

THE IDEA OF A WELFARE STATE IN THE ASPECT OF STATE-LEGAL MONISM AND PLURALISM

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The problem of implementing the idea of a social state is considered from the point of view of state-legal monism and pluralism at the level of humanity, that is the possibility of the emergence of a universally recognized model of such a state or the inevitability of the co-existence of various such models due to national, economic, cultural factors operating in specific countries.

Attention is drawn to the fact that such a problem is also relevant in relation to the ideas of a democratic and rule-of-law state. In general, the coincidence of formal characteristics of states reflected in modern constitutions is accompanied by statements about the absence of unified concepts of democracy and human rights. To an even greater extent, this is characteristic of the search for a solution to the so-called social issue.

The theses underlying the concept of the welfare state by L. von Stein are presented. In particular, it is indicated that, in his opinion, the simple development of the social security system of the poor class is not enough to solve the “social issue”. The further development of the idea of a social state is shown, discussions are touched upon regarding the understanding of its essence and the problems that were revealed during the social reforms carried out by socio-democratic and liberal forces in capitalist states at the end of the 19th and 20th century.

The main approaches to the constitutionalization of the social state are revealed (the “simple” proclamation of “social” statehood in the constitution; the clear formation of the goals and objectives of such a state; the absence of an indication of the social nature of the state). The classifications of the welfare state carried out by G. Esping-Andersen, as well as modern researchers of Russia and neighboring countries are analyzed.

It is established that the very existence of a “social issue” and the importance of one or another of its solutions are gradually becoming generally recognized. Despite this, the fixation of the social character of the state has not yet received the same universal distribution

as, for example, theses about the democratic and legal nature of the state. Both the implementation of the idea of a welfare state where it is legally recognized, and its declared “projects” are very diverse, while the typology of the welfare state is subject to further study.

The social model, the framework of which determines the position of the state in relation to society, is, on the one hand, the result of the evolution of a complex of factors specific to each country, and on the other, the result of a conscious choice. Different models of the welfare state are characterized by different degrees of realization of the interests of different social classes, a different relationship between the beginnings of society and the state. Accordingly, these models are “attractive” to representatives of the haves and have-nots to varying degrees, they compete with each other at the international level.

It is concluded that the idea of a social state can be reduced to a certain unity, whereas the ways of its implementation are inevitably multiple.

1. Introduction: problem statement

During the analysis of the basis of the political system of different states that are expressed in their constitutional texts, the attention is drawn to the fact that most countries declare themselves democratic and law based. Moreover, they are mostly republics or limited monarchies. The existence of constitutions also makes it possible to define almost all states of the world as constitutional. This coincidence of formally expressed characteristics of states can be defined as very revealing.

In this regard, it is noted, for example, that democracy has acquired at the beginning of the XXI century "seemingly unquestionable legitimacy" [1, p. 118] or that constitutionalism has become "an empire of uniformity" [2, p. 140]. In the same connection one recalls F. Fukuyama with his "end of history" embodied in the "democratic rule of law of the Western model" [3] and popular modern reflections on the possibility of building a "world state", based, among other things, on the famous thesis of I. Kant: "The greatest problem for the human race, to the solution of which Nature drives man, is the achievement of a universal civic society" [4, p. 12].

If we continue this line to its logical conclusion, we can point to the statements of many philosophers that the search for the common, monism is the basis of science, the development of society and the world as a whole, and that diversity and pluralism is superficial observation, the argument of a "weak" or "biased" mind [5].

On the contrary, for other scholars who do not seem to be accused for this very "weakness" or "engagement" today's state-legal monism appears to be a "seeming appearance" from which they find alternatives, the absence of unified concepts of democracy or the rule of law state. Often they move from descriptive to prescriptive assertions that the world *should be* diverse.

A representative example of modern thoughts of this kind regarding the development of the state is the book by J. Tilly "Strange Multiplicity: Constitutionalism in an Age of Diversity" [6]. Regarding the law, a typical example

is the article of Indian philosopher S.P. Sinha "Non-Universality of Law", in which he writes that "if the history of the world has shown anything clearly, it is the persistence with which it preserves international pluralism..., which shows no sign of disappearing" [7, p. 212].

The multiplicity of governmental law systems within mankind, is one of the assertions underlying the special concept of legal pluralism. It was already considered by one of its founders, the Italian lawyer of the early XX century S. Romano [8, p. 50], and today it is considered in the studies on global (transnational) pluralism as its feature [9].

Of course, some of the ideas of "legal pluralists", taken to an extreme, are one-sided, but this concept quite correctly reflects, for example, that:

- 1) the choice of options of state organization is conditioned by the peculiarities of cultural and social contradictions inherent in certain societies;

- (2) the legal systems of different states influence and compete with each other, also regarding basic constitutional provisions;

- 3) many subjects of law involved today in cross-border relations have an opportunity to compare the quality of life in different states, national options for the realization of constitutional provisions on democratic, legal, republican state, etc., and sometimes, on this basis, to choose a place of residence or a place of economic activity, leisure;

- 4) another source of such comparison and choice is the presence of interstate entities, international organizations and international law.

The last two factors are reflected in the well-known, although highly controversial "quality of nationality index" [10].

As a result, the most of modern developers of the models of ideal states are quite cautious and, unlike F. Fukuyama, do not reduce such models to any specific states, talk not about the end point, but about the movement towards it, recognize alternatives.

This is also common for domestic scholarship.

For instance, for the studies of Russian authors on the "rule of law state" and human rights

it is typical to state that the international legal standards of human rights are affected by opposite trends - universalization and regionalization, and the adoption of the UN Universal Declaration of Human Rights dated December 10, 1948 did not enable the convergence of fundamental differences [11], that civilizational processes put the universalization of human rights under doubt [12, p. 29].

Similar theses regarding the identity of Russia as a state based on the rule of law are reflected in the well-known studies of V.D. Zorkin [13, p. 449 – 488]. It is clear that they also mean that the Chairman of the Constitutional Court of the Russian Federation assumes the existence of different versions of "constitutional" and "democratic" state.

Another Russian scholar and politician S.N. Baburin proposing the model of "moral state" relies on domestic traditions, but recognizes Iranian, Indian, Chinese, Singaporean, Japanese alternatives to such model, the possibility of revival of the moral state in the "Western world" [14, p. 466 – 490, 500 – 520].

A special concern of the authors of this article is the issue of state-legal monism and pluralism when solving the social issue reflected in the idea of "*welfare state*". Referring to state or legal monism (pluralism), we do not mean in this case the degree of centralization of a particular state (law) or the degree of expression of interests of various social groups in them, but rather the existence of a single, universally recognized model of the welfare state for the whole mankind or the coexistence of such different models arising from national, economic, cultural features existing in particular states.

2. The extent of the issue's research depth

The idea of the welfare state was put forward by the German Hegelian philosopher and lawyer Lorenz von Stein in the middle of the XIX century [15, 16]. Since that time, a significant number of studies have been devoted to it, including one of the authors of this paper [17, 18].

Various researchers have also analysed different options for solving the social issue, including the typology of the welfare state. Among

them we can mention G. Esping-Andersen [19], and among the authors from the post-Soviet region – V.I. Goyman [20, p. 139, 140], V.P. Miletsky [21], V.A. Namchuk [22], N.M. Kchoma [23] and others.

3. Methodological basis of the issue research

In our opinion, for the purposes of the study it is necessary to combine the dialectical method with other methods: formal logical, modelling, formal legal and comparative-legal, as well as with theoretical-sociological and theoretical-cultural analysis.

4. The genesis of the idea of the welfare state

The idea of the "welfare state" from the point of view of its founder, Lorenz von Stein, is based on the following theses:

1) the idea of the state and society as two opposing principles of human dwelling, in which the "principle of the state", consisting in the elevation of all individuals to the fullest freedom, to the fullest personal development, and the "principle of society", consisting in the subordination of some individuals to others, in the perfection of some at the expense of others, are directly opposed;

2) posing the "social issue" (how can the working class, with the help of state power, change its dependent position, conditioned by the nature of labour, into a position of independence - financial freedom?);

3) the statement that neither the destruction of the political domination of the non-labour classes nor the availability of intellectual education for all destroys by itself the stratification into the wealthy class (which has economic capital) and the unfree poor class (which has only labour without capital) - the contradiction between labour and capital [15, p. XLVIII, XCII];

4) understanding that freedom (expressed in the possibility of acquiring capital) is achievable for the poor class only when "labour wages will exceed the needs of workers", which does not correspond to the interests of capitalists (that is why workers are excluded from participation in the profits of enterprises) [15, p. XLVIII];

5) the idea of property as a mean of resolving the "social issue" [15, pp. XXIV-XL, XLIII, LVIII-LIX, etc.] – the necessity of providing the lower

classes with the means and opportunity to acquire property and, consequently, to a live and free inter-class movement possible for every person [16, p. 524];

6) the awareness of the state's interest in solving the "social issue" because it stands "above capital and labour" and "greatly tolerates the dependent position of the lower, purely working class" (the more numerous this class is, the poorer the state);

7) understanding that the state organization of labour (the state becomes an entrepreneur) or credit (the state gives each worker capital proportionate to his labour force without taking anything for it) does not resolve social contradictions;

8) the existence of a third way - the way of social reform (the creation of such an arrangement and establishments that would allow labour to "lead to the acquirement of property by its very existence"). On this path, the state should, firstly, remove legal obstacles to the free social movement of the classes; secondly, the state should take care of public needs (fight against costliness, beggary, fight against poverty, establishment of nurseries, orphanages, schools for the poor, homes for the poor, support for the poor, etc.); thirdly, it should help labour without capital to achieve economic independence (self-help in the form of a union system for the poor, auxiliary funds, insurance business, etc.) [16, p. 525 – 594].

Therefore, according to L. von Stein, the state becomes "social" only when its activity is aimed at harmonious resolution of contradictions between social classes ("labour and capital"), in order to fulfil the idea of the individual ("the free development of one is the free development of all").

Although this conclusion seemed to be "monistic" for understanding the nature of the "social state", however, the further development of the idea, including the understanding of "social harmony", as well as the ways of constructing the "social state", turned out to be very diverse.

Many scholars consider a state "social" if it "...economy, politics, ideology, legislation, law enforcement practice and other spheres of public

life ... are aimed at creating the conditions necessary for a decent life and free development of each person ...", "...if it clearly and at the appropriate level recognized, enshrined and guaranteed: social focus of the economy, politics, law; basic social rights and freedoms of the individual; mechanisms of social solidarity and social justice; a decent standard of living and free development of a person; measures to prevent drastic social inequality" [24 p. 58 – 61].

The common features of a "social state" include the legal nature of the implementation of its social policy; the presence of budgetary social payments; the presence of state system of social protection, social security and employment; responsibility for the welfare of its citizens; the presence of civil society institutions in it [25, p. 82 – 85].

In other words, the "social state" is supposed to establish the necessary conditions to provide citizens with work, to protect labour, to redistribute income through the state budget, to provide a minimum living wage, to promote entrepreneurship, to take care of education, culture, family, health care, social security, etc. [26, p. 12; 27]. It should "fight not against wealth, but against poverty, denying excessive statism in the distribution of wealth, promoting the social function of private property" [28, p. 118, 119].

The set of these features, the researchers conclude, is sufficient to determine which of the states is "social" and which is not.

It is clear that all these features of the "social state" were not formed at once, their genesis is stretched in time and reflects the emergence and development of the state's social function, which allows us to trace the stages of development of the "social state" from the "primary" (the emergence of the functions of social security, social protection, health care and education and the spread of these functions to everyone, etc.) to the "social state" itself (emergence of the state's function of conducting social policy aimed at removing the antagonism between the social aims of the state and the market demands, ensuring a high level of protection against social risks by means of an efficient economy, compensating asymmetries in the set of

rights and obligations, etc.) [29, p. 86 – 97]. Such ideas of scholars differ favourably from those in which the "social state", in fact, was reduced only to the proclamation of socio-economic rights of citizens ("the right to work", "to vacation", "to social security", etc.) or to the distribution of pensions and various welfare benefits.

Based on the abovementioned ideas "social-democratic", "liberal" and "conservative" concepts of the "social state" were formulated. Despite all the differences, all of them were similar in recognizing the positive role of the state in the economic and social spheres [19, p. 28, 29].

Studies point out that most of the adherents of these concepts agreed that one of the main goals of the "social state" is to expand democracy, granting all citizens not only "legal and political" but also "social rights" through a fair redistribution of income: in social democracy and bourgeois-liberal reformism, the democratic interpretation of the "social state" as a guarantor of "social justice" prevailed. It was assumed that by providing guaranteed standards of living, the "social state" was able to reduce the gap in income, education and employment of different categories of the population. All this was seen as a means of excluding social class conflicts from society, integrating as many broad layers of the population into the existing system as possible [29, p. 177 – 179].

Many adherents of the ideas of "social state" – both liberals and social democrats – from the very beginning justified its necessity by considerations of capitalism legitimization. According to this view, the "social state", although containing non-capitalist or even anti-capitalist elements (for example, state distribution, anti-monopoly legislation, etc.), is a necessary evil; it is the means of increasing the freedom of the most unprivileged and correcting the injustices arising from the market system of wealth distribution.

In this regard, the reforms carried out by the social-democratic and liberal parties had as their result the improvement of the material position of broad layers of workers, the expansion of their rights in the political sphere, the strengthening of the economic and political positions of trade unions, and the increase of their

influence on the political system.

However, having reached a certain level, social-democratic and liberal reforms stumbled over the system-preserving partitions of capitalism, beyond which capitalism loses its inherent character. These limits, as L. von Stein predicted, are strictly defined by the ruling class, which seeks to maintain its dominant position in society and to preserve the capitalist system itself.

With the increased economic power of monopolistic associations and the progressive scarcity of resources, the expansion of the role of the state gave rise to other, no less complex and explosive problems. It became obvious that the social state and the system of state-monopolistic regulation have their limits, that a number of their mechanisms and links began to work intermittently [30, p. 360, 361], and some of them became obsolete.

Therefore, it can be stated that researchers have a certain unity in their views on understanding the specifics or, rather, the essence of the "social state". However, this unity in establishing the grounds for the emergence of the idea of "social state" and views on its development, in defining the concept of "social state" and its main features, in fact, has become rather relative, revealing a number of problems on which researchers have endless discussions. As a result, various researchers place different emphases in defining the concept of the social state. A detailed review of its definitions is given in the study of one of the authors of this article [31, p. 52 – 60].

5. Constitutionalization of the welfare state

All these theoretical provisions are reflected in the current constitutions of various states, which differ greatly from each other.

Several approaches can be distinguished in this regard.

Firstly, the "simple" declaration of "social" statehood (Haiti, Guinea, Georgia, Spain, Kazakhstan, Russia, Rwanda, Romania, Senegal, Slovenia, Tajikistan, Republic of Togo, Turkey, Ukraine, Republic of Chad, Equatorial Guinea).

Secondly, the clear formation of the goals and objectives of such a state, the definition of "welfare" as the goal of the state, the consolidation

of the role of property as a necessary and significant factor for resolving the "social issue", achieving "social justice" (Azerbaijan, Bahrain, Belgium, Denmark, Yemen, Syrian Arab Republic, Tunisia, Uzbekistan).

Third, the lack of indication of the social nature of the state, combined, however, as a rule, with the actual provision of some social benefits (public services) in accordance with the legislation [32].

As O.V. Rodionova correctly notes in this regard, in the era of globalization the need for universalization of the "social state" is increasing, at the same time preserving the national peculiarities of the implementation of its specific models [33].

The significant factor that distinguishes social models is the structure and configuration, the combination of the most important institutions of social protection - insurance, social support, state social security, medical care and education, the amount of resources allocated for their functioning, as well as the prevailing role of one of the institutions of social protection.

6. The approaches to the typology of the social state

In view of the above, various typologies of the social state have been proposed in the literature.

G. Esping-Andersen, as noted earlier, suggested that the criteria for classifying social states should be changes in stratification systems, the degree of expansion of social rights, and the public-private organization of social security. In his book "The Three Worlds of Welfare Capitalism" he drew attention to the existence of three models of the social state:

1. *Liberal model* (Australia, Canada, United States, New Zealand, Ireland, United Kingdom). For this model, it is common that many benefits, such as health insurance and pensions, are linked to employment. A means test for welfare benefits is used to determine eligibility for public services, and those deemed eligible are provided with relatively modest cash benefits and vouchers.

2. *Conservative (corporate) model* (Italy, Japan, France, Germany, Finland, Switzerland). It is based on the provision of services by the state

rather than market or private services. In this model, the normative ideals of the nuclear family are often manifested, characterized by a male provider and a woman taking care of the family.

3. *Social-democratic model* (Austria, Belgium, Netherlands, Denmark, Norway, Sweden). It is based on the idea that the state acts as a guarantor of social rights [19, p. 28, 29].

A similar approach is followed by V.P. Miletsky [21] and V. Namchuk [22]. The latter, using slightly different terminology, distinguishes *paternalistic, corporatist and statist* models of the social state.

V.I. Goyman suggests the following types of social state according to the income level criteria:

1) *egalitarian* (all members of society receive equal benefits, in the financial aspect everyone is equal);

2) *Rawlsian* (such income differentiation is just, which allows a relative economic inequality only when it contributes to the achievement of a higher standard of living for the poor members of society);

3) *utilitarian* (most of the social wealth should go to those who are the most useful);

4) a type of social state oriented to the classical market model [20, p. 139, 140].

According to N.M. Kchoma, as a result of the diffusion of ideologies and under the influence of the challenges of the XXI century, primarily *globalization*, the classical types of social state (liberal, corporate, social-democratic) are transformed into *neoliberal, corporate-liberal (conservative-liberal) and social-liberal*.

In addition, according to the time of emergence, he also proposes to distinguish *classical* ("established, traditional") models and *neo-models* of the social state (for example, the models that are being formed in the post-totalitarian states of Central and Eastern Europe, the projects of a unified social model of the EU, etc.).

According to the ratio of the state's activity in solving social problems and citizens' initiative in solving welfare problems, N.M. Kchoma also distinguishes *paternalistic, classical and activating models* of the social state [23, p. 141, 142].

Conclusion

Based on the abovementioned, we can

state the following:

new contradiction.

1. The very existence of the "social issue" and the importance of one or another of its resolution as social consciousness develops - are gradually becoming generally acknowledged.

2. Despite this, the fixation of the social nature of the state has not yet received the same universal spread as, for instance, the theses about the democratic and legal nature of the state.

3. Both the implementation of the idea of the social state where it is legally recognized and its declared "projects" are quite diverse (from attempts to build a "welfare state" to a "quasi-social" state, from democratic to totalitarian solutions to the social issue, etc.). At the same time, the typology of the social state is subject to further study.

4. It can be assumed that the social model, the framework of which determines the position of the state in relation to society, is, on the one hand, the result of the evolution of a set of factors (economic, legal, religious, etc., as well as traditions) that are specific to each country, and on the other hand, the result of a deliberate choice.

5. Various models of the social state are described by a different degree of the fulfilment of the interests of different social classes, different correlation between the origins of society and the state (according to the terminology of L. von Stein). Consequently, these models are "attractive" to various degrees for representatives of the wealthy and poor classes, they compete with each other at the international level.

6. Therefore, the very principle, the fundamental idea of the social state can be reduced to a certain unity, while the means, ways of achieving the corresponding aim are inevitably multiple. At the same time, in the course of social development, the ways of solving the social issue with the help of the state are not only modified, but also multiplied.

Monism in this case acts as a fundamental idea – a goal, which is followed with the help of pluralism – different ways and methods. When the aim changes, the methods are also subject to revision, each achieved aim generates a new one, due to the need to search for or an appearance

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