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Models of Marginality in the Historical-Theoretical and Political-Legal Contexts

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Abstract

The research analyzes different models of marginality in historical-legal and political-legal contexts. The relevance of the study is due to the significant risks of spreading marginality in modern society, as a prerequisite for legal anomia. Understanding marginality, as one of the destructive forms of legal awareness and legally significant limiting behavior, allows marginality to be modeled historically and theoretically in relation to sociocultural phenomena such as state and law. At the methodological level, documentary design was used close to historical research and epistemological reflection typical of interdisciplinary dialogue. It is concluded that the use of legal means and techniques to combat marginality is based on the hypothesis of legal consciousness, according to which anyone initially focuses on consciousness, socially active and useful, and therefore on lawful behavior established by law. This approach can be formed, strengthened, or restored through the implementation of educational, ideological, and other functions of law, political science, or history.

Keywords: marginality models; risk of marginalization; marginality modeling; criminal subculture; limit behavior.

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Modelos de marginalidad en los contextos histórico-teórico y político-legal

Resumen

La investigación analiza distintos modelos de marginalidad en los contextos histórico-legal y político-legal. La relevancia del estudio se debe a los importantes riesgos de propagación de la marginalidad en la sociedad moderna, como un requisito previo para la anomia legal. Entender la marginalidad, como una de las formas destructivas de la conciencia jurídica y el comportamiento límite jurídicamente significativo, permite modelar histórica y teóricamente la marginalidad en relación con fenómenos socioculturales como el Estado y el derecho. A nivel metodológico se hizo uso del diseño documental próximo a la investigación histórica y a la reflexión epistemológica típica del diálogo interdisciplinario. Se concluye que el uso de medios y técnicas jurídicas para luchar contra la marginalidad se basa en la hipótesis de la conciencia jurídica, según la cual cualquier persona se centra inicialmente en la conciencia, socialmente activa y útil, y por lo tanto en un comportamiento lícito establecido por la ley. Este enfoque puede ser formado, fortalecido o restaurado a través de la implementación de funciones educativas, ideológicas y de otra índole del derecho, la ciencia política o la historia.

Palabras clave: modelos de marginalidad; riesgo de marginación; modelado de marginación; subcultura criminal; comportamiento límite.

Introduction

The relevance of the research problem is due to the need to revise a number of theoretical categories and constructions inherited by modern Russian legal science from its “socialist predecessor” and still considered as the basic foundations of educational, research and practical activities in the field of state-legal relations. Among such categories, is inter alia “marginality”, which in its most general sense is a form of borderline (alienated from the values and meanings of law) consciousness and behaviour of subjects of social and legal relations. Its fundamental research is carried out by an independent branch of social science, known as marginalist (Farge, 1989).

In jurisprudence, this area of knowledge is studied in terms of the general legal theory of marginality, which has developed since the beginning of the 21st century. The foundations of this theoretical structure include the works of foreign (Park, 1928; Billson, 1988; Bradatan and Craiutu, 2012), as well

as Russian (Atoyán, 1993; Popova, 2000; Sainakov, 2013) philosophers, sociologists, lawyers, political scientists, historians and psychologists.

Under the conditions of the Soviet period, the theory of the socialist state and law was undoubtedly oppressed by the concept of monism, according to which the world was a class dichotomy of civilizations and cultures (socialist and bourgeois-imperialist), while all social and legal negativity, regardless of types and forms external manifestation, was either “the legacy of the accursed past”, or a consequence of the “pernicious” influence of the “decaying and parasitic world of capital” (Khazieva et al., 2019). With this approach, marginality was naturally perceived as a temporary, non-systemic phenomenon subject to complete eradication in the process of communist construction and incompatible with the ideological axioms enshrined in the “Moral Code of the Builder of Communism” (Sainakov, 2013; Stepanenko, 2014).

In the internal legal theory of the Soviet period, marginal behaviour was considered as a) an unstable and maladaptive form of illegal behaviour in relation to the rules of the socialist community, within which a potential violator would not commit illegal acts solely out of fear of punishment; b) as legal, although bordering on illegal behaviour, which did not become as such for a number of reasons (Feofanov, 1992).

The systemic crisis of communist ideology and the socialist economy caused the collapse of the USSR and destruction of the socialist legal family (Khazieva et al., 2019). In the post-Soviet space, this led to the formation of state-legal systems of transitional type, a number of which (the countries of Eastern Europe and some former Soviet republics) adopted the vector of perception and implementation of the established parameters and stereotypes characteristic to the states of traditional Western liberal democracy (Popova, 2000). Other countries, including the Russian Federation, are trying to find their own path of state and legal development, demonstrating their desire to become independent civilizations and claiming that they retain the status of “superpowers” that have a decisive influence on world politics (Sainakov, 2013). Today the modern vision of the state and law is carried out under the influence of two opposite vectors: a) the Soviet, based on the opposition of “hostile” cultures of Russia and the West; and b) post-Soviet-pluralistic, which asserts multiplicity of tolerant perception of cultures and civilizations that are equivalent in their right to existence and development. Under these conditions, the study of marginality acquires a qualitatively different meaning from that which has developed within the framework of the theory of the socialist state and law (Popova, 2000; Sainakov, 2013; Feofanov, 1992).

In the realities of modern state and law, marginality is accepted as a “normal alienation and borderline” that exists in legal consciousness. It is thus expressed in the behavioural acts of almost any individual or legal entity. Marginal status has become not so much an exception in the modern world

as the norm for the existence of millions and millions of people (Farge, 1989). In this sense, we can and should talk about marginality not only in relation to representatives of aluminumized social groups or carriers of the criminal subculture (Romashov and Bryleva, 2019) but also in connection with rather closed social communities united by similar material, cultural, physiological, psychological status and other conditions of life. Equally, we should take into account the activities of individual “normal” representatives of the state bureaucracy (civil servants), confirmed by the risks of marginalization as well as “ordinary” Russian citizens (Stepanenko, 2014). Moreover, the state itself can be considered as an object and subject of marginal behaviour, whose activities can equally be aimed at both implementation and protection of national interests, and at meeting the requests of a narrow circle of its representatives in the state power elite. This ruling group has departed from the interests of society and, thus, can probably be seen as a marginal oligarchy (Popova, 2000).

Modern Russian law, based on the integrative approach to the typology of legal thinking and pluralistic approach to the perception of legal systems and legal cultures, develops a relevant attitude to the phenomena of marginal consciousness and behaviour of subjects of state-legal relations as a form of objective legal reality that, depending on various factors, can be expressed in both legal and illegal acts (Stepanenko, 2014). In line with this position, any marginal community ceases to act as a benchmark for negative sociality; rather, it is perceived as an element of the dialectical struggle between tradition and innovation under the image of society close to synergetic paradigm (Sainakov, 2013). As a result, marginality becomes, in a full sense of this concept, a “borderline” and “elastic” category, its main characteristic feature being uncertainty or polyformality, which provides this phenomenon with a wide set of opportunities associated with formal and meaningful transformations (both positive and negative) (Atoyán, 1993; Stepanenko, 2014).

According to the authors, the results of a marginal lifestyle and marginal behaviour of individuals and collective subjects of legal relations are manifested as processes of sublimation, as the possibility of modifying or changing the negative behavioural, motivational sphere into constructive lawful behaviour (Ainoutdinova & Ainoutdinova, 2019); situations of escapism – as “oblivion” or “escape” from problems through the use of artificial “pathogens” (drugs, alcohol, and other tranquillizers) (Ainoutdinova & Ainoutdinova, 2019); the onset of frustration causing the state of despair, hopelessness, anomie and disbelief, and leading to aggression, including auto-aggression (Stepanenko, 2014; Romashov & Bryleva, 2019; Romashov et al., 2017); the expression of protest reactions through the commission of offences, including crimes, participation in riots via expressing disagreement with the causes of the current marginal circumstances (Stepanenko, 2014).

The study found that the expediency of building a strategy of demarginalization leads to the strengthening of national unity; formation of a tolerant attitude towards deviations in society that do not pose a social threat; legitimization of state legal means and methods with a regulatory and protective effect on social relations, primarily those containing no signs of alienation or borderline marginality of legislation and legal policy to comply with the values of the rule of law (Khazieva et al., 2019; Stepanenko, 2014).

1. Methods

In the course of this research, various methods were used, such as comparative analysis, cyclicity, theoretical and legal modelling, historical and legal reconstruction, and other methods of scientific knowledge. To consider the mechanism of the legal assessment of marginality, a complex method of historical-theoretical and intersectoral synthesis was used. This allowed combining scientific achievements of foreign and domestic historical-theoretical jurisprudence and other branches of law (Bradatan & Craiutu, 2012; Sainakov, 2013; Feofanov, 1992).

To characterize the subjects of marginal consciousness and behaviour, the method of interdisciplinary analysis was employed, while in relation to individual legal structures of marginal acts, priority was given to criminal and administrative methods (Feofanov, 1992; Romashov & Bryleva, 2019).

2. Results

Modelling of marginality in the historical-theoretical context involves identifying three stages (monistic, dualistic, and pluralistic) of the genesis of the paradigm of the world order. At each stage, the perception of human relations changes and, as a result, the ratio of such key concepts as norm and deviation, analogy and pathology, regularity and causality, law and crime are updated, which accordingly changes the content of the phenomenon of marginality (Stepanenko, 2014).

In conditions of the monistic stage, the world was represented by two mutually exclusive phenomena: the “ecumene” (intelligent universe) existing within the framework of a particular autarkic (self-sufficient) polis and the barbarism. In the socio-cultural dimension, only a citizen of the polis was regarded a person (or human being) as the individual bearer of such collective rights as freedom, democracy, defense with arms in the

hands of a native polis, etc. Loss of status of citizen automatically meant the defeat in all civil rights. At the same time, the rigid division of society into free citizens of the polis and slaves did not exclude singling out of a marginal group of strangers, which included both citizens of other policies and barbarians who, for some reason were not enslaved or killed (e.g., traders, leaders of “friendly” tribes, etc.). The marginals could stay in the polis, were obliged to comply with its laws, but did not have any civil rights, and in this sense, they occupied a borderline position: while not being “living things”, at the same time, they were not citizens and, hence, people (or human beings) in the political and legal sense of the word.

The emergence of a dualistic paradigm of the world order is associated with the division of the Christian world and the Roman Empire as its basis into two conflicting, however, at the same time equally cultural and traditional segments: The Western Catholic Roman and Eastern Orthodox Byzantine empires (Bakulina, 2014). The dualistic world presupposes the allocation of two types of cultures and the perceptions of the world associated with them: true and false.

Under dualism, monism does not disappear, since only one of the two cultures is true and, accordingly, worthy of the “right to life.” It does not matter, though in what forms this duality is presented (Del Pilar & Udasco, 2004). In religion, it is “true faith and heresy”, in the legal field – “law and crime”, in interpersonal communication – “love and hate”, “partnership and conflict”, etc. Within the dualistic world order, marginality is characterized by inconsistency with the traditional (normative) stereotypes of truth that have been formed in a particular society (Atoyán, 1993).

A pluralistic paradigm is primarily due to the reformatory revolution in the Catholic Faith, which caused bourgeois transformations in the political and economic life of Western society. This led to the recognition of the intrinsic value of the human’s personality, expressed in their natural rights and freedoms, independent of the state in origin (Bakulina, 2014). In the context of social and cultural pluralism, the human personality, as the fundamental principle of human civilization, combines individual uniqueness (causality) and collective averaging (normativity) (Stepanenko, 2014).

Within the pluralistic paradigm of the world order, marginality is due to the dichotomy of individuality and collectivity, which act as equivalent vectors of state structure and legal regulation (Billson, 1988). In this sense, marginal is a citizen who seeks to overcome conservative or innovative state-legal restrictions to improve the system of political-legal communications, and simultaneously, the same citizen who considers the violation of law and order as illegal, albeit effective means of ensuring his/her own selfish interests (Farge, 1989).

Modelling of marginality in relation to the modern Russian state-legal system allows us to state that it is more consistent with the dualistic paradigm of the world order, within which the national political and legal culture continues to be opposed to the culture of the West (Popova, 2000; Sainakov, 2013; Khazieva et al., 2019).

3. Discussion

In the current situation with the Russian state-legal system, the domestic humanitarian science identifies several models of marginality, namely: political, legal, economic, ideological, cultural-historical, etc.

The innovation that distinguishes the modern legal model of marginality in Russia from its Soviet counterpart embraces: recognition of the objective nature of delinquency in general and organized professional crime in particular (Bradatan & Craiutu, 2012; Romashov & Bryleva, 2019; Ainoutdinova & Ainoutdinova, 2019; Romashov et al., 2017); recognition of the fact of latent delinquency is associated with referring to a marginal group of persons involved in illegal relations, however, for a number of reasons, not brought to legal responsibility for the crimes committed (Popova, 2000; Feofanov, 1992; Romashov & Bryleva, 2019; Ainoutdinova & Ainoutdinova, 2019); presence of uncertainty, gaps and defects of law, “illegal” norms and acts, etc. (Billson, 1988; Bradatan & Craiutu, 2012; Khazieva et al., 2019; Davletgildeev & Klimovskaya, 2019); mismatch of goals and objectives, methods, and mechanisms of legislative regulations at the international, federal and regional levels, etc. (Popova, 2000; Khazieva et al., 2019; Feofanov, 1992; Romashov & Bryleva, 2019).

Understanding of marginality in modern Russia is pluralistic in nature, since: a) it is not reduced only to the “inherited paradigm” of marginalism (as a stable socially negative phenomenon) of the Soviet period (Popova, 2000); b) it is carried out within the framework of the dualistic paradigm of the worldview, according to which the normativity and deviance of law are correlated as its truth and falsity (Stepanenko, 2014); c) the state as an object of marginalization is a combination of three semantic images: a country / territory, a people / nation, an apparatus of public power / state bureaucracy, which in synergy form ideas about a particular state, its reputation and authority (Sainakov, 2013; Khazieva *et al.*, 2019); d) the state-country’s comprehension of marginality boils down to recognition of possibility to change the results of the “division of the world” that emerged as a result of World War II (Bradatan and Craiutu, 2012; Stepanenko, 2014); e) in relation to the state-as-people, the problem of marginalization is actualized in connection with legal and illegal migration; though, in reality, migrants act as bearers of a legal status that is not much different

from that of any foreigners (Romashov and Bryleva, 2019; Romashov *et al.*, 2017; Davletgildeev and Klimovskaya, 2019).

Even the citizens of the European Economic Community (EEC) member states (that are formally building a single economic space in this country) are subject to a special legal regime based on a special restrictive approach to foreign workers, which is not recognized as discrimination though contributes to marginalization (Davletgildeev and Klimovskaya, 2019).

Speaking about the relationship between law and marginality, we should focus on two aspects. Firstly, the law acts as a public (generally valid and generally binding) regulatory and protective system, the norms of which serve as evaluative means, with the help of which the subjects endowed with the appropriate competencies carry out the legal qualification of subjective acts for their recognition as legitimate or unlawful and find out the corresponding motivational basis for decision making (Popova, 2000; Sainakov, 2013; Stepanenko, 2014; Feofanov, 1992; Del Pilar and Udasco, 2004).

Secondly, the perception of law as the most significant and effective instrument of regulatory and protective activity means that with the help of legal means, methods and techniques, prevention of marginality could be carried out effectively, as well as the consistent transition of legal marginality into legal normativity (Sainakov, 2013; Stepanenko, 2014; Romashov and Bryleva, 2019; Ainoutdinova and Ainoutdinova, 2019).

Conclusions

Qualification of an act (action and inaction) as marginal is carried out based on the presumption of guilt – a reasonable assumption about the possibility of committing an unlawful act by any subject. Marginal behaviour can be objectively illegal in nature but does not entail application of measures of legal responsibility, for example, due to age, insanity, insignificance, peculiarities of regional lawmaking in the field of administrative, family, labour and other branches of law, etc. The use of legal means and techniques for countering marginality is based on the hypothesis of legal conscientiousness, according to which any person is initially focused on conscientious, socially active and useful, and therefore lawful behaviour established by law. This approach can be formed, strengthened, or restored through the implementation of educational, ideological, and other functions of law.

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