SCIENTIFIC IDEAS, LEGAL PROGRESS AND SCIENTIFIC LEGAL DOCTRINE: SEARCHING FOR THE OPTIMAL POWER MODEL IN THE MODERN STATE

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Abstract. Today, scientists continue the debate on the crisis of lawfulness, raise questions about the rethinking of the place and role of law and the state in society, about manifestations of statism even in democratic liberal states, so the question arises not only about legal progress, but about clarifying the social value of law as an integral part of the legal progress.

Keywords: *law, modern state, legal system, principle of the separation of powers, social values, rights, legal sciences, legal doctrine.*

Introduction

Then what should we define as a progress: only progressive development or development for the better, as well as the manifestations and components of legal progress are submitted in the modern period? Legal progress is reflected in the development of spiritual culture and law as a component of spiritual culture and social value. We are the witnesses of the axiological accumulation - value accumulation, axiological accumulation in the law.

Legal progress should be measured by the approximation of law to the ideal, the legal ideal. Even Ulpian said long ago that law is a measure of good and justice, and prof. Volodymyr Solovyov argued that law was a measure of balancing the common good and personal interest. It is probably legal ideal lies in this formula as an accumulated expression of the value of law. Objectively, the development of law as a social phenomenon, the development of the law system, the development of legal science occurs under this slogan precisely.

Research results. We can talk about legal progress when it comes to the enhancing the effectiveness of the realization of the law and full realization of human rights and freedoms, which is a manifestation of both legal progress and the legal value. Measures of the legal value and manifestations of legal progress should be considered the improvement of legal technique, improvement of democratization of legislative process, the increasing of science role in the development of legal system.

The most striking manifestation of legal progress is what Eugene Ehrlich called the right of lawyers in his time, bearing in mind that the state does not have a monopoly right to create a law, but only to create the regulations, under which (state law) Yevgen Ehrlich singled out the definitions of the judicial law and the law of lawyers [1]. However, Eugene Ehrlich considered the right of lawyers as the creativity of the same judges, if they are reasonable and moral. I think that Eugene Ehrlich was afraid to go further and say that the right of lawyers took place in Ancient Rome and the right of lawyers is flourishing now, and the right of lawyers is the result of law-making by scholars [1, p.3-5]. We mean an illustration of the progress of legal science, which becomes a law-making force: from scientific idea to concept, and further to the transformation of concept into scientific doctrine due to its universal recognition and theoretical and methodological basis.

In the context of the intended objective, we will focus on the principle of power-sharing as one of the fundamental principle of law and modern lawfulness, as well as the criteria of the state's classification as legal. The idea of the power-sharing developed in parallel with the idea of the rule-of-law state as one of its conditions, along with other features, such as the guarantee of rights and freedoms of the individual, real equality, the rule of law, justice of the law, the responsibility of the state to human etc.

The content of these principles is to ensure the power-sharing in order to prevent the concentration of power in the hands of one person or group (clan, class) of people. The history of the scientific searching for a solution to this problem [3; 4] goes back a little to the traditionally cited sources by L. Montesquieu or, at best, by D. Locke.

In thet context going over the ancient Greek historian Polybius wrote: power in ancient Rome is divided in such a way that none of the branches of government outweighs the other [7, p. 378]. In Plato, the state is called just when out of the three states in it (rulers, warriors, and artisans) each does his or her own work. [4, p. 25] The idea of the power-sharing functions is found in the works of such figures: Tommaso Campanella, and Jean Boden and Hugo Grotius, both Benedict Spinoza and Gerard Winstenley.

Of course, John Locke first formulated the theoretical basis for the power-sharing into legislative (legislature), executive and judicial brunches. Accordingly, legislature has «the right to indicate how the power of the state should be used to preserve society and its members». In order to ensure «continuous enforcement and monitoring of this execution», it is necessary that there was the power that oversees the enforcement of those laws that are created and remain in force. Third branch is a People's or Federal Responsible the power that is inherently possessed by every person before he or she enters the society. «Here, John Locke justifies the legislature, the subordination of the executive to the legislative. Despite the commitment to the idea of popular sovereignty and the right of the people for the usage of force against unjust and unlawful power, John Locke does not yet refer to the people as the sole source of power, so he argues for the inappropriateness of the distribution and the transfer into the hands of various people of executive and federal (people) power. Obviously, this is due to the attempts of advanced thinkers of that times to substantiate the need to restrict royal power [4, p. 202-203] in the legislative and executive spheres theoretically, inter alia by the creation of the parliament and the system of executive bodies that would invite people relating to the professional feature.

The brilliant French scientist of Swiss descent, Charles Montesquieu, has only formulated this idea into a concept, into the theory. Even after this concept became universally accepted, it developed into a doctrine and subsequently, like any other scientific legal doctrine, began to play a regulatory role, regardless of whether some states, such as Poland or Ukraine, constituted this idea (under the Article 6 of the Constitution of Ukraine or the Article 10 of the Constitution of Poland the power is exercised on the basis of division into legislative, executive and judicial). Even though this scientific legal doctrine may not be constituted in some countries, it has become a rule and a legal prescription, because it is practised in the legislative work, practical legal policy and science.

Therefore, we can say that the most striking manifestation of legal progress and the social value of law is the development of legal science, which is most clearly manifested in the growth of scientific ideas to scientific doctrine, which becomes either a source of lawmaking, or the object of universal recognition and application.

Discussion of research results. Legal doctrine is considered in the legal science as a philosophical and legal study, identified with the scientific and theoretical work of outstanding scientists, interpreted as an additional means of clarifying the text of legal rules in the process of interpreting law, which gave rise to the term «doctrinal law interpretation». Sometimes the legal doctrine is understood as the expert opinion of scientists and professionals used by the court in the examination of the case and decision-making, as it was in Ancient Rome. In the past century, the reference to the legal doctrine of generalizations of jurisprudence by higher courts in the countries of continental law, including Ukraine, has become widespread. That is, the scientific legal doctrine is given a largely serving role in the

legal system, the practice of the law application. Eventually, legal doctrine was called the source of law, identifying it with legal science as a system of fundamental views of jurists that determine the prospects of legal development of the state. In this case, legal doctrine means a source of law that defines the features and mechanism of law [8], referring to it as legal ideas, concepts and theories.

It should be noted here that neither idea nor theory nor concept can be regarded as the legal doctrine. Scientific legal doctrine in its development goes from scientific idea to scientific concept, further - scientific theory, which can become a scientific legal doctrine. Grounds for calling a theory a legal doctrine appear when such a theory is generally accepted, turn into a governor of social relations, performing a normative function. We can illustrate such a process of the formation of scientific legal doctrine by the example of such scientific ideas as the idea of the rule of law, the power-sharing, the rule-of-law state.

Thus, already the idea of the rule-of-law state as the embodiment of the power justice appears in the works of Hesiod. The rule of law, power justice in the life of the Polis (the city-State) is considered by the ancient thinkers like an important condition of social order, a reflection of the cosmic order under which human laws derive their power from the Divine origin, in Democritus state and power is a «common cause» of all members of society[2]. In the following we find the ideas of the rule-of-law in the works of scholars from the Platonic school: the state is a community of people strong enough for prosperity; the legitimacy of many people, constructed in the accordance with the idea of goodness and justice [3, pp. 117-118; 4, p. 35]. According the Aristotle this state meets the requirements of justice and the common good [5], according the Jean-Jacques Rousseau it is guided by the Public Treaty to establish the common good [4, p. 223], according the Thomas Jefferson it provides equal personal and property rights and their disposal [4, p. 401], and according the G. Hegel this state becomes the reality of a moral idea [6].

Legal progress is also reflected in the peculiarities of the development and establishment of the liberal idea in law, legal practice, and modeling of the state. Now we often see a negative attitude towards the ideas of liberalism, the accusation of extreme liberalism and the attempts of the states to shy away from some of their fulfilling functions in the growth of global problems and the crisis of opportunities of the liberal state, the claim that liberalism did not justify itself, because challenges such as the spread of terrorism, religious wars, environmental risks, lead to an objective increase in the needs, not just of increasing the importance of the state in society, and the need to strengthen state functions, which in our view is a manifestation of the philosophical law of the struggle and the unity of opposites in the political and legal sphere. Let us take the liberty of claiming that the idea of liberalism does not exhaust itself; on the contrary, such liberal ideas as the power-sharing, the primacy of human rights and freedoms in the activity of the state, remain the dimensions of the civilization of the state and the ability of the right to be an instrument of democratic development, legal progress and a factor of social values accumulation.

Let us turn our attention to another liberal legal idea. The emergence of such a concept as the rule-of-law state, that is, a state that is limited by law, which in the person of public authorities, as well as the local self-government bodies do only what is defined by law against the background of the absence of such a restriction on a person who can do anything that is not forbidden by law is also an indicator of today's prosperity of the liberal idea.

We can also say that such liberalism in the realization of the Institute of Human Rights and Freedoms has caused a new phenomenon that has become a hallmark of the modern life. We mean abuse of the right, which is the attribute, the indicator of the liberal idea prosperity in the realization of human rights and freedoms. And this abuse of the right takes place both at the national level, in the activities of both the authorities, officials, members of parliaments and the citizens. For example, there are many undergraduate students who have to study because the state spends resources (teachers, electricity, room maintenance). The state is interested in the basic knowledge that can be gained if you systematically attend lectures and seminars. On the other hand, a person has the right to work even in the conditions of fierce competition for prestigious places of work

students and doctoral students (postgraduate and master's degree in Ukraine) are forced somewhere to get a job in advance, for low-paying positions, so that at the moment of receiving a diploma not only a job but also a chance to make a quick career. That is, they abuse their right to work. There is the struggle between two tendencies. One tendency is related to the necessity of strengthening the functions of the state, and the second tendency is related to the fact that the liberal idea as an human-based expression in law needs further research.

And more about the state, or the dispute, more importantly: the chicken or the egg. For the lawyers who abandoned the ideas of the Soviet doctrine, it is obvious: the state is derived from the law and the law is a means of the nation-building. That is, the law is the instrument of the state creation. Therefore, if we are talking about the legal progress, signs of which were the democratization and human-baced tendency, then it is obvious that the state must also be democratic and human-based. Unfortunately, this institution does not yet justify such a grand definition – not every state can be the bearer of the legal progress. This is obviously due to many reasons, such as the same theoretical and methodological backlog of many legal advances in the law development. As an example, we'll consider the constitutional process in Ukraine, which is characterized by attempts every time to change the government to carry out reforms, to amend the Constitution. Such reform proposals are based on the certain ideas: there are the idea of decentralization; the idea of ensuring justice by reviewing the processes of judiciary formation, but does not determine the theoretical and methodological basis of such constitutional reform.

Now, back to the question of the importance of law in the nation-building. We contend that Montesquieu is brilliant, but the 280 years that have passed since his theory of the power-sharing has been promulgated - it's been a very long time. Therefore, today the author of this article proposes his state model, based on the grass-root democracy [9], recognition of the people not only as a bearer of the sovereignty, the source of power, but also as the subject of power, the formation of a three-level power model based on the recognition of the people as a subject of power, the existence of representative power of the people, as well as the third level of power - functional power.

We must note that we cannot continue to live in the bosom of Marxist-Leninist post-Soviet ideas about a state that emerges from the primitive communal system and undergoes a slave-owning, feudal, bourgeois and socialist stage. We turn to Keynes and argue that the historical types of states were pre-industrial, industrial and post-industrial state. And what replaces the post-industrial state? As a theoretical and methodological justification for what state model to do now, when there is no socialism or capitalism, but there is a new world order, in which it is necessary to combine elements of statism with the strengthening of the state functions and the need to maintain liberal doctrine and primacy of human rights and freedoms [10].

Conclusions

It seemed that the rule-of-law state would be the answer to this issue. Yes, this idea has passed through the long-term development in the modern science and political and legal practice of European countries. However, today the combination of the two tendencies - on the one hand, the strengthening of the state function, and on the other hand, the preservation of the achievements, values and assets of the liberal model is possible provided that a new state model is recognized - the social rule-of-law state. Then the Article 1 of the Constitution of Poland in the definition of the state must be supplemented with the word «social», and Poland will be called a social rule-of-law state. In Ukraine, the solution of this issue is possible by the removing a comma, which incidentally was put with the author's participation in Article 1 of the draft of Constitution of Ukraine, which states that Ukraine is a social (comma), rule-of-law state. So already among the scientists there were ideas that it is possible to replace the post-industrial state with a state not of general prosperity, because to speak about prosperity in the conditions in which the modern world is.

This will be the recognition that the law is a factor of progress and fixed value, as well as an illustration of legal progress, which finds its way in the development of legal science - from the scientific idea to the scientific doctrine as a governor of social relations.

This approach involves clarifying the essence of the law. Law is a social phenomenon, an indispensable attribute of modern social life, a universal governor of social relations, a fixed social value, an inheritance of the spiritual culture that has embraced the attainment of political and legal thought and the socio and economic development of our civilization. At the core of the law development is the Moral Imperative that modern civilization preserves in the Holy Books - Christians in the Bible in the form of the Ten Commandments, Jews - in 627 rules in the Torah, Muslims - in 72 Quranic rules. Around the Moral Imperative, humanity in each country develops national law through the system of state law (normative legal acts), judicial precedent, corporate law (statutes and norms of internal coexistence of public organizations, political parties, clubs and other subjects of pluralistic democracy as institutions of civil society), as well as scientific legal doctrines.

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