free use and, on the other hand, protection of the national and cultural specifics of society and the adequacy of the development of end-to-end digital technologies to the unique trajectories of the development of certain civilizational systems. For example, Chinese researcher Zhao Hongrui (2020) notes on this point that "virtual network technologies need to be guarded, guided and monitored, and this protection will serve the purpose of protecting network information on the basis of coercive law... only sovereign coercive force can exercise compulsory jurisdiction, and ordinary treaty actions other than sovereignty cannot establish a universal order" (p. 36).

In the framework of digital etatism, emphasis is put on the processes associated with ensuring stateness in the context of digital challenges and threats. They presuppose not so much attention

to the sovereign qualities of state power (to independently determine and implement the priorities and directions of external and internal policy of the state) as to the possibilities and ability of "systemic counteraction to the processes of penetration into key spheres of life of the state and society from external actors of geopolitical confrontation" (Volodenkov et al., 2021). Digital security and digital sovereignty in this context are becoming key factors to ensure the sustainable functioning of various processes in society (economic, political, legal, cultural, etc.).

In addition, another aspect is associated with the transformation of the traditional doctrinal political and legal foundations of the institution of the state; first of all, we are talking about the basic categories that describe the essence of this institution and its differences from other forms of public organizations and political subjects. Thus, today many basic categories such as "public authority apparatus", "territory", "population", "sovereignty", "legitimacy", "legality", and others are being substantially transformed. End-to-end digital technologies change the principles and modes of implementation of public authority, alter the forms and methods of public-authority communication in the individual-society-state system, destroy the traditional formats of sociopolitical identification and maintenance of the socio-cultural integrity and value-normative unity of the social system and give rise to new ones.

Conclusion

So, it is evident today that complex social forecasting and socio-legal modelling do not use only the "social" and "humanitarian" as a fundamental element and the dominant trend of power and management activity. Today, traditional socio-cultural forms and characteristics of social organization and public administration technologies are not fundamental either in the dynamics of modern social systems or in the doctrinal and programmatic priorities of their evolution. Technological requirements and innovative prospects for restructuring modern societies are becoming more attractive and significant for today's economic, political and technological elites.

Currently, at issue is the status of new drivers of social development, which are still difficult to define with the traditional concept of "subject" (digital personalities, digital platforms, digital algorithms and other digital actants) and which significantly affect the political iteration and dynamics of the political process. In addition, the key centres of mobility, forms and technologies of social-legal and public-authority communication are being restructured; the key resources of social organization are also changing; the most important of them are data generated by the population, organizations, mechanisms, and algorithms. It is data that become the basis for the constant circulation of information and content and the base for the modern "digital formation".

At the same time, digital platforms are becoming a new "value-normative" and "institutional framework" that integrates various environments of social interaction (economic, political, legal, cultural, etc.) and also forms a new balance and priorities for the interaction of realities (digital, sociocultural, biological, and physical).

From the perspective of ensuring stable sociocultural development and the integrity of the social system, the most adequate doctrinal and legal model is "digital etatism". In the framework of this model, digitalization processes are assessed, interpreted and oriented towards a specific national-cultural environment, and complex autonomous algorithmic systems are designed with consideration to the peculiarities of this environment and the needs to ensure its safety and integrity. This approach steers the development of national digital platforms and information networks to protect the data of citizens and their organizations, helps preserve the national and cultural specifics of society and ensures the development of end-to-end digital technologies in the context of unique evolutionary paths of civilizational systems.

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DEVELOPMENT OF ENGLISH LEGAL POSITIVISM FROM BENTHAM TO SALMOND AND BROWN: LEADING IDEAS IN THE CONTEXT OF THE COMMON LAW TRADITION

Abstract

This article examines the peculiarities of the evolution of English legal positivism, which was the only direction of understanding law formed by professional lawyers, expressing the specifics of their legal consciousness, focused on understanding positive law and the practice of its implementation. The authors examine the key concepts that define the historical trajectory and problem field of legal positivism in the Anglo-American tradition, analyzing the legal teachings of T. Hobbes, D. Hume, J. Bentham, J. Austin, M. Hale, W. Blackstone, J. W. Salmond and W. J. Brown. The attention is drawn to the fact that Salmond lays down objections to the concept of law as a rule of the state and considers its main shortcomings. In his work "Jurisprudence or the Theory of Law", Salmond presents the flaws and omissions of the "imperative theory of law", among the proponents of which he names T. Hobbes, S. von Pufendorf, J. Bentham and J. Austin. Brown believes that the essence of law can be expressed by a set of three concepts: "will", "command" and "reason", and the just conception of law implies recognition of the elements of unity, growth and growth that is consciously directed towards the realization and achievement of the goal.

Keywords: legal positivism, Anglo-American tradition, command theory, J. Bentham, J. Austin, J. Salmond, W. Brown.

Introduction

The relevance of a holistic historical reconstruction of the evolution of legal positivism in Anglo-American legal thought is due not only to the fact that analytical jurisprudence remains one of the leading areas of understanding of the law but also because its specific features are inextricably linked to one of the leading legal traditions – "common law". The methodological basis of the concepts of legal positivism in England should be considered as the concept proposed by David Hume (1960), which implies the delimitation of the areas of "what ought" and "what is" and asserts as the object of scientific research only the area of "what is" (the essence). It is important to note that D. Hume challenged the position of S. Clarke in his treatise "A Discourse Concerning the Unalterable Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelations" (1706), which considered it possible "to deduce the original obligations imposed by morality from the necessary and eternal reason and proportionality of things" (Finnis, 2011, p. 62). Nevertheless, Hume was of the view that the basis of any judgement of "what ought" lies "in the feeling" and not "in the object" or in action (Finnis, 2011, p. 62): a negative judgement of the wrongness of an action involves an inner sense of reproach, which involves looking inwards (Hume, 1960) and which, not being a fact of reason, cannot be known by rational means through the categories of truth and error. For this reason, Hume (1960)

is convinced that "what ought" cannot be logically deduced from "what is". Consequently, the "facts of what ought" cannot become an object of rational introspection and self-knowledge. As I. N. Gryazin (1983) notes, this thesis laid the foundation for the formation of "the unity of the entire positivist line of jurisprudence".

The First Ideological Background of Early Legal Positivism in England

It should be stressed that the English philosopher Jeremy Bentham (2000) pointed out two purposes of a book of jurisprudence: (1) to determine what the law is ("a book of expository jurisprudence"); (2) to determine what the law should be ("a book of censorial jurisprudence, or a book on the art of legislation"). The founder of the school of analytical jurisprudence, John Austin (1995), made a strict distinction between the theoretical science of jurisprudence ("the science of jurisprudence"), which studies positive law, and the applied science of legislation ("the science of legislation"), which develops principles from which positive law is evaluated.

Many of the ideological premises of the "first" legal positivism in England were laid down by the political-legal doctrine of Thomas Hobbes (1996), in which some common features with the legal concepts proposed by J. Bentham can be identified, namely:

1. the nature of law is based on empirically derived knowledge;
2. the necessary quality of usefulness of knowledge about human nature and society, which contributes to the well-being of people and their happiness;
3. the individual nature of man, characterized and driven by egoism and the desire for pleasure, acts as a fundamental link in the teaching of English philosophers of law about positive law (for Hobbes – "appetites and aversions", for Bentham – "pain and pleasure").

Moreover, English thinkers define the concept of law by formulating common attributes inherent in it. For example, in "Leviathan", T. Hobbes (1996) pointed out that law is an order of a "public person" addressed to all who are bound to obey him and expresses the will of the sovereign through an oral or written rule prescribing to do or abstain from doing some action. In "Of Laws in General" (1970), J. Bentham defines law as the "will" of the sovereign, which is unconditionally binding, aimed at specific consequences as a motive to comply with it. Thus, it is fair to conclude that both Hobbes and Bentham associate the origin of law with the will of the sovereign and give the law the qualities of an imperative, coercive and non-personalized addressee. The fundamental characteristic that unites the early concepts of legal positivism in England is the denial of the possibility of the existence of an objective, rooted in nature and independent of subjective assessments of natural law (Postema, 2019).

In the teachings of John Austin (1995), the law in its proper sense is understood as rules "laid down for the guidance of an intelligent being by an intelligent being having power over him". This includes both "laws set by God to his human creatures and laws set by men to men". Thus, Austin equates laws established by God with natural law. The laws set by men are divided into two classes: (1) laws established by persons who are politically superior in an independent political society, and (2) rules of positive morality (Austin, 1995, p. 15; Houlgate, 2017, p. 37). Every positive law ("posited law, given its position law") is established by a sovereign, an individual or a collective with political power, in whose independent political society it is sovereign or sovereigns (Austin, 1995). Sovereignty is based on the habit of the greater part of society to obey a particular general superior, the bearer of sovereign power, whereas the bearer of such power himself has no habit of obeying a particular superior. Thus, law, in Austin's understanding, can be defined as a set of general commands (orders) emanating from the sovereign who

makes them effective through sanction, with law being both a pattern of conduct for administrators and judges as well as a warning to persons who commit some unlawful action in terms of that very command or order, trying to convey to them that there will be a sanction, that is a warning of responsibility. Didikin A. B. (2016) notes that Austin's theory of law emerged at the time of fundamental changes in the structure of the British society, the growth of liberal tendencies, the reform of state bodies and of the system of judicial proceedings. The key terms of Austin's theory are "command", "sanction", "duty", "sovereign" (Lobban, 2021).

The declaratory conception of the common law of M. Hale and W. Blackstone (1869), on the contrary, was based on the objective nature of the common law of England, its existence regardless of the private opinions of individuals, including judges themselves. In his "Commentaries on the Laws of England", W. Blackstone (1869) said that a judge is only called upon to declare and proclaim, not to create law (p. 327). However, J. Bentham fundamentally disagreed with the traditional justification for the operation of judicial precedent based on the declaratory doctrine of M. Hale and W. Blackstone. At the same time, Bentham gives an extremely negative assessment of the judicial case law: the thinker characterized the British system of precedents as "a perpetual conspiracy of lawyers against the people" – judges and lawyers have a direct interest in making the law as irrational as possible (Isaev & Lunts, 1947, p. 7). Bentham's project of a general codification of English law was therefore intended to reduce considerably the power of the lawyers, whose task would be reduced not to the interpretation of an ill-defined "common law", but only to the application of the law (Wacks, 2014, p. 22). J. Austin thought that since the sovereign does not interfere with the adjudication of cases and does not overrule their decisions by his "tacit command", he allows this practice (Lloyd, 1987, p. 297; Bogdanovskaya, 1993, p. 44). In so doing, J. Austin was forced to create a legal fiction of "tacit approval" by the sovereign of the actual judicial practice because otherwise, it was impossible to reconcile the mode of establishment and operation of the case law with the "command" conception of law.

In our view, J. Bentham's revolutionary attempt to transform the common law system (Postema, 2019, pp. 186-212) by replacing judge-made "dog law" with a universal codification and the very fictitious entity of "law" with the real entity of "law" as an act of legislation (Bentham, 1977, p. 7) was legitimately defeated by deeply rooted in the professional legal consciousness of the English lawyers' attitudes and perceptions. Since for centuries, the central figure of the English legal system was the judge, who was not just the enforcer of the law, but the author of the law. The perception of law as a judicial tradition, developing evolutionarily and closely linked to the historical development of English society, was a deeply rooted view of the professional legal consciousness of English lawyers, and it is these traditional views that found expression in the legal teaching of the New Zealand lawyer, civil servant and judge John William Salmond (Frame, 1995).

J. W. Salmond's Contribution to the Evolution of English Legal Positivism

It is interesting to note that most of the key aspects of H. L. A. Hart's theory of law (1994), from his critique of Austin's theory of commands and the doctrine of sovereignty to his concept of the rule of recognition, can be considered as developed in J. Salmond's legal theory. In particular, Hart's ultimate rule, which provides criteria for defining valid norms of the legal system (Gryazin, 1988, p. 176), resembles Salmond's notion of "ultimate legal principles", which Hart rejected, qualifying it as "insufficiently elaborated" (Postema, 2011, p. 25). J. Salmond (1902) defines law as a system of principles and rules recognized and applied by the state in the administration of justice. "It is justice that speaks to

citizens as the voice of the state", argues the New Zealand jurist (Salmond, 1902, p. 56); that is, every rule or principle of law is expressed in judicial practice (Salmond, 1893, p. 88).

In our view, this emphasis on judicial recognition and application of the rules constituting the content of the law is a clear expression of the specifics of the common law tradition in which, for several centuries, the law was seen as the "property" of the professional corporation of lawyers – judges and lawyers. As it is known, one of the basic principles of English law states: "The right is where the means of its judicial remedy" ("ubi jus ibi remedium"). This principle is an expression of the system of injunctions (writs) that has been in place for centuries of English legal history, indicating the historically established priority of procedural forms and generally "procedural" thinking of English lawyers (Mikhailov, 2015, pp. 38-43). Just as Roman law was the law of claims, so the common law of England has traditionally regarded justiciability (possibility of judicial remedy) as the necessary and leading feature of law. English case law since 1703 (Lord Ault's position in Ashby v White (1703) 14 St Tr 695, 92 ER 126) explicitly recognizes that a remedy is a necessary component of a subjective right. It is therefore far from coincidental that J. Postema (2011) links Salmond's definition of law to his direct experience as an attorney at law.

The focus of law on the maintenance and protection of a subjective right introduces a purposive element to its concept, which significantly distinguishes Salmond's doctrine from the position of the founder of English legal positivism. Law in Salmond's (1902) understanding has a purposive nature since it is an invention for the administration of justice and cannot be understood without reference to its end result. Therefore, the representatives of the "imperative theory of law", who reduce law solely to the coercive orders of the sovereign, regard, according to Salmond, only one part of the true nature of law and completely ignore the other part of it – the exercise of justice (Salmond, 1902, p. 56).

In addition, J. W. Salmond criticizes J. Austin for neglecting the question of the ethical meaning of law and attempting to separate this from the concept of law as such in principle. At least because of this one-sided approach, Salmond generally finds the imperative theory defective and unworkable. The New Zealand legal scholar notes the inconsistency of such a strong simplification in the form of excluding all the elements other than coercion from the concept of "law", which does not allow for the existence of a link between law and justice, especially in the administration of justice in pursuance of the law. Law is an ideal combination of right and power, aligned with justice on the part of the state. Salmond assumes a theoretical, but not always practical, overlap between law and justice, for the realization of which law was created: in this connection, Salmond (1902), in essence, and in spirit, equates "courts of law" with "courts of justice", which received this name due to the reasoning described above. It is interesting to note that Salmond attributes the concepts of "right", "wrong", and "duty" to both law and morality, in support of which he states that in many foreign languages, the terms equivalent to "right" and "law", such as "jus" (lat.), "droit" (French), "das Recht" (German), "diritto" (Italian) have both ethical and legal connotations in a natural rather than accidental way (semantic argument). Accordingly, this fact is a refutation of the imperative theory, which views law solely as a command of the state and which loses its workability and plausibility, especially when, even from a purely linguistic point of view, the term "law" has also the meaning of "justice" (Salmond, 1902, pp. 56-57). Thus, J. Salmond makes ethics an integral, "internal" element of the law, understood as an instrument of justice. For Salmond, the law is not merely an overbearing precept of the state, but it also includes a public pronouncement of the principles of justice. This approach, of course, can no longer be seen as following the "separation thesis" of Austin's command con-

cept.

The development of English legal positivism was also reflected in the changing understanding of the content of positive law. Salmond emphasizes that although the idea of command and coercive exercise of justice by the state is an intrinsic consequence of the law, it is incorrect to say that every legal principle can be expressed in a peremptory form, since only those rules of law that create legal obligations take this form, and even these by their intrinsic nature are something more that the imperative theory does not take into account. Other varieties of legal principles go beyond the peremptory definition and take the form of permission, as they confer freedoms rather than obligations. In particular, these include (1) rules of legal procedure; (2) permissive rules of law which declare certain acts to be optional or wrongful, "for example, a legal rule that witchcraft or heresy is not a crime, or that damage caused by competition in trade cannot constitute grounds for action" (Salmond, 1902, p. 58); (3) rules which refer to the existence, application and interpretation of other rules of law. The New Zealand lawyer disagrees with those authors who are trying to present non-imperative legal norms also in the form of orders, but sent to judges, and not to all people: in refutation, Salmond (1902) gives an example of cases when the performance of judicial functions is not delegated by the supreme authority but is carried out by the supreme legislative body or the monarch himself, therefore, in such cases, procedural rules cannot be forcibly applied to the judiciary, while, however, they do not cease to be rules of law, "the legal nature of which is a consequence of the fact that they are actually observed in the course of the administration of justice, and not because the judiciary is bound by legal sanctions to comply with them" (p. 59).

The legal doctrine of the New Zealand jurist shifts the focus from sovereign power (J. Bentham, J. Austin) to judicial practice as the ultimate basis of law for the first time in the history of English jurisprudence. Thus, the reality of law is no longer based on the coercive command of the sovereign but on the rules and principles recognized by the judiciary and confirmed by their practices (Postema, 2011, p. 23). It is, therefore, not unreasonable to believe that it was J. Salmond who brought English analytic jurisprudence closer to the widely known social thesis of law as a fact of social life (Postema, 2021, p. 198). From J. W. Salmond's (1893) point of view, the law is a heterogeneous and multi-component body of norms and principles that are both imperative and permissive in nature. In his view, Austin's theory of commands fails to explain the existence of different kinds of law (in particular, permissive rules, procedural rules, evidence, etc.).

The Legal Doctrine of W. J. Brown as the Development of Legal Positivism

In addition to J.W. Salmond, critical arguments regarding J. Austin's legal theory of commands ("command theory of law") were formulated at the end of the 19th century by W. A. Watt in "Outline of Legal Philosophy" and subsequently systematized by the Australian jurist William Jethro Brown (1868-1930) in 1906 in the excursus E of "The Austinian Theory of Law Being an Edition of Lectures I, V, and VI of Austin's "Jurisprudence" and of Austin's "Essay on the Uses of the Study of Jurisprudence" with Critical Notes and Excursus".

Attention must be drawn to the fact that W. J. Brown accuses J. Austin of perpetuating two errors: (1) attempting to give any legal rule the form of a command; (2) limiting the ultimate source and nature of commands to the arbitrary prescriptions of rulers to whom they are subject under penalty of punishment, rather than the prescriptions of the state as a totality of both rulers and governed, which would exclude the arbitrariness of regulation, since it is "imposed" – in other words, the law as a system exists – by the will of the totality which citizens themselves are part of (Brown, 1906, p. 344).

W. J. Brown develops an argument similar to that presented by J. W. Salmond that a significant part of the law cannot be expressed in the form of commands and that many rules of law do not concern imposing duties but granting privileges. Moreover, even in cases where the law can be expressed in the form of a command, the command is not its real essence. That is, the law is much more than a command: "The general purpose of the law is not to impose duties, but to grant rights; not to turn a citizen into a slave, but to ennoble him as a person; not in forcing him to follow prescribed paths, but in giving him opportunities for self-realization. In a word, the law is, first of all, a system of rights provided in the interests of the common good. Duties are imposed not for their own sake, but only for the purpose of securing rights" (Brown, 1906, p. 341). Decisions are made by judges not on the basis of a system of commands but on the basis of the principles of utility and general welfare, developed by independent reasoning from anyone based on the real facts of life. These conclusions allow us to conclude that Brown adheres to the social thesis as a fact of public life.

It is worth noting, however, that W. J. Brown's (1906) definition of "a positive law" is quite close to Austin's understanding and the terminology the latter uses: "Every positive law (or any law in the ordinary or strict sense) is established, directly or indirectly, by a sovereign person or body in relation to one or more members of an independent political society in which its creator has supreme power" (p. 235), that is, it comes from a superior, behind which there is a coercive force, to subordinates. Brown's refutation of the concept of law as a command of the "real ruler", to whom Austin attributes the origin and authority of all the law and with whom he identifies the state, appears to be an essential distinction. Thus, Brown argues that "law exists regardless of its formulation by the state", nevertheless considers as paramount to jurisprudence the "legal norms which actually exist", are "determined on the basis of the officially proclaimed will of the state" and "enforced by the state power" (p. 235). Law, in its totality, is the voice of an organized society, addressed to all persons under its control and affirming the rules of life, which people can accept with the knowledge that society has the power to uphold them. It is the expression of the organized will of the society, backed by the organized power of the society (Brown, 1906, p. 344).

In Brown's view, a just conception of law implies recognition of the elements of unity, growth and growth consciously directed towards the realization and achievement of the goal – that is, a variation of the "concept of the organism" proposed in relation to law by R. von Ihering: "Into each rule of law the spirit of the whole law enters" (Brown, 1906, p. 351). The conclusion of the Australian legal scholar seems fair that the definition of law should recognize the imperative element in law as well as some other elements that have found little or no expression in the analysis conducted by Austin, namely the purposive and the mental elements. Brown believes that the essence of law can be expressed by a set of three concepts: "will", "command" and "reason" – an expression of the general will asserting an order to be enforced by the organized power of the state and directed towards the realization of some real or imagined good, with the existence of an organized state being seen as an essential precondition for the existence of positive law. Thus, in legal scholarship, the term "law" is to be interpreted as the organic set of rules pertaining to the external actions of the individual, together with the corresponding systems of rights and duties that these rules imply, approved by the state through official bodies, upheld by the organized power of the state and applied by the courts of the state in the exercise of their judicial functions.

Conclusion

It is problematic to argue with the fact that the specifics of the historical development, structural

organization and professional thinking in the family of "common law" determine the qualitative originality of concepts of Anglo-American legal positivism. At the same time, the integrity of the reconstruction of the tradition of Anglo-American legal positivism is also related to the need to demonstrate the manifestation of the specific features of common (precedent) law in the ideological content of the concepts of analytical jurisprudence.

It is fair to conclude that both Hobbes and Bentham associated the origin of law with the will of the sovereign and endowed law with the qualities of an imperative, coercive and non-personalized addressee. The fundamental characteristic that unites the early concepts of legal positivism in England is the denial of the possibility of the existence of an objective, rooted in nature and independent of subjective evaluations of natural law. It must be stressed that Bentham and Austin's notions of the proper organization of the legal system were at odds with the common law tradition because the degree of centralization of law-making, according to the legal theories of these English legal scholars, is completely out of character with case law, which is hardly established by a particular sovereign, is scarcely built consistently on the principle of utility, as well as case law is also unlikely to be holistic and coherent.

In our opinion, J. Bentham's revolutionary attempt to radically transform the common law system was quite naturally defeated, coming up against attitudes and perceptions deeply rooted in the professional legal consciousness of English lawyers, according to which for many centuries the central figure of the English legal system was the judge – not only the enforcer of law but the real lawmaker. The perception of law as a judicial tradition, developing evolutionarily and closely linked to the historical development of English society, found expression in the legal teachings of the New Zealand lawyer, civil servant and judge John William Salmond. In our view, this emphasis on judicial recognition and application of the rules that constitute the content of the law is a clear expression of the specifics of the common law tradition, in which for several centuries, the law was viewed as the "property" of a professional corporation of lawyers – judges and lawyers. The focus of law on the maintenance and protection of a subjective right introduces a purposive element into its concept, which significantly distinguishes Salmond's doctrine from the position of the founder of English legal positivism John Austin. Salmond makes ethics an integral, "internal" element of the law, understood as an instrument of justice. In the concept of justice, Salmond seeks to integrate what he sees as two intrinsic aspects of the law – the political, which is expressed in the imperative, coercive nature of the requirements of official law emanating from the state, and the ethical, which is expressed in the focus of justice on the maintenance and protection of a subjective right.

W. J. Brown develops a similar argument to that made by J.W. Salmond that a significant part of the law cannot be expressed in the form of commands and that many rules of law do not concern imposing duties but granting privileges. The essence of law can be expressed by a set of three concepts: "will", "command" and "reason" – an expression of a common will, asserting an order to be enforced by the organized power of the state and aimed at the realization of some real or imagined good, with the existence of an organized state being seen as an essential precondition for the existence of positive law.

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PRIVATE AND PUBLIC INTERESTS IN RUSSIAN LAW AND JURISPRUDENCE: TRANSFORMATION OF APPROACHES

Abstract

The article deals with the problem of interests in law and jurisprudence, their identification as private and public interests, the search for a balance of private and public interests in society. The authors emphasize the change in the nature and essence of the private and public in Russian society in the post-Soviet period. This basis allows proposing theoretical models for the transformation of private interests into public ones and the harmonization of such interests in the general context of social, political and legal development. In the first case, we are talking about trends in the development of society, in the second – about the goal of implementing legal policy based on the coordination of interests. By means of reflexive analysis, the authors highlight the interests in law arising in the conditions of post-Soviet society and their understanding within Russian legal science. The justification of the idea of harmonisation of public and private interests in the system of relations of modern society is equally close to jurisprudence and philosophy, history, sociology, political science as fields of knowledge with many points of intersection and common vision.

Keywords: Russian law, jurisprudence, private interests, public interests, private and public law.

Introduction

One should take into account that the problem of interests belongs to such socio-humanitarian spheres as philosophy, history, sociology and political science. At the same time, jurisprudence, using the approaches proposed by other sciences, considers interests in its own perspective, defining their types, forms of manifestation, normative expression and institutionalization. From a methodological point of view, it is extremely important to establish the circle of subjects of legal communication correctly, realizing their private and public interests, without identifying the former only with freedom of property, the latter with state power.

The authors consider that the concepts that have filled various areas of socio-humanitarian knowledge in the post-Soviet space and have deep epistemological, ontological and axiological roots. Legal science is much more fortunate in terms of the opening opportunities for the implementation of ideas since it has access to the practice of lawmaking and law enforcement. At the same time, the theoretical models formed in legal science and responding to the challenges of the modern world sometimes lack constructive completeness in order to get real embodiment in life. The task of jurisprudence is to build models of legal regulation and legal constructions based on the identification and harmonisation of interests (in public-private partnerships, in contractual relations, etc.), which in Western jurisprudence is interpreted as "social engineering".

In its most general form, interests are understood as the real reasons for social actions. The identification of interests in law and their configuration in legal regulation (in the general dynam-

ics of social relations) is one of the significant methodological problems of modern jurisprudence. To solve it means to form the strategy for the development of society and the state, the institutional development of law, as well as to resolve conflict situations in law enforcement practice. All this determines the modern sociocultural context.

A complete theory of interests in law can be found in the work of the outstanding jurist of the 19th century Rudolf von Ihering (1818-1892) considered that "interests were the essence of life's demands in a broad sense. The concept of life requirements was taken here mainly in a relative sense, which made up the fullness of life for one, i.e., was included in the conditions of his well-being, then for another, it did not matter, this was justified both on individuals and on whole nations, even on the same people in different periods of its culture" (Ihering, 1880, p. 83). In the mainstream of the logically consistent reasoning of the German scientist, one should pay attention to different perspectives, in which various interests existing in a particular period in the culture of a society are refracted. Ihering focuses on the interests of countries and peoples in the geopolitical space, to the interests of the state and various social groups, refracted through the activities of public institutions, to the multidirectional interests of individuals, realized in legal relations.

Ideas about the interests of prominent Russian legal scholars N. Korkunov (1853-1904) and S. Muromtsev (1850-1910) had a significant impact on the development of Russian jurisprudence at the turn of the nineteenth and twentieth centuries. The works of these authors were devoted to the reflection of interests existing in society in legal norms and institutions, about the ratio of general and private interests, about the proportional equality of interests, when the objectively existing advantage of common interests should not suppress the personal freedom of the individual (Korkunov, 1909; Muromtsev, 1879).

In Soviet jurisprudence, the theory of interests in law was developed by P. Stuchka (1865-1932). In line with the Marxist methodology prevailing in his era, he emphasised class interests (Stuchka, 1924).

The so-called "jurisprudence of interest" as a scholarly trend that took shape by the mid-twentieth century is widely represented in the works of American authors R. Pound (1870-1964) and J. Stone (1907-1985).

R. Pound (1923) emphasized: "The task is one of satisfying human demands, of securing interests or satisfying claims or demands with the least of friction and the least of waste, whereby the means of satisfaction may be made to go as far as possible" (p. 157). R. Pound saw one of the main functions of legal science in the classification of interests. According to J. Gardner (1961), "Pound asserts that a legal system attains the ends of the legal order in the following manner: (1) by the recognition of certain interests, individual, public, and social; (2) by defining the limits within which these interests shall be legally recognized and given effect through legal precepts; and (3) by endeavouring to secure the interests so recognized within the defined limits".

The Russian researcher S. Kotlova considered Pound to note, after classifying interests, that they can clash in society and therefore, a means is needed to find a balance of interests. The duty of a lawyer is to generalize and classify interests since interests are not static. The task of the rule of law is to harmonize and resolve overlapping requirements; he calls the activity to establish a rational-legal order in society "social engineering" (Kotlova, 2013).

In analysing J. Stone's views, A. Soboleva (2002) notes the following: "J. Stone believed that there are three main directions in the study of law: 1) law and logic – analytical jurisprudence, 2) law and justice – ethical jurisprudence, and 3) law and society – sociological, or functional, jurisprudence" (p.76). The three identified subject areas of jurisprudence, on the one hand, prompting a reflection on how the problem of interests can be solved within each of them and,

on the other hand, encourage the synthesis of the possibilities of analytical, ethical and functional jurisprudence to solve this problem.

Transformation of Concepts of Interests in Russian Jurisprudence

In Soviet legal science, the problem of interests was developed from a Marxist standpoint. Confrontation of class interests led to a change in socioeconomic formations and within their framework – forms of state and law. The party-state system, established in the USSR since the 1930s, determined the undivided domination of public interests identified with the ruling party and the state. Means of ideology and legal science were used to substantiate the priority of public interests, collective interests, the interests of the party and the state over the interests of the individual. Thus, in Soviet society, the public undividedly dominated over the private.

In the 1960s, ideas about interests in Soviet jurisprudence began to go beyond the rigidly defined framework of class interests. Views on the interests of the individual (the direction of the subject's actions, his desire to master this or that good) and society as a whole were gradually formed. By the mid-60s, one could define "three points of view on the nature of interest: it was presented as a subjective or objective phenomenon, or as a unity of the subjective and objective" (Ekimov, 1984, pp. 4-5). The study of interests expressed in legal norms made it possible to identify the socio-regulatory possibilities of law.

In the post-Soviet period, attention to the problems of interests in law has significantly increased. The question about the dialectical unity of the interests of the individual, society and the state and the priority of the rights and freedoms of the individual in his relationship with the state arose.

In the 1990-s, within the context of the transition of Russian society to a new state, the V. Nersesyants' libertarian concept based on the freedom of the individual was admired (Nersesyants, 1997, p. 321, 2002, p. 3). It claimed, "a law that does not meet the value criteria of freedom and justice can be recognized as unlawful". Another, no less interesting as a concept of libertarianism, but not widely recognised until now, is V. Nersesyants' concept of civilism "(from Latin civis – citizen), which is based on ideas about a new social order that may result from the fair, i.e. legal, de-socialisation of socialist property" (Lapaeva, 2020, p. 18).

V. Nersesyants (1997) believed that the socialist order "with its permissive (permissive) order of regulation typical of egalitarianism, where something limited is allowed ... creates attitudes of passivity and dependency, deforms the human factor and closes the door to growth in social production" (p. 89).

In describing post-Soviet law, V. Nersesyants noted the "close intrinsic interplay of private and public law" that exists within it. The author stated: "In the context of the post-socialist movement to the rights and freedoms of man and citizen, to the rule of law, to the civil society and the rule of law, it is obvious that there is a need for a simultaneous, coordinated, complementary and mutually reinforcing the development of the principles of norms and institutions of both private and public law, contrary to the common misconception that private law is what we need today for a market society, and that we already have so many public laws since socialism" (Nersesyants, 1997, p. 111). V. Nersesyants considered that kind of reasoning as erroneous.

At the turn of the XX–XXI centuries, Russian legal science paid close attention to the legal nature of private interests, interpreted in the mainstream of the development of a market economy, freedom of ownership and entrepreneurial activity. At the same time, ideas about the private in the context of constitutional rights and freedoms (the private life of a person in its various manifestations, the rights and freedoms of an individual as a private one) were formed.

The area of interest of Russian lawyers was to identify the nature of private and public law.

E. Sukhanov (2004) rightly asserts that the development of human civilization, the colossal complication of social processes, "modified, but in no way abolished the foundations of the legal system, based on the fundamental difference between private and public law" (p 26). The categories "public" and "private" were used preferably to substantiate the dualism in law, two modes of legal regulation – private law and public law, in the first of which dispositive principles prevailed, in the second imperative principles were determinant.

Nowadays, the idea that the opposition of the two modes of legal regulation is hardly justified gradually gains popularity in Russian legal science. Justifying the thesis that the provisions of the Constitution of the Russian Federation of 1993 form a dualistic legal system and fundamental provisions of both private and public law, V. Yakovlev notes that "for both public and private law, a single goal in accordance with Art. 2 of the Constitution is a person, his interests, his rights and freedoms. Public and private laws are not a goal, but different means of achieving this goal" (Yakovlev, 2004, p. 20). If the common goal of legal regulation for both private and public law is the individual, then the fundamental basis for opposing private and public law and for justifying dualism in law and the legal system is thereby lost.

Post-Soviet jurisprudence conceptualizes now the ideas about law as a form of existence of interests, their functioning and implementation, and at the same time a way of regulating and restraining them, and positively promoting interests in legislation (Subochev, 2008, pp. 13-14).

The attention of researchers is increasingly focused on the legal nature of private and public interests underlying the legal system of the Russian Federation, "their correlation, and maintaining a balance between them. General trends in the development of Russian society force us to pay attention to the problem of harmonizing relations in various spheres of its life on the basis of legal coordination of private and public interests" (Nemytina, 2008, pp. 45-69).

It becomes evident that in the post-Soviet society, the branches of law classified as private law are enriched by the use of elements of public law regulation (protection of the weaker party in legal relations). Vice versa, the branches of public law begin to use actively legal constructions of private (for example, contractual) law.

Thus, scientific discourse in Russian jurisprudence has shifted from the recognition of dualism within the legal system to the identification of private and public interests of various subjects of legal communication that are forming in society.

D. Dedov draws attention to the fact that the problem of interests is recognized in contemporary Russian jurisprudence as a serious methodological problem (both in theory and in practice). Lawyers focus their efforts "on taking legal knowledge of the interests to be legally protected and the methods of protecting them from the irrational into the realm of the rational" (Dedov, 2008, p. 19).

V. Malakhov writes that it is impossible "not to take into account the fact that the practical life of society is inextricably linked with the realization of interests". With regard to law and jurisprudence, we are talking about "legitimate interests ... requiring or suggesting the use of legal means both for their implementation and for counteracting them" (Malakhov, 2017, p. 31). "Interest can always become the basis for an action, including the basis for a lawful or unlawful act" (Malakhov, 2017, p. 33). "Interest, if it is not an ideological value, is always specific, and according to the subject of its presentation and existence, and this subject is a person ... they are essential elements of the legal relationship" (Malakhov, 2017, p. 34).

V. Kuzmina examines scientific approaches converging the understanding of interests in jurisprudence and philosophy. "In the context of the total chaotisation of ordinary and scientific consciousness, very pluralistic ideas about the nature, essence, typology and functions of inter-

ests in contemporary conditions are being formed" (Kuzmina, 2009, pp. 3-4), notes the author.

It is obvious that the coexistence of private and public interests in social reality, the change in the legal nature of private and public interests in modern society associated with the growing activity of civil society institutions and the affirmation of human rights and freedoms, as well as forms of their implementation in society, predetermine the trends of legal regulation at different levels and in different spheres. Such trends also guide the development of modern jurisprudence, as well as related fields of scientific knowledge.

The attention of the Russian scientific, legal community in studying the problems of interests is evidenced by the following conferences: All-Russian Scientific Conference "Interests in Law" (Moscow, Peoples' Friendship University of Russia, 25-26 March 2016); All-Russian Scientific and Practical Conference "Law and Interest (R. Iering)" (M. V. Lomonosov Moscow State University, 20 December 2017).

Private and Public Interests in Russian Society

The scientific discourse in Russian jurisprudence around the private and the public, about the identification of each of these components, the definition of their correlation and the determination of the possibilities and prospects of their coexistence, reflects the true relations formed in the new conditions of the post-Soviet society.

Understanding of the problem of private and public interests in the modern Russian jurisprudence, identification of such interests by methodological means has a profound meaning, since it develops around the triad "man– society– state" and is also associated with other scientific discourses related to the nature and essence of law (natural law, statist, sociological, integrative). Meanwhile, the scientific discourse of lawyers "professing" different approaches to understanding the law, having different ideas about the nature and essence of the private and public in law, and their correlation should be based on an in-depth study of the trends unfolding in modern society. They should also reflect the dynamics of social relations and, most importantly, should facilitate the movement of society towards progress, as far as possible, with the help of legal science.

The social potential of jurisprudence is great because it can actually contribute to the solution of the problems faced by society and influence the state of lawmaking and law enforcement. In view of the interests of the various subjects existing in the legal field, it was necessary to:

a) build scientific concepts based on a new understanding of private and public interests;
b) reformat the law-making process in a new paradigm reflecting the transformed public and private interests;
c) resolve in practice the conflicts arising between the subjects implementing the different interests in society.

In the post-Soviet period in legal science, law-making and law-enforcement practice, Russian lawyers had to learn to identify public and private interests newly emerging in society and subject to legal protection to determine the balance between them. Guided in essence and value by the methodological approaches in the framework of private and public, it is already possible with the help of technical-legal means to build legal constructions in normative legal acts, to resolve in an optimal way on the basis of the balance of interests for specific situations in law-enforcement practice. Finally, in the context of the correlation of private and public for scientific purposes, we can try to identify general trends in the development of Russian society, state and law of the last three decades.

Trends in the development of Russian legal science in terms of its understanding of the issues of private and public quite reflect the essence of what is happening in society, in which in the 90s, the citizens were aware of their own (private) interests in the sense of obtaining material bene-

fits, forming property relations and implementation of entrepreneurial activities. On the wave of the free market, government involvement in the regulation of economic relations was minimised. Intangible goods, moral values, moral attitudes cultivated in Soviet society were relegated to the background. At the same time, no new ethical guidelines were set at the ideological level in society and the state, which corresponded to the newly emerging system of relations.

The categories "private", "private interest", "private principles" in legal regulation are in essence fully reflected in the Constitution of the Russian Federation of 1993: private property (part 2 of article 8, article 35), freedom of economic activity (part 1 of article 8, article 34. In Russia, in connection with the emergence of private property, it was the realization of the property rights of citizens that became of primary importance, which was fully justified.

In the 1990s, an unprecedented surge of interest in the problems of private law regulation, which met the needs of social development, clearly manifested itself in Russian jurisprudence, which led to a significant increase in knowledge in civil law and related branches.

At the same time, the attention of the scientific, legal community was focused on the development of the problem of human rights as a private individual. The formation of the focus of scientific interest here again can be seen in the Constitution of the Russian Federation, according to Article 2, of which the main goal of legal regulation is proclaimed the person, his rights and freedoms, hence - his interests. The state's attitude towards the individual is regulated in Part 1, Article 7 of the Constitution of the Russian Federation: "The Russian Federation is a social state whose policy is aimed at creating conditions that ensure a decent life and the free development of the individual" (Constitution of the Russian Federation, 1993).

Despite the enormous interest of Russian lawyers in private law as a sphere of legal regulation, to the dualism in the legal system based on the division of private and public, it becomes obvious that the category of "private" cannot be attributed exclusively to property relations, linked primarily with the freedom of economic activity. This category must be interpreted first and foremost in the context of the interests of the individual as a private person, his rights and freedoms, which is defined by the Constitution of the Russian Federation.

Since the early 2000s, Russian jurisprudence has already focused on the study of public law problems associated with the search for a new nature of Russian in the context of administrative reform, strengthening the role of the state in regulating the economy and social sphere.

In Russian legislation and the practice of legal regulation of that period, one can see, albeit not so clearly expressed, but objectively existing, a tendency to reconcile private and public interests in legal regulation.

In this sense, the "National Security Concept of the Russian Federation" approved by Presidential Decree No.1700 of December 17, 1997 (amended on January 10, 2000, No.24) is very telling. It stated that "the national interests of Russia are a set of balanced interests of the individual, society and the state in the economic, domestic political, social, international, information, military, border, ecological and other spheres". This Concept was the first document to contain the idea of balancing the interests of the individual, society and the state in various spheres of life, but it does not define the ways and means of achieving this balance.

It is symptomatic that in the text of the document, the interests of the Russian society differ from the interests of the state of the Russian Federation. They are interpreted broadly – both the interests of an individual and society as a whole are embedded in a general context with state interests. At the same time, according to the logic of the Concept, the interests of the individual, consisting "in the implementation of constitutional rights and freedoms, in ensuring personal security, in improving the quality and standard of

living, in the physical, spiritual and intellectual development of a person and citizen", are presented separately from the interests of society. The authors of the Concept see the interests of society "in the consolidation of democracy, in the creation of a legal, social state, in the achievement and maintenance of social harmony, in the spiritual renewal of Russia". Based on the content of this political-legal document, public interests are not presented in it as based on the private interests of citizens, derived from them, being a harmonious combination of private interests within the framework of various public corporations, civil society institutions and the result of consolidation. The concept, completely apart from the individual and society, positions the interests of the state, which "mean the inviolability of the constitutional system, sovereignty and territorial integrity of Russia, in political, economic and social stability, in the unconditional provision of legality and maintenance of law and order, in the development of equal and mutually beneficial international cooperation" (National Security Concept of the Russian Federation, 1997).

It is worth noting that the activities of state institutions at the beginning of the twentieth century were integrated in fundamentally new ways. The state, transforming its institutions in terms of its orientation towards the individual and society, no longer only exercises power but also provides social services. According to the Constitution of the Russian Federation, the institutions of local government are not part of the system of state power and have autonomy within the limits of their competence (article 12). However, this type of public authority, distinct from state power, still exists in the Russian Federation as an extension of the vertical of state power.

Thus, over the past 30 years of Russian history, "public" in Russia has been gradually transformed and is no longer synonymous with "state" in legislative regulation and public policy. The features of publicity began to be recognised (first in science, then at the official level) by corporations other than the state (local self-government, political parties, professional, confessional and other corporations).

Search for a Balance Between Private and Public in Russian Law and Jurisprudence

In the 1990s, the programmes of socio-cultural development changed in the post-Soviet space, which predetermined the need to search in socio-humanitarian fields of knowledge for the fundamentally new interests of the individual, society and state, the conditions and possibilities of their coexistence and development in the dynamics of social relations.

"Any change in the historically established types and forms of activity", according to the Russian academician V. Stepin, "must necessarily be accompanied by changes in the sphere of culture, the emergence of semiotic systems in it, corresponding to new programs of social communication, behaviour and activity". Behind all this, "there are real demands of society, the need for transformations of the prevailing stereotypes and ways of human activity" (Stepin, 2011, p. 115).

In methodological terms, attention should be paid to the fact that in the application and justification of the categories of "private" and "public" in Russian law and jurisprudence, there are two directions in which these and derived from them categories and concepts are interpreted differently.

First. In the general socio-cultural context of the development of Russia, there is an understanding of private (individual, personal) interests, understood in the sense of a person exercising constitutional rights and freedoms, as well as their transformation into corporate-private (common interests of subjects of entrepreneurial activity) and corporate-public interests (associated with activities institutions of civil society). At the same time, Russian researchers, in their works, delve deeper into the consideration of public in-

terests that are not identified with the state ones (Zelentsov & Nemytina, 2018). In this context, it is significant that "state" and "public" cease to be synonymous not only in academic discourse but also in political decision-making and in the practice of Russian everyday life.

Second. The categories "private" and "public" in Russian jurisprudence are used in the sense of emphasizing dualism within the legal system, classifying the array of legal norms, institutions and branches of law as private or public law, establishing separate legal regulation regimes based on the principles of dispositivity or imperativeness. The theoretical justification of "private" and "public" in line with the dualism of legal systems, the origins of which go back to Roman law, the establishment of "watershed" between branches, institutes of law, spheres of legal regulation, can hardly be considered a promising direction in the development of legal science. This kind of dualism hinders the perception of law as a holistic phenomenon and the search for the means to harmonise legal relations in society. As of today, it is obvious that the branches traditionally classified as private law cannot avoid using elements of public law regulation, while the branches that have always been considered as branches of public law are enriched at the expense of the means developed by branches of private law. In one case, this may be the protection through public means of party interests in a private law relationship. In another, it may be the use of forms of contractual relations by public law entities. This process of interchange, cross-influence and cross-fertilization between branches and institutions of law and areas of legal regulation is gaining pace and momentum.

Since trends in the development of law in modern society set the vector for the development of jurisprudence as a field of scientific knowledge, it is obvious that the rationale for the dualism of the private and the public in law is not a major trend in legal science. For the development of legal science, further development in the first paradigm associated with the identification of private and public interests of subjects of legal communication and the construction on this basis of models of legal regulation at the doctrinal, dogmatic and practical levels is much more promising.

V. Malakhov, arguing that a "restructuring of the entire legal understanding" is required on the basis of interests, which "requires the recognition of individual law as a form of self-organisation of people's legal life as independent in importance and ways of implementation" (Malakhov, 2017, p. 35). At the same time, the author expresses genuine concern about the dominance of interests in legal regulation: "Interests are easily manipulated. The manipulation of interests, i.e. the continuous adjustment of law to reality through them, inevitably disables the mechanisms of legal 'autopilot'" (Malakhov, 2017, p. 36).

Obviously, the trends described above, based on the generalization of the Russian experience, related to the development of law and jurisprudence in the course of implementation of interests by the subjects of legal communication and the formation of ideas about interests in legal science developed in a similar way throughout the post-Soviet space. At the same time, along with general trends, there are peculiarities determined by the socio-cultural context existing in a particular society and state, which, in turn, predetermines the reflection of social reality in the socio-humanitarian fields of knowledge.

Conclusion

Speaking about the trends in the development of legal science in terms of understanding the problems of interests, it should be noted that this scientific direction, called "jurisprudence of interests" in the second half of the twentieth century, has gained recognition in the United States (Pound, 1923, 1940; Stone, 1964). At the same time, Soviet jurisprudence was dominated by notions of interests based on class interests within the framework of socio-economic formations.

The problem of interests attracted serious attention of Russian legal scholars already in the post-Soviet period. In the 90s, of the twentieth century, on the wave of transforming social relations, domestic scientists focused on the justification of private and public in the law in the context of the dualism of the legal system. At the same time, attention was paid to the legal nature of private interests interpreted, on the one hand, in the context of the development of institutions of property and entrepreneurship, on the other hand, in the context of constitutional rights and freedoms of the individual. More and more attention is being paid to the problems of the public in law and jurisprudence, which is no longer identified with the state.

Identification of private and public interests in law, the search for their configuration in the dynamic processes of modern society, in our view, are among the significant methodological problems of modern jurisprudence. The solution of these problems largely determines the strategy of development of society, state and law, as well as the possibilities of conflict resolution between different actors realizing their differently directed interests in modern society.

Meanwhile, scholars in the post-Soviet space will still need some time to form adequate ideas about the new social reality in the form of the coexistence of private and public in it and about the interests of various actors influencing this reality.

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LEGAL THEOLOGY IN INTERDISCIPLINARY DISCOURSE

Abstract

The paper as a research subject deals with the importance of a new interdisciplinary trend in studying the law – legal theology. The authors argue in favour of acknowledging the value of the theological dimension of law and legal awareness for the contemporary post-secular world. The aim of this paper is to substantiate the theoretical and practical value of legal theology for investigating legal awareness, shaping legal culture and legal theology of the contemporary Russian state. As a result of the theological dimension of law, the paper also focuses on spiritual and moral grounds of legal awareness, which determine legal values, ideals and beliefs of a personality as well as primarily impact the related criminal behaviour. For these purposes, to investigate legal awareness of a criminal, the authors appeal to orthodox anthropology based upon patristic concepts and teachings on combating egocentrism and aggression, as well as the reflection of passions which generate, originate the basic negative motives of legal mentality and legal awareness of an individual. The legal theology actualizes the ascetic study of legal awareness and enables in the context of the post-secular world to mobilize religious feelings and concerns in order to establish a steady rule of law.

Keywords: legal theology, philosophy of law, legal culture, post-secularism, legal ideology, legal values.

Introduction

The contemporary period of state and legal development of Russia to some extent resembles the passage through the wilderness of ancient Jewish people in search of the "promised land": following disappointment in communistic ideals of public and political future, the long-awaited island of salvation not achieved; strategic goal, ideal and idea of the polity not found; vector of legal policy not formulated; "image of future" for the sake of which one can live and die not shown. Unavailability of the state idea and ideology is a fairly logical result of the Soviet past: people have cultivated a steady immunity against various tempting projects of "earthly paradise". Meanwhile, the state needs a distinct hierarchy of values, including the highest absolute values. Undoubtedly, one of such values is faith in God. Thus, one can't help but support an aspiration to consolidate and protect this value in the RF Constitution which proved to be the case in the course of adopting an amendment to the Basic Law of the Russian state in 2020. In particular, the adoption of the said amendment should be treated as commencement for shaping a new stage in the development of legal mentality and legal doctrine in Russia. This stage should be viewed as commencement for shaping a new interdisciplinary field of expertise on law – legal theology.

The importance of legal theology for the Russian state is conditioned by the historical specifics of its development. Compromise with regard to ideals has not yet been found: a dispute between conservatives and westerners-modernists with regard to Russia's path in XXI century is not diminishing; there is no accord towards the

evaluation of the past (pre-revolutionary Russia, Soviet period and its luminaries, February and October revolutions); there are no common views towards the future, including faith in God. Westerners criticized the religious choice of the Holy Great Prince Vladimir, Equal of the Apostles, who opted for an eastern-Christian faith from Byzantium while the Slavophiles, on the contrary, found exactly in it a foundation of values of the Russian world and link successes in the history of Russian people with a choice of orthodox Christian faith. The legal theology enables not only to investigate into the history of the state but also the history of the legal system of Russia in the context of the Christian faith.

The contemporary Russian community is unified through memory, the past, achievements and the outcome of the life of the past generations: it is not a coincidence that the topic of World War II is so beloved and significant for the state power. However, the history of Russia is not only and not even mainly XX century but primarily a millennium of equivalent great wars, achievements, accomplishments that shaped our culture where the faith in God was one of the fundamentals.

It is important to point out that all peoples of multi-ethnic Russian state belong to monotheistic peoples, except for Buddhists. Christianity, Islam and Judaism are based upon a common value foundation of the Ten Commandments of Moses and date back to the biblical prophet Abraham. The basic distinctions between ethnicities of Russia lie particularly in the interpretation of the ways of implementation of these commandments. However, still, religiosity, faith in God and traditional values are a foundation for the ethnic identity of each of them. Thus, the legal theology enables to preserve the unity of the Russian state since it argues respectful treatment towards the religious legacy of each nation.

A simplified perception of faith influenced by the Marxist-Leninist thesis about "opium for people" often dominates in legal, politological and socio-philosophical literature. The achievements of the Russian theological and legal, political and historical thought were lost and forgotten; eventually, the philosophy of law, political theology, theory of state and law could not but "suffer" and "sustain damage". Meanwhile, the European political and legal culture, national statehood and legal mentality are conditioned by the biblical legal and political ideal, Christian values and ethic views – the legal studies in the religious domain, the subject-matter realms of which cover spiritual and moral, religious and socio-cultural roots of legal cultures, legal institutes and legal values, biblical state and legal ideals, and conceptual foundations of national philosophy of law: philosophy of truth, faith and morality remain an important and relevant line in research.

Literature Review in Legal Theology

In the contemporary Russian philosophy of law and legal science, the conceptions on religious ideals of building a state and the related legal system, on Christian approach towards the nature of a state and law are almost entirely based upon the views of representatives of pre-revolutionary state and legal and theological thought. However, back at that time, there were divisions into advocates and opponents of theocratic understanding of law and state, western and eastern understanding of relationships of spiritual and secular power (symphony of powers) and spiritual and moral foundations of the law. However, it is worth noting that virtually all Russian legal scholars, without exception, emphasized the value of religious and philosophical analysis of the law, legal awareness and legal culture.

While research in respect of political theology and its value for political science in the years since K. Schmitt has been conducted for more than half a century, the value of legal theology for legal science needs to be substantiated individually. Although in recent years, the biblical roots of the European and global legal culture are

invariably becoming a subject of scientific studies (Barenboim, 1997; Papayan, 2002; Sorokin, 2007; Velichko, 2019).

In foreign literature, the theology of law and legal theology have long been developing as an independent line at the intersection of jurisprudence and theology. For instance, research is being intensively conducted in this area overseas; even the "Journal of law and religion" is being published by the Publishing house "Cambridge University Press" where the article "Legal theology" by Mark Hill was published. It addressed the issues of the given interdisciplinary field of expertise and subject matter of theological and legal thought (Hill, 2017). He treats legal theology as a chapter of ecclesiology (from Greek ekklêsia "People's Assembly, Church" and logos "word, teaching"). Many scientists refer to the church law as applied ecclesiology; thereby, they speak about "theology of the church law" and "theology in the church law".

The researchers of Christian legal theology underscore the necessity of studying Christian law. Norman Doe (2015) highlighted the ecumenical role of legal theology in his article "The Ecumenical Value of Comparative Church Law: Towards the Category of Christian Law". He pinpoints that churches share common principles and their existence imply a category "Christian law", and the identity between the norms of Christian churches shows that the laws of believers, irrespective of their various confessional identity bond Christians through common forms of actions. For this reason, comparative Christian law should have a higher value in ecumenism.

The challenges of legal theology caught the attention of contemporary scholars due to the crisis of western traditions of the law caused by desacralization, dechristianization of legal systems of Western countries (Berman, 1998). Their attention focuses on the issues of catastrophic changes in the law due to the loss of spiritual values and norms. Meanwhile, they view "the root of the evil" in the materialism of the contemporary legal mentality, in radical liberalization of legal awareness. Robert Bork, a well-known judge in the USA, during the ruling of R. Reagan, was an applicant for membership of the Supreme Court. In his works "Slouching Towards Gomorrah, Modern Liberalism and American Decline", he describes the negative consequences of the loss of faith in God and "cultural revolution" of the 60th, the emergence of extreme liberalism and the follow-up degradation of the community, emphasizing, in this context, a crisis of legal awareness in the light of losing faith in God. The scholar offers to develop legal theology and Christian theology of the law in order to restore the legal systems of the West to their religious and moral roots (Bork, 1996).

Martin L. Gross, in his work "The End of Sanity, Social and Cultural Madness in America" (1997) and Patrick Buchanan in his work "The Death of the West" (2003), express almost the same ideas. Buchanan shows that since the 60^{th,} dozens of judicial rulings of the Supreme Court making Christian traditions, organizations and symbols unlawful have been passed under the pretext of respecting freedom of religion. Meanwhile, atheistic liberalism has reached a fever pitch: offending the religious feelings of Christians turned out to be acceptable and desirable. However, the demonstration of scepticism towards left-wing liberal postulates (for instance, nature of homosexuality, equality (physical) of races and cultures, assessments of historical past, evolutionary origination of biological species etc.) are toughly prevented and prosecuted. He writes: "Dechristianization of America is a risky game, the stake in which is our civilization. America tossed an "ethical compass", according to which the republic made its way over two hundred years, overboard and now steers by guess and by God" (Buchanan, 2003, p. 34). The scholar writes about the necessity of "reverting to the roots" in the area of legal science and draws attention to the fact that the dechristianization of the contemporary world entails growing selfishness and egoism. It is well known that the rule of law that rests not on the fear of punish-

ment, not on the charisma of a legislator and not on rational approval but on the moral strength of the law is the most sustainable.

Legal Theology in the Post-Secular World

The post-secular world represents a new phase of developing relationships between secular and mundane, sacred and profaned, religious and indifferent, religious and scientific rationality. Following a few centuries of antagonism, now is the time of mutual recognition of faith and science as important and equal paths in world cognition. Post-secularism appeared to replace rational secularism of the Modern with its claims to "uncharming the world" and, to some extent, can be regarded as its negotiation. Post-secularism represents a new paradigm of philosophical mentality where religiosity is no longer regarded as something "sustained" by humanity and where religious ideas and attitudes are well covered in the contemporary world. A renowned German political philosopher Jurgen Habermas (2002), views post-secularism as such a status of the community where caring about the continuation of the existence of religious communities in an invariably secularizing environment is actually in place (p. 22).

The German thinker maintains that a state based on a neutral ideological foundation accepts neither the position of the one aspect or the other (faith or expertise) in the course of the political decision-making process, thus preserving an equal distance both for the faith and for the expertise, for the faith and for a reason with the commitment to openness. In the post-secular world, believers do not need to translate their religious beliefs into a secular language since these beliefs are recognized equally as the beliefs of humanists in ideas on human rights, while the language of commandments and spiritual and moral principles is similar to the profaned language of bearers of secular moral. The establishment and recognition of borders between secular and religious spheres of social life occurred in tandem with cooperativity and mutual respectfulness towards the perspectives of each of these spheres. In the post-secular world, the value of religious faith in human life is not subject to denial and ostracism.

Legal theology represents a new interdisciplinary trend in studying conceptions and essential features of the state and law as well as religious and legal systems. In today's situation of the post-secular world, the conceptions about the nature of the law from the point of view of theology, as a whole, and christen theology, in particular, can't help but sustain changes, especially due to numerous discussions about the correlation between the law and religion, state power and spiritual power, law and faith in the new context of co-existence and mutual respect of the faith and expertise and also due to new achievements of theological and doctrinal science. The philosophical and legal analysis of religious systems inevitably determining legal consciousness, legal culture, legal consciousness, and legal values in this or that state appears to be equally important and significant.

Believers and those are the vast majority in Russia, judging by sociological research, can't help but get interested in the issues on the nature of the law and state where they reside since many conflicts in daily life are addressed precisely in setting off from the ideas of the state and law, conceptions on their substance: for instance, the issue on the legal prohibition against visits of churches in the period of COVID 19 on the part of on secular state.

Mass media pages illustrate statements of the clergy and proactive laymen who accused the state of worshipping the looming Anti-Christ that unwittingly reminded of the attitude of the state on the part of Old Believers when the state became a "devil's shelter", "beast's image" and "kingdom of Anti-Christ". So the issue of the attitude of religious consciousness towards the ideas of the law and state is far from being an idle one: a dispute on the nature of the state and

its laws from the point of view of religious mindset would arise not once.

In Russia, a theological and theocratic approach towards the substance of the law and state is no longer regarded as an obsolescent one or an artefact of the political and legal mentality of the past years. Thus it is no wonder that a process of revision of profound foundations of constitutional legal awareness is now going on in the contemporary Russian community. That was reflected in the discussion in respect of references to God in RF Constitution Part II new Article 67 with meaning 1: "Russian Federation pooled by millenary history, preserving memories of ancestors who translated us the ideals and faith in God as well as the succession in the development of the Russian state, recognizes a historically formed state unity"[1].

This amendment would inevitably impact both the secular and church law. The fact would call for its consideration in unity with other legal values of the RF Constitution. Thus axiological studies within the framework of legal theology have both theoretical and practical value.

The national legal thought will still have to substantiate the scientific theoretical and conceptual value of legal theology, develop its methodological, axiological, industry-specific, institutional and system models, trends and principles and address the most important topics and interdisciplinary ties.

Legal theology enables not only to identify but also to render assistance in resolving a whole array of fundamental issues facing the contemporary community and the state.

Firstly, this is a crisis of contemporary legal awareness which has long been talked about among scholars in foreign countries and in Russia (it is important to mention P. I. Novgorodtsev and his paper "On the crisis of contemporary law awareness" (1909), which arose as a result of the spiritual and moral crisis. It is caused by oblivion of Christian moral values, the patristic background of correcting a human being through the internal combat with ones' passions: false pride, vanity, love of money, jealousy, gluttony as well as desacralization of the law, the transformation of the law into a mechanism, algorithm and production process.

Here one should point at the extensive experience of patristic anthropology in the analysis of human behaviour from the point of view of moral and legal values, which are not divided in Christianity. Legal theology enables to revitalize the "spiritual heart" of legal awareness – "human conscience" (Ilyin, 1994), restore a conception of the law as "science on the good and fair". In fact, the national philosophy and the theory of law in pre-revolutionary times and in a subsequent period in emigrant foreign press appealed to the world's legal thought by its reasoning on the intimate identity of morals and law and on spiritual and moral foundations of the law and legal awareness.

Secondly, the contemporary period of state and legal development of Russia is featured for the pursuit for a strategic goal, ideal, the idea of the state since a vector of legal policy not formed, "image of the future" not shown, for the sake of which construction of the state is being undertaken. Unavailability of the state idea and ideology is a fairly logical result of the Soviet past: people have cultivated a steady immunity against various tempting projects of "earthly paradise". Meanwhile, the state needs a distinct hierarchy of values, including the highest absolute values. Any references to God in RF Constitution couldn't have failed to cause a serious discussion in the community. What is the role of religious communities in the contemporary post-secular world? Can anyone be held accountable for disrespect to the feelings of believers in God? What are the limits of personal freedom? What human dignity and the related natural rights are rooted in? It appeared that answers to these and many other questions couldn't be addressed beyond a theological discourse since the idea of

[1] See the full text of the Law "On amendment to the Constitution of the Russian Federation" http://duma.gov.-ru/news/48045/

natural human rights is rooted precisely in Christianity.

Here attention should be drawn to the fact that the basic confessions of the Russian Federation – Christianity, Islam, and Judaism are based upon a common value-based foundation, Moses' commandments and moral and legal norms of the biblical Decalogue since all three of the religions derive from the Holy Prophet Abraham, common for them. These confessions are so-called "Abrahamic". Their basic values and beliefs coincide – the sanctity of marriage, the absolute value of life and dignity of each human being, mercifulness to a fellow being, compassion, faith in God, the life of the soul after death and preservation of its personal identity and many others. These values are also shared by atheists who are bearers of a value-based code of Abrahamic religions "by inertia".

For the world's legal culture, Moses' Pentateuch is a common religious text producing an impact on theology and legal culture. Thus the Bible is an essential source of legal, political and socio-economic views, ideas, values and norms for many peoples of Russia, not to mention the constituent Russian nation. Today the works unveiling in-depth biblical roots of the contemporary political and legal institutions and considering biblical state and legal ideals constitute an enormous value.

Thirdly, no compromise in respect of the ideals has yet been found: a dispute between conservators and westerners-modernists with regard to Russia's the path in XXI century is not diminishing; there is no accord towards the evaluation of the past (pre-revolutionary Russia, Soviet period and its luminaries, February and October revolutions); there are no common views towards the future, including faith in God. The contemporary Russian community is unified through memory, the past, achievements and the outcome of the life of the past generations: it is not a coincidence that the topic of World War II is so beloved and significant for the state power. However, the history of Russia is not only and not even mainly XX century but primarily a millennium of equivalent great wars, achievements, accomplishments that shaped our culture where the faith in God was one of the fundamentals.

A simplified perception of faith influenced by the Marxist-Leninist thesis about "opium for people" often dominates in legal, politological and socio-philosophical literature. The achievements of the Russian theological and legal, political and historical thought were lost and forgotten; eventually, the philosophy of law, political theology, theory of state and law could not but "suffer" and "sustain damage". Meanwhile, the European political and legal culture, national statehood and legal mentality are conditioned by the biblical legal and political ideal, Christian values and ethic views.

Fourthly, the biblical ideal of the state and law merits comprehensive analysis and study since, in recent centuries, its image was significantly distorted due to the secularization of political and legal mentality. However, the religious conscience and mindset continue to determine the fates of the world: the majority of large conflicts of Modernity arose along civilisational and cultural, to be more precise, rather religious and not economic fracture. At the individual level, religious values continue to determine the behaviour and daily routine of a human being through the recession in spirituality in the Western European countries determined by the community is obvious.

Legal Awareness in the Context of Christian Legal Theology

For over one hundred years, one of the important topics in the contemporary theory of law is legal awareness of a personality and legal sphere of the human spiritual world, which is not only the source of legal texts, legally significant interests and needs of a personality but also serves as the most important regulator of human relationships and enabling generator of regulatory provisions changing the meanings of legal norms, le-

gal acts and judicial practice. Specifically, legal awareness stands as the basic context for understanding and interpreting the law, regulatory instruments and tenor-generating elements for interpretation of the law. Eventually, it is legal awareness on which the quality of legal life of the community and efficiency of legal statements depends on and not on a legislator compiling contents of laws which before they being operative are doomed to be subject to comprehension and interpretation by a bearer of legal awareness. The contemporary legal hermeneutics actualizes the problem of legal awareness as a contextual source in the processes of understanding the law. The legal psychology discovers the source for shaping the intent and motive of criminal behaviour, particularly in legal awareness.

The national philosophy and the theory of law in pre-revolutionary times and in a subsequent period in emigrant foreign press appealed to the world's legal thought by its reasoning on the intimate identity of morals and law and on spiritual and moral foundations of the law and legal awareness. One of the most prominent theorists of law both in Russia and overseas was professor of Saint-Petersburg University Lev Josephovich Petrazhitsky (1867-1931), who emphasized two polar principles for building a state legal system: right to personal liberty and right to social service. He also laid the foundations for the theory of legal awareness and psychological understanding of the law (Petrazhitsky, 2019). His apprentice – Pitirim Sorokin, even deeper, disclosed the linkages between the law and moral psychology of a personality (Sorokin, 1914). A socio-cultural focus of studies in the theory of law shall be recognized as one of the most important achievements of this theory. It enabled to address irrational roots, foundations and prerequisites of law, investigate the specifics of national legal awareness and legal mentality. A multitude of essays was written on this particular topic. However, a new stage of studies of legal awareness is required. I am confident that it might be possible only with due regard to the basic provisions of patristic anthropology.

While wrapping up writings of the Holy Fathers of Orthodox Christianity into the studies, a researcher derives answers to numerous questions which remain unanswered within the framework of a positivist theory of law. For instance, one of such questions shall be: how the level of expertise in law correlates with legal nihilism, denial of law, distortion of legal awareness, the criminogenic conscience of a personality and causes for a crime. For instance, a typical answer to the question on causes of legal nihilism is an answer seeking for its roots: "in legal ignorance, narrow-mindedness, immaturity and legal discourtesy of the mainstream population" (Kostina, 2012). However, "sinful" in corruption is specifically the senior lawyers, for instance, a notoriously known "Colonel Zakharchenko" who became a symbol of limitless appetite for profits and corruption which can't be "accused" of legal ignorance.

A right answer to the question on causes of the crisis of legal awareness in the contemporary world can be given only with due regard to a Christian doctrine on the "passionate" and "egoistic" nature of a contemporary. As correctly stated in the contemporary pedagogy: "The patristic doctrine treats a human being in his/her "properly human" dimension, the most complicated for psychology and pedagogy – in value-semantic space of a human being as a personality; in the space of its freedom, moral awareness (conscience), faith, love, creativity and will" (Lifintseva, 2013). It is high time to comprehend that the patristic doctrine on passions and the related combat shall be used in studying the problems of contemporary legal psychology and criminology. "The issues on the essence of passion, types of passions, psychological mechanisms, their emergence, dynamics and, eventually, ways to overcome and prevent "harmful" passions deserve serious consideration both from the scientific and practical point of view" – note contemporary psychotherapists and psychologists (Florenskaya, 2003). This includes anthropological

and spiritual, and moral observations, teachings and guidance of the Holy Fathers Isaac Sirin, Nile of Sinai, Abba Dorofei and others. Their writings enable us to comprehend that the crisis of legal awareness and the growth of legal nihilism are of global nature, and there are a few who call the spiritual crisis of a European individual the most important cause. It is this crisis that underlies the crisis of the Western tradition of law, as shown by G. G. Berman – a well-known jurist of the contemporary epoch (Berman, 1998).

It is a great tribute to the contemporary foreign scholars who do not only agree with the negative assessment of the status of the contemporary post-industrial community but also testify about catastrophic changes due to the loss of spiritual values and norms. At that, they view the "root of the evil" in the radical liberalization of conscience and mindset. Meanwhile, liberalism has reached a fever pitch: offending the religious feelings of Christians turned out to be acceptable and desirable. However, the demonstration of scepticism towards left-wing liberal postulates (for instance, nature of homosexuality, equality (physical) of races and cultures, assessments of historical past, evolutionary origination of biological species etc.). However, the dechristianization of the contemporary world entails growing selfishness and egoism. It is well known that the rule of law that rests not on the fear of punishment, not on the charisma of a legislator and not on rational approval but on the moral strength of the law is the most sustainable. In the latter, the rule of law is based upon the suppression of own selfishness by using internal spiritual forces. Thus, combating own selfishness represents an activity of genuine legal awareness. The essence of legal awareness consists in the subordination of one's false pride to the principle of love for the neighbour and respect for the other who is the image of God. Love for the neighbour and respect for the other exists unless two interests: own and that of the neighbour – collide. However, in order to cede place to the other, one should have humility. It is also required for compliance with the requirements of the law: respect for the law also slips away from the moment of conflict of interests. Thus, the law-obedience implies victory over own false pride and selfishness. However, the awareness of one's exceptionalism, uniqueness and individuality by each personality remains an impediment to such victory. In order to overcome this false opinion, one needs to be navigated by the presence in the world of a personality infinitely more authoritative, bigger and more significant than Me, own personality and individuality. In other words, one needs to recognize a Supreme personality, which is God. For this reason, materialism and false pride are so tightly linked with each other: there is no one higher than a personality. It is not a coincidence that the following motto was popular in the Soviet epoch: "Man! That has a proud sound!"

Opposition to false pride is Christian humility, the basis of which, on the one part, is recognition of own imperfection and, on the other part, the existence of the Divine Principle, which is God.

Thus, the basis of legal awareness is respect for the other, his/her dignity, rights and interests. The source of benignant respect for the other is humility since the feeling of one's imperfection, unworthiness towards God represents an obstacle to any attempt of arrogance before other people who are possibly more perfect and welcome to God. By recognizing one's imperfection, it is impossible to be arrogant before others and think that other people are inferior to you.

If to look closely at the inner world of a contemporary individual, we would see the attributes of egocentrism – arrogance, resentfulness, insecurities, jealousy, stubbornness, petty tyranny, pleasure-seeking etc. Such traits of character of an arrogant person as a propensity to ignore the rules of conduct, lack of respect for authorities, influencers, superiors, social hierarchy and rules of everyday life plays a negative role in the legal awareness of a contemporary individual. The growth of egocentrism entails escalating racism,

nationalism, extremism and aggressiveness.

For instance, racism, which is an implication of false pride, is well known to the world from the history of Western countries – Great Britain, the USA, Spain and others. One has only to recollect all western colonies and the behaviour of colonists in colonies, the attitude of the Americans to the Indians, Africans, Chinese, Japanese, Mexicans, Slavs, Italians, and Irish etc., in order to agree to this statement. False pride also generates notorious anti-Russian xenophobia of the West. Prejudiced attitude towards all Russia-related things started long ago, back in the Middle centuries and during the Tsar times. Here what I. A. Ilyin (1998) wrote about the danger of national arrogance, namely about the sources of the USA's right to interfere with the affairs of other countries: "Arrogance stems from spiritual blinding and creates an illusion… Since it starts from the naïve megalomania and reaches its catastrophic climax in the political vanity".

Violence and aggression filled not only a media space of the American cinematograph and television. They penetrated into the schools and kindergartens, hospitals and offices. The fact is that one of the most hate-filled properties of an arrogant person – is his/her irrational, uncontrollable hatred, sometimes reaching up to loathing towards one's victim. Since an arrogant person cannot admit his/her guilt, repent, beg pardon, somewhat correct the committed things, he/she grows to hate his/her victim, criticize, humiliate, insult and devise any theories, for instance, that it, not him/her who is responsible for the incident but his/her victim is guilty.

Children today in the "consumerist society" are figuratively brought up in arrogance, fostered awareness of the fact that they are the hub of the universe. But when they face reality, they see that they are neglected and, on top of all other children, also reveal arrogance, have a self-image or "falsehood" as tell the Holy Fathers, and they do not care "a jackstraw" about the others. In a state of frustration, legal awareness is switched off, they feel lost, without knowing what to do and start culling "persona non grata".

In broad terms, the egocentric attitude towards other people, as known, directly causes mental derangement, especially paranoia. In paranoia, a paranoic lives in his/her fictionalized unreal world. The laws of this world are composed by him/her himself/herself. Thus, the ones who violate the laws invented by a paranoiac are subject, from his/her point of view to liquidation.

Here hence one can witness steady growth of violence and aggression in American schools. The contemporary western community holds leadership in the world championship in terms of false pride: "On the West – where materialism, egoism, individualism, extreme liberalism etc. – do exist – a person is brought up in arrogance. From early childhood, in English-speaking countries, he/she are taught to write "me" from a capital letter (M) and "you" sometimes are lowercased. A Russian person always writes "me" from a lowercase letter and "You" sometimes from a capital letter, in token of respect.

Contemporary liberalism gradually devastates, demolishes not only a legal culture but the entire society at large. Here are the basic points of its program briefly: propaganda of sexual recklessness, abortions and sexual outreach for students in schools, legalization and propaganda of sodomy, propaganda of moral relativism and struggle against Christians, propaganda of feminism, the war against parents, privileges for special minorities, pushing of special minorities, sodomists and feminists to the armed forces, state authorities and executives.

All that affects not only the level of crime but also the attitude of the population towards authorities, regularities and the law at large. On the one part, the opinion of the majority of citizens with traditional Christian and family values are ignored by new laws, the fact that leads to legal nihilism and growing anarchist and rebellious moods of earlier law-obedient citizens; on the other part, promiscuity and lechery destroyed more than one empires in the history of humanity due to some reasons which should be particularly

articulated.

In its brilliant paper "American sexual revolution", which was published in 1956 when America only started witnessing glows from the sexual revolution, a prominent Russian sociologist of law P. Sorokin showed that sexualisation of human consciousness does not only results in the devastation of the institution of family: growing divorces, incapability for mutual life, the recession of parental love, refusal from childbearing and increase in the number of abandoned children. In his paper, the scholar showed the negative impact of the sexual revolution on the economy, culture and politics, status of the state and law.

Since a chaotic sexual life undermines both the physical and mental health, morals and creative opportunities of its adherents, a negative impact of a similar calibre is produced on the society, the majority of which are lewd people. And the more is the number of such people and the more indecent is their behaviour, the harder are implications of the entire community, since if sexual anarchists account for a larger part of its members, then eventually they destroy the community itself. When lechery and random sexual life extends to the larger portion of the community members, then it inevitably entails incapability of the community to control biological and emotional motives, to counter the temptations of the body, material wealth and comfort, to curb the lust for power, to carry out heavy responsibilities and to make necessary sacrifices, to determine one's historical path and to follow it. "From self-defined and self-controlled commonality, the community degenerates into a passively drifting downstream to the very edge of the historical Niagara" (Sorokin, 2006, p. 76).

Paralysis of will and incapability of the community to counter temptations result in non-compliance with the laws and attenuation of the degree of their severity. And "when the ruling group and the community, at large, weaken the severity of the laws – writes Pitirim Sorokin – normally during the span of three generations a decline in culture occurs as was the case at the last phases of Babylon, Persian, Macedonian, Mongolian, Greek and Roman civilizations and also at the end of Ancient and Middle kingdoms, New Empire and epoch of Ptolemy in Egypt" (Sorokin, 2006, p. 95).

However, the culture does not exist separately from the community. Thus its decline and degradation of the community are in direct dependency. The enslavement of a personality with evil pleasures does not lead to a law-abiding and morally sustainable society since the majority of its members are egoistic nihilists preoccupied with these pleasures. Such people inevitably come into conflicts the fact that leads them to constant violation of moral and legislative norms and endless infringement of life interests of each other. This results in a step-by-step impairment of the existing legislative and moral order and perpetual warfare between community members in pursuit of a maximum share of material benefits and pleasures. The established laws are constantly violated in it. The violation of moral norms inevitably entails a violation of the rules of law. The codes of conduct are increasingly ignored, and they eventually stop managing human behaviour. Thus, in the process of sexual emancipation, the community increasingly approaches a status of moral anarchy, where everyone considers himself/herself a legislator or a judge entitled to distort moral and legal norms as he/she wishes. The community with such impaired moral foundations loses internal solidarity and civil virtues necessary for its welfare. Its internal peace is increasingly violated by riots and rebellions, and its security is constantly undermined by the brute force of crime.

Therefore, sexual anarchy and political and social anarchy are twin demons. Though one might appear earlier than the other, they are interrelated and interdependent – asserts P. Sorokin and illustrates with many examples. Sometimes sexual liberation preceded an explosion of socio-political upheavals, and sometimes these processes occurred simultaneously. But almost in-

variably, these two forms of anarchy went along.

Religious norms of chastity and asceticism are directly linked with government policy in the area of nurturing patriotism and shaping legal awareness. Over the recent years, the focus of the supreme power on national patriotism has become apparent; in isolation from chastity, it seems to be unrealistic. Catering for ones' pleasures, family desertion for the sake of these pleasures, denial of childbearing and other forms of a free life do not entail readiness for self-sacrificing for the sake of the neighbour. It is a low probability that depraved egoists who used to live according to their passions and lusts and committed to greed for profit by the ideology of "consumerist society" would devote all energies, health and life for the sake of their countrymen – people whom they have never even set their eyes on. On the contrary, they would attempt to derive benefits from the situation, would not disdain betrayal, defect to the enemy's side and would do anything they want in order to preserve their lives for new sensual frolics and material welfare. The contemporary western legislators are progressing towards the legalization of lechery, sexual perversions, while the decline of Europe is palpable not only from a providential point of view.

It shall be mentioned that the status of the western culture of his time Sorokin described as a crisis one due to the dominance of material values and sensual pleasures guilty in degradation of an individual, transformation of values into mere relative with metaphysical, ideative aspirations of an individual and not with the "consumerist society" and sensual culture. The scholar deemed that such future is attainable through purification and resurrection of culture and propagation of moral resurrection of the community based upon the principles of altruistic love and ethics of solidarity. However, unfortunately, the dreams of the thinker were not destined to be realized as the second half of the XX and early XXI centuries show. Pragmatism and utilitarianism appearing in the society as a consequence of materialism of capitalist epoch entailed further development of mass culture, egocentrism, hedonism in the society the fact that extremely negatively impacted legal awareness.

Legal theology and the religious dimension of legal awareness enable us to see deep the crisis of materialism penetrated into the legal culture. Scientific theories based upon the sensual concept of truth (empiricism and materialism) have a tendency to become materialistic, mechanic and quantitative, even in the interpretation of an individual, culture and spiritual phenomena, including the law. Social and psychological sciences, including jurisprudence, imitate natural sciences copying an approach towards an individual similar to the approach of physicists and chemists towards inanimate nature. Eventually, legal phenomena have been taken to be interpreted from the standpoints of physiology, endocrinology and psychoanalysis, while the society becomes pragmatic with an economy-based interpretation of the history. There are attempts even to integrate the law with physiology, medical studies; for instance, one might hear about neurolaw with ever-increasing frequency (Petoft, 2019). Everything which is lofty, spiritual, supersensible, idealistic is ridiculed and get replaced by derogatory interpretations. Material values are becoming the principal ones in such a society: from wealth to benefits, satisfying physiological needs ensure consumption and pleasures. The consequence is relativism and nihilism. The entire historical path is viewed from the point of view of progress and evolution, and an individual is degraded to the level of organic or non-organic complex and not seen as a bearer of supreme values and truths. Along with the degradation of truth, an individual lowers down from the pedestal of a truth seeker down to the level of an animal who, through his rationale, strives to satisfy his egoism.

Sensual law is viewed by P. Sorokin as the one created by an individual, though, in fact, it serves private ownership, property, order, the welfare of the community and exploitation of an individual and its subordination. Its norms are

relative and volatile, and conditional. The laws are subject to changes, and there is nothing sacred and eternal in such a system (Sorokin, 2006, p. 497). No non-utilitarian limitations are imposed on property relations.

So, the contemporary systems (sensual) of ethics and law are facing the largest crisis. Ethical and legal values were increasingly viewed as speech reactions, disguising money obsession and cold math of individuals. Legal norms were perceived as an instrument in the hands of elites for crowd submissiveness. Relativity and conventionality of the norms of sensual law eliminate their prestige and influence, their universality and generality. They came to be perceived by virtue of their conventionality as an obstacle, barrier and unfortunate misunderstanding: "everything that is profitable is permissible". Sorokin considers that sensual law and ethics lead humanity to a dead end since they create anarchy and atomism.

Conclusion

Consequently, the value of legal theology for the post-secular world and contemporary legal mentality consists in the fact that the study of spiritual Petoft moral aspects of legal regulation – as an essential component for addressing an array of complex problems of shaping legal awareness, legal culture, legal education, the study of lawful and unlawful conduct, investigation of various aspects of law enforcement and mechanism of social operation of the law cannot pass indifferently towards religious foundations of the life of the contemporary society. The development of theoretical conceptions which would fully take note of religious foundations of the state and law is a crucial stage for shaping and developing contemporary social thought where a key place is occupied by legal theology. This is also important from the point of view of state construction since the contemporary processes in this sphere appeared to be unprepared for challenges of political and legal modernization are a serious test of Russian statehood for endurance.

Legal theology enables to revert the spiritual and moral dimension of law and legal awareness back to legal science. Spiritual causes for crime should, on the one part, become a subject of analysis of criminologists, law theorists, and, on the other part, a powerful argument in favour of introducing elements of Christian asceticism, orthodox education, classical Russian culture and Soviet pedagogical school into the school educational curricula. Everywhere one might see the influence of spiritual damage to legal awareness of a contemporary individual: non-performance of obligations or their improper non-quality performance under the contract, which are often the result of false pride, selfishness and greed; disciplinary offence – the result of disrespect to superiors, their orders, instructions, directives which are rooted in ego and deception in respect of one's merits; embezzlement is rooted in greed for profit, the sin of gluttony; violations of proprietary rights – in vanity, self-interest etc. Undoubtedly, economic, social, cultural factors for committing delinquencies are important and significant. However, the basic cause for growing crime in the contemporary world is the loss of spiritual values and truths of Christianity in the process of secularization of the western world, lifestyle, mindset sacralizing selfishness, false pride, hedonism, the so-called human weaknesses which on the language of patristic anthropology are named otherwise – passions. Thus, one needs to nurture and maximize the spiritual wealth of our country – Orthodox faith, patristic teaching about a man, centuries-old expertise of national and cultural traditions. The foundations of Orthodox culture and other religions traditional for a number of constituent entities of the Russian Federation must not only be studied in schools but also become a fundament for basic values of the state.

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V. S. NERSESYANTS' POLITICAL AND LEGAL IDEAS ABOUT THE RULE OF LAW STATE AND THEIR REFLECTION IN THE CONSTITUTION OF THE RUSSIAN FEDERATION AND THE CONSTITUTION OF THE REPUBLIC OF ARMENIA

Abstract

Since the inception of the idea of the rule of law state, the problems of its formation and development have always been in the focus of attention of progressive countries, as well as humanities scholars. During the years of perestroika, for the purposes of prospective legal construction, V. S. Nersesyants formulated the distinctive features and components of the rule of law state, without which the existence of the rule of law state is impossible. Well-known historical events led to the beginning of the formation of a new legal space on the territory of the Russian Federation and the Republic of Armenia, which is primarily due to the adoption of basic laws - the Constitutions of these countries. This article examines the political and legal views of V. S. Nersesyants about the rule of law state. The analysis revealing the reflection of his ideas in the Constitution of the Russian Federation and the Constitution of the Republic of Armenia is carried out.

Keywords: V. S. Nersesyants, Constitution of the Russian Federation, Constitution of the Republic of Armenia, law, rule-of-law state, libertarian-legal theory of law, G. V. F. Hegel.

Introduction

Sixteen years have passed since the death of the outstanding Russian jurist of Armenian origin, Vladik Sumbatovich Nersesyants (1938-2005). At the same time, interest in his creative legacy has remained inexhaustible all these years. One of the factors of the intellectual and spiritual significance of the impact of the master's heritage on the minds of today's generation of legal theorists and philosophers is the holding (since 2006) of annual Philosophical and Legal readings in memory of Academician V. S. Nersesyants at the Institute of State and Law of the Russian Academy of Sciences, the topics of which are inextricably linked with the field of scientific and personal research of the scientist, for example, law and society in an era of change (Grafsky, 2008), standards of scientific and homo juridicus in the light of the philosophy of law (Grafsky, 2011), current areas of analysis of law and jurisprudence: the problem of interdisciplinary understanding and cooperation (Grafsky, 2015), law enforcement as art and science (Grafsky, 2016), law and literature (Grafsky, 2014), modern state and personality in historical and philosophical-legal understanding (Grafsky, 2018).

In 2009, the Yerevan publishing house "Nzhar" published a landmark memory book dedicated to Vladik Sumbatovich Nersesyants (Lapaeva, 2009), compiled by the widow of the sci-

entist, Doctor of Law, chief researcher of the Institute of State and Law of the Russian Academy of Sciences Valentina Viktorovna Lapaeva. This work, along with the memoirs of V. S. Nersesyants of his relatives and colleagues, contains fragments of his unpublished philosophical essays, among other things, fragments of his unpublished philosophical essays ("On Mood", "On theogony", "On Myths", "On Neology", "On Law (on the origin of equality"), "Reason as creativity" and others), but also some philosophical and poetic works, as well as a work of programmatic content "The national idea of Russia in the world-historical progress of equality, freedom and justice. Manifesto on Civilizationism, in which the scientist used the concept of "rule-of-law state", pointing out that a civil state of the law is designed to protect the civil system, protect "the system of civil property and properly ensure its normal functioning together with members of society and their elected officials".

Since further, we will refer to the Constitution of the Russian Federation and the Constitution of the Republic of Armenia, and it is necessary to make brief historical explanations. According to the fair remark of Russian constitutionalists, 2020 entered the history of state-legal construction of Russia with the largest constitutional reform in modern domestic constitutional practice. In 2020, the fifth amendment to the Constitution of the Russian Federation was adopted – for the period of validity of the modern Russian Constitution, adopted on December 12, 1993. The Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation dated March 14, 2020, No. 1-FKZ "On Improving the Regulation of Certain Issues of the Organization of Public Power" has become an important state-legal means of developing the Basic Law of the Russian Federation. These circumstances stimulate dynamism in the development of the rule of law and civil society, entail a new stage of updating constitutional legislation, determine new directions of institutional reform.

On December 6, 2015, the draft amendments to the Constitution of the Republic of Armenia were approved at the constitutional referendum of the Republic of Armenia, which actually meant the adoption of the fourth Basic Law of the country. With the adoption of the new Constitution, the transition of the republic from a semi-presidential form of government to a parliamentary one began, which ended on April 9, 2018, when the fourth, current President of the Republic of Armenia, A. V. Sargsyan, took office (Balayan, 2017).

Methodology

In the preparation of this article, general and special legal methods were used. General methods of scientific cognition (analysis and synthesis, generalization, comparison, system-structural and functional analysis, concretization, logical, systemic and historical approaches) allowed the authors to make a brief overview of the scientific heritage of V. S. Nersesyants, to identify the main directions of the scientist's creative research, to reveal the originality of V. S. Nersesyants' views on the rule of law in the history of political and legal thought. With the help of special legal methods (normative-dogmatic and formal-legal methods), the conceptual features of the content of the concept of the "rule of law", the meaning and role for its formation of "people's sovereignty", legal legality and independence of the judicial system, as well as the peculiarities of the interpretation of the Hegelian understanding of the rule of law by the scientist were isolated from the works of V. S. Nersesyants.

The Concept of "Rule of Law" and the Idea of "People's Sovereignty"

According to Nersesyants in modern usage and meaning, the rule of law (Rechtsstaat) can be viewed in two following planes. Firstly, the rule of law is observed as a special concept of the rule of law. Secondly, the rule of law as a structure of

a state developed in the legal sense - a constitutionally formalized liberal-democratic state, the formation of which is socially and historically connected with the development of civil society and constitutional-legal forms of organization of public power; the legal form of organization and activity of public-political power and its relationships with individuals as subjects of law. At the same time, the conceptual and applied aspects of the rule of law are in an inextricable triune interaction with each other and are represented by the following legal blocks: the humanitarian block (the fundamental rights and freedoms themselves), the normative (fixation of the rule of law in the sources of law), the institutional (formed by the classical system of checks and balances in the system of separation of powers) (Nersesyants, 2008).

The rule of law is intangible without the following distinctive features.

Firstly, it is necessary to have the rule of law fixed at the constitutional level. Within the framework of this feature, the law is positioned as a special social phenomenon, independent of the will of the legislator, with its objective properties and regulatory principles, and the law as a set of officially authoritative institutions, generally binding acts and norms endowed with enforcement force. In modern constitutions, this feature finds its embodiment by recognizing a person, his rights, freedoms and legitimate interests as the highest value. Thus, Article 2 of the Constitution of the Russian Federation establishes that universally recognized rights and freedoms, as well as the person himself, are the highest value, and their continued recognition and protection is a direct and immediate duty of the state. Article 3 of the Republic of Armenia also provides that a person is of the highest and inalienable value. It is the inviolability of human dignity, respect for rights and freedoms, as well as comprehensive assistance in their implementtation that is the ontological basis of the legitimacy of public power.

Such an approach in the Constitutions of the states under consideration best confirms the thesis of V. S. Nersesyants that it is impossible to achieve such development of civil society that would become the real basis of the rule of law without a free person protected by law. This interconnection, interdependence and interdependdence in the development of the individual, society and the state should occupy a priority position in the ideology of the rule of law (Nersesyants, 1989).

Secondly, the reality of the rights and freedoms of individuals cannot exist without proper reinforcement of the rule of law by law-securing mechanisms. According to this feature, the effective functioning of the rule of law requires the existence of a legal form and the legal nature of the interactions of state authorities and local self-government with subjects of law, with the condition of recognition and proper guarantee of the rights, freedoms and legitimate interests of all participants in legal relations.

For example, article 19 of the Constitution of the Russian Federation establishes that the State guarantees equality of rights and freedoms regardless of any personality characteristics and circumstances; at the same time, the inadmissibility of any restrictions and infringements is naturally established. Accordingly, in order to ensure the implementation, including of these rights, the Constitution establishes the legal status of law enforcement agencies. Also, very effective and effective mechanisms for the protection of citizens are provided for in Chapter 2 of the Constitution of the Republic of Armenia: in case of violation of rights, citizens can use Article 52 of the Constitution, according to which citizens have the right to apply to a Human Rights Defender for assistance in protecting their rights. Article 191 of the Constitution of the Republic of Armenia corresponds to this right, which postulates that a human rights defender is an independent official responsible for the relevant area of legal life and is obliged to assist citizens in restoring violated rights and freedoms.

Thirdly, the provision that the actual principle

of separation of powers is the real basis for the activities of sovereign State power. The implementation of the above positions will be impossible without constitutional regulation of sovereign state power in accordance with the principle of separation of powers. This principle is a litmus test of the development of law and the state, an indicator of the effectiveness of the institutions of the rule of law, as well as a platform for the subsequent development of legal statehood (Nersesyants, 1989). Article 10 of the Constitution of the Russian Federation provides that power in the Russian Federation is exercised by three independent and independent branches, namely: legislative, executive and judicial. Article 4 of the Republic of Armenia also establishes the principle of separation and balance of powers.

A significant place in the concept of the rule of law, according to the views of V. S. Nersesyants, should be occupied by the idea of national sovereignty. Only this phenomenon can act as the basis and source of the formation of real sovereignty. It is the people who have the inalienable right to establish and modify the forms and content of their right and the entire social, political and legal existence. Consequently, it is precisely from this sovereignty that the sovereignty of the rule of law is derived as a cumulative unity of powers and powers, wholly belonging to the people of the country concerned, covering the territory of the state with its action and determining the political and legal norms of public life. Accordingly, the development and establishment of State sovereignty are unthinkable without strengthening the foundations of the rule of law (Nersesyants, 1989). It should be noted that the ideas of national sovereignty are fully reflected in the Constitution of the Russian Federation and in the Constitution of the Republic of Armenia.

The Principle of Legal Legality and the Independence of the Judicial System

V. S. Nersesyants assigned a special place in the theory and practice of the rule of law to the observance of the principle of legal legality. The very name "rule of law" implies the presence of legality in it, expressing the ideas of the rule of law, contributing to the spread of respect for legislation in general and legal norms in particular.

The Constitutions of the Russian Federation and the Republic of Armenia contain generally recognized legal principles reflecting the guarantees of legal legality.

V. S. Nersesyants (1989) attached great importance to the creation of an effective legal mechanism for the objective, fair and timely resolution of disputes and conflicts between various subjects of legal communication, including the judicial mechanism.

The Constitution of the Russian Federation provides for a set of legal mechanisms that allow individuals and legal entities to effectively resolve various kinds of disputes and legal conflicts. This complex is expressed by such concepts as the ability to protect their rights and freedoms in all ways not prohibited by law; the guarantee of judicial protection; the possibility of appealing against power decisions of any level (for example, articles 45, 46, 118-128).

The Constitution of the Republic of Armenia stipulates the right to petition, the right to judicial protection, including at the international level, the right to receive legal assistance (for example, articles 53, 61, 64).

At the same time, V. S. Nersesyants (1989) prophetically noted the significant role of constitutional justice since the proper implementation of the powers of the judiciary is impossible without an effective and well-established mechanism of constitutional and legal control over the issued normative legal acts. Constitutional courts have been established in the Russian Federation and the Republic of Armenia in order to ensure the supremacy of Constitutions and to empower these courts with the powers of the supreme judicial body of constitutional control.

V. S. Nersesyants' Interpretation of the Hegelian Understanding of the Rule of Law

The area of scientific interests of V. S. Nersesyants was inextricably linked with the name of the German philosopher G. V. F. Hegel (Nersesyants, 1975). V. S. Nersesyants (1986) is the author of two dissertations on jurisprudence devoted to Hegel, many articles and monographs on this topic, including in Armenian. He was also the compiler, author of the introductory article and notes to the updated academic edition of Hegel's Philosophy of Law (Hegel, 1990).

According to Nersesyants, "the Hegelian state as a moral whole not only has an absolute right in relation to its constituent moments but is itself a right in its developed integrity". Accordingly, the rule of law should be considered not as an ephemeral wish and dream but as a concept (idea) and concrete legal practice. At the same time, Hegel gives the status of an organically structured and legally verified process to the legal interaction of elements of the legal system and the functioning of the rule of law, in which each subject of law enjoys his rights, duties and legitimate interests (Nersesyants, 1998).

At the same time, V. S. Nersesyants rightly notes "the specific meaning of the Hegelian philosophical concept of the state," therefore, many researchers misinterpret Hegel's political and legal views. For the German thinker, the main role in a state governed by the rule of law should belong to the idea of freedom and the rule of law, and the people should be independent and free participants in legal life. Only in such a State can the idea of the State, consisting in the "real realization of the concept of law", be fully revealed. The sovereignty of the people and the state serve as a guarantee of the "legality of state autocracy", which protects society from violence and legal arbitrariness (Nersesyants, 1998).

Based on the analysis of the voluminous material presented by primary sources, foreign literature and Russian studies of Hegel's philosophy and related fields, V. S. Nersesyants (1998) reasonably came to a conclusion that "the whole Hegelian construction of the rule of law is directly and unequivocally directed against arbitrariness, disenfranchisement and in general all extralegal forms of the use of force".

Conclusion

Ideas concerning the political and legal structure of the rule of law occupy a significant place in the libertarian-legal theory of law developed by V. S. Nersesets and is an independent direction of philosophical and legal thought. The conclusions of V. S. Nersesyants, obtained by him during the historical and legal analysis of the rule of law and devoted to the identification of the meaning, principles and features inherent in this form of organization and functioning of public political power remain relevant to the present time.

V. S. Nersesyants has repeatedly noted that the theory and practice of building a legal state are inseparable from each other. This means that legal states cannot appear in a mechanistic and synthetic way since legal statehood always reflects not only the real level of legal progress but also historically determined forms of interaction between state institutions and society, respectively, the formation of legal statehood is a complex and lengthy process.

The analysis of the reflection of the political and legal ideas of V. S. Nersesyants on the rule of law in the Constitution of the Russian Federation and the Constitution of the Republic of Armenia allows us to conclude that these states are legal, which reflects their current level of legal development and legal life, are in continuous legal evolution, as evidenced by the ongoing constitutional and other legal reforms.

The construction and development of legal statehood should be a priority goal of modern states. This requires regular updating of the entire complex of existing regulatory legal acts and modernization of public and state institutions,

which, as phenomena of historically developing legal reality, share their achievements and shortcomings and are always far from ideal.

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PHILOSOPHICAL FOUNDATIONS FOR UNDERSTANDING THE SYSTEM OF LAW

Abstract

The article deals with a problem of correlation between the evolution of the main ideas pattern, philosophical foundations of the intellectual life of age and historical state-law systems. The method is a cyclic conception of history, according to which on every round of historical processes, the framework of state-law system development was formed by the main ideas presumption about space, time, the multiplicity of the world and so on. According to it, authors argue that the existence of some milestones in the history of ideas gives us an opportunity to highlight some phases of the state-law system evolution, such as temple-state with its mythological space and cyclic time; polis state, which emerged from rationalization and understanding the world is multiple; medieval theological state with its dualism and teleological history conception; modern state based on separation of abstract conceptions such as nation and their embodiment.

Keywords: state-law systems, law and state philosophy, history of state and law ideas, cyclic history, state-law conception, Ancient state, polis state, the Medieval and early modern state.

Introduction

Cognition is a process of collecting knowledge of circumambiency's reality (or its irreality). It is a functional process, which is determined by its goals and tasks in perspective. The goal is prescribed by the subjective image of the cognitive object, constructed by the researcher's mind as an ideal pattern. This pattern reflects the researcher's will to rational cognition and value judgment about the object of a cognitive process. Though the object per se is independent of the researcher's mind entity, its image in the researcher's consciousness reflects values and preemptions of the cognizer.

The universal object of cognition is the entire Universe (nature and culture, which together form the milieu of human existence). Its image is defined by a three-dimensional socio-spatial-time continuum, in which man and society is the sole discrete category, which at a certain point stands out from the "universal nothing" and is inevitably transformed into "nothing" in sometimes.

The emergence of man and his endowment with the "potency of reason" entails the thinking activity's "came-to-reality". This activity is tied to three inseparable parameters determined by noesis logic: social then man investigates the world of which he is a part; spatial then man investigates the world by limiting it by physical parameters (distances, weights, efforts, etc.); temporal/chronological then man investigates the world by determining the temporal (past – "before"; present – "now"; future – "after") frameworks of examinated phenomena. Along with it, the objectivity of the intelligible world predetermines the infinity of space and time and the initial subjectivity and relativity of any tied with subjects of cognition parameters.

Cognition is a means for obtaining, depositing, systematization, practical implementation and transmission of information about the world as an object of noesis. The genesis of the cognition process has a cyclic pattern. Within each cycle, its own idea of the noesis essence and its functionality is formed. The basic hypothesis is that the systematization of philosophical and legal cognition in its historical development corresponds with socio-cultural cycles: sacred cognition (temple state culture); philosophical cognition (polis state culture), theosophical cognition (patrimonial-theosophical state culture); scientific cognition (secular state culture).

Mythological Space and the Temple State

The culture of the temple state was based on the understanding of the state as a form of social organization and power, based on the associative array set by the "temple context". The concept of the original form of the state as a temple complex has been complexly investigated by both Russian and foreign historiography. It is necessary to pay attention to the works of the Russian criticist I. M. Dyakonov. In his texts, he demonstrated the role of temples not only as an apparatus for the organization of irrigation activities but also as symbolic, structuring community centres (Dyakonov, 1989). A similar thesis about Mesoamerican cities was promoted by V. I. Gulyaev. He regarded Mayan temple urban complexes as the "political, administrative, cultural and economic centre of the surrounding area" (Gulyaev, 1977). The ideas of these scholars were largely based on the works of the famous American anthropologist Clifford Geertz. In his "Interpretation of Cultures", he presented a traditional organization of religion in Bali descriptiton as a system of temples, to which rural communities gravitate and with which their parishioners identify themselves. Temples play a key role in structuring the world and shaping the hierarchy process through the stratification of the space. Also, traditional religion shapes perceptions of the sanctification of social inequalities by mythic-ritual tools (Geertz, 1973). This phenomenon was also noted by scholars in Mesopotamia, ancient Egypt, India and other examples of early city-states organization.

The temple, as a formation basis of early states and the early form of law, was noticed by historians of the economy. Temple households were the first to use money (Hudson, 2004) (at the beginning for internal transactions, then for external settlements). Also, they formed the interest rate on credit and, accordingly, the first forms of credit contracts (Graeber, 2012). Thus, the temple became also the place where the first form of bureaucracy in history was formed (Grierson, 1977).

Nevertheless, we can argue that the role of the temple in the formation of cognition of law and state was more important. The Weltanschauung (including the view of the state-legal system) of the temple epoch is based on the mythic-ritual approach to the perceived phenomena and, accordingly, is characterized by four major components - teleological, anti-historical, monistic and orthopraxic. Teleologicality existed at the level of mythology interpretation by priests-intellectuals (and, in some cases, by near-religious psalmists). It can be understood as the world cognizing from the position of answering the question of the purpose. Objects in mythological consciousness exist not "for a reason" but "for a purpose". So, it can be argued that in such a worldview, the temple (and the state coinciding with it) become the purpose of human society's existence. This purpose that embraces the entire world was understood as eternal and unalterable. It is clear that at a certain stage of development, teleological and anti-historical characters of mythological consciousness become more rhetorical than ideological truths. Nevertheless, the truth of such an approach is not denied (Veyne, 1988).

Finally, analyzing the ontology of power in the temple state in the context of "four pure types of authority" proposed by Alexandre Kojève

(2004) (the Father, the Judge, the Master and the Leader), we have to admit that the temple Weltanschauung is most appropriate to the power of the Judge as timeless and, so on, anti-historical. According to Kojève's approach to temporal stratification of the types, the power of the Father belongs to the past, the power of the Master to the present, the power of the Leader to the future and the power of the Judge to eternity. This also corresponds to some historical manifestations of the authority in this epoch. We can turn attention to the concept of *iuris dictio* of Roman kings in the early stage of Roman history. So, it did not refer to law-making but specifically to judicial action ("say what law is") (Dozhdev, 2015). The text on the Hamurappi's Stella also emphasized the special role of the king's judicial process, and the Old Testament indicates the power of the judges of Israel as the first form of authority after the settlement of the Jews in Palestine.

The anti-historical nature of the temple consciousness also manifests itself in the understanding of justness as a constant state of the Universe. So a violation of the right order of things becomes a violation of justice. Respectively, the function of the state and power became the maintenance of the unchanging right order of things. It is indicative, in particular, that the Egyptian and Sumerian terms "maat" and "me", often translated as "truth", "justice" also mean "right ritual", "right order of things", etc. (Assman, 1991, Emelyanov, 2003). Hence the popularity of the talion principle, as a way of restoring the constancy of the world, comes forward.

Orthopraxis as a construing tool at the everyday level manifests itself in priority of ritually correct actions to their correct understanding (in terms of the generally accepted in this society and sanctified by the religious and mythological order) (Geertz, 1973). In this sense, the legal norms declared by the authorities become an embodiment of "right doing", i.e. a fixation of the existing practices and a statement of their correctness.

The main problem of the temple-era mind was the existence of a gap between the sacral world (anti-historical, mythological, monistic, teleological) and the observed reality with its changeability, violation of "right" practices and diversity. In this situation, the temple plays the role of the "non-divine sacred", situated in an intermediate position between the sacred heavenly and the temporal earthly world in a state of *sanctus*, that, on the one hand, separates *sacer* and *profanum*, and, on the other hand, creates the possibility of a connection between them (Zenkin, 2012). The famous scholar of mythology and religion Mircea Eliade (2002) noted that in mythological, religious systems, the ruler plays the role of a nodal point, a link between the heavens and the human world, and occupies this point in the course of a certain ritual performed at a certain point in space. In this point of view, the temple was a portal connecting human and divine essences. The only ruler could take this linking point cause he was a living embodiment of God. Also, there were the priests providing the interaction of the divine and humanity. The subjects of cognition were priests; the knowledge obtained in the course of the cognitive process was sacral (super-historical) in nature, and their instrumental purpose was to justify the immutability and "divine predestination" of the authority of the "earthly" ruler and the legitimacy of the "corporate elitism" of the priests' corporation, while the "common people" - the temple slaves - have no rights to serve the temple-state itself and its representatives - the ruler and priests.

The stratification of the world can be pictured accordingly. The temple, as the centre of power and religion, which was *sacer* – "own" land, the homeland of the people worshipping the temple and submitting to authority Next *sanctus*, consecrated place, and the third - external, profane world, which understood as an object of potential conquest. Such a division existed for quite a long time, for example, in Roman law, distinguishing things *divini iuris* - so of the divine law, such as temples, above all the temple of Jupiter Capito-

lius, lands of *quirite* law (*ius civile*) historical lands of Central Italy, which belonged to the Roman community from ancient times and for which the *quirite* property regime applied and lands of *ius gentium*, in which the classical regulation of property was not consumed and formally belonged to the collective of the Romans, but not to a particular proprietor (although in practice during the Imperial period the distinction between the formal lease of these lands and the civilian property remained purely speculative).

Rationalization, World's Pluralism and the Polis

The culture of the polis state is connected with the phenomenon of the polis - city, state, civil community. Undoubtedly, the transition from the temple state to the polis was not a simultaneous event (there was no point in history when people once went to sleep in the temple state and woke up in the polis one). Such a rigid dichotomy is absolutely impossible in the sphere of the history of ideas, including the state-legal ones. As has been shown above, elements of the temple Weltanschauun remained active in the polis consciousness even at the late stage of its development.

The thesis that the community of citizens as bearers of collective freedom predetermines the uniqueness of the socio-political polis type culture led criticists to the question "was the polis a state" in foreign and later in Russian historiography at the turn of the 1980s - the 90s. The Israeli historian Michael Burnett, for example, rightly noted the lack of many modern state's elements in a polis society: the absence of a regular army and, with a few exceptions, a police forces (the regiment of 300 Scythians, among whom were often not only Scythian slaves, but also free Athenians who worked for pay, was nevertheless an exception), permanent taxes (the citizens were rather entitled to receive money or goods from the state treasury, which was thought to be collective property), a bureaucratic apparatus, and the absence of constitutional order (Burnett, 2000). Elements of public power could be noticed in the Golden Age of Athens. That was the appearance of a permanent mercenary army, paid public offices, the transformation of *phoros* into a type of a tax on the members of the Delian League, the beginning of the law-making process prevailing to the fixation of customary law. Nevertheless, the defeat of Athens in the Second Peloponnesian War could be interpreted as the end of the "early state project" in Ancient Greece

The early Roman society was interpreted in a similar way by many political historians. For instance, E. M. Staermann, basing his hypothesis on the Marxist interpretation of the state, considered the period of its emergence in Ancient Rome not earlier than the beginning of the Principate, considering the previous period as a stateless civil community - *civitas* - in which there was no coercive apparatus alienated from the society.

O. V. Kharkhordin, basing his thesis primarily on linguistic analysis, argues that our interpretation of the term *res publica* is based rather on the modern insight of the state, while the contemporaries understood the term more literally. So the word *res* had a meaning "thing", "object of property". Thus the normal condition of Roman society was a situation then the community of Roman citizens (*civitas*) controlled and benefited from communal property (*res publica*, understood by Cicero as *rei populi*) (Kharkhordin, 2015; 2020).

Nevertheless, it is necessary to pay attention that contemporaries understood polis or republic not as an apparatus of coercion but from the Aristotelian concept of "virtuous life" of citizens as the purpose of polis existence. From this point of view, following W. Runciman (1990), it is possible to define a polis as a "civil state".

The crucial point in such a state was the status of a citizen from which personal freedom and dignity are derived. It gave the right to participate in political life expressed in direct democracy, the right to have property, etc. Accordingly,

the loss of citizenship entails the loss of rights and freedoms, which were determined by the status of a citizen of the polis in their existence.

The division of citizens in Ancient Rome into *sui iuris* and *alieni iuris* people, i.e. living on his "own" or on "alien" rules, is especially indicative. Only being in "his own rules", i.e. the sum of three statuses - freeman, citizen, and the head of a family - gave the fullness of all personal, property and political rights. Only adult men who were members of the militia and who defended the interests of the polis with arms can acquire "full citizenship". Juvenile boys, girls and women, being "de jure" free citizens, at the same time possessed, in the modern language, partial legal capability and were deprived of a number of political and economic rights. The understanding of civil liberty in the polis was contrasted with both slavery and statelessness. Though slaves were not considered people in principle (at least in legal theory), being perceived as "speaking tools", then foreigners and non-citizens (Metegs in Athens, Perieki in Sparta, Priscopes Latin in Rome) not being slaves, at the same time were not legally equal to free citizens and could not take part in political life (with a few exceptions). It was the polis that the distinction between work and labour emerged.

At the same time, the unanimity of the civil community did not exclude the hierarchical division within it. This structural distinction was manifested by the class system of Athens or by the census system of Rome. Citizens, though having equal rights, could exercise their rights with different degrees of intensity (for example, to occupy certain public offices). This intensity depended on their property status and, as a consequence, different degrees of participation in public life and disposal of public property (including incurring expenses for public needs). Noteworthy that the disintegration of the classical polis model is associated with the transition from the conscript model, when each soldier came with his own weapons corresponding to class or census, to the standardization of armaments and their distribution at public expense. It gave way to the growth of the army, but destroyed the system of the status-intensity relation of the using of rights and privileges of the status and also created the basis for the formation of private armies (for example, Pericles' reforms in Athens or Caius Marius in Rome) (Gabba, 1976).

The work was the lot of slaves, whose activity was not creative and was exercised under coercion. It involved external control and application of measures of negative impact for the failure to comply or violation of established "above" the rules of the working order.

Labour was the privilege of free citizens, who have the right to choose the type and form of employment and to determine for themselves its terms and final results. Types of free labour were military activities carried out for the purpose of armed defence of the polis, sports and creativity in arts, one of the varieties of which is philosophy - "love of wisdom" expressed in various forms and traditions. It is important to remember that ancient philosophy was not a science in the modern sense. Ancient philosophers had no formal education, scientific degrees and ranks, there were no scientific specializations with the separated subject and methodology, there were no specialized institutions with educational and scientific activity. At the same time, there were schools of philosophy of antiquity, such as Plato's Academy, which paved the way to scientific schools of modernity. The key feature of these schools is the presence of the founder of this or that branch of knowledge, his students and pupils. The main pattern that characterized an ancient philosophical school was the existence of a cognitive tradition common to different generations of philosophers, which acts as a contextual link between different generations of thinkers.

Philosophy played a crucial role in restructuring the Weltanschauung (at least among the intellectuals of polis society) in the understanding of the state, its role and its place in the world. First of all, the natural philosophy of the Antiquity shows the transition from the teleological

consciousness of the temple age to the aetiological (Hubner, 2011) search for the prime origin. This search leads to the development of two other important features of the image of the state's formation in the polis mind. At first, it is historicity. The presence of cause and consequence necessarily presupposes the existence of the connecting process, that is, a historical process. Thus, the state does not exist for some purpose but for some cause. Its existence became an external and predetermined historic process. The idea of historicity gave rise to fatalism as a feature of ancient thought (Losev, 1988).

Simultaneously, the search for the primal cause of the physical world marked the transition from monism to pluralism in mind. Its extreme embodiment became the ultra-pluralism of Democritus of Abdera, who believed that every object corresponding to a primary cause (Reale & Antiseri, 1997). In the political sense, the combination of historicism and pluralism led to the recognition of the state forms diversity and their estimation in terms of consequentialism, especially in the ideas attributed to the sophists Gorgias and Callicles (Reale & Antiseri, 1997). From the standpoint of consequentialist ethics, the function of the state was not to maintain some ideal social order – of orthopraxis (which is impossible due to historicism and pluralism of such forms), but to provide the maximal "public good", the "good life" of the polis, which becomes the ideal function of the polis as a citizen-state according to Aristotle.

Nevertheless, with the emergence of the schools of Epicureans and especially Stoics, the basis of moral philosophy became "virtue ethics" or aretology, which opposes both the deontological morality intrinsic of the temple era mind and the consequentialism of sophists and naturophilosophers. The close connection between the moral code and the law, up to their unity, imamnent to deontology of temple consciousness (a classic example here is the norms of the Pentateuch) was replaced by the new concept of equality. Due to this pattern, the law may well not correspond to justice. So, Cicero (1994) in "De Legibus" justifies both logically and by examples the difference between *aequitas* (justice) and *lex* (positive law) (De Legibus, Book I, XV (42)). Thus, it can be argued that there was intrinsic to the polis mind separation of the abstractions of law as the embodiment of the virtue of justice and law as a set of actually existing norms and rules underpinned by the authority. The combination of deontology, aretology and consequentialism led to an understanding of crime close to the modern one, in which the violation of a formal norm (deontology), malicious intents (aretology) and criminal consequences (consequentialism) matter.

In the context of Kojève's ideal models, this search for the cause, i.e. appeal to the past, manifests that for antique thought, the ideal type of power was the power of the Father. This is clear in Aristotle's "Politics" (1983), where the family (and, accordingly, paternal power) is interpreted as the primal cause of the state (Politics, Book I, 6).

In the stratification of the political space, the polis-minded pluralism led to the recognition of the possibility of the other centres of the world existence. Such a view created the possibility for the formation of international law as a recognition of the "other" in international politics as a legitimate bearer of law. Nevertheless, apart from the world of equivalent centres of power, there was a world of "barbarians," which reflected the division of citizen - free alien - slave intrinsic to the polis consciousness.

Pax Christiana, Vector of History and Mystical Body of the Medieval and Early Modern State

The abovementioned problems of polis-minded interpretation of the state led to the formation of a different view, which was embodied in the Early Christian concept of state. It should be remembered that during a long and very eventful historical period, combining late antiquity, the

Middle Ages, and the Early Modernity, the organization of public authority had taken a variety of forms. Traditionally historiography is focused on the forms which have later developed into proto-national states. Other forms of social organization and public power - from the "imaginary super-community" of *Pax Christiana* and the Medieval Empire to non-territorial forms of spiritual and chivalric orders remained usually obscured by the shadows of "ideal forms" (Lachmann, 2000). Famous Marxist theorist Perry Andersen in his "Genealogy of the Absolutist State", mentions this problem. However, after that, he himself takes the historical development of England and France as an "ideal model" (Anderson, 2013). Of course, there are many studies devoted to different non-state forms of organization of public authority in the Middle Ages, such as Medieval city-states and their leagues (Scott, 2012; Praak, 2018) or spiritual-chivalric orders (Riley-Smith, 2002); however, they do not address the problem of the interrelation of different patterns of Medieval statehood.

Nevertheless, it is possible to distinguish common features for all these forms. At first, all of them could be described as based on personal power relations, defined as "feudalism". As has been shown in Russian historiography by Aaron Yakovlevich Gurevich (2007) and in Western historiography by Susan Reynolds (1994), feudalism should not be understood as relations of lend-owners, which were rather a rare case, but as a special myth of authority in which all power relations are thought of as based on kinship, being, most often, quasi-kinship. Such relations can be seen both in the feudal pyramid, which was essential to the classical feudal monarchy (relations of lord-vassal as father-son) and in city brotherhoods-corporations (where horizontal brotherhood relations were supplemented by hierarchical ones between "elder" and "younger" brothers). So was in the spiritual-chivalric orders with their knights-brothers and half-brothers as well as in the church, where monastic brotherhood was structured in a hierarchical structure with the "holy father" - the pope - as the head.

The pluralism intrinsic to the ancient philosophy with its regard to cause-and-consequence relations was replaced by the dualism of spiritual and physical. This pattern was expressed in the concept of two cities developed by Aurelius Augustine. There were two organizational-administrative systems that were formed and coexisted in the conditions of the patrimonial-theosophical state. It was stated in a narrow sense (regnum, that is derived from rex - king) and confessional (church as a "master" of human souls). Social organization was considered in the context of the "two cities - of God and of the World" pattern. "The City of the World" unite people who put their own egoistic interests above spiritual. At the head of the City of the World stands "earthly" rulers, who, despite their "crowned" kingship and the status of "anointed by God", are subject to base passions no lesser than their subjects. The "City of God" gathers those who have devoted themselves to the Lord's ministry, for whom earthly life is but a moment on the road to the Apocalypse and Judgment Day. These people fully commit their lives to the Lord Jesus Christ.

However, rigid dualism would clash with principles of monotheism as the basis of Christian philosophy. This contradiction could lead to the danger of a rigid opposition between the spiritual and the physical, the secular and the temporal, intrinsic to medieval Gnostic heresies, of which the Cathars (Albigensians) were the most prominent representatives. Tools to solve this contradiction were outlined in the Early Christian texts by Melito of Sardis, Eusebius of Caesarea, and especially Paul Orosius. According to his arguments, the Divine Plan for the establishment of the Kingdom of God on Earth included the creation of a secular Empire (Tyulenev, 2005). Thus, the Christianization of the ruler became the Christianization of the Empire and the realization of the Divine plan by gradual convergence and

simultaneous extension of the City of God onto the City of the World.

Overcoming the dualism of spiritual and secular reflected the religious and dogmatic struggle of the age of the first Ecumenical Councils over the dual but inseparable nature of Jesus Christ. As a result of this struggle, Eastern and Western Christian traditions solved these questions in somewhat different ways. Long before the Great Schism of 1054, traditions diverged on a number of issues, including purely linguistic (using Latin and Greek), attitudes toward repentance and redemption, and secular authority. It is telling that the first apologetic father to write in Latin, Quintus Septimius Florence Tertullian, was simultaneously a practising lawyer. His perception of repentance as a judicial action and understanding sin as a crime and penance as punishment, along with his enmity towards state authority, formed the Western tradition basis (Preobrazhenskii, 2004).

Of course, it was a complex of reasons for the divergence between Eastern and Western Christianity in the understanding of the spiritual and the secular balance in the medieval state. Along with the ideological motives mentioned above, there were also purely practical ones. First of all, there was a "vacuum of power" in the West, which lasted at least until the consolidation of the Carolingian monarchy on the continent. In this situation, the leaders of the local communities were primarily bishops, while the bishop of Rome became a leader and defender of the all Christian world. Decisive for the development of such a role became pontificate of "strong" popes as Gregory I the Great and Leo I the Great (Gonsales, 2001). Simultaneously within the Eastern Church, the tradition of power was not interrupted despite the weakness of a couple of Emperors. As a result, the concept of "symphony" of secular and spiritual power was formed. However, it should be remembered that in practice, after the reign of the Iconoclast Emperors, the concept of "Symphonia" served more as a rhetorical justification for the Emperor's dominance (Treadgold, 1998).

In the Western tradition, the concept of *rex-sacerdos* (king-priest) (Cunning, 1996) combined functions of spiritual and secular power in one person. As a result, Western kings acquired sacred features peculiar to the mythological mind, and the political struggle between church and secular power was conducted for the possession of the position of such a dualistic figure (Bloch, 1983). In particular, the ritual of anointing for kingship, common for France and England, was thought to confer on the king the properties of a priest and even of a saint - the ability to administer the sacraments, to heal the sickness, and so on (Duby, 1978).

The sacralization of the king's power led to another form of dualism - the formation of a political theology of the king's two bodies - a temporal human body and an eternal body of state (Kantorowicz, 1957). This doctrine laid the foundation for the subsequent accentuation of the abstraction of the state in Modernity and for the revolutions of the 17th and 18th centuries allowed to break the connection between the physical body of the king (which could be, among other things, executed) and the immaterial transcendental body of the state, which became embodied in the abstraction of the nation-state in the USA and France.

The Christian historical conceptions were a combination of aetiology (God as the primal cause of the Universe) and the existence of the Begining Point as an act of Creation and teleology (the end of time as the realization of the Divine Plan for the establishment of the City of God on Earth). The Divine plan implementation was predetermined and not dependent on the will of people. This thesis found an idea of society's current existence as an intermediate, transient one. The goal of society's existence became the achievement of the final point, which, however, was inevitable. This gave birth to the interpretation of the City of World as a "restraining" power, whose purpose was not to establish the Kingdom of God but to prevent the transforma-

tion of the City of World into the earthly subdivision of Hell. This doctrine, set forth by St. Augustine and based on his intrinsic negative anthropology (man is sinful by nature, and any deed of his free will leads to sin) (Augustine, 2009), was developed by John of Salisbury in his "Polycraticus" (1990). According to it, the function of the State was thus to maintain the present state of things (since the attainment of the Kingdom of God did not, in fact, depend on it) and to counteract evil. So, the main feature of the state became a punitive apparatus. This idea was established in the concept of "two swords" - spiritual and secular - already formed during the reign of Charlemagne and corresponding, in Kojève's terms, to the pure type of Lord, as directed to the present and associated with risk and violence.

From the spatial point of view, the Christian oikoumene had no limits since it potentially occupied the entire Universe. Such imagination could lead to both the expansionist policy of spreading the Christian state and the recognition of the equality of all subjects of international law, regardless of their confessional affiliation, since all are created by God equally, and all are potential Christians. A striking example of the birth of international law as a recognition of the equality of subjects was the treatise of Paul Włodkowitz, a Kraków professor and doctor of law in the early fifteenth century. He argued in "Tractatus de potestate papae et imperatoris respectu infidelium" and in his speech at the Council of Constance that rights to his land of any lawful sovereigns, regardless of whether they were Christians or pagans, are equal (Prokhorenkov, 2015). Similarly, in the sixteenth century, a Dominican friar Bartolome de las Casas (1968), in his treatise on the History of the Indies, justified the legitimacy of the Inca Empire and of their emperor, Montezuma, and interpreted Fernando de Cortés's war against the Incas as violating international law.

The change of the Weltanschauung paradigm at the turn of the Middle Ages and Early Modernity was complex. The formation of Renaissance monarchies and early Absolutism, expressed in the maxim *Rex in Regno suo imperator est*, was accompanied by a "Copernican revolution" in consciousness (Khun, 1992). On this ground was created "social Copernicanism" - absolutist ideas of political space, with the le Roi Soleil (The Sun-king) in its centre and all other subjects as planets turning around him (Yates, 1991).

There were a couple of conclusions from this hypothesis. They played a huge role in the formation of modern ideas about the state and the law. Firstly, the king became the only source of law and rights. Others could only be the bearers of the rights granted to them by the king, just as the planets do not possess their own light but reflect the light of the Sun. Secondly, the hierarchy pyramid of the Middle Ages was destroyed. From the absolutist point of view, the king - the living God on Earth - so much higher than everyone else that the difference between a Duke and a peasant is extremely negligible to him. Not for nothing was the graphic symbol of absolutism, as Drayton wrote, a circle, where the king is the centre and the equidistant points on the circle are the subjects (Hart, 1994).

The scheme created a potential bifurcation, as one could move from it both toward the idea of equal rights for all and toward equal deprivation of rights. The parallel spread of Protestant theology with its desire for the dematerialization and deanthropomorphism of God automatically led to the deanthropomorphism and desacralization of the political sacred. In the Medieval paradigm, the physical body of the king was the focal point of the material world in which the sacred body of the state was manifested in the greatest concentration (as a metaphor, we can compare such a representation to the relationship between the images and God in the Medieval church). But in Modernity, these bodies were separated. The political theology of Protestantism deprived the body of the state of its personification. Similar to a Protestant thesis that the Pope could not speak for the Church and interpret Scripture, so the king could not be a "secular pope" speaking for

the state and interpreting the common law. The only worthy receptacle for the sacred body of the state became the equally transcendent body of the nation, as manifested in 1778 in the famous formula of the U.S. Declaration of Independence "We the People of the United States of America...", which became a new version of the traditional formula "We, George the Third, by the grace of God King of Great Britain, France and Ireland...".

Conclusion

The separation of science as a system of structured, rational cognition occurred during the Enlightenment. One of the postulates of the era was the proclamation of the right to freedom of conscience and religion and the ensuing sepa-ration of church and secular state. Since that period, the sphere of state and church activities have been separated into independent fields of social activity, in which science and religion share the same object - the world - but cognize it with the help of different methodologies. Scientific methodology is based on experiments, causal logic, and rational argumentation. Religious methodlogy operates with notions of the miracle of divine creation and transformation of the universe, as well as dogmas based not on rational argumentation but on faith and Revelation. The scientific attitude towards philosophy is twofold. On the one hand, philosophy appears as an independent group of social sciences (09.00.00 - Philosophical sciences); on the other hand, it is seen as a structural and functional element of non-philosophical sciences with "philosophical component" (philosophy of law, philosophy of culture, philosophy of politics etc.). Consideration of philosophy as a separate system of philosophical sciences presupposes that the *object* of philosophical cognition is singled out. According to I. A. Aseyeva (n.d.), the object of philosophy as the science is the cognitive process itself, or rather the social relations arising in the sphere of cognitive activity, evaluation of its results, 'inclusion' of cognition system in the dynamics of human civilization development. Philosophy as a science "cognizes the world from the side of its essence and universal laws of existence and development" (Erakhtin, 2016). Considering philosophy in relation to other social sciences, we should use the subject field of cognition. It turns out that for philosophy as a science, the law is an element of the object of scientific-philosophical cognition, a part of the world of human civilization studied in the context of "the world's as a whole". If we talk about the philosophy of law as a part of the system of legal sciences, legal categories should be considered as a subject area of cognitive activity, where philosophy will be involved primarily in terms of the methodology of cognition of law as a socio-cultural phenomenon, as well as legal technique of law-making and law-enforcement activity.

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LAW AND LOGIC: E. BULYGIN'S DEDUCTIVE PATTERN OF JUDICIAL REASONING

Abstract

In the twentieth century, the debate over the possibilities and limits of logic in law became particularly acute with the emergence of judicial realism, a philosophical and legal trend that denied the deductive nature of judicial decision-making. This compromised the theory of the judicial syllogism, assuming that a judicial decision could be deduced as a logical consequence from the premises - norms and facts, and generally provoked a sceptical attitude towards logic in law. The subject of the article is the deductive model of the justification of judicial decisions proposed by the outstanding legal philosopher Eugenio Bulygin. The aim of the article is to show Bulygin's contribution to the improvement of the deductive model of judicial reasoning. The main innovations Bulygin brought to the deductive model of judicial reasoning are: 1) justifying, based on logical analysis and open texture of language theory, the analytical character of the court interpretative sentences; 2) distinguishing the individual and the generic subsumptions, etc. At the same time, the authors conclude that Bulygin's improved deductive theory is not free from criticism, as the Argentine jurist does not succeed in complete eliminating doubts about the logical deducibility of at least some categories of decisions from general rules.

Keywords: legal reasoning, application of the law, creation of law, E. Bulygin, logic in law, judicial syllogism, legal realism, subsumption, judicial decision.

Introduction

The problem of the role of logic in law has a long history - lawyers have looked to it for a firm basis for their conclusions and legal disputes, such as the Protagoras-Evatlus litigation, and it has been a rich source of inspiration for logicians (Armgardt, Canivez, & Chassagnard-Pinet, 2015). In the twentieth century, the debate about the possibilities and limits of logic in law became particularly acute with the emergence of judicial realism, a legal, philosophical trend that denied the deductive nature of judicial decision-making. This compromised the theory of the judicial syllogism, which assumed that a judicial decision could be deduced as a logical inference from its premises - norms and facts - and generally provoked a sceptical attitude towards the possibilities of logic in law. At the same time, attempts to develop a methodology for judicial reasoning based, for example, on the "weighing" of values (human rights, legal principles) (Alexy, 2007) are not free from the costs of judicial voluntarism and have not become an acceptable alternative to the traditional deductive model. While the deductive model of law enforcement allows detecting defects in legal qualification and normative justification of the decision, the judge's methods of working with values (including "balancing", "weighing" methods) do not have an algorithm accepted in the doctrine, which makes it impossible to critically assess the validity of such decisions either.

The attempt to modernize the deductive model of judicial reasoning, having taken into account critical arguments of legal realists, was

undertaken by the outstanding representative of legal positivism in the philosophy of law, Eugenio Bulygin (1931-2021), an Argentinean logician and legal scholar of Russian origin, who wrote numerous legal, logical and logico-legal studies[1]. The scholar's answer to the question, which he put in the title of his article, "What Can One Expect from Logic in the Law?" is far from the position of "logical theology", which sees logic as an instrument for solving legal problems: "Logic cannot explain why and how certain facts come about, just as it cannot solve ethical, political or, indeed, legal problems, but it can clarify the issues involved in such problems and in their resolution. This is not everything, but considerably more than just something" (Bulygin, 2008, p. 153). At the same time, his version of normative reasoning for judicial decisions is based on the conviction, unshaken by legal realism, that "the reconstruction of judicial justificatory reasoning can be achieved within the limits of deductive logic" (Alchourrón & Bulygin, 2015b, p. 271). Besides the high scholarly authority of Bulygin, we have practical reasons to trust his judgment: from 1986 to 2001, he was a judge at Argentina's National Court of Appeal, and his deductive model of judicial reasoning, as represented in particular in one of his major works on the subject, "Limits of Logic and Legal Reasoning" (Alchourrón & Bulygin, 2015b), clearly reflects his own experience as a judge.

In 2021, philosophers of the law were preparing to mark E. Bulygin's 90th birthday, but he passed away in May of this year, just short of his jubilee. We dedicate this article to his memory.

Deductive (Syllogistic) Model of Law Application: Genealogy and Main Tenets

The doctrine of the "transformation" of general rules of law into judicial decisions that determine the rights and obligations of parties to a legal conflict is traditionally referred to as the doctrine of the application of the law, referring to it as "among the most important in the entire system of law" (Savigny, 1847, p. 258). Its central problem is the problem of justification of the decision, and for such justification, it is usual, primarily in the continental legal doctrine, to use the deductive (syllogistic) model of reasoning, or the "theory of judicial syllogism" (Bulygin, 2016, p. 74).

The basic premises of the syllogistic theory of law application were explicitly formulated by doctrine in the early 19th century. The basis of the syllogistic model was the presumption of "Unity" (consistency) and "Completeness" of the legal system - the "whole" which "is destined for the solution of every problem arising in the province of law" (Savigny, 1867, p. 211) and it was generally assumed that for each legal problem there was only one correct solution (Bulygin, 2016, p. 74). This presumption did not rule out the existence of contradictions and gaps in the normative system but conditioned the demand for the restoration of "Unity" and "Completeness" addressed to doctrine and judges: "If Unity is wanting", wrote F. C. von Savigny (1867), "we have a *contradiction* to remove - If Completeness, we have a *gap* to fill up" (p. 212), stressing that "the requirement of completeness has just as absolute a claim of right as that of unity has" (p. 234). The possibility of this "restoration" was linked to the discovery of legal principles in the legal system, whereby it is possible to "deduce… the internal connection… which subsist between all juridical notions and rules" (Savigny, 1831, p. 39). Genetically dating back to medieval scholasticism and jurisprudence of the Glossatorian school (Berman, 1983, pp. 148-151), the thesis of unity and completeness of the legal system acquired a new impulse during the European codification era, initially linked with the natural law school, and subsequently with the development of classical legal positivism. The

[1] Some of these works, in particular "Normative Systems" (1971), which represents one of the first experiences of applying logic analysis to normative, especially legal systems (Bulygin, 2013, p. 45), were co-authored with Carlos Eduardo Alchourrón (1931-1996), an Argentine logician and legal scholar.

genealogy of this idea illustrates the "extraordinary vitality of the Postulate of Completeness" of law as a rational ideal of jurisprudence, noted by C. E. Alchourrón and E. Bulygin (1971, p. 178).

The institutional basis of the deductive model of law application was the principle of separation of powers, in particular, the separation of the *law creation* function carried out by the legislative (representative) power and the *law application* function entrusted to the judiciary. This was followed by the most important ethical principle of the judge's treatment of the text of the law, to regard its provisions with respect and the prohibition on "fill" the law with its own meaning: when "the interpreter [of the law] undertakes to improve... its actual contents, he puts himself above the legislator and consequently misconceives the limits to his own calling; it is no longer the interpretation which he practices but the actual development of law. Such a confusion of boundaries between essentially different activities is a sufficient ground… for wholly rejecting this sort of interpretation, and, according to the true conception of the office of judge, for wholly denying his liberty to adopt it" (Savigny, 1867, p. 261). Likewise it was forbidden to replace the provisions of law by its own moral considerations, having regard to the "intrinsic value of the result" of the interpretation which is "most questionable" since in consequence of it "the interpreter will, as easily as possible, overstep the limits of his occupation and intrude upon that of the legislator" (Savigny, 1867, p. 181). Accordingly, the use of the syllogistic model in law application, "by the certainty, resulting from a strict scientific method", has been seen as excluding "all arbitrary discretion" and avoiding two extremes: *on the one hand*, limiting the judge to "the mechanical application of a given text, which he is not allowed to interpret" and, on the other, a situation where "the judge should have to find the law for every case" (Savigny, 1867, pp. 150-151).

It has long been agreed by logicians and lawyers that the application of the law, culminating in a judgment, is "wholly and exclusively one of ratiocination, or syllogism" (Mill, 1872, p. 547). For a long time, logicians and jurists alike agreed. Thus, from the point of view of G. Shershenevich (2016), "any judicial decision will reveal its logical nature" (p. 606). The dispositive part of the court decision appears as the conclusion from two premises: the major one, which is the rule of law interpreted by the court, and the minor one - the set of facts ascertained by the court. The judge's discretion in the choice of the norm and its interpretation, as well as in the determination of the proof of the facts, does not allow the conclusion (decision) of the judge to be considered as "a simple mechanical matter" (Shershenevich, 2016, p. 619). Because of the logical relation between the grounds and the conclusion, not only the dispositive part (the judgment in the narrow sense) but also the opinion containing the justification of the decision was recognised as the constitutive part of the judgment with legal force (Savigny, 1847, p. 358).

E. Bulygin's Deductive Model of Law Application: Responses to Critical Arguments of Legal Realism

At the turn of the nineteenth and twentieth centuries, the syllogistic model of judicial reasoning was criticised by the free law school and later by American legal realism. The main object of the realist attack on the deductive model of law application was the subsumption model as incapable of adequately reflecting the real process of *how* judges make decisions.

Sharing the deductive theory of the application of the law, Bulygin and Alchourrón modify it significantly, expanding its content to include the problems posed by legal realists in their critique of the deductive model. Believing that "realist movements have generally formed a salutary corrective to the formalist excesses of legal dogmatics" (Alchourrón & Bulygin, 1971, p. 53), Bulygin (2015a), however, considers it nec-

essary to distinguish between two questions - the question of the normative justification of the decision, which, in his view, is purely logical, and the psychological question of the judge's motivation in making a decision, the answer to which involves investigating the causal link between the psychological motivations for the decision and the decision itself (pp. 47-49). Thus, the distinction between the logical question of normative decision justification and the psychological question of the judge's causal motivation in decision making allows Bulygin, on the one hand, to isolate in some part the problem of normative decision justification from the realists' criticism and, on the other, to recognize the significance of investigating the problems raised by them.

Two key theses of the realist critique of the syllogistic model of law application - on semantic uncertainty of the content of norms, as well as on uncertainty of facts - are not considered by Bulygin as arguments against the deductive nature of argumentation in law[2]. He incorporates these theses into the theory of legal application that he develops, treating the situation of the uncertainty of facts as a "gap of knowledge" about facts, and the situation of semantic uncertainty or vagueness of predicates as a "gap of recognition" (H. L. A. Hart's "case of penumbra") (Hart, 2012, pp. 24-136; Alchourrón & Bulygin, 1971, p. 33) that creates difficulties in the exercise of individual and/or generic subsumption. Believing that the term "subsumption" is used ambiguously, Bulygin suggests distinguishing between individual and generic subsumption. Unlike the case of classical subsumption, which he defines as "individual subsumption", where the judge needs to determine whether the individual object has the property designated by the predicate in question, generic subsumption involves determining what logical relationship exists between two predicates (Alchourrón & Bulygin, 2015b, pp. 256-257), for example between the predicates "contracts signed on Sunday" and "sacrilegious" (Alchourrón & Bulygin, 2015b, p. 255). If the "gap of knowledge" can be corrected by means of legal presumptions (Alchourrón & Bulygin, 1971, p. 32, 2015b, p. 256), the way to deal with the "gap of recognition" will be for the judge to establish new semantic rules that determine the meaning of the relevant predicates or to use existing semantic rules.

However, Alchourrón and Bulygin (2015b) concede that the choice of the relevant semantic rules may be based on ethical evaluations (p. 262). Nevertheless, the volitional act of the judge's choice to overcome the uncertainty of predicates is not considered by scholars as an argument against the deductive nature of legal reasoning, although the judge's activity is not always cognitive in nature (Alchourrón & Bulygin, 1971, p. 147). We can conclude that Bulygin and Alchourrón soften the cognitive thesis of classical syllogistic theory by agreeing with H. Kelsen and realists that "deciding is an act of will and as such is not determined by logic" and that "what is entailed by the premises of a sound argument are the contents of a (possible) act of deciding". This means that "this act of deciding, once performed, is said to be justifiable by the premisses of the argument" (Alchourrón & Bulygin, 2015b, p. 252). In other words, if the judge has made a decision, "sentence stating, for example, that 'contracts signed on Sunday are sacrilegious' expresses not a value judgment but an analytic proposition" (Alchourrón & Bulygin, 2015b, p. 262).

The third thesis of the realists - on the determining role of the judge's subjective evaluations in the decision-making process - is given by Bulygin by means of three arguments, each of which refers to three cases in which the judge may use such evaluations: 1) the evaluation of

[2] Alchurron and Bulygin (1971) emphasise that the importance of situations of uncertainty in the law should not be exaggerated, especially to the extent that this is typical of realists (pp. 33-34). To clarify the thesis on the relative certainty of legal language, Bulygin (2015c) in particular uses the argument of the infinite regress of acts of interpretation, through which he demonstrates that language that does not meet the minimum conditions of unambiguous linguistic expression "is useless as a tool for communication" (p. 309).

the evidence of a given fact, which is necessary for individual subsumption; 2) the evaluation of the interpretation of rules, which occurs in both individual and generic subsumption; 3) the application of evaluative predicates to specific situations.

1. The judge's evaluation of the evidence is called *epistemic* by Alchourrón and Bulygin (2015b), suggesting that it is "of the same kind as the evaluation of evidence carried out in the empirical sciences" and in that sense is not ethical. Evidence is evaluated in terms of whether or not it contributes to confirming the truth of empirical sentences. "Thus, the evaluation of evidence is the problem of determining whether an empirical sentence has been duly proven" (pp. 261-262).
2. The judge's evaluation of the interpretation of the rules, scholars believe, is given in the form of interpretive sentences which do not express value judgements but are analytical propositions. However, Alchourrón and Bulygin (2015b) acknowledge that a judge's choice of interpretation may be psychologically conditioned by a value attitude that includes an ethical evaluation of the consequences of a particular decision. Furthermore, he also acknowledges the significance of ethical evaluation, which "requires understanding the values implicit in the rules" (p. 263). However, the interpretive sentence itself is an application of existing semantic rules or setting new ones (p. 262).
3. The problem of the use of evaluative predicates is addressed by Alchourrón and Bulygin (2015b) by analogy with the distinction between norms and normative sentences, involving their prescriptive and descriptive (secondary) uses, respectively. Evaluative terms, they suggest, can also be used descriptively in sentences that do not express evaluation (approval or disapproval) but are descriptions of the fact that the subject meets the evaluative standards or criteria of a particular community or social group. Such sentences express descriptive propositions about the facts, i.e., in other words, the judge does not make an evaluation but only applies the standards of evaluation established in the community or social group to which he or she belongs (pp. 262-263).

Alchourrón and Bulygin (2015b) thus negate the realist's thesis on the role of the judges' subjective evaluations in the reasoning of the judgment: reduced to empirical, interpretative sentences or evaluative propositions, which are often necessary to determine the premises of inference, they cannot shake the conclusion that "the reasoning - that is, the step that leads from the premises to the conclusion - …can be reconstructed as, a deductive inference" (p. 253). At the same time, responding to the critical arguments of the realists, Bulygin explicates a more complex structure of the reasoning part of the judgment as compared to the classical deductive model: along with the *general normative sentences* which constitute the normative basis of the judgment and the *empirical sentences* used to describe the facts, it also contains sentences which are necessary to determine or clarify the premises of the inference and which he calls "*definitions* in a broad sense" (Bulygin, 2015b, p. 77). They include interpretative sentences that define the scope of a concept and its content and also descriptive, evaluative sentences that capture the actual social standards of evaluation. "When a judge decides on the meaning of expressions such as 'affluent tenant' or 'usury interest'", explains Bulygin (2015b), "he is not creating norms but defining concepts" (p. 87). That is, in other words, he introduces a "meaning postulate" (Alchourrón & Bulygin, 1971, p. 61). At the same time, the decision itself, i.e. its dispositive part, which Bulygin (2015b) regards as an individual norm *derived* from general rules and descriptions of facts, has a performative function (p. 77), causing the effects of the rights and duties determined by this norm. However, in accordance with Bulygin's conception of norm creation, discussed below, such a derivation of a

norm will not be its creation, as it is derived from the existing normative system.

Sharing the rational ideal of normative completeness and regarding it as "a prerequisite of the activity pursued by jurists, if their work is to deserve the name of science" (Alchourrón & Bulygin, 1971, p. 166), Bulygin treats the notion of *normative justification* of a decision as a special type of rational explanation - the justification of the deontic qualification of an action (Alchourrón & Bulygin, 1971, p. 169), believing that philosophy of law has not paid due attention to this issue as simple and obvious (Bulygin, 2015b, p. 75). He also removes the functions of creation and application of law separation doctrine from the political-ideological context of classical liberalism and reformulates the thesis that the judge only applies, not creates law: the requirement of the rational justification of the decision means that the grounds for the decision must not be created by the judge himself (Alchourrón & Bulygin, 1971, pp. 178-179). Accordingly, a judge being "bound" by the law metaphor means that the judge has a duty to justify explicitly the decision by means of general rules (Bulygin, 2015a, p. 45).

Law Application and the Problem of Judicial Law Creation

E. Bulygin presented his vision of the problem of judicial law-creating and the legal significance of the various parts of a judicial decision in his article "Judicial Decisions and the Creation of Law" (1966), in which he polemicises with Hans Kelsen's pure theory of law.

The Argentinean lawyer criticises H. Kelsen's notion of the relativity of the distinction between law creation and law application. The Austrian lawyer believed that law creation is always law application (because in order to create a new norm, it is necessary to apply the relevant empowering norm), while law application, except in the case of purely factual execution of an individual norm, is always law creation because it involves a certain act of will and always has a creative nature (Kelsen, 1970, pp. 233-236). Accordingly, a judicial decision is interpreted as an individual norm created by a judge (Kelsen, 1970, pp. 242-245).

Bulygin believes that interpreting a whole judgment as an individual norm is a simplification, and it is more precise to consider it as an inference, in which the opinion (grounding part) plays the role of a premise and the dispositive part - of a conclusion. The Argentinean lawyer, as already noted, distinguishes three types of premises:

1. "*general normative sentences* that constitute the *normative ground* of the decision";
2. "*definitions* in a broad sense, including as well sentences that determine the extension of a concept and sentences concerning meaning postulates" and
3. "*empirical sentences* used for the *description of facts*". The decision is, in turn, an individual norm (Bulygin, 2015b, pp. 76-77, 1995, pp. 24-26).

3.1. *The concept of norm creation*. To address the issue of judicial law creation, Bulygin (2015b) defines the creation of norms as follows: "in order for one to consider a norm formulated by a normative authority to have been created by this authority, its content cannot be identical to the content of some other norm belonging to the same legal order, nor can it be a logical (deducible) consequence of other norms" (p. 79). Bulygin (2015b) rejects the use of the existence of an act of will on the part of the relevant authority as a criterion for the *creation* of a legal norm because any formulation[3] of a norm involves an act of will and the adoption of such a criterion "would give excessive reach to the concept of norm creation" (p. 79).

In our view, Bulygin's concept of norm crea-

[3] The English translation of Bulygin's (2015b) article uses the expression "issuance of a norm" in the relevant place (p. 79). At the same time, the original Spanish text (Bulygin, 1991, p. 360) contains the expression "formulaćion de una norma" which, in our opinion, would be more accurately translated as "formulation of a norm".

tion faces two problems.

1. First of all, it should be noted that it is built entirely on Bulygin's own original definition of norm creation, i.e. it can be said that it is based on a kind of circle of evidence. A different understanding of norm creation (for example, identifying it with a binding expression of a will containing a prescription) (for example, Kelsen, 1970, pp. 3-10) also entails different conclusions about lawmaking by the courts. The discussion between Bulygin and Kelsen is therefore largely terminological in nature.
2. The only argument Bulygin cites to justify the merits of his definition of norm creation (which assumes that the norm formulated is not identical to any other norm in the legal system) is that the concept would otherwise be overly extensive. In other words, the fallacy of the theory of individual judicial norm creation is proved by the inconsistency of judicial decisions with the criteria of norm creation, but these criteria are a priori established by Bulygin himself. However, the opposite seems rather true: Bulygin's requirement excessively narrows the notion of norm creation, even beyond the problem of the norm-creating nature of judicial decisions. Quite often, especially in Continental legal systems, identical content norms can be found in different normative acts. This phenomenon occurs in particular in the following situations:
   a. the law reproduces and details the provisions of the written constitution;
   b. the by-law reproduces and details the provisions of the law;
   c. one law contains a general rule, and the other contains a special rule, but it is a particular case of the general rule.

The listed cases of one legal act norms being reproduced in other legal acts reflect a certain legal-technical idea - the desire of the legislator to make a legal act coherent, consistent and relatively complete in regulating its subject matter. It is also important that in the case of complete or partial repeal of one of the legal acts containing the relevant norm, the other will remain in force.

The possibility of the existence of several rules having the same content in a normative system is well known to E. Bulygin since it was considered by him in a number of works, in particular, in cooperative articles with C. E. Alchourrón "Expressive conception of norms" and "On the concept of a legal order" (Alchourrón & Bulygin, 2015a, pp. 146-170, 2015c, pp. 124-135). We assume two possible explanations for what the legal scholar meant in these cases.

The first possibility is that E. Bulygin when introducing the concept of norm creation, meant only individual norms and not general ones. However, there is no any distinction in the text of "Judicial Decisions and the Creation of Law", but the definition of norm creation as such. Moreover, the different definitions of the creation of general and individual norms would seem to require further justification.

The second possible explanation lies in the opposition between normative formulation and normative content, which can be found in other works by E. Bulygin. Thus, if we proceed from the expressive concept of norms, the normative formulation will represent a certain speech act, and normative content is the logical content of such an act, changing the existing normative system as a set of norms and their consequences (adding a new element to it) (Alchourrón & Bulygin, 2015a, pp. 151-157). The legislator's introduction of a new norm-formulation will not have been accompanied by a change in the normative system if the relevant normative content has already been introduced into the normative system before (compare: Alchourrón & Bulygin, 2015c, pp. 128-132). Similarly, "when the legislator becomes aware that there are two or more redundant formulations - that is, one and the same norm-content is expressed, for example, by different paragraphs of a statute - then he may be willing to derogate the redundant formulations without eliminating the norm-content. In this case, what he wants to do is to 'efface' the re-

dundant formulations, leaving only one of them. No rejection of the norm-content is required to achieve this aim" (Alchourrón & Bulygin, 2015a, p. 156)[4].

For these reasons, we believe that E. Bulygin's adoption of such a narrow definition of the concept of norm creation reflects his consistent logical-legal position, but the refusal to accept the establishment of "redundant" norm-formulations as "law creation" following from it does not seem consistent with the word usage that has been developed in legal scholarship.

3.2. *Norms created by the courts*. The first type of norms that Bulygin has tested against his definition of lawmaking is the set of individual norms in the dispositive parts of judicial decisions. Although individual rules are not derived directly from general norms, they are derived from general norms and descriptions of facts. For example, the individual norm "Diaz is to spend 12 years in prison" is not deductible from the norm "he who murders another is to be punished by imprisonment for 8 to 25 years", but the individual norm "Diaz is to be punished by imprisonment of 8 to 25 years" follows directly from the said norm together with the description of the fact "Diaz murdered Gonzalez". The fact that other conclusions can be drawn in the same way from the penal provision cited (for example, imprisonment for 20 years or 8 years, etc.) is, from Bulygin's (2015b) point of view, irrelevant (pp. 79-80).

The latter assertion, however, is questionable.

(A). Bulygin does not provide a logical justification for the thesis that different solutions can be deduced from a general criminal law norm that contains a relatively certain sanction. Apparently, he interprets "to be punishable by imprisonment for 8 to 25 years" as a predicate that includes "to be punishable by imprisonment for 8 years", "to be punishable by imprisonment for 14 years", etc. The derivation of any particular punishment for Diaz is then simply a logically weaker inference than the conclusion "Diaz is to be punished by imprisonment of 8 to 25 years", as, for example, from the premises "All murderers are criminals" and "Diaz is a murderer" would follow the statement "Diaz is a criminal" (modus Barbara of classical logic). However, in fact, this conclusion is more appropriately compared to the following:

(1) All law students study European languages.

(2) John is a law student.

Conclusion: *John is learning the German language*.

It would seem that the concept of a European language is more general in relation to that of the German language, just as the concept of imprisonment for 8 to 25 years includes any punishment from the relevant time frame. The error in both cases is the need to choose - John is not learning all European languages, and Diaz cannot be sentenced to imprisonment for 8 to 25 years.

In order for the result of this choice to be the logical conclusion of an inference, additional premises are needed to create a complex inference or a sequence of inferences.

In the first case, some specific language must be chosen, and in the second, some specific punishment must be given.

Correct inference in the example of language learning:

(1) All law students learn some European language.

(2) John is a law student.

Intermediate conclusion: *John is learning some European language*.

(3) Students learn the European language of their choice.

(4) John chose German.

(5) German is a European language.

Final conclusion: *John is learning German*.

[4] Compare: "A normative system is redundant with regard to a given norm if the norm has been formulated more than once - that is, if there are two or more formulations expressing the same norm - or if a derived norm, which by definition is already a part of the system, is explicitly promulgated. The elimination of a redundant norm-formulation leaves the system unchanged" (Alchourrón & Bulygin, 2015c, pp. 128-129).

As you can see from this example, three additional premises (premises 3-5) are required for the conclusion you are looking for.

The correct logical form in the example with the judicial syllogism:

(1) Anyone who commits murder shall be punished with some penalty of imprisonment from a range of 8 to 25 years.

(2) Diaz committed murder.

Intermediate conclusion: *Diaz should be punished with some penalty of imprisonment from a range of 8 to 25 years*.

(3) Whoever commits murder is to be punished by whatever punishment the court chooses.

(4) The court chooses the punishment within the statutory interval.

(5) The punishment of 12 years' imprisonment ranges from 8 to 25 years.

(6) The court chose a 12-year prison sentence for Diaz.

Final conclusion: *Diaz is to be punished by 12 years' imprisonment*.

Thus, no punishment in Diaz's case without additional premise (premises 3-6) logically follows from the criminal law norm and the circumstances of the case established by the court, which means that the court's adoption of the individual rule "Diaz is to spend 12 years in prison" falls within the Bulygin's definition of norm creation.

(B). Even if one does not question the logical deducibility of the different decisions in the criminal law, a situation in which the decisions "Diaz is to be punished by 8 years' imprisonment", "Diaz is to be punished by 14 years' imprisonment" and "Diaz is to be punished by 25 years' imprisonment" are equally deducible from the same norm (and the fact of the murder) contradicts to the intuitive understanding of logical consequence and raises questions about the adequacy of the logic applied, recalling the famous Alf Ross paradox[5].

The second type of norm is quite rare. It appears in the situations of gaps in the law when general legal norm does not regulate the disputed situation. In such a case, a general legal norm contained in the opinion of a court decision, for example, which involves extending by analogy another norm to a disputed situation, is actually created by the court, as it does not coincide with any other already existing norm (Bulygin, 2015b, pp. 80-81). The question of whether these rules are legal (in case they do not become de facto general norms as judicial precedents) is, according to the Argentine lawyer, a purely semantic one (Bulygin, 2015b, pp. 85-86).

Conclusion

The theory of law application by E. Bulygin is aimed at mitigating the extremes of judicial formalism and realism, the main provisions of which the Argentinean jurist considers quite compatible. By rejecting individual judicial norm creating, Bulygin takes into account the criticisms of opponents of the traditional syllogistic theory of judicial decision and improves it, based on a clear distinction between the logic and psychology of law application. On the basis of logical analysis and the theory of open texture (relative indeterminacy) of language, Bulygin seeks to justify the analytical nature of the court's interpretative sentences and the relatively low significance of the judge's own evaluations. However, the improved syllogistic theory cannot be said to be completely immune from criticism, as the Argentinean jurist fails to completely eliminate doubts about the logical deducibility of at least some categories of decisions, in particular, decisions on the imposition of criminal penalties.

[5] This paradox is formulated by Alf Ross (1944, pp. 38-43) and consists in the following: the logic of norms implies in particular that from a norm A follows A or B (!A→ !(AvB)), which can be illustrated by an example: "Slip the letter into the letter-box, then slip the letter into the letter-box or burn it". The conclusion is obviously absurd.

Bulygin's original conclusions include a distinctive, albeit controversial, understanding of normativity and a distinction between individual and generic subsumption.

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PHILOSOPHICAL AND LEGAL FOUNDATIONS OF THE COMPREHENSIVE THEORY OF LAW

Abstract

The article is devoted to the clarification of the essence of the law. The article examines the ontology of law, and the epistemology of law reflects the philosophical problems of law. The conclusion about the law as a contradictory social phenomenon is formulated. The article substantiates the theory of the comprehensive (all-encompassing) study of law as a philosophical and philosophical-legal theory, the purpose of which is characterized not in the justification of any one theory of law but in the comprehensive study of law, taking into account all available theories. The comprehensive theory allows us to look at the law philosophically, stating the different properties of the object, their manifestations and contradictions. The article argues that it is the philosophical attitude to the law that many scientists lack.

Keywords: philosophy of law, theory of state and law, law, comprehensive theory, essence of the law.

Introduction

The question of what is law, what is its essence, has always interested a person. Philosophers and lawyers, sociologists and politicians have studied law from Antiquity to the present day, comparing it with other social phenomena, the legislation, the state. On the basis of the prepared scientific works, several legal theories have been formed, the most famous of which are the iusnaturalism, positivism, divine, historical, sociological, contractual, psychological theories and a number of others.

However, something else is surprising. With the brilliant achievements of mankind in the technical and humanitarian sciences, the question of what law is still open. Dozens of definitions of law have been formulated, various approaches to its cognition have been proposed. However, over the millennia of human existence, no single approach has been developed that suits everyone.

Does this fact mean that the law is impossible to comprehend? We believe in the power of knowledge and proceed from the fact that any social phenomenon is fundamentally knowable. In the study of law, the problem, we think, is different.

From the point of view of cognition, law reminds us of a diamond. As you know, the most common diamond cut is 57 facets. And now it seems that scientists see this or that facet of the stone, sometimes even consider it in detail, while losing sight of the fact that there are at least 56 more facets of the same stone. The same thing happens with the law. Experts on one facet of this phenomenon study it as a whole. It is obvious that the theories obtained in this way eventually run into insoluble contradictions. Then new thinkers appear, who also, sometimes sincerely believing that they see the whole subject, sharpen their views on one of the manifestations of the subject. Their theories are also refuted by other concepts that are also far from perfect. Historically, how many different concepts of understanding law have there been? It would seem that not a little. However, there are not as many of them as the facets of a diamond.

Research has allowed us to suggest that until

a significant number of independent concepts are created that objectively and fully disclose specific facets of law, we will not be able to create a single and general concept. But as soon as the number of definitions of law reaches a critical mass, it will grow into quality, as a result of which we will get an understanding of the law at a completely new level, which may be surprising for all of us.

Results and Discussion

If we combine everything we know about the law, will we get something bigger and more satisfying for everyone? Apparently not. So far, we have only reached the understanding that it is impossible to dwell only on one concept or theory of law, to try to "make" it dominant, the main one. It is necessary to strive to embrace the law entirely, to study the law comprehensively. Such a comprehensive approach (from the Latin Komprehendo – all-encompassing) to the study of law, in this case, is the most appropriate (Zakharcev, 2014, 2021; Zakharcev & Salnikov, 2015, 2019).

We formulated the comprehensive theory of law in 2014-2015. During this time, this theory has become known not only in Russia but also abroad. It has been translated into several foreign languages. This theory became most notable after a monograph dedicated to it was published in Cambridge (Zakharcev & Salnikov, 2018).

Positive reviews of our research were written by D. A. Kerimov, I. F. Pokrovsky, A. I. Ekimov, A. G. Khabibulin, V. M. Baranov, F. M. Rayanov, F. H. Galiev and other specialists. We thank them for their support and want to return once again to the philosophical and legal foundations of the comprehensive theory of law.

We are convinced that the knowledge of the law, like any other phenomenon, should begin with philosophy. It is the philosophy that allows us to "rise" above the problem, evaluate it in the historical aspect, in dynamics, taking into account the development of scientific knowledge about the world and being. It seems that in philosophical terms, a significant number of legal studies, although having global goals, actually represent work at the foot of the pyramid. And it is naive to believe that we will overcome the "huge distance" quickly. And sometimes, instead of rising to knowledge, work is carried out "in a circle". For example, more than a century ago, N. M. Korkunov summed up the convincing result of the attempts to create the so-called encyclopedia of law. In particular, he wrote: "It turned out to be impossible to create a science of sciences from an encyclopedia that would at the same time be an independent, special science and would embrace the content of all individual sciences" (Korkunov, 2019). At the same time, a century later, it is proposed to return to the named idea anew.

Another typical example. Currently, there are attempts to combine the theories of natural and positive law into an integral theory of law. But the law is not only these two theories. So the design in this form is doomed to failure. Philosophically rise above the problem and appreciate that the unification of only these theories will be absolutely incomplete - not everyone succeeds.

Philosophical assessments are required by the modern attitude of legal science to law. So, at present, it is clearly observed that many experts have begun to write about the phenomenon of "law" "sublimely well". They say that everything connected with true law is fair and honest. But what is unfair, totalitarian, undemocratic (although contained in legal norms) is no longer a law. Hence, expressions became commonplace – illegal law, anti-legal authority, anti-legal relations, etc. That is, the law, especially recently, has become idealized.

This approach has become so widespread among students that teachers of a number of branch legal disciplines complain that in universities where students are inspired with the idea of the difference and contradictions of law and the legislation, it is extremely difficult to encourage future lawyers to study codes and other legisla-

tive material since many students are convinced that almost all of this is not law (Lejst, 2015).

It is important to understand that if we look at the phenomenon of law "through rose-coloured glasses", we will not come close to understanding law and its essence. It should be recognized that if the legal norms of reform laws lead to mass impoverishment of the population, infringement of the needs for education and health care, then this is a legal arbitrariness. Arbitrariness! But it is legal. At the same time, the popular phrase "illegal law" used protects the law itself, as if everything explains and suits everyone. Under such circumstances, the law becomes a shrine, an idol, to which everyone prays and does not allow criticism. Like: the law is by definition good, honest, clean, free from bad impurities. About the same thing: the law is freedom, justice, equality and nothing else. For example, V. S. Nersesyanc (2020) began a book on the philosophy of law as follows: the philosophy of law deals with the knowledge of the law as a necessary form of freedom, equality and justice in the public life of people.

But such an understanding of the law is one-sided, not critical and not objective. Uncritical cognition of any phenomenon contradicts the very essence of philosophy. For the philosophy of law, this provision is fraught with great danger. An uncritical approach brings the understanding of a phenomenon to hypertrophied forms. This inevitably leads to a perverted understanding of the phenomenon, the essence, the concept. Subsequent criticism, which sooner or later breaks through, sometimes destroys not only the formed approaches to the phenomenon under study but also discredits the phenomenon itself, the concepts and ideas associated with it.

The current attempts to shield the law from criticism, it seems, are doomed. Even if we proceed from the divine origin of the law, then they will pray to God, not to the la, which is natural. To oppose God to the law or to supplement God with the law is absurd and meaningless.

Again, if we try to somehow idealize the law, to create a law that everyone should strive for, then it is still not right to reduce it to a form of freedom, equality and justice. The law is much more multifaceted and ambiguous than the above categories. Moreover, even precisely defining these philosophical categories is a very difficult philosophical question.

Law is an important and necessary phenomenon of public life. But other phenomena are of the same importance – culture, economy, etc. Is it possible, for example, perfect justice in the economy if one simply wants to sell more expensive, and the other wants to buy cheaper? Is perfect justice possible in a legal dispute between persons in the division of property - everyone has their own justice? Is an unambiguous assessment of cultural works (say, Malevich's "Black Square") possible? Will it be completely fair? At the same time, no one writes about an uneconomical economy, an uncultured culture, etc.

It should be said here that we do not identify law and legislation. However, we consider it fundamentally wrong to contrast these concepts, to oppose one-sidedly, shielding the law as a phenomenon from criticism. We would like to ask why they write "non-legal legislation" and not, for example, "non-legal law"? Why whitewash legal norms? Moreover, it happens that the norms that seem to us today to be legal and fair in every sense do not seem legal after a historical period. For example, the reforms in Russia carried out in the 1990s and formalized by the relevant legal norms initially seemed to be legal, liberal. However, after a short amount of time, they led to significant negative consequences: the collapse of the state, separatism in Russia, nationalism, impoverishment of a significant part of the population, armed conflicts, etc. The ambiguity of the results of the reforms was also recognized by the country's leadership. Now it is obvious that the norms of legislation that established the course of these reforms can hardly be attributed to the legal (in the sense that is laid down by individual idealist scientists).

But there are also reverse examples. The or-

der of Marshal G. K. Zhukov on the protection of Leningrad at any cost in its cruelty would seem unlikely to fit into the legal framework. However, the course of history has objectively demonstrated the supreme justice of such a decision, rightness and correctness, that is, precisely the legal nature. Now it is obvious to everyone that if Leningrad had not been held, the number of people killed would have been many times greater, and the question of victory over fascism would have remained open. It must be said that in the history of mankind, a lot of legal norms have accumulated, which nevertheless contain violence and cruelty.

In addition, it must be borne in mind that the same legislative act at different stages of social existence can be both legal and wrong. Moreover, the same action (for example, speculation) can be both a criminally punishable act and a positive, effective economic activity.

Thus, the concept of legal and non-legal legislation cannot become a reference point for state bodies and officials applying the law. Such a concept is a kind of speculative construction that cannot be implemented in the application of the law. Here, at this stage, the issue of scientific, dialectical verification of ideas and constructions is once again clearly highlighted.

A deep study of the problem of "legal / non-legal" legislative acts was conducted by O. E. Leist. In his fair opinion, a serious obstacle to the formation of meaningful philosophical directions in the study of law in recent years has been the concept, which until recently was called by its supporters the "historical-materialistic concept of the difference and correlation of law and legislation", and now it has been renamed "libertarian" by him. This concept opposes the law, the essence of which is seen in freedom, equality and justice, to legislation adopted by the State. This is the basis of the concept of "non-legal legislation", which does not correspond to the ideas of freedom, equality and justice. Based on such a concept, it is generally difficult to find "legal legislation" in the centuries-old history of mankind. If we consider the law to be the embodiment of freedom, equality, justice, then the history of law begins only from the XVII-XVIII centuries, and all previous law (Hammurabi Laws, Manu Laws, Roman slave law, all the law of the Middle Ages, in Russia – the Russian Truth, all Judicial Codes and Regulations, etc.) should not be considered as law. It turns out that the "libertarian concept" seems to have abolished most of the history of law. Paying tribute to the theoretical courage and consistency of the founder of this concept, V. S. Nersesyanc, we note that he recently abolished most of the history of the state. The state, in his opinion, is constituted only on the basis of "legal legislation", and everything else that has been considered a state in history so far has been various types of despotism, fundamentally different from the state.

Furthermore, As O. E. Leist continued his thought, on the basis of abstract reasoning, which always opposes good law against often bad legislation, it is difficult to formulate any specific recommendations to a modern legislator who fundamentally recognizes the ideas of freedom, equality and justice, but does not always know how to embody them in a legislative act. In addition, the opposite ratio has completely fallen out of the field of view of the supporters of the criticized concept – good legislation and a shaky, unsecured and therefore bad law. An example of such a ratio is art. 59 of the Constitution of the Russian Federation on the right to replace military service with alternative civil service and the inability to exercise this right due to the lack of a legislative definition of the procedure for its implementation. Proponents of the distinction between law and legislation did not notice that law differs from legislation in its ability to be implemented in specific legal relations, in the rights and obligations of members of society, and therefore excessively general formulations of (good by design) legislative act cannot be embodied in law, which does not have a developed mechanism for their translation into specific legal relations (Lejst, 2015).

We fully agree with the above arguments.

Thus, the law should not be idealized. It is a phenomenon of social life, human life and reflects the processes that occur with people. Speaking about natural human rights (the right to life, freedom of conscience, movement, religion, etc.), no one will argue with the fact that all these rights appear to a person after birth, but not before birth. That is, the law is inextricably linked with a living person who was born and thus appeared in public life. Accordingly, it is impossible to separate law from man and society. The law is not a cloud hovering somewhere outside of people. And since the law is inextricably linked with man and society, it should not be talked about as something supernatural, sublime. It simply reflects both society as a whole and specific people - their virtues and their vices.

For us, it was and remains a mystery why the law is subject to such idealization among legal scholars (mainly legal theorists). Experts in these fields evaluate the economy, culture, and politics more carefully and objectively, without illusions.

Perhaps the phenomenon of law itself contains a constant human desire for kindness, honesty, justice. Or maybe the ideal of law is created by scientists who are somewhat divorced from specific legal realities, the stagnation of many legal mechanisms, red tape in disputes, injustice, dishonesty, sneaky tricks, bribery or pressure on the court, etc.? Note that these qualities have always been in law throughout history. They are repeatedly described in the literature, historical works, and by lawyers themselves.

We must live in reality. In the course of our research, we found that many Russians primarily associate the law with prohibition and punishment! What happens? Scientists write about the measure of freedom, equality and justice, and for people, society, it is mainly associated with prohibition and punishment? And why are the prohibition and punishment in law more significant for people than mandatory established rules or a legalized procedure for carrying out any actions?

On the one hand, it is good that the law is not associated with violence and cruelty among Russians. However, on the other hand, prohibition and punishment are not a positive reaction of a person. They do not please and, as a rule, do not cause positive emotions. So it is logical to assume that the law does not cause positive emotions in most people. And to be more precise, it causes negative ones.

What are the dangers of prohibition and punishment? People do not seek salvation and protection in them!

There is a lot of idealism in the proposed modern concepts (natural, libertarian, integral, and others). However, humanity has not yet succeeded, and in the near future, undoubtedly, it will not be possible to create an ideal society, at least a society that is absolutely fair. Outside of an ideal society, the models of idealized law are not fully realized; they will be refracted in a variety of directions, possibly reaching anti-legal ones. Examples of when bright ideas turn into lawlessness and terror are known to everyone.

It is necessary to take into account the dependence of law on external factors, for example, on the economy. According to Engels, the law is almost entirely dependent on the economics. The law depends on the economy according to positivism. The law partially depends on the economy according to iusnaturalism. Even if we recognize the law as a given, dominant and ruling in the world, without a strong economy, many natural human rights will become slogans containing nothing and having no practical meaning (the right to a decent life, the right to respect, the right to a protected old age, etc.). That is, the law is at least partially, to some extent, dependent on the economy. This conclusion is important because, in this case, it must be objectively recognized that the law cannot be completely fair. After all, the economy cannot be fair. And if the law at least partially depends on the economy, then it is at least sometimes unfair by definition.

Many modern specialists, learning the law, start from any concept of the origin of law that suits them. However, we would suggest first as-

sessing the essence and content of the law. This process is very interesting.

After all, the law is both protection from violence, and violence under duress, and a regulator of violence. Moreover, in each society, taking into account its mentality, traditions, culture and other social factors, the parameters of regulating violence are different.

Law is both the realization of human needs and their limitation and the regulator of needs. At the same time, if we can say so, the law ensures human life.

Law is both specific legislative acts issued by the state, and being independent of specific legislative acts and even prompting to issue these legislative acts.

Law is both a reasonable regulator of vital activity and nonsense, absurdity, recklessness (for example, well-known senseless and comical laws in case law). The law shows both the intellectuality and the recklessness of humanity.

The law strives for justice but, at the same time, allows injustice.

The law is aimed at establishing the objective truth, and at the same time, allows its non-establishment.

Law is dynamic and, at the same time, contradictory in its dynamics. So, depending on external social factors, the same act can be considered a crime, or it can be effective conduct of business (e.g. speculation).

The law is simple and understandable from the point of view of eternal values (do not kill, do not steal), but at the same time, it is difficult from the point of view of the qualification of these acts.

In some cases, law forms policy and, at the same time, is a policy instrument. At the same time, the law cannot solve all the problems of humanity, although, for some reason, many people see it that way.

Law regulates the economy and, at the same time, depends on economic processes.

Does the law regulate murder? Paradoxically, yes. In a number of states, the law permits euthanasia – the killing of a sick person. Or is it not, in fact, a veiled murder to place seriously ill people in hospices without providing them with medical care? And the death penalty of criminals, too, is actually the murder of a person.

Speaking of the inconsistency of law, another example is appropriate here: the number of supporters and opponents of the death penalty is approximately equal. And each of the parties in the argument refers to the law.

Such reflections can be continued and continued. Ultimately, it seems that law is undoubtedly a complex dialectical multifactorial social phenomenon, multidimensional and contradictory, depending on objective and subjective factors. Subjective factors, for example, include the tyranny of a person authorized to issue legal norms (there are many such examples).

This conclusion underlies the formation and formulation of our theory of the *comprehensive study of law*.

We are not entirely satisfied with the definitions of law that are widespread in our time because, although they reveal certain features of the law, they are, firstly, rather one-sided, and secondly, as already noted, they consider law idealistically and not objectively. It seems to us that lawyers - scientists and practitioners - need to be closer to philosophy, be based on it, and therefore doubt more, look at legal phenomena critically. A step in this direction will be the beginning of a movement from the observed mythical legal idealism towards legal realism, a comprehensive study of law.

Now, probably, there is not a single area of public relations that has not been regulated by law to one degree or another. The norms of law in their own way reflect and characterize the economy, culture, politics, history, intelligence, way of thinking, attitude to a person, etc.

In such circumstances, the law is one of the forms of reflection of being. And since the law is not conceivable without human existence, it is a form of reflection of social existence, designed to regulate emerging social relations.

Legal existence is dialectical and accordingly contains internal contradictions. This is most clearly manifested within the legal regulation of public relations. On the one hand, society strives for the maximum regulation of public relations by law. Literally so that for any life situation, firstly, there is an appropriate legal norm, and secondly, so that this norm is not contradictory, unambiguously understood and applied. Everyone sees and feels the movement in this direction. The legal array is noticeably increasing. Recently, the understanding of a lawyer as a person, if not knowledgeable, then at least oriented in all laws, has gone into oblivion. A narrower specialization in specialists in the field of criminal, civil and administrative law was required. However, even there, the growth of the legal array objectively necessitated even narrower differentiations of specialities. Thus, specialists in the land, family, labour law, etc., were "nurtured" from civil law. However, the further growth of legislative and sub-legislative acts continues, requiring even more "narrow" specialists. For example, lawyers who are specialists in such a small part of administrative law as traffic rules are currently very valuable. The rules of the road, their application, analysis of road accidents has thousands of legal nuances. And such nuances are significant for people: to determine their guilt, measures of responsibility and even freedom.

But, on the other hand, it is desirable for any society that the legislative acts are known, simple and understandable to everyone. Now even a lawyer is not always able to deal with the many subtleties of the modern legal system of the state. As a result, most people, paradoxically, are quite defenceless before the norms of law. This conclusion is confirmed by countless examples when educated people with a wealth of life experience were easily deceived not only by fraudsters but also by government officials (the same traffic police inspectors), clever lawyers.

In legal existence, another paradox and internal contradiction turned out. Society and people, on the one hand, are interested in everything being clearly regulated by law, and on the other hand, they can no longer "digest" the already existing legal array. At the same time, the law, alas, for objective reasons, can act against a person and society. If not so long ago, the phrase: "It is impossible to take a step without breaking something!" was perceived with humour, now there is more and more tragedy in it. Moreover, in this case, everyone - both ordinary citizens and government officials - are in principle in the same conditions. Government officials whose service is regulated by a set of instructions and orders can also easily become subjects of both administrative and criminal liability. To match the Russian folk saying: "If there was a person, there would be an article".

Conclusion

The above makes it possible to formulate the theory of the *comprehensive study of law* in "large strokes". Initially, it should be said that the relevance of the formation and formulation of this theory is caused by the need to turn to the concept of law from a philosophical standpoint, evaluate it comprehensively and honestly, rejecting the method of idealization of law often used today. This theory, according to our plan, should fulfil the role of a private theory in the philosophy of law.

The object of the theory is objectively existing social relations regulated by law. The subject of the theory of the comprehensive study of law is the law itself as a complex, contradictory, multidimensional, dynamically changing social phenomenon, assessed without the dominance of any legal concept.

The subject of the theory of the comprehensive study of law also includes:

- Regularities of essential dialectical contradictions in law and legal existence (some of them have been named).
- Patterns of influence on an adequate and objective assessment of law and legal reality of exter-

nal factors (such factors include economics, politics, ideology, the role of the head of state, etc.)

- Prospects for the development of law in the context of legal reality.

We started the study with the fact that a diamond turned out to be a diamond when we justified the need for its 57 facets. We believe and hope that as soon as the researchers of law discover the same set of facets and features of the law, its essence and purpose will be clearly defined. This will not happen now, and, we think, not in the near future.

By the way, we state that interesting legal concepts have recently appeared in the legal environment. For example, V. M. Shafirov (2016) justifies the special status of the Constitution in the knowledge and understanding of the law. He writes that the Constitution is not a kind of legislation. It cannot be both a law and give a name to a separate branch of law. That is, according to the author, the Constitution has a supra-sectoral character. Yu. P. Borulenkov (2014, 2015) tries to develop the ideas of postmodernists, in particular H.-G. Gadamer and tries to substantiate the methodological status of hermeneutics in legal cognition. We are specifically moving away from criticizing these new concepts. They are, of course, not indisputable. But these concepts are important because they focus on new facets of law, which is actually very valuable for a comprehensive theory of legal cognition.

But here, it must be emphasized again that comprehensive knowledge of law does not imply a persistent justification of any one concept of law, which is often "sinned" by many scientists. And at the same time, not through an integral theory of law, which boils down to attempts to take the "best" of separate legal concepts. Without fully knowing the law, it is impossible to say what is "the best" and what is "the worst" in it. In addition, the knowledge of the law, without assessing its negative features, is not complete, and therefore not objective. It is not about combining different legal concepts.

We see the meaning of the proposed approach in a strictly objective, real, deidealized knowledge of the law without allowing the dominance of any concept. The more objectively we evaluate law as a complex, contradictory, multifaceted social phenomenon, the clearer we reveal all its contradictions and flaws, strengths and weaknesses, opportunities and limits of these opportunities, etc., the sooner we will come to the knowledge of the law. It is the knowledge of the essence of law that is one of the main tasks of the philosophy of law.

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THE SOCIOCULTURAL CONTEXT IN LAW: MODERNISM - POSTMODERNISM - METAMODERNISM

Abstract

This article analyses the socio-cultural aspects of modern law in terms of philosophical and legal analysis and in the context of the changes that take place in the culture of the 19th-21st centuries. The objective of this work is to identify the discourse of today's cultural strategies and their reflection in law and legal culture.

The article uses an arsenal of methodological tools of philosophical and legal analysis, a cultural methodology through which the values of modern society are revealed, as well as a methodology of historical and philosophical research.

The main result of the work is to establish that modern law cannot be understood outside and regardless of its contextuality, as well as in accordance with the cultural logic and peculiarities of civilisational development in the context of globalisation.

The main conclusion of the article is that the emergence of post-postcapitalism and the deepening of the consumer society result in a crisis of law and its excessive bureaucratisation and formalisation. The emerging cultural logic of metamodernism refers to such concepts as "structure of feeling", "oscillation", "communication", "post-truth", "totality" in order to restore the subject-orientation of law and give anthropological substance to the traditional concepts of "human dignity", "freedom" and "justice".

Keywords: modernism, postmodernism, metamodernism, structure of feeling, oscillation, post-nonclassical legal understanding, irrational.

Introduction

Today, modern legal science has various types of understanding of the law that can be combined into post-nonclassical legal understanding; however, what mainly unites them is the understanding of law as a means of regulating and transforming social changes, a means that contributes to the development of law. It is unlikely that there will be researchers who will deny the centrality of law in the modern social reality; it is therefore not surprising that most studies in modern moral theory, philosophy of politics and economics, social philosophy in one way or another concern law, consider its aspects, nature and interaction with various spheres of social life.

In its turn, philosophy of law refers primarily to analysis of the nature of law, its sense and meaning, considering it in a socio-cultural context, factoring in the pluralism and multifactor nature of legal reality analysis. Philosophy of law refers to the axiological consideration of law, its values, ideals, archetypes, and influence on the formation of the modern way of life and thinking. Taking into account the inclusion of law and legal culture in the general grid of social coordinates, we refer to the analysis of those developments that take place in the understanding of the law, its role and meaning in the cultural

logic that has been formed over the past and present centuries. V. P. Malakhov (2019) writes: "The philosophy of law discusses what kind of law we can generally have, what kind of law (real, formal or abstract) is possible" (p. 4).

The emergence of a postmodern understanding of the law is associated with:

1. the total influence of the State on all aspects of an individual's life, the strengthening of bureaucratic structures that control all his/her actions, thereby reducing his/her freedom and ability to make decisions independently;
2. the ongoing globalisation processes in economic, political, and cultural life that are leading to the levelling of national feelings, moods and values of subjects.

As R. Wacks notes, the postmodern concept of society "has also witnessed a new pragmatism. A down-to-earth set of goals (economic, ecological, political) is accompanied by the advocacy of a more inclusive community that emphasises the special predicament of women, minorities, the dispossessed, and the poor" (Wacks, 2020, pp. 154-155). Dissatisfaction with the postmodern concept has led a number of researchers to analyse the changes that have occurred in the world and culture; therefore, the new cultural strategy of metamodernism, although it has not yet become an established social theory, demonstrates those overdue changes that require reflection, analysis, and evaluation.

Problems of Law in the Modern Era

In the modern philosophical literature, the beginning of the Age of Enlightenment is usually associated with the advent of the modern era that is marked by the establishment of classical scientific rationality with the subject-object opposetion, the dominance of one truth, monologism, and orientation primarily towards the development of natural sciences. But already, the second half of the 19th century witnessed a radical separation of natural and socio-human sciences and a methodology of socio-humanitarian cognition where the subject is not eliminated from the cognitive activity. In addition to natural scientific rationality, there is also socio-humanitarian rationality that is understood by S. A. Lebedev (2020) as "a set of methodological requirements that should be met by socio-humanitarian scientific knowledge, socio-value objectivity, reflexivity, systematicity, cultural feasibility, adaptive utility, openness to criticism, the possibility of change" (p. 38).

The new scientific rationality is not limited to the inclusion of the subject in cognitive activities. Its gnoseological aspects expand due to ontological components. This is first due to a reference to the irrational, the idea of which was not new in the history of socio-humanitarian cognition. In fact, at the beginning of the modern era, researchers begin referring to it, albeit timidly and inconsistently, but persistently.

The socio-cultural aspect of the scientific consideration of such a spiritual phenomenon as "law" begins precisely with the modern era. This is due to the beginning of the paradigm that the sciences of spirit are not identical to those of nature, and spiritual phenomena include special human relations reflecting the development of culture itself with its semioticity, the necessity not so much for an explanation as for understanding in order to identify senses, determine mental attitudes that arise slowly against the background of historical, economic, and political events.

In the 18th century, B. Pascal, and in the first half of the 19th century, S. Kierkegaard referred to the irrational world of humans. But in those days, these concepts were not widely used, appeared more like crankery, and did not correspond to the spirit of the times. The optimism of the Age of Enlightenment is gradually replaced by doubts about the omnipotence of the mind that can supposedly make a person happy and solve all life's problems. It turns out that science is not able to solve the contradictions that permeate the social life of the 19th century, and most importantly, science does not clarify the meaning of life and is not able to eradicate vice, crime,

and poverty. It is dissociated from human beings and their daily world. Dissatisfaction with science and its inability to give human life meaning shifted the attention of many scientists to irrationalism.

But this was not the only reason for the search for new philosophical strategies. The third scientific revolution led to fundamental discoveries and the appearance of new branches of natural science that were not only moving humanity far forward in the knowledge of nature but also opening new areas in the practical activities of man that put him on the verge of death. Already during the First World War, it became clear that science could be used both for good and bad causes, for the mass destruction of humanity and its culture. Already at the beginning of the 20th century, such factors as toxic gases, bombings of peaceful cities and senseless victims forced a number of philosophers to talk about the death of civilisation. Irrational, mystical ideas about the world became prevalent, while astrology, magic, and occultism reappeared and complemented our knowledge of the world obtained in an irrational way.

The formation of scientism and anti-scientism, irrationalism, and their opposition gain development and rationalisation in the philosophical concepts by A. Schopenhauer, F. Nietzsche, A. Bergson, N. O. Lossky, O. Spengler and others. A huge contribution to the introduction to the theoretical discourse of the unconscious was made by S. Freud: "With his epochal insight into the unconscious determinants of human experience, Freud took his rightful place in the Copernican lineage of modern thought that progressively relativised the status of the human being. And again, like Copernicus and like Kant but on an altogether new level, Freud brought the fundamental recognition that the apparent reality of the objective world was being unconsciously determined by the condition of the subject" (Tarnas, 1995, p. 358).

A reference to the extra-rational is an urgent attempt to reveal the multidimensional nature of the subject whose being does not fit into the narrow framework of rationalism. In this regard, one cannot disagree with the statement by S. A. Lebedev that an important pattern of the development of socio-human sciences is a "reflexive and emotionally expressive nature of discourse" (2020, p. 241).

In the Russian legal science of the beginning of the 20th century, the necessity of taking into account the extra-rational aspects of law was described by B. A. Kistyakovski and L. I. Petrażycki. The latter writes: "The content of the science of law, along with the issues it gives rise to and the solutions devised in the attempt to address them, appears to be an optical illusion consisting in the following: It does not see legal phenmena where they actually take place, and it sees them where they in no way are, nor can they be found, observed, and known, i.e., in the world external to him who experiences the legal phenomena" (Petrażycki, 1907, p. 22). The author refers to legal experiences that are plain to see but should be attributed to a real existing legal being. Even P. I. Novgorodtsev is no stranger to the influence of irrationalism in law, although he was a supporter and admirer of I. Kant's metaphysics. "Based on Kant's ethics and by criticising the costs of rationalism, it will be more accurate to say that Novgorodtsev follows the path of defending irrationalism" (Zhukov, 2018, p. 82). As a supporter of revived natural law, the Russian thinker kept guard over an individual person who cannot be understood from the point of view of enlightenment logic with its cult of reason and rationality in general.

There is no denying the fact that a significant part of the behaviour that should be regulated by law is sometimes coloured with very strong emotions, experiences, worries, and stresses. In Russia, this emotional aspect in law and legal consciousness found its expression, for example, in sympathy for robbers who were forced to hide in the forests and live in inhuman conditions away from their families and loved ones. Ballads about the robbers and the tragedy of their situation

were widespread during the medieval period of Russian culture. They are devoted to moral issues and glorify courage and power, freemen and the desire for truth as a characteristic of the Russian people. In the robber songs, criminals are justified since they are isolated from their families and are under the constant threat of impending severe punishments. But the bush telegraph does not condemn them; on the contrary, they are considered fighters against inequality and injustice, spontaneous rebels who find support from the people. "The emotional tone of many robber songs is daring and bright, a person dies with his newfound will: "they rowed and sang their funny songs". This fun comes from immoderate freedom without any bonds" (Medushevskaya, 2017, pp. 451-458).

The adventure genre has always been characteristic of Western thought, but at a certain stage, the vector of activities of a part of picaros changed, a positive adventurer appeared, i.e., a fighter against injustice, sometimes a private detective, or even an old pensioner (Hercule Poirot, Sherlock Holmes, Miss Marple). They fight against criminals, shame negligent official servants of the law, and snipe at short-witted ordinary people (Sigalov, 2014, pp. 11-14, 2018, pp. 1688-1695).

Returning to the topic of emotions in law, we note that confidence in considering law as a fortress of the reason is shattered in the modern era. And this issue concerns the emotionality of not only ordinary legal consciousness but also the professional. So, legal procedure is all imbued with emotionality.

The irrational may include imagination, emotions, intuition, and fantasy. Beginning from the modern era, the inclusion of the irrational in cognition has led to the creation of new methodlogical strategies for considering law and legal phenomena. Hermeneutic and phenomenological methodologies arose during this era and actually focused scientific cognition on the study of extra-rational aspects of human legal beings.

Legal gnoseology emphasises that forms of extra-rational cognition of law promote concentration, undivided attention, determination, and quick reaction. This does not downplay the importance of rational cognition of law since we cannot rely, for example, on extra-rational intuition. However, the fact that it can contribute to a faster solution is difficult to question.

R. Posner (2020) notes that "a solution is a form of action, but no action is possible without emotions" (p. 246). If we project this thesis on the Russian reality, we can clearly argue that the low level of legal culture of the population of this country, the lack of developed legal experience, or the solution of emerging problems in an adequate legal way, the low level of legal worldview are all factors that contribute to an increase in emotionality in the legal response. Moreover, this method of dealing with legal situations demonstrates a more primitive practical action. We can also pay attention to the fact that the level of education is sometimes not a guarantee of legal action at all. And the fact that an extra-rational action can lead to a wrong move does not determine the focus on forming one's own legal responsibility, studying legal norms and legislative acts, as well as on raising the level of one's legal culture. It is difficult to disagree with the following thesis by R. Posner (2020): "In general, law recognises that emotionality is an aspect of human behaviour, but its reaction to this fact is determined by the goals of specific laws applicable to specific situations, and not by a general opinion about whether emotion is good or bad" (p. 249).

In this context, R. Posner's article "Utilitarianism, Economics, and Legal Theory" (1979, pp. 103-140), in which the author defends and gives reasons for his wealth-maximisation theory, is noteworthy. On the one hand, the author analyses the differences between norm-ative and positive analysis, and on the other, formulates a preference criterion between ethical theories (Kolosov & Sigalov, 2020, p. 33).

The Cultural Strategy of Postmodernism. The Influence of Postmodernism on Law

In the second half of the 20th century, nonclassical rationality is replaced by post-nonclassical scientific rationality that postulates the following principles in legal theory:

1. subject orientation with due regard to the everyday world and communication;
2. interdisciplinary and involvement of a wide conceptual framework in legal research;
3. dialogism and multidimensionality of the legal being;
4. pluralism of truths that is based on the impossibility of simultaneously covering all various aspects of legal reality;
5. contextuality, i.e., the interaction of legal phenomena with other forms of spiritual mastery of the world (for example, with the aesthetic mastery of reality) (Medushevskaya, 2018, pp. 33-40).

The image of culture changes, and even if it generally retains its traditionality, those artefacts, traditions, models and patterns of behaviour, forms of sociality that penetrate into this national culture from the outside are gradually interspersed with it and begin to influence it. Thus, the change in the cultural paradigm of modernism after World War II led to the formation of a new one – postmodern logic. As a result, these changes influenced those in the legal life of society. It was the uncertainty and relativisation of cultural values, norms, schemes that led to the erosion of normality, which affected not only the aesthetic and moral spheres but also the legal one.

In the community of law theorists, disputes over the relationship of legal and moral norms have led to long discussions. In our opinion, the connection between them is obvious. Therefore, the deformation of traditional morality, the expansion of the scope of the permissible, fragility and smoothing, and the identification of the permissible with the impermissible have prompted the transformation of legal norms, the displacement of the legal and the illegal up to their substitution. The effectiveness criterion for a legal norm is determined not by certain metaphysical reasons but by political will and ideology, scientific, technical, and technological knowledge. In this regard, L. Turner (2011) notes: "The cyberpunk world can be considered a projection into the future of negative forms of a combination of technology and political interest".

In addition to the uncertainty in postmodern law, the ontologisation of the irrational is also felt there. There is no place for irrationality in classical law. It is believed that one of the most important functions of law is minimisation, and it is better to exclude any irrationality that may include intuitiveness, emotionality, and fantasy. But when we refer to the gnoseological side of the irrational, we have to state that emotions, faith, fantasy, insight are also important forms of cognition. However, postmodernism is not limited exclusively to the cognitive approach. On the one hand, irrationality in law leads to the necessity of taking into account its expressions and manifestations in the activities of judges, jurors, prosecutors, or internal affairs authorities. On the other hand, it can not only "clarify" the mind but also have an effect in the opposite direction when subjects are guided in their actions not by law but by emotions, internal beliefs, faith, or ideas about justice. R. A. Posner rightly raises five questions that arise in the legal system in connection with the reaction of law to emotionality:

1. What is the impact on the legal evaluation of an offence when it is caused by emotions?
2. Should law take into account and use emotions?
3. How should law enforcement officers feel from an emotional point of view?
4. How can an adequate emotional state be formed for such officers?
5. How can law prevent the superiority of emotions during legal proceedings (Posner, 2020, p. 245)?

In this article, the authors do not seek to answer the questions. This is primarily about the

fact that the problem of the irrational in law is evolving from the cognitive plane to the ontological one, thereby prompting legal theorists to refer to issues posed by postmodern culture.

As noted above, the decline and degradation of normality, whether moral, legal or political, becomes a significant aspect of postmodern culture. Regulatory systems are pluralised until they confront each other, bringing legal reality to a state of entropy. At that, the chaotisation of legal systems is most often decorated with statements and calls for justice and freedom, limited violence, and absolutised tolerance. But chaos does not contribute to freedom; moreover, it leads to the triumph of formal freedom or arbitrariness.

In law, such principles can contribute to its deanthropologisation, the transformation of man into an object of manipulation, which is incompatible with a true understanding of justice and freedom. People living in a world of simulacrum become themselves simulacra, plunging into the imaginary world of post-truth, becoming a means of achieving political goals, an object manipulated by political elites. Their civic activities are fully regulated. Such individuals are immersed in a "virtual" political world far from reality or avoid active involvement in the political sphere and do not enjoy their electoral rights.

The emphasis on post-truth is a reference to the extra-rational in humans, to speculations on their emotionality, affectivity and gregariousness. Voters are transformed into obedient robots that are open to catchy slogans, calls, and vivid but hardly achievable promises. Skillfully replacing the internal content with external forms, the ideologists of political parties create myths that, due to their catchiness and imagination, seize voters with utopism, impulsiveness, and passion. Sam Browse notes about political shows: "In the thick of events, politicians use experts to make their political strategies more convincing, but not at all to get to the truth and understand what the best political strategy for people for whom laws are actually written" (Akker, 2019, p. 403) is.

Postmodernism is a continuation of modernism, but with some aspects associated with the post-postcapitalism era. The fragmentation and inconsistency in the evaluation and fixation of reality were noted above; it is therefore not surprising that these fragments should be evaluated in a certain way that is denoted by postmodernists as a "discourse". J.-F. Lyotard (2016) writes that "true knowledge is always indirect knowledge; it is composed of reported statements that are incorporated into the metanarrative of a subject that guarantees their legitimacy" (p. 86). Therefore, the philosopher concludes that such knowledge is embedded in all discourses, even if "the same thing applies for every variety of discourse, even if it is not a discourse of learning; examples are the discourse of law and that of the State" (p. 87).

The presence of different discourses inevitably leads to the conclusion that there is no classical understanding of truth. Each fragment has its own discourse; therefore, the truth is fragmentary, multiple, and heterogeneous. Knowledge is not universal, but the cognoscible reality itself is multidimensional, multifaceted, and multifarious.

J.-F. Lyotard links the emergence of postmodernism with the development of information societies, and it is a reflection of those socio-economic, political, and everyday living conditions of people. "In the form of an informational commodity indispensable to productive power, knowledge is already, and will continue to be, a major, perhaps the major, stake in the worldwide competition for power", the philosopher writes (Lyotard, 2016, p. 20). Therefore, a struggle for information awareness determines new political, economic, and legal strategies. Therefore, we will highlight those points in postmodernism that may be relevant to modern law.

Firstly, postmodernism states the existence of the surrounding legal reality independently and separately from legal consciousness. The essence of legal reality is hidden from us, and our legal consciousness reflects only what we see, i.e., legal phenomena. Totality is characteristic of mo-

dernism, and it is a result of the activity of the Logos. But if the world is virtualised, it becomes open to all kinds of myths. Well-known myths in legal reality are those of justice, freedom, or natural human rights. An equally common myth is that of civil society or equality. The latter proceeds from the equality of all system elements and is something unattainable, an illusion, a "captivating" delusion. When ideologists promise to create a society of abundance, it is also a myth since contradictions must be overcome and conflicts eliminated in the promised society. But that is impossible, just as a society without crime is impossible. In this regard, M. Foucault notes that good penal policy does not aim for the extinction of crime, since in this case, it will not be needed anymore. These and those mythologems are insistently imposed by the media, political ideologists, and scientists.

This is the second point to which we would like to pay attention.

Secondly, being an atomised and isolated subject, a person is overwhelmed by a "sincere belief in consumption". But consumption is preceded by production, distribution, and all this requires strict organisation, formalisation, and management. A consequence of these intentions is the strengthening of the bureaucratic apparatus and its power, the formalisation of law, which further makes the consumer a means of manipulation and deprives him/her of subjectivity. And then, it becomes clear that the whole modern bureaucratic machine, this new Leviathan, is reasonable, necessary, and appropriate. At that, the beginning of this process traces back to modernism, in connection with which F. Jameson (2019) writes that modernists and their idea of "anti-capitalism" "ends up laying the basis for the "total" bureaucratic organisation and control of late capitalism..." (pp. 183-184).

Since the end of the 19th century, P. I. Novgorodtsev consistently criticized those social theories that are not based on spiritual foundations (and in this sense, he acted as a critic of positivism, who always negatively perceived and rejected the value and metaphysical foundations of law). He considered fruitless dreams of an earthly paradise, general prosperity and harmony, of a kind of God's city on Earth, considering these searches utopian and useless. And even more so, he did not associate the happiness of the individual with consumption. This idea arose much later with the formation of the modern consumer society. And if a person's happiness is not in spiritual but material values, then, consequently, to manage this entire growing mass of manufactured products, there must be a certain apparatus, and the entire bureaucratic system must be improved.

The atomisation and transformation of a subject into an object of manipulation allowed postmodernists to proclaim "the death of the subject", "which inevitably shifts the accents from the single to the universal. Moving away from concentration on the inner world of an individual, philosophy should turn to multiplicity – an impersonal and averaged "something" of linkedness in the conditions of a total information society. And it is the language that becomes such a linking element" (Malinovskaya, 2009, p. 83).

Thirdly. Imaginary reality requires its manifestation, which is reflected in the concept of simulacrum introduced in postmodernism. In the treatise "Simulacra and Simulation" by J. Baudrillard, simulacra represents reality, but it is, in fact, a phantom, fiction, fantasy. It is a figment of imagination. "The simulacrum has no roots," writes the philosopher, "it is disconnected from the traditional order of representation" (Khaustov, 2020, p. 133).

The word "simulacrum" means that an individual does not live in a real world but in an imaginary world where reality is "written" in disappearing inks, leaving barely visible traces. Due to networks, a person is immersed in a fictional hyperreality that may have nothing to do with reality. Our legal consciousness that is formed in the field of simulacra becomes increasingly hypnotisable and mystified under the influence of reality shows, ideologies, and mythologems. In law,

individuals do not seek regulation of their actions or a scheme of actions in the legal field, but a hidden meaning and scheme of actions in accordance with their expectations.

The fifth point. J. Derrida introduces the concept of deconstruction to denote deceptiveness, illusory, fragmentation of the world. Therefore, deconstruction is primarily aimed at destroying the integrity and creating conditions for its degradation. In law, this cultural logic manifests itself in referring to the mental grounds, traditions and customs, national characteristics of legal systems in order to stand against the uniformity of the globalised world. "For example, to take customs and make their use possible, to give greater discretion to subjects of legal relations by limiting the expansion of their regulation. Or, for example, to clearly determine the boundaries between a public-law and private-law regulation by empowering the latter. In general, the methods of extra-legal regulation should be studied more carefully" (Medushevskaya, 2021, p. 40).

Postmodern thinking is metaphorical, and in this discourse, we see echoes of the influence of modernism by F. Nietzsche, where researchers come to ambivalent conclusions. The metaphor of the rhizome, a certain root system located outside of external observation and obviousness, leads us to at least two conclusions: first, the rhizome has no centre, no integrity, no power, and everything is both primary and secondary at the same time. Second, the rhizome grows on a specific type of soil, in a specific climate, being zoned. Therefore, the introduction of the concept of rhizome underlines the necessity of giving credence to ancestral voices, traditions, rules, and recommendations of customary law to preserve their national and public fundamentals, despite the need to interact with other elements. "Rhizomatic thinking is variable, unstable, mobile, and nonlinear, relative" (Medushevskaya, 2021, p. 41).

Sixth. For postmodernists, sense-making passes through the irrational, affective, and emotional-willing. Therefore, postmodernism tends towards anti-scientism. J.-F. Lyotard, therefore, writes that true knowledge is always "indirect knowledge; it is composed of reported statements that are incorporated into the metanarrative of a subject that guarantees their legitimacy. The same applies for every variety of discourse, even if it is not a discourse of learning; examples are the discourse of law and that of the State" (Lyotard, 2016, p. 86-87).

Therefore, the postmodern worldview, as a continuation and modification of modernism, has led man to deep doubts about the integrity of the world, the rational understanding of the world order that has been approved in metaphysics, starting from Ancient Greece. But after losing faith in the totality of the world and its absolutes, humanity has also lost the support, reliability, and thoroughness that existed before. Scientific knowledge is actually hypothetical; all our knowledge will sooner or later be questioned and falsified (K. Popper). Our knowledge is deeply relative, fragmentary, and variable. The state of postmodernism is characterised by quintessential vagueness, multidimensionality, and baselessness. On the other hand, the postmodern discourse has raised the critical question of the fragility of human existence, the search for new senses, the need to turn to the human in the broadest aspect. Postmodernism is as paradoxical as the world in which we live. However, one cannot but pay tribute to this discourse, which turns us to the social world, where a person is not a sand grain lost in a huge universe, but a creator with his/her individual interests, motives, mental and spiritual experiences, passions, and emotions. The separation of the world of law from an individual is hostile to him/her, causes his/her alienation and destroys his/her identity. One cannot, therefore, disagree with I. L. Chestnov (2020), who writes that... "the post-classical approach gives practical substance to legal dogmatics and forms a much more adequate idea of such a complex and multidimensional phenomenon as law. Not denying the importance of dogmatic jurisprudence, he argues the necessity of supplementing the ap-

proach traditional for domestic legal science with a new, post-classical dimension of law" (p. 89).

Since the end of the 20th century, there have been changes in the development of capitalism accompanied by the emergence of a new cultural strategy, the symptoms of which remain extremely uncertain and vague. All the means of the digital age are aimed at doubling the world, i.e., the creation of a virtual symbolic world in contrast to the obvious and real one. The mystification and mythologisation of the world are enhanced by the improved technical facilities when a person no longer distinguishes the real world from the fictional one. Serving this effect are shopped photos, plastic surgery, advertising, films, and performing arts that virtualise the world beyond recognition.

Together with the development of consumption, differentiation is also increased due to different consumption opportunities. J. Baudrillard (2020) states that "faith in consumption is a new element; the rising generations are now inheritors: they no longer merely inherit goods, but *the natural right* to abundance" (p. 21). From now onwards, skills and abilities, competencies and spiritual development are not assessed as a way to achieve success, the criterion of which is the number of objects consumed.

Summing up the brief description of the social situation at the end of the past century and at the beginning of this one, we note that the financial crisis, social inequality, economic instability (including employment), increased social inequality, environmental crisis and demographic distortions (due to unregulated flows of immigration), instability and insecurity of the future, dissatisfaction with globalisation and destroyed traditional values, widespread irreligion and a lack of higher ideals have led to a new cycle in culture, of which law is a part.

Metamodernism and Law

In 2010, the essay by T. Vermeulen and R. van den Akker "Notes on Metamodernism", introduces the term "metamodernism" that has become a manifesto of the new cultural paradigm and is mainly aesthetic in nature. It notes that the modern world is witness to the rapidly growing problems previously unknown to humanity, such as unregulated immigration faced by post-industrial countries that are no longer able to cope with it. This is also globalisation in both economic and cultural ways, which is causing an increase in legal trends and parties and a breakdown in old neoliberal ideas and ideologies. This is also a convulsive effort to preserve the identity of nations, especially under the influence of, literally, the outbreak of Islam. The feeling of an unfairly arranged world, a world of declarative equal opportunities, leads to the radicalisation of young people.

At that, they note the neo-romantic aspect of the new post-post-capitalism era, its sincerity, unlike the cynicism and irony of the previous culture. The authors highlight the following features of the new cultural approach:

1. metamodernism fixes permanent oscillations between modernism and postmodernism;
2. the term reflects the neo-romantic turn primarily in the aesthetics and culture of the beginning of the 21st century;
3. this is a new turn in the historical being of the modern world that covers not only art but also politics and economics;
4. a specific property of metamodernism is the orientation towards revealing "the structure of feeling". The scientists write: "As we have defined it, metamodernism has become the dominant cultural logic of Western capitalist societies" (Akker, 2019, pp. 45-46). Generally, an inextricable link between culture and the social system is declared, and metamodernism actually becomes the cultural logic of globalisation and post-post-capitalism.

We hasten to add that metamodernism is still a very vague, fragile, and uncertain platform. The authors do not claim that their cultural logic is comprehensive and fully developed. But philosophy is significant with the effect that, due to its

heuristic function, it catches even more implicit, only emerging changes in cultural strategies.

R. Williams, a Western literary and cultural theorist, first introduces the concept of "structure of feeling" that is later widely used and analysed by F. Jameson. His interpretation turns out to be quite productive for meta-modernists, despite all the uncertainty and vagueness of this concept. A. V. Morozov (2019) notes: "so, metamodernism is between sincere enthusiasm, depth or fullness of modernism, on the one hand, and indifferent irony, superficiality or triviality of postmodernism, on the other, without generally cancelling modernism and postmodernism, but only pushing them into the background just as the movement of a pendulum distracts us from our extreme points" (p. 241).

As applicable to law, "the structure of feeling" can be understood as an emotional-affective reception of shared social experience. The excessive bureaucratisation and formalisation of modern law lead metamodern theorists to the necessity of referring to the inner world of an individual with his/her perception of the legal and illegal, permissible and impermissible, legitimate and illegitimate, thereby carrying out a kind of subjectivation of law with due regard to the communicative structures of collective legal experience. Immersed in the hidden world of the unconscious, meta-modernists emphasise the limitations of rationality as it does not contribute to easily comprehending the extra-rational perception of reality.

Formalisation of law sometimes seems to be its main advantage, and it is difficult to argue with this fact. The greatest victory of the theory and practice of jurisprudence is the ability to create normality that goes beyond the individual and becomes unconditional in this sense. On the other hand, modern man lives in a condition of alienation and defenselessness. It is no coincidence that N. Timmer emphasises the radicalisation of defenselessness that "could become one of the defining aspects of affect-based sensuality in postmodern literature, arts, theory, and life itself" (Timmer, as cited in Akker, 2019, p. 284). A defenceless person is passive; he/she is lost in the rapidly changing world and loses his/her reference points, roots, traditions, and the spirit of the people. It is no wonder, then, that V. Zorkin (2019), in his lecture at the 9th St. Petersburg International Legal Forum, notes that: "The doctrine of national identity has become a response to the challenges of postmodern law, which is called differently in different legal systems, but at its core reduces to the realisation of the significance of a value-normative foundation of the constitutional system of a certain state" (p. 5).

Metamodernism is a permanent oscillation between modernism and postmodernism. In this regard, L. Turner (2011) writes: "metamodernism should be defined as a changeable state between and outside of irony and sincerity, naivety and awareness, relativism and truth, optimism and doubt, in search of the multiplicity of disparate and elusive horizons. We must move forward and oscillate!".

The content of modern integrative legal understanding has been changed as a result of the oscillation between modernism and postmodernism. The value field of the integrative legal approach is filled with traditional legal values, but meaningful in the context of the present time: "such values as *personal dignity and justice are in the first place in the hierarchy of values*. In addition, they include *freedom and equality"* (Marchenko, Ershov, & Ershova, 2019, p. 279).

Oscillation is always "in-between". It includes permanent fluctuations, searches, negations, and statements: between traditionalism and technogenicity, between virtualisation and perceptible reliability. A person in search of him/herself, confidence, stability, his/her roots and foundations, he/she tries to find ways to him/herself in action, communication, cooperation, he/she is tired of postmodern uncertainty and chaos.

Metamodernism tries to overcome the extreme relativisation characteristic of postmodernism when the traditional meaning of such con-

cepts as "justice", "truth", and "freedom" disappears. In the real world and in a platonic way, these concepts turn into an untrue being when they themselves as ideas become unattainable and distant ideals.

V. D. Zorkin notes that metamodernist philosophy seeks to overcome Eurocentrism in the understanding of legal values, which is a legacy of the modern era. As known, one extreme, the dominant of Eurocentrist principles, is transformed into another one – postmodern cynicism with its chaotisation of life, degradation of values and going beyond the established normative attitudes and traditions. According to the scientist, metamodernism implies a broader approach to understanding the sense of law that helps "to accumulate the heuristic potential of various types of legal understanding" (Zorkin, 2019, p. 5). In connection with this statement, prerequisites are created for overcoming the modern crisis of law that is a result of its postmodern interpretation.

V. V. Koromyslov (2020) notes that "Metamodernism is the return of common sense under the pressure of global problems that have revealed the carelessness of the postmodern position and its helplessness in solving such problems" (p. 93). The correctness of this judgment can be doubted, which is found in modern scientific literature. However, it is certain that the postmodern discourse is coming to an end, as we see a different cultural paradigm aimed not at fragmentation and randomness, uncertainty and chaoticity, but at integrity in balanced relation to socio-cultural aspects, values and traditions that underlie a particular legal system. Quite clearly, this idea is argued by R. Dworkin (2020) in his book "Law's Empire": "each accepts political integrity as a distinct political ideal, and each recognises the judicial principle of integrity as a sovereign in law because we want to consider ourselves as an association of principles, as a community guided by a unified and consistent vision of fairness, justice and due proceedings in a proper ratio" (pp. 538-539).

The understanding of law as integrity proposed by R. Dworkin may be interpreted as a manifestation of the new cultural logic of metamodernism, in contrast to conventionalism and pragmatism criticised by him that explains the law in the postmodern discourse. Proposing his approach, the scientist writes: "Law's attitude is constructive: it aims, in the interpretive spirit, to lay principles over the practice to show the best route to a better future, keeping the right faith with the past. It is, finally, a fraternal attitude, an expression of how we are united in the community though divided in project, interest and conviction" (Dworkin, 2020, p. 550).

Conclusion

In the modern era, there have also been attempts to synthesise various areas in law, find common ground between them, and fit different understandings of law into a single context. Postmodern legal understanding is characterised by the absolutisation of relativism, lack of systematicity, and multiculturalism.

"Metamodernism", a new cultural strategy, has not yet developed in its final form, it does not seem to us yet a way along which the spiritual culture of modern civilisation will go, but a path that is still poorly defined and sometimes interrupted. Because of this, in modern socio-humanitarian and legal literature, there are different, sometimes diametrically contradictory, assessments and interpretations of metamodernism and its future.

On 28 April, in his speech at the Institute of Philosophy of the RAS, P. Ricœur aptly noted: "The central idea of law and politics, … is to create a means of realising a person's essential abilities. One of the provisions of political and legal philosophy that we can now consider is that belonging to a certain legal or political system is not something external, added to the human essence or political system, as if we already represent completed human beings outside the state or public space. No, the justification for law and politics is that human abilities are exercised through

them" (Ricœur, 1996, p. 31). The scientist keenly noted the necessity of reorienting law and politics towards humans, their internal contents, needs, requirements and feelings, which is necessary for a fuller realisation of their creativity, those abilities that actually make them humans.

The concept of meta-modernism does not pretend to be an established theory with a developed conceptual apparatus, principles, and systematised knowledge. The main thing that opens up to researchers when referring to the analysis of metamodernism is the fixation of a certain turn in the cultural strategy, which indicates, if not the end of postmodernism, then its modernisation and transformation in accordance with the new socio-economic and political context, a new turn, step or milestone in the development of post-post-capitalism.

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ՎԻՍԴՈՄ

ՀԱՏՈՒԿ ՀԱՄԱՐ 1(1), 2021

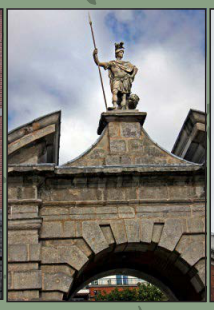
ԻՐԱՎՈՒՆՔԻ ՓԻԼԻՍՈՓԱՅՈՒԹՅՈՒՆ

Լրատվական գործունեություն իրականացնող՝ «Խաչատուր Աբովյանի անվան հայկական պետական մանկավարժական համալսարան» հիմնադրամ
Վկայական՝ № 03Ա1056715, տրված՝ 19.04.2016 թ.
Հասցե՝ Երևան 010, Տիգրան Մեծի 17
Համարի թողարկման պատասխանատու՝
գիտական պարբերականի գլխավոր խմբագիր Հասմիկ ՀՈՎՀԱՆՆԻՍՅԱՆ
Տպաքանակը՝ 200
Ծավալը՝ 256 էջ

GATES OF FORTITUDE AND JUSTICE, DUBLIN CASTLE

The Gate of Justice is the main ceremonial gateway into the Dublin Castle

Entrance to Dublin Castle
Statue of Justice by John Van Nost the Younger on the Gate of Justice (1712-1780)



Statue Fortitude by John van Nost the Younger on the Gate of Fortitude

https://commons.wikimedia.org/wiki/Category:Gates_of_Fortitude_and_Justice,_Dublin_Castle

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