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The illusion of law: A philosophical and legal study

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Abstract

The article examines the phenomenon of the legal illusion of the principle of equality and the reality of legal inequality via historical and legal, systemic, structural-functional, comparative-legal, statistical, sociological, specifically the formal-logical, logical-legal methods. As a result, the political and legal choice of the best form of the state and the variety of the legal family, in many respects, is secondary in the construction of the institution of private property. In

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conclusion, the state and law are idealistic (illusory) constructions in reality represented by power and law-realization practice.

Keywords: Illusions, Law, State, Equality, Constitution.

La ilusión del derecho: un estudio filosófico y legal

Resumen

El artículo examina el fenómeno de la ilusión legal del principio de igualdad y la realidad de la desigualdad legal a través de métodos históricos y legales, sistémicos, estructurales-funcionales, comparativos-legales, estadísticos, sociológicos, específicamente los métodos formal-lógico, lógico-legal. Como resultado, la elección política y legal de la mejor forma del estado y la variedad de la familia legal, en muchos aspectos, es secundaria en la construcción de la institución de la propiedad privada. En conclusión, el estado y la ley son construcciones idealistas (ilusorias) en la realidad representadas por el poder y la práctica de la realización de la ley.

Palabras clave: Ilusiones, Derecho, Estado, Igualdad, Constitución.

1. INTRODUCTION

The contradictory state of legal reality and legal ideal, the practical construction of the mechanism of state administration and the optimal model of the desired form of the state are not new topics in the history of world civilization.

The peculiarity of the human psyche is that people since ancient times, as a rule, live in a world of illusions that allow them to justify their weakness, ignorance, cowardice, and servility. Rational people,

writes Anthony de Jasai, for their own good consider it profitable to obey the state, pretending to believe in its ideology, i.e., the mythical justification of state necessity (YASAI, 2016). The state, which emerged and strengthened in the history of world civilization, did not immediately receive its theoretical explanation in the form of an abstract construction. (MUSE & NARSIAH, 2015).

In reality, there is no impersonal state. It always belongs to the elite with specific names and surnames, exercising control over society with the help of force violence or ideological influence on the people, legalized by the norms of the law, characterizing the degree of political art of determining a single measure of socially significant behavior, protected by the entire power of state power (MELNIKOV, SEREGIN, TSECHOYEV, DZHAMALOVA, & HASSANOVA, 2018). The state is a parody of the tribal system, in which political clans use the energy of the people, which is the stepchild of the sovereign public order, in fact, based on the recognition of the permissible and sometimes useful level of social arbitrariness of managers.

In formal terms, the state materializes in legislation (positive law), which expresses the will of the politically and economically dominant class, social group or individual ruler. In a real application, the law is never abstract. It always expresses and enshrines the will and interests of the politically dominant groups in society, as a rule, United by common private and public power interests. This is manifested, first of all, in the fact that the right at all stages of its development sanctifies and fixes the property, social and other

inequality of people. Inequality of the slaveholder and the slave, the feudal Lord, the landowner and the serf, the employer and the slave recipient (BARANOV, P., VERESHCHAGIN, V., KURBATOV, V. & OVCHINNIKOV, A., 2004). If the law protected the interests of all, it would not be necessary, for it is obvious that it is impossible to put in the same position of the owner and the non-titular owner, the criminal and the law-abiding citizen, the subject and the foreigner, etc.

2. METHOD

The methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative-legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

3. RESULTS

A. S. Alexandrov proposes to study the phenomenon of law as the text of the law multiplied by its interpretation (ALEXANDROV &

DUKHOV, 2010). At the same time, any author can be mistaken in good faith in the assessment of the scientific significance of his works and the scientific results obtained, overestimate their importance in the development of legal science, take for science the provisions lying beyond its borders. Who among us has not overestimated the quality of his child, - rightly asks V. M. Raw, - not saw in it big abilities and talents under their full absence of either highly modest creative potentials? (RAW, 2011). This is the cause of subjective illusions and errors not only in the real legal understanding of the state but also in such fundamental principles of modern law as the ideas of equality and private property.

Within the framework of the philosophical understanding of justice, one of the fundamental theoretical and legal problems that humanity is trying to solve is the question of the ratio of equality and inequality. In trying to reconcile the desired ideal state of equality with real inequality, the ideologists of humanistic doctrines are very often themselves fascinated by the illusion (with FR. Illusion, deceptive representation, distorted perception, unjustified hope) for the realization of the principles of freedom, equality, and brotherhood, or especially mislead the broad masses of the population intoxicated with the hope to rise from dirt to princes and stand on a par with the political elite. Legal illusions are declarative norms that do not correspond to the nature of human nature, including the principle of equality.

In the ancient period, the Pythagoreans, including Aristotle, regarded law like justice, which they divided into two types: 1) arithmetical and 2) geometric. Arithmetic justice is applied among equal people and is based on the principle of Talion (equal for equal). Geometric justice, on the other hand, works between unequal people, for by equalizing them in rights, Aristotle believes, we will come to the highest injustice.

I. Kant realized that the problem of fair legal understanding of equality and inequality has no unambiguous solution. The question of what is right, he wrote, is the question of what is truth. Of course, a person can answer that is consistent with the law, which is, with what the laws of a given place and at a given time prescribed. But when the question has been asked whether what the laws prescribe is just, when a General criterium is required of him by which to discern what is just and unjust, he will never be able to cope with it, unless he puts aside for a time these empirical principles and looks for the source of judgments in reason alone. Here reason, according to I. Kant, is the ability (and will) to create principles and rules of moral behavior, containing them in it as an intrinsic prior impulse. Equality in the state And Kant understood, as such attitude his citizens, when everyone can oblige to something another legally, only if he himself subject to law, demanding, to and his could oblige thus same way (KANT, 1966).

Law-materializes within the framework of relations of formal equality, freedom, and justice. But, every right is only a norm of judgment and therefore never coincides with the relations subject to its

judgment, which is expressed in the idea of the normative force of the actual.

V. A. Chetvernin proposes to study law exclusively within the framework of legal structures. Thus, in his opinion, the law is a system of norms and powers of free socio-political existence of formally equal subjects (individuals and organizations). Legal norms and powers (requirements, claims) should be formulated in-laws and other obligatory acts of the state i.e. should be recognized and protected by the state (CHETVERNIN, 2003). For Yu. Tikhonravov's law is an empirical phenomenon expressed in the system of regulation of people's behavior in society by means of norms established by certain organizations, provided that the implementation of these norms is ensured by sanctions carried out by certain organizations to the extent of their real power.

In a real application, the law is never abstract. It always expresses and enshrines the will and interests of the politically dominant groups in society, as a rule, United by common private and public power interests. If the law protected the interests of all, it would not be necessary, for it is obvious that it is impossible to put in the same position of the owner and the non-titular owner, the criminal and the law-abiding citizen, the subject and the foreigner, etc.

Under the state-legal regime, called the modern theory of state and law democracy, first of all, legal equality of rights and obligations of citizens is guaranteed, while the real opportunities of the individual

continue to arrive depending on the welfare of the family in which he was born. This creates a de facto inequality of people's initial capabilities. Moreover, the laws of dialectics about the unity and struggle of opposites and negation of negation will always generate inequality in the field of equality: for example, evaluating students on the scoring system on the basis of uniform criteria, the teacher constructs a rating system of inequality.

The modern process of globalization increases social inequality based on the cult of pragmatism, rationalism, selfishness, unrestrained thirst for success at any cost, thereby cultivating an obsessive desire to extract the maximum benefits, regardless of the interests of the native country or the aspirations of their fellow citizens. It turned out that market relations cannot exist in isolation from crime, because they are based on competition (which implies the suppression of competitors), on the surplus of labor (unemployment), on achieving profits in the largest possible limits at lower costs, on the property and social inequality. Therefore, in the most economically developed countries of capitalism, there is a high level of crime. Moreover, the pursuit of profit reduces the spiritual potential of society, worsens morals. It is quite natural that the image of the criminal is changing in the mass consciousness of justice: gradually he became associated with the envy of a successful businessman who knows how to circumvent or break the law and make a profit at the same time. Such intellectual and psychological erosion, combined with the decline in the standard of living of a significant part of the population, leads to the intensive involvement in the criminal environment of an increasing number of

citizens with no criminal experience. Historical experience shows that no economic system is ideal, but more criminal is still the market-writes I.A. Ivannikov, - since the market of goods, services, labor is unthinkable without unemployment, and unemployment is a reserve of crime. It is quite natural that the image of the criminal is changing in the mass consciousness of justice: gradually he became associated with the envy of a successful businessman who knows how to circumvent or break the law and make a profit at the same time. Such intellectual and psychological erosion, combined with the decline in the standard of living of a significant part of the population, leads to an intensive involvement in the criminal environment of an increasing number of citizens who do not have criminal experience.

4. CONCLUSION

The bourgeois revolutions, which proclaimed private property the sacred cow of the new social and political system-capitalism, created only the illusion of a return to the ancient Roman traditions of civil law, consciously or unconsciously misleading the peoples who believed the slogan: Freedom, Equality, and Fraternity. 17 of the Declaration of human and civil rights and freedoms of 1789 it was declared: "since property is an inviolable and sacred right, no one can be deprived of it except in the case of an undoubted public necessity established by law and subject to fair and preliminary compensation" (GALANZ, 1957: 25-51). This rule was enshrined in parts 1 and 3 of

article 35 of the Constitution of the Russian Federation in 1993; parts 1 and 3 of article 33 of the Constitution of Spain in 1978.

Therefore, it can be argued about the primacy of the right of state property over private, which is subordinate to the public interest. In addition, the idea of a classical understanding of private property contradicts the theory of social statehood proclaimed by article 7 of the basic law of the Russian Federation.

The ideas of social justice are reflected in article 29 of the Constitution of Japan of 1946, which established a ban on the use of private property in the interests contrary to the public welfare. On the basis of part 1 of article 33 of the Constitution of Spain 1978, the right of private property is limited to its social function (part 1 of article 33), and all the wealth of the country in its various forms, whoever was their owner, serve the common interest (part 1 of article 128 of the Constitution of Spain 1979). In part 2. Article 14 of the German Constitution of 1949 States Property obliges. The use of it must simultaneously serve the common good. The interpretation of the German basic law by the Federal constitutional law in the case of the Hamburg dam in 1962 confirmed the possibility of seizure of land plots in the interests of society and the state not for commercial, but for a symbolic price of one German mark per square meter.

Special measures to restrict the right of the owner to use land plots not for their intended purpose, as a rule, are established by national legislation. Thus, the ban on the use of agricultural land for

other purposes is enshrined in part 2 of article 21 of the Constitution of Bulgaria in 1991 in article 78 of the LC of the Russian Federation in 2001 also fixed restrictions associated with the misuse of agricultural land. I believe that the Russian Imperial legislation of the XX century, which used the concept of hereditary use instead of the term property, legally more honestly fixed the rights of titular landowners. It is particularly worth noting that the rights of the owner to own use and dispose of, enshrined for example in part 1 of article 209 of the civil code of 1994, for example, in respect of immovable property, in case of non-payment of taxes can be paralyzed by the use of the Institute of pledge and arrest, provided for in articles 73 and 77 of the tax code of 1998. With the subsequent sale of the encumbered property to repay the tax debt. The establishment of land tax and property tax of individuals (Art. 387-401 of the tax code) is actually a mandatory payment for the use of property rights, which is proof of its beneficial nature, indicating the reanimation of feudal relations in the modern post-industrial society of the information era of mankind.

Summing up the discussion about the correlation of legal illusions and legal realities, we can draw a number of conclusions:

1. Legal illusions are declarative legal constructions that do not exist in nature, but the subjects of legal relations believe in their existence not as fictions, but as real facts.

2. The state and law are idealistic (illusory) constructions in reality represented by power and law-realization practice.

3. Law is the art of just inequality applied for the common good, not for the prosperity of a small part of society. In the conditions of capitalist relations, the common good is unattainable, for the bourgeoisie's creed consists solely in profit, and profit knows no compassion, honor and morality. For there to be masters and servants, there must be rich, very rich, poor and very poor. Equals do not serve each other. Therefore, the economy should not just be mixed, but also socially oriented, with elements of small business.

4. In modern conditions, the right of private property does not exist; instead, it has a legal construction, which can be called the right to private property, or more precisely, beneficial ownership, burdened with the obligation to pay it through legally established taxes and fees.

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