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ПРАВОВОЕ И (ИЛИ) СОЦИАЛЬНОЕ ГОСУДАРСТВО: МОНИЗМ ИЛИ ПЛЮРАЛИЗМ?

LEGAL AND (OR) WELFARE STATE: MONISM OR PLURALISM?

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The subject. Russian legal literature presents opposing approaches to the issue of the relationship between the legal and social states. The article examines the problems of scientific validity, social conditionality and compatibility of ideas about the legal and social state.
The purpose. Classical ideas about the ideal social structure, characteristic of different directions of political and legal thought (rule of law; renunciation of the state (minimal state); unified system of public self-government (socialist state); social state) are aimed to be assessed in terms of a combination of socio-legal monism and pluralism, touches on the ideas of the special concept of legal pluralism.
Methodology. A combination of the dialectical method with other methods is used: formal logic, modeling, formal legal and comparative legal, as well as theoretical-sociological and theoretical-cultural analysis.
Main results and conclusions. It is possible to consider the model of a social legal state as an ideal way to resolve social contradictions, taking into account the following proposed clarifications to this model: (a) the idea of a welfare state, despite its various interpretations, primarily refers to the solution of socio-economic problems, while a balance of private and public interests is also necessary for intangible issues that cannot be resolved only through the acquisition of property; (b) complete harmony of private and public interests is an unattainable ideal, therefore, in a social legal state new contradictions will continue to arise between the private and public principles, the solution of which can be achieved if the following condition is met: “awareness of every interest of public interest in those areas of life where it necessary, and the development of a compromise of private interests where possible”; (c) the dialectical approach assumes that the model of a social legal state, as its goals are achieved, sooner or later must be revised (added).

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1. Introduction: problem statement

Continuing our previously touched upon topic of unification and differentiation of modern ideas about the state-legal ideal [1], we can find that the issue of the relationship between the legal and social state is resolved in modern science and in constitutional practice in two opposite ways.

In the first case, their compatibility is noted, it is indicated that they complement each other or that the second form (social state) follows from the first (rule of law state). A similar point of view is defended, for example, by our respected colleague V.B. Kozhenevsky [2], as well as I.Sh. Galstyan, R.K. Melekaev [3].

Legal confirmation of this approach is the Constitution of the Russian Federation itself (Articles 1, 7, etc.), which proclaims our country to be a legal and, at the same time, social state, the policy of which is aimed at creating conditions that ensure a decent life and free development of people. There are also similar examples in the constitutional law of foreign states.

In the second one it is argued that the rule of law and the welfare state are fundamentally different. Let's say this position is expressed by K.N. Kuznetsova [4]. From a practical point of view, here we can pay attention to the well-known fact - many modern states proclaim themselves only legal, but not social. And in the works of one of the developers of the Constitution of the Russian Federation S.S. Alekseev can be found unequivocally regretting that in the final version of our constitutional text, the socio-economic rights of citizens were on the same level with fundamental human rights and freedoms [5, p. 105]. In another work, he directly writes that the true realization of the social principles of people's lives is achieved due to civil law in its unity with human rights, and not on the basis of wonderful formulas like the "welfare state", "the second "generation" of human rights" [5, p. 513].

The literature also presents a third, "middle" way to solve the problem. According to the position of I.V. Leonov and other researchers, the legal and social state are in an inextricable dialectical interdependence of the unity and struggle of opposites [6, p. 26; 7].

This discussion about the forms of an ideal state can be described using the terms "monism" and "pluralism", asking the following question: is there ultimately one such form (only the "legal and social state") or several of them ("rule of law", "social state", and maybe "legal-social state", "socio-legal state")? One can ask in another way: at what stage should the "construction" of an ideal state be completed?

It is no less obvious that behind the discussion about the number of *forms* there is a dispute about the *content*, which can be conveyed, for example, by the following question: how many interests should be taken into account in an ideal state - one (public), many private ones, or both one public and many private?

It is clear that the basic model of the rule of law corresponds to social and political pluralism, and the model of the welfare state appeals primarily to the social (state) principle.

For us, this discussion is certainly a dispute about legal monism or legal pluralism. If we proceed from the fact that legal monism (pluralism) is determined by social monism (pluralism), then the question about it cannot be reduced only to how many independent systems of law are there in society and whether individual stable social groups, in addition to the state, can produce their own unofficial law? This well-known and long-standing statement of the issue [8, 9, 10] is important in its own way and, in our opinion, has a certain perspective [11, 12], but cannot be correlated with the problems of social monism (pluralism) as a whole. Pushing *only* this aspect of the problem obscures the others.

The issue of legal monism (pluralism) can be completely resolved if the problems of (internal) pluralism in a unified system of state law are also taken into account, that is, again, the question of how many law-forming interests exist that must be taken into account and implemented with the help of the state? And accordingly, to what extent in the ideal law of an ideal state can private interests be absorbed by public interests, what balance between them should be the basis of law? Is such a balance even possible?

2. Methodological basis for studying the problem

In our opinion, for the purposes of the study it is necessary to combine the dialectical method with other methods: formal logic, modelling, formal legal

and comparative legal, as well as theoretical-sociological and theoretical-cultural analysis.

3. The degree of scientific development of the problem

If we turn to the classics of political and legal thought, we can isolate the basic scheme of the dialectic of pluralism and monism, which, in our opinion, underlies the idea of the rule of law: primary social pluralism and pluralism of law (pre-law) in a proto-state society - the gradual provision of social and legal unity as the state develops, the disadvantage of which is, however, the predominant reflection of the interests of dominant individuals (their groups) - a rule of law state, within the framework of which the achieved social and legal unity is combined with internal pluralism, taking into account and balancing the conflicting interests of individuals (their groups) with through law and formal equality.

Let us recall here the corresponding views of J. Locke (possible states of society: 1) a natural state of complete equality, in which everyone equally acts as judges; 2) despotism, usurpation and tyranny; 3) a true political or civil society, in which there is a common established law and a single judicial institution, which, however, protect the freedom and property of different individuals) [13, p. 262 – 406] and I. Kant (1) the state of nature is a state when "everyone does on the basis of his own right what *seems right and good to him*", "*acts according to his own understanding*" and therefore here any acquisition is only preliminary in nature; 2) a state is possible where both good and evil principles reign; 3) (ideal) state (civitas) is an association of many people, subject to legal laws and common power; in such a civil legal state, the freedom of everyone is limited by the condition of its agreement with the freedom of all others, everyone is equal, free and independent) [14, p. 252 – 254, 343 – 345; 15, p. 87; 16, p. 176].

In a similar way, one can interpret the model of the genesis and evolution of law of our contemporary V.M. Shafirov, which is obviously related to the above-mentioned views of the classics: (1) natural law of the pre-state era – 2) positive natural law of a state-organized society – 3) natural positive law of a constitutional and legal state [17].

The main disadvantage of this scheme, taken literally, in our opinion, is the idealization of the rule of law as a kind of end of history, not subject to further evolution (transformation), which contradicts the laws of dialectics.

In this regard, we can recall at least three alternative historical forecasts:

A. Many supporters of anarchism, corporatism, and traditionalism view any state, including a legal one, as monistic (insufficiently pluralistic).

The unification of social groups into a state leads, in their opinion, to the actual subordination of the individual to a single whole (the ruling minority), and the destruction of diversity. Therefore, it is predicted either the rejection of the state and state law in favour of a voluntary "federation" of self-governing groups and their rights (anarchism) [18], or the "New Middle Ages" - the minimization (transformation) of the state, turning it into an arbiter over groups, and, accordingly, – revival of primary pluralism of law. The latter view is generally characteristic, for example, of such seemingly heterogeneous concepts as guild socialism [19], syndicalism [20], and some areas of modern globalism [21].

As we see, in this case, the above-discussed scheme of the dialectic of social (legal) monism and pluralism is generally preserved, but instead of a transition to pseudo-pluralism of individuals in a rule-of-law state, a transition to genuine pluralism of social groups is postulated after the abandonment of the state (its minimization).

B. From the point of view of classical Marxism, social pluralism has never existed in reality, and it does not exist in the so-called legal capitalist state and law, since the latter have a class essence, express the interests of only one community of people. Therefore, as social progress continues, the state and law must die out [22, p. 375 – 479], more precisely, to be transformed into a unified system of public self-government and organizational norms. The latter will perceive many of the properties of legal norms, but will not be provided with class violence and will be able to express genuine general social interests [23, p. 138 – 157]. Until such a transition has taken place, a socialist state (law) can exist, various theorists of which also postulate the primacy of

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general social interests over private (group, class) interests [24, 25].

Here the dialectic of monism and pluralism is rejected and a new dialectic is postulated: natural monism of a pre-state society ("primitive communism") – class monism of a (legal) state – monism of a self-governing society (socialist state), under which the principle will operate: from each according to his ability, to each according to his ability needs (or at least: from each according to his ability, to each according to his work).

C. Finally, the followers of the idea of the social state that interests us believe that economic and political pluralism in law should be preserved, but at the same time the social issue should be resolved, that is, it should be ensured that classes that are not owners of capital can acquire property. This is defined here primarily not as a private interest (the interest of civil society), but rather as a general interest (the interest of the state). Therefore, it is believed that if this goal is achieved, equality in the implementation (harmony) of private and general interests can be ensured [26, p. 11, 13]. At least, this is how one can interpret the basic position of the founder of the idea of the social state, L. von Stein [27, 28, 29].

Taking into account the above, the idea of a social state is obviously based on the following dialectical triad: primary social and legal monism – pluralism of a capitalist (legal) state – restoration of social unity (harmony) through overcoming the extremes of socio-legal pluralism.

4. Social conditionality and compatibility of ideas on the legal and social state

The basic scheme that underlies ideas about the rule of law is correlated with some relatively generally accepted historical facts, namely:

1) the emergence ("the beginnings") of social pluralism and law already in pre-state society and the pre-bourgeois state;

2) the transition of European societies to a capitalist state, which cannot exist without state law and social relations of a legal type, based on the ideas of legality (certainty) and formal equality (equivalence) of individuals;

3) the possibility of the actual existence of states in which these principles are implemented to a greater or lesser extent.

At the same time, this scheme does not fully reflect reality or is its idealization, because:

1) the beginnings of social pluralism and law in primitive society are clearly preceded by a period of predominance of collectivism, in which the individual dissolves in the social essence;

2) primary social pluralism most likely arises as a pluralism of groups (subgroups) of society, and not a pluralism of individuals;

3) legality and formal equality of individuals cannot by themselves ensure an ideal balance of individual, group and public interests.

It is these shortcomings of the primary concept of the rule of law that have contributed and continue to contribute to the existence of alternative ideas about the social ideal.

We can, perhaps, exclude two of them from consideration, since both the complete destruction "at the end of history" of the elements of social and legal pluralism (communism), and the significant disintegration of the achieved level of integration of society (anarchism) can be assessed as utopias, or at least, as those ideas which are ambiguous in their consequences and are therefore unlikely to be considered as an ideal.

Not all private (group) interests can be fully reflected in public interest; not all private interests that do not coincide with public ones can be called unimportant and idle. On the other hand, eliminating (minimizing) the state will clearly not help in realizing public interests.

Both worldwide communism (socialism) and the picture of a complete anarchic equilibrium of various corporations (social groups) on the world stage look, in our opinion, unviable.

As for the idea of a welfare state, we can state the following:

1) this idea correctly reflects both the primacy of the social principle in society and the need to preserve social and legal pluralism;

2) the search for social justice and social harmony indeed cannot stop with the achievement of legality and formal equality;

3) the fact that the so-called social question was not completely resolved either within the framework of attempts to build a socialist state of the entire people, or during the construction of capitalist welfare states in the 20th century, does not mean,

therefore, that further attempts will not be made to solve it.

This leads us to the following modification of the basic scheme for the emergence of an ideal state:

1) primary social monism – 2) the emergence of social pluralism and pluralism of law (pre-law) in proto-state society – 3) ensuring social and legal unity as the state develops, the disadvantage of which is, however, the predominant reflection of the interests of dominant individuals (their groups) – 4) a rule of law state, within the framework of which the achieved social and legal unity is combined with internal pluralism, taking into account and balancing the conflicting interests of individuals (their groups) with the help of law and formal equality – 5) limiting or, more precisely, transforming the pluralism of individuals at the next level of evolution of the state through ensuring a balance between private and public interests, reflected in law.

This fifth stage can, in principle, be designated as a *social legal state*.

Close to a similar conclusion is the view of G. Rohrmoser, who believed that there is a certain version of the social state, combined with the liberal principle of the rule of law, but there is also another type of social state that is opposite to it. In the first case, the correspondence of a social state to a legal one is expressed in the fact that it creates material conditions only to the extent that each individual can take advantage of the rights and freedoms that a liberal (legal) state guarantees to him. In the second case, we are talking about a goal that, as the German researcher notes, was set by K. Marx, namely, "the achievement of universal material equality" [30, p. 80].

But here an objection to the thoughts of G. Rohrmoser should be made. The fact is that achieving universal material equality is not the goal of the "Steinian" social state [27, p. 138], these are the costs of modern interpretations. Material equality for L. von Stein is "...impossible, and not necessary" (here it is necessary to clarify that we are not talking about minimum guarantees (including material ones) for everyone, which he did not deny, since they ensure human life itself).

As for the principle of the welfare state, which means, as G. Rohrmoser claims, "expansion of state intervention" and "limitation of freedom", here, in our opinion, the principle of management was accepted one-sidedly, which, according to L. von Stein, was expressed "in the intervention of the state in favour of capital-free labour" and the implementation of which was planned through the implementation of the following programs: to make the "right to workers" a right consistent with the state structure; provision of state assistance [28, p. 576].

But he also noted that such programs run counter to the idea of the state: "... the state cannot, and will never, provide the latter (non-capital labour) with its power of domination over the former (capital); ... any personal development, and, consequently, the development of labour then only corresponds to the highest life idea, when every individual person achieves what he wants to be and own only *through his own efforts*. The insignificance of what is given from outside for true prosperity must also be applied to the delivery of capital to non-capital labour. Therefore, if the latter wants to receive capital and thereby achieve the economic and social position that he requires, then *he must make up his own capital for himself*. As a result, its principle is expressed in the formation of capital from its own funds; his demand extends only to the fact that no obstacles are placed to this aspiration; his program is *self-help*" [28, p. 576 – 577, 587 – 594].

Therefore, only self-help, which the state *guarantees*, allows the lower classes to rise, in particular, "the working classes are offered all those conditions of development that they, for reasons of lack of capital, cannot provide themselves with either their physical or their mental ability to acquire" [28, p. 572].

As a result, the rule of law, according to this logic, becomes a necessary stage preceding the social state and guarantees the achievement of the goals of the latter.

5. Conclusions

Thus, we support the idea of a social legal state as an ideal way to resolve social contradictions. At the same time, several clarifications to this model can be made as conclusions.

Firstly, the idea of a welfare state, despite its various interpretations, primarily refers to the solution of socio-economic problems, while a balance

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of private and public interests is also necessary for intangible issues that cannot be resolved only through the acquisition of property. In this regard, we recall the more general idealistic views of G.W.F. Hegel (the goal of universal history is progress in the consciousness of freedom, from complete lack of freedom to harmony between the personal free choice of everyone and the needs of society as a whole in a rationally organized state [31]) and I. Kant (an (ideal) legal, legal-civil society can be call it an ethical state, that is, the kingdom of virtue, in which the law "act in such a way that the maxim of your will could be a universal law" [14, p. 247; 15, p. 98, 99]).

Secondly, *complete harmony* of private and public interests is also an unattainable ideal; therefore, in a social legal state, new contradictions between the private and public principles will continue to arise, the solution of which can be achieved if the following condition is met: "awareness of every interest of public interest in those areas of life, where necessary, and developing a compromise of private interests where possible" [26, p. 13].

Thirdly, the dialectical approach assumes that the model of a social legal state, as its goals are achieved, sooner or later must be revised (added).

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