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TÍTULO: Naturaleza fundamental de la moralidad dentro del sistema de valores de la cultura jurídica.

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RESUMEN: En este artículo, los autores consideran varios temas de la interpretación axiológica del derecho y proporcionan un análisis profundo de la correlación entre el derecho y la moralidad. El autor también particulariza una serie de factores que influyen en la génesis y el desarrollo del derecho, es decir, el desarrollo histórico de la sociedad, el factor sociocultural, el factor socioeconómico y la estructura de clase de la sociedad. En general, desde el punto de vista del autor, el estudio de los aspectos axiológicos del derecho ayudará a superar la crisis de la educación legal.

PALABRAS CLAVES: Derecho, cultura jurídica, valor, moralidad.

TITLE: Foundational nature of morality within the value system of legal culture.

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ABSTRACT: In this article, the authors consider several issues of the axiological interpretation of law and provides the profound analysis of the correlation between law and morality. The author also particularizes a number of factors that have an influence on the genesis and development of law, i.e., the historical development of society, the sociocultural factor, the socioeconomic factor and the class structure of society. In general, from the author's point of view, studying the axiological aspects of law, will help in overcoming the crisis of legal education.

KEY WORDS: law, legal culture, value, morality.

INTRODUCTION.

Between morality and law is the distinctive feature of the Christian culture in Europe, that has its origins in Greek philosophy and Roman law. In general, revealing the contrasts between the concepts of morality and law, as well as highlighting the differences between moral and legal spheres denoted by these concepts, is intrinsic to the Western European tradition.

In the XVIII century, the given contrasts were conceptually substantiated. The distinction between the above-mentioned spheres is rather rigid, since they are related in one way or another to the idea of preserving personal freedoms, which implies that morality and law may be regarded as political realia. In this respect, the interpretation of the discrepancy between moral and legal spheres that can be found in the work of a prominent German legal scholar G. Radbruch (Phillimore, 1863, p.49) is of interest.

However, in the context of Russian philosophy and culture, this interconnection is fundamentally different from the one that exists in the context of Western European philosophy. While for the Western philosophical thought, which deals with the issues of the relationship between morality and law, 'freedom' is the most important category; Russian philosophers regard 'good' and 'love' as such. Here, the difference between the two approaches to the issues is obvious.

While the concept of freedom, which is, of course, the ultimate spiritual value, acquires a political meaning in the context of the juxtaposition of law and morality, the concepts of good and love have a purely moral meaning, which characterizes the inner state of the individual. Hence, being subordinated to morality, law has a meaning that is unlike the one we find in the context of Western European philosophical discourse.

Studies that have been carried out by contemporary scholars, known for their in-depth analysis of the spiritual basics of philosophy and culture, are significant for revealing the features of the domestic legal culture within the system of spiritual values of Russian philosophy. Works created by A.A. Korolkov, M.N. Gromov, M.A. Maslin, B.N. Tarasov, A.G. Gacheva and others are important for understanding the axiology of the spiritual aspect of culture.

According to A.A. Korolkov, "... legal culture cannot develop separately from the whole spiritual culture, which permeates all spheres of the Russian person's activity" (Karavayev, 2017, p.77). The Russian philosophical tradition is characterized by such priorities that stem from the fundamental character of morality within the system of spiritual values of culture, where law occupies not so much a subordinate position as the one that is transformed by the light of spiritual truth.

According to Ye. A. Karavayev, "... in law, morality was considered as a special way of regulating social relations that was based on the Christian ideals of good and love. On the other hand, being a factor in ensuring the existence of a just and holistic community, morality was seen as a means of strengthening this system and controlling the law" (Höffe, 1994, p.47).

In order to consider law and the nature of its values, it is necessary to base the research on the philosophical interpretation of value as something very significant and acknowledged by people as such at the levels of feeling and thinking that lay the foundation for value-based goal setting, which, for its part, determines person's activity.

Comprehensive consideration of the issues, relating to the axiological content of law and legal understanding, as ideological ones, is explained by a peculiar indicator of a person's activity-based attitude towards reality at any stage of the historical development of society.

The issue of the axiological interpretation of law in terms of the insight into its philosophical and cultural aspects has its own specific features, which are connected with the particular qualities of different historical periods of society and science development, as well as with different views of the authors of various theories.

DEVELOPMENT.

Results and discussion.

The aspect of law related to its values has been the object of study for many Russian and foreign scholars like S.S. Alekseyev, G. Hegel, N. Nenovsky, V.S. Nersesyants, J. Rawls, O. Höffe, I.A. Ilyin, and others. Developing value theory with reference to the field of law within the framework of the axiological approach, the authors have studied its purposes and functions in human, social and cultural development, considering not only the nature of values that are relevant to law, but also the dynamics of their historical development, their contents and hierarchy.

We also base our research on the fact that law provides solutions for tasks that are initially value-oriented, which plays a decisive role in the functioning of law, i.e., in establishing, proclaiming and abiding by legality and democracy, as well as in preserving and standing up for generally accepted behavioral norms.

The value orientation of law is also about providing a certain freedom for subjects of law and asserting both juridical and universal values. Juridical values underlie law and the existing legal order in the form of facts and phenomena, as material things and ideas.

Traditionally, juridical values include various objects and material goods, human actions and deeds, promptings and motives for action, goals and ideals, various social statuses, etc. We regard these values as the ones belonging to law due to the fact that they form the basis of law and order, generate legal precepts as the ideal foundation, establish legal regulations and form the purposes of law and legal institutions.

It is important to emphasize that legal consciousness is also based on juridical values, and its regulatory role is aimed not only at obeying axiological postulates, but also at the constant maintenance of legal norms. On account of these circumstances, law as a subject of axiology implies a special type of legal duty that is founded on juridical values. Moreover, it is necessary to give emphasis to a certain unity and interdependence between values of law and values of its content, which obviously facilitate the formation of the above-mentioned duty in legal subjects' activities.

Now, let us dwell upon basic legal principles in terms of the value system. These principles, which are traditionally supposed to include justice, security, freedom and equality, are based on social values that are closely related to human activities and subsequently develop into human rights, which are a value of law. From this point of view, law is a value that is directly connected with human activities and determined by those activities, making the self-developing person a subject of law. It is the self-development level of the subject of legal relations that indicates the value level of law.

It is a well-known fact that European legal philosophers differentiate between natural law theory and legal positivism. Scholars supporting the former of the mentioned theories distinguish teleological and instrumental values of law. Besides, the essence of the instrumental values, according to adherents of that legal philosophical theory, consists in acknowledging law itself as an instrumental

value and as a system of legal behavior enforcement. In this case the aspect of law that contains its values and purposes may be viewed as supra-positive law, which is a sort of criterion for the legal assessment of law and its teleological values.

Defenders of legal positivism and its key points consider law only as a means to ensure certain social order. From their point of view, the instrumental value of law consists in implementing a system of truly effective rules of people's behavior and coexistence through authority's enforcement.

Another major trend in studying the axiological aspects of law and legal understanding is social contract theory, which is based on the idea of ensuring human life, civil liberties, person's property and equality of all citizens before the law by the entire state legal system.

It is the values mentioned above that were considered by supporters of social contract theory as natural and essential human rights. Besides, that group of scholars regarded social contract theory as the basis of juridical axiology. In general, the rights to life, liberty, equality, creativity, and some others, which are to be provided by the state and by positive law, are viewed as natural and inalienable human rights.

The above-given values are called teleological, and adherents of social contract theory put emphasis on the need for preserving those values in the system of the existing legal order. At the same time, the functioning of the principle of formal equality is observed, according to which all people are recognized as formally equal and free.

However, social contract theory was developed without taking into account any specific personality traits or any other differences between individuals participating in social relations and legal activity.

The most common interpretation of juridical values consists in considering them as the type of spiritual values that exists in order to "meet the social groups' needs for regulating social relations and people's actions."

From this point of view, values in law are regulatory and deontic at the same time, i.e., being intended for maintaining social order, these values are clearly prescriptive. Regarding the concept of law as the one correlating with the concept of freedom, and law as a form of freedom, demands special attention within the hierarchy of juridical values.

Juridical freedom means permission to perform particular actions without thinking about whether this permission is compatible with the real opportunity. Considering freedom as a legal category, Mikhail Bakhtin noted that “no one can adopt a neutral position with regard to such concepts as ‘self’ and ‘other’: any point of view which is the result of the cognitive process of abstraction, lacks the axiological approach; in terms of value orientation, it is necessary to take a single position on a single event” (Bakhtin, 1986, p.120).

Justice as a juridical value has three aspects of its meaning: “... justice has the nature of moral obligation; it is most closely related to voluntarily accepted duties, which are above mere enforcement; the main criterion for its evaluation is its distributive value – everything that is good for every person, is just” (Radbruch, 2004, p.231).

The issues concerning the development of law and its axiological aspect surely depend on numerous conditions and factors. "The genesis of law is the process of its emergence, the origin and formation of law as a specific social phenomenon" (Livy, 1989, p.228). By factor we mean a moment or a circumstance that is significant for any process or phenomenon; factors influence law, its essence and content indirectly through other phenomena.

In contemporary science, the genetic approach to studying the phenomenon of law has been widely used. On the other hand, several legal scholars, like N.N. Tarasov, consider the historical and genetic approaches to law as identical due to the total unity of the purposes of studies that are based on those approaches. We assume that, in general, the features of the genetic approach consist in such a method

of studying phenomena that is founded on the causal analysis of their origin and evolutionary development.

According to N.N. Tarasov, this also concerns the process of studying law, which is about studying the characteristics of the development of law, where law is regarded as developing on its own and based mainly on its own starting point and principles. Such interpretation of the genetic analysis stems primarily from researching the origin and development of the 'gene' of a studied phenomenon, which in our case is law. In his view, the historical approach consists in reconstructing the changes of conditions that determined the development of a certain phenomenon. In other words, the historical approach is related to the reconstruction of cultural contexts changing along with the sociocultural reality of a particular society (Polyakov, 2004).

Each legal system has its own historical background. In general, the development of law was initially based on rather simple, even primitive attempts to make a normative generalization of one or another custom protected by the state. The structure of the analysis definitely contains the study of factors relating to social and legal phenomena and processes, including those factors that affect the genesis of law and its axiological basis. There are many approaches to determining such factors. Further, we will consider some of them.

One of the factors in the genesis of law and its moral component in particular, is the factor of the historical development of society, which is characterized, according to J. Phillipmore, by the natural progress of law. The pace of change occurring in the legal sphere at each stage of society development corresponds to the pace of change in society itself (Tarasov, 2000).

The authors identify three historical periods in the development of law. The so-called "infancy" of law is classified by him as the first period, which is symbolized by the dominance of custom. They describe the second period as the stage that is characterized by the enrichment and heterogeneity of law, which leads to the chaotic accumulation of law's content and requires a change of approach to

the interpretation of law. The climax of law's evolution is the third period, i.e., the period of codification of law, which makes the study of law a genuine science.

The fact that, emerging from a custom, law develops through precedents into a codified system certainly seems to be a truism; such periodization of the development of law is really demonstrated by history itself. Therefore, being one of the factors in the genesis of law, the historical development of society surely set up a historically and genetically conditioned three-step scheme for the emergence and development of law.

According to the history of the development of law, the emergence of law preceded the emergence of the state system. Furthermore, it was law that ensured the observance of the so-called legal norms and regulations, and it was the emergence of law that became a particular reason for the emergence of the state system. As a result, an assumption was made that the existence of law is impossible without the existence of society.

For instance, Titus Livy emphasizes in his work "The History of Rome" that law only originates in society as a specific order in social relations, in accordance with which people participating in such relations have a certain social freedom of action established in the duties of others (Korol'kov, 2011, p.145). In all fairness, it should be pointed out that historical periods in the development of legal systems in different countries differ from each other. However, in this article we do not concentrate on studying this phenomenon profoundly.

The next factor in the genesis of law is the sociocultural factor; its essence comes down to the human society's need for special social regulators of behavior. Such need arises due to deliberate cooperative activities of people. Within the framework of this factor and under its influence, one can see the dynamics in the development of law, beginning from a number of prohibitions and totems, which, in terms of their origin, are close to the natural requirements that are essential for the survival of the

human race, until the emergence of morality as a set of norms containing various moral obligations, e.g. keeping the fire burning, participation in hunting, etc.

Such dynamics in the development of law is evidently influenced by the sociocultural factor, which reveals the rise of human consciousness, the enhancement of cooperation between members of the society, the development of social ties and personality formation in general. Both morality and law as a sphere of freedom arose due to the influence of this factor. Thus, being a means of regulating and determining people's behavior, law included prohibitions and obligations, but after it appeared and started to evolve, it was the freedom of individuals to act in their best interests without contravening the interests of the society that became a significant stimulator of behavior.

The socioeconomic factor is also one of the main factors in the genesis of law. It is this factor – i.e., the economy – that is generally supposed to maintain and even provide the existence of the human factor and the sociocultural factor, which was described above. Specifically, the economy as well as property relations made it possible for civil liberties to get their material basis, e.g., the emergence of the social division of labor and the exchange of goods brought about private property. The socioeconomic factor laid the foundation for the collapse of the primitive communal system and enabled reaching the civilizational level.

CONCLUSIONS.

Having the economic background, the emerged legal relations were intended for regulating property relations, relations of production, commodity relations, buyer-seller relations, etc. In fact, it was the correlation between the rights and obligations of the subjects of the relationships based on freedom, equality and justice that turned into legal relations. On the other hand, it is law that is usually accepted in advanced commodity and market relations, which provide civilized protection of property relations under the law and by the court.

One more factor in the genesis of law is the class structure of society, which is not a constant, since its characteristics depend on a certain period of time. It is also known as the factor of national and ethnic disunity in society. There is no doubt that universal values should prevail objectively in the contemporary civilized society. It is universal values that reflect and consolidate laws. Besides, it should be emphasized that law itself is one of social values. However, even nowadays we cannot exclude the influence of class, national or local interests of the society on laws as well as on the state system that protects those laws.

Hence, there is antagonism of interests, and for its elimination the legal approach is required, i.e., a genetic change of law in general or a modification of the particular existing law. In that case, emerging contradictions are also regarded as a factor that affects the genesis of law, but this factor is negative in terms of its nature and essence, and it does not correspond to the social purpose of law.

In conclusion, it should be pointed out that the basis for global legal practice nowadays is still the genesis and development of law in its various manifestations –from customary laws, legal acts, judicial precedents and regulatory agreements to legal doctrines and legal practice. More to the point, contemporary socially-conditioned factors lie at the core of law development.

Russian thought has always striven to arrange earthly reality in accordance with the eternal laws of goodness and justice in order to build the Kingdom of God on earth, seeking the ideal that spiritualizes and transforms the existing reality by destining the latter for the supreme spiritual goals. Therein lies the indivisibility of spiritual, moral and legal ideals that is typical of the ultimate manifestations of Russian philosophical culture.

So, like any other ideological phenomenon, law possesses some value-based characteristics, which represent its axiological essence. The Russian philosophical tradition is characterized by such priorities that stem from the foundational nature of morality within the system of spiritual values of

culture, where law occupies not so much a subordinate position as the one that is transformed by the light of spiritual truth.

Axiological orientation of law is multidimensional. Axiology of law may be viewed as a complex phenomenon, i.e. as a set of juridical values, within the systems approach. In addition, law itself, viewed as a holistic phenomenon, is a value; thus, it requires value-based criteria for its evaluation. From our point of view, studying Russian legal culture in the context of spiritual values of Russian philosophy will help in overcoming the crisis of legal education.

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