The Development of Philosophical and Legal Ideas about Legal Laws in the Teachings of German Classical Philosophy (Kant, Fichte, Hegel)

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Abstract

This article presents an analysis of the philosophical and legal doctrines of representatives of the German classical philosophy (I. Kant, I. G. Fichte, G. V. F. Hegel) on the essence and content of legal laws. In particular, the conclusions drawn by Kant about the moral law or categorical imperative, which became the basis for the organization of the rule of law state headed by the principle of legal law, are presented. The imperative of mutual restriction of citizens' freedoms as a condition for ensuring the free existence of people, proposed by Kant and Fichte. Hegel's ideas about the difference between the essence and phenomenon in law, which became the mainи one for substantiating the principle of legal law as a phenomenon that distinguishes law from positive law. The main purpose of the study is (a) an appeal to the philosophical and legal views and theories (ideas and principles) of the German classical philosophers in order to identify the fundamental (essential) laws of the development of their content and (b) an attempt to further generate (develop) a single, systemic and fundamental basis. The analysis of philosophical and legal doctrines has shown that the authors' ideas about legal laws can be presented as an expression of reasonable selection, on the basis of which a rational search and construction of social interaction was carried out by deducting and reducing non-viable, destructive for social existence and development models of social behavior. Most importantly, reasonable selection has demonstrated that the only effective mechanism and brainchild of the culture of all mankind, capable of ensuring a safe existence and development of a person, is law and its understanding, based on the imperative of preserving human nature and implemented in the context of state regulation of public relations.

Keywords: legal law, Kant, Hegel, Fichte, legal understanding, natural law, positive law, rational selection.

1. INTRODUCTION

To date, it is difficult to present any original conceptual scientific hypotheses about the rule of law, a democratic state, legal laws, equality and freedom, which in one way or another would not affect and or interpret the philosophical and legal teachings of such great thinkers of Modern times as I. Kant, I. G. Fichte, G. V. F. Hegel. In fact, not being professional lawyers, representatives of German classical philosophy made a significant contribution to the research of the fundamental field of legal science- legal understanding, namely, ontologically, epistemologically and axiologically foundations of law.

It would seem, that the formulated conclusions of the above-mentioned Master of Philosophy have already been studied from all sides and in due measure, the corresponding doctrinal, and utilitarian conclusions have been drawn, and a return to their provisions cannot bring anything fundamentally new, at least for legal science. However, the present study seeks to address not so much the general or particular problems of the development and development of legal philosophy and theory, but rather the doctrinal and legal views and theories (ideas and principles) German legal law philosophers to identify fundamental (substantive) regularities in the development of their content and to further generate (develop) a single, systemic and fundamental basis.

2. METHODS

The study methodology is expressed by historical, sociological, systematic, structural-logical, descriptive, as well as dialectical methods of scientific knowledge, collection and analysis of scientific and practical material.

3. RESULTS AND DISCUSSION

As we begin our analysis, it is important to stress that, of course, the Western European teachings of the Enlightenment of the Rule of Law, as well as the basic ideas and principles of a State governed by the rule of law, were directly associated with the name of the Great Immanuel Kant (1724-1804). Unfortunately, it was Kant who made the first attempts to critically analyze and revise the philosophical and legal ideas of previous centuries (reviewers described the philosopher as "a man who threatens the German academies with a terrible revolution") (Fischer, 1898), including the position on the secularization of morality (Kant, 1994) and the rethinking of hypotheses about natural law (Maltsev, 1999).

In his methodology of cognition, Kant gives preference to reason, as opposed to experience (empiricism), since, in his opinion, the knowledge, obtained from experience is superficial, incomplete, and тonly reason, as an a priori knowledge, can comprehend the essence and interior of any object.

The depth and scope of Kant's critical philosophizing also had a fundamental impact on the rational explanation of the nature of law and its role for the practice of legislating. The subject of Kant's reasoning – the pure concept of law, that is, the study of what should be a right, regardless of time and space law itself (Kozlikhin et al., 2007). Net (metaphysical) the doctrine of right, Kant is a criterion for "the future of the legislator" (Kant, 1988) in determining the reasonable character from the statutory (positive) law.

Kant’s man is presented as an entity possessing a moral consciousness, which in public (external) relations must be guided by "moral imperative" (moral law). Thus, in his work entitled "Metaphysics of Morals" (1797), Kant, answering the question of what is right, indicates the existence of a universal criterion on the basis of which it would be possible to distinguish between right and wrong. In his opinion, this universal criterion cannot be known only on the basis of knowledge of what the laws say or have said in this or that place, that is, only on the basis of empirical teaching about law. For a more convincing explanation of the doctrine of law Kant referred to it as "a head, but without a brain" (Kant, Metaphysics of morals). Whereas the basis for positive law, that is, "pure (metaphysical) teaching about law", according to Kant, must be sought in the human mind (that is, in philosophy). Consequently, the source of law in Kant was the human mind, which Kant called the "brain of the head".

Concept of the “categorical imperative" of Kant introduced into legal theory and practice a fundamental legal principle based on the protection of the dignity of the individual and moral consciousness: "Act in such a way that you always treat humanity, both in your own person and in the person of everyone else, as an end, and never treat it only as a means" (Kant). Based on this maxim, it followed that a person is quite capable of becoming "master of himself", i.e., according to Kant, a person does not need any external guardianship. However, according to Kant's logic, human nature is designed in such a way that not everyone uses their freedom only to implement the maxim of the "categorical imperative", but also for other arbitrary and sometimes в negative purposes.

The philosopher derived his understanding of law from practical, external relations between people, which, based on a logical chain of hypotheses, formed the following concept: "law, is a set of conditions under which the arbitrariness of one person is compatible with the arbitrariness of another from the point of view of the universal law of freedom" (Kant, 2019).
Kant developed a universal principle of law (legal law, categorical imperative), which stated: "act outwardly so that the free expression of your arbitrariness is compatible with the freedom of everyone, in accordance with universal law" (https://www.civisbook.ru). At the same time, the philosopher noted that in the case "when a certain manifestation of freedom itself turns out to be an obstacle to freedom", proceeding from the legal law, then it becomes necessary to apply coercion (the law of mutual coercion) to the one who damages this right, that is, hinders freedom.

Kant sees the causes and purpose of the emergence of law in getting out of the natural (non-legal) state, where everyone acts according to their own understanding, there is violence, anger and mutual hostility, that is, unbridled freedom. To do this, it is necessary to enter a civil state, "in which everyone will be determined by law and given by a sufficiently strong power what should be recognized as their own" (https://www.civisbook.ru), i.e., in a state, where there is a right. At the same time, the difference between the natural and civil state, according to Kant, consists only in the fact that the civil state "specifies the conditions under which laws can be

enforced (in accordance with distributive justice)" (https://www.civisbook.ru). Hence the fundamental definition of the state: it is an association of many people subject to legal laws (Oxamytny, 2021), namely, subject to the constitution and as a documenty, that allowsy society to "use what is based on law" (Kant, 1992). Regarding the methodology of the legal law, the philosopher noted that if a government body or ruler passes laws that do not comply with the "law of equality in the distribution of state duties", then in this case citizens have the right only to file a complaint (although Kant does not explain to whom specifically), but not how to resist. From this it follows that Kant stands for official, legal resistance.

Kant distinguished the natural (or quotient) field as based on a priori principles and positive (statutory) as based on the will of the legislator. At the same time, Kant's natural law was divided into innate (internal) and acquired, where natural law was understood as something that belongs by virtue of nature, i.e., independently of legal institutions (acts), and acquired is something that belongs by virtue of some institution (act). By natural right is meant the freedom given to every human being by virtue of his or her nature. This freedom is the only original right (https://www.civisbook.ru). When Kant speaks of each person, he means inherent equality (independence), which means that "others cannot oblige anyone to do more than what he ccan oblige them to do on his part." In addition, according to the philosopher, other ethical principles follow from freedom, such as: decency of a person; the right to do something in relation to others that does not in itself reduce what belongs to them; the right to share with others only their thoughts, tell or promise something to others (https://www.civisbook.ru). Said right to freedom of expression Kant calls it a higher concept of law and points out that in the case "when there is a dispute about the acquired right..., a person could refer to his innate right of freedom". At the same time, the philosopher emphasizes that since everyone has innate rights, since there are "two extremely unequal members", then, accordingly, "the division of the doctrine of law can only relate to the external my and thine", namely, to positive law. Positive law Kant denotes as a "strict law", containing nothing ethical or "external law", i.e., the object of which is only the external acts of people.

Thus, it is important to note that Kant laid down reason and distributive justice in the content of the legal law. In addition, speaking generally about the "categorical imperative" it is important to note that Kant's imperative is the basis of all his philosophical and legal system of law and the state, i.e., according to the philosopher's teachings, such social institutions as the state, power and law are called into existence in order to implement the "categorical imperative".

Another representative of German classical philosophy, as well as a proponent of subjective idealism, is the philosopher Johann Gottlieb **Fichte** (1762-1814–). According to Fichte's philosophy of subjective idealism, the material world with its peculiarities and order is an expression of the freedom of the human spirit (human consciousness).

Based on the natural law doctrine, Fichte asks the following question: "How is the community of free beings as such possible?" (Fichte, 1908-1911). It followed that Fichte's philosophy of law was based on the realization of human freedom, as well as on the study of the necessary conditions for the joint existence of people in society. It is important to note that in his views Fichte always adhered to a practice-oriented approach (Fichte, 1935). Following I. Kant, Fichte noted that the achievement of freedom is possible only in the legal state (on the basis of legal laws), therefore, no natural state can ensure the free existence of a person. Law, according to Fichtee, – "the concept of a relation between rational beings. It exists only under the condition that such beings are thought of in relation to each other...", where conditions were understood as "voluntary mutual restriction of freedom". Fichte derived this definition from dialectical methodology, which he explained as follows: "Reasonable (free) the creature can't put myself as such, if it has not encouraged to the free action..., mean for the identity of the person (i.e., "I") need "the impact of something perceived" need "base" (ton is "beside himself" or "not me") serving as the "I" constraint. This basis, i.e., "Outside of itself", must be another "reasonable subject" (Fichte, 1908-1911). At the same time, Fichte a priori proposes to understand a "reasonable subject" as a free, morally autonomous and reasonable person as "I", that is, like and equal to myself. Fichte notes: "Until people become wiser and fairer, all their efforts to become happier are in vain" (Fischer, 1898; Kant, 1994; Maltsev, 1999). Thus, the basis of law was understood as the existence of mutual restrictions on the freedom of rational beings in public relations.

Speaking of "rational beings", Fichte insists that law is based on the "pure form of reason" and that no external influence or factors influence its formation. The right is formed not on the basis of individual arbitrariness, but on the basis, as it was noted, of mutual recognition of each member of society "The goal for each is others, and he himself is never... " (Fichte, 1798). The expression of such recognition, that is, the recognition of the freedom of rational beings, should not be a moral law, but an established (legal) law, the observance and protection of which, as Fichte notes, requires the presence of compulsion. At the same time, the operation of legislation and

the possibility of coercion can be ensured only on the basis of "collective will" and within the framework of the Civil Hostel Agreement, that is, within the framework of the state organization of society. It follows that in Fichte the State is a means of realizing the right. By "collective will" Fichte means the absolute right of the people to any organization of the state. Responsible only to God – "nation is, in fact and by right, the supreme authority," – the philosopher reasoned in the spirit of natural law. In addition, Fichte proposedл to create a special body (ephorate) to oversee the executive power (Fischer, 1898; Kant, 1994; Maltsev, 1999; Kozlikhin, & Polyakov, 2007; Kant, 1988), which is directly elected by the people. It was assumed that this body would act as a mediator between the people and the Government and would also have the right to suspend the Government's activities and summon the people for trial.

Fichte inconsistently adhered to the position of separation of law and morality, which was reflected both in terms of content, semantic foundations, and in terms of their origin. In his early works (before 1794), Fichte referred to law as the sphere of morality, whereas in subsequent works (Fichte, 1908-1911), he pointed to law as the regulator that determines the freedom of external relations between people (that is, as the initial stage of the practical "I")., considers law as a subject of research for the theory of law. That is science, "which is supposed to be a special, independent of the other, science" (Fichte, 1908-1911) with a subject of research for morality (the moral law), is developing the higher level hands-on "me" and serving controller "inner" freedom of the person, ton is the identity and the dictates of conscience. This position, according to some authors (Fichte, 1908-1911), found its justification in the fact that Fichte's position of that period was of a state (political) nature and was based on the idea of "the separation of the church as an institution of moral education and the state as an institution of law". Whereas Fichte's position in relation to lawy was based on the establishment of a moral order in the state through law: "It is only needed as an artificial institution until a moral order is established in society" (Chicherin, 1877). In other words, Fichte's approach to law is only a preliminary, a priori approach to the establishment of the moral principle, when the rule of which is achieved, "legal definitions become superfluous, and law is thereby abolished" (Chicherin, 1877). Fichte also made a similar comparison in relation to the characteristics of the state, which he did not immediately formulate consistently. In his opinion, the rule of law state, in itsefinal version, should appear as "a moral community, the bearer of the highest values of the spiritual world" (Gaidenko, 1990).

Thus, the basis of Fichte's legal law was law in the natural-legal interpretation, the essence of which was to ensure the free existence of people through mutualro restriction of their freedoms. Fichte’s right is, first of all, the absolute right of the people to any organization of the state. In order to ensure mutual restrictions on the freedom of the people, as well as on the rights of the people, the latter, according to Fichte, must form special supervisory bodies. This showed that for Fichte the problema of achieving legal legality was relevant.

The teachings of Georg Wilhelm Friedrich **Hegel** (1770-1831) were of particular importance for the philosophical and legal science, including its fundamental part related to the essence of law. Unlike their fellow philosophers Kant and Fichte, in whom the unity of the will as a combination of subjective wills is achieved only on the basis of mutual restriction and coercion (the removal of these two opposites) (Hegel G W. F. Gesammelte Werke. Bd. 1), Hegel offers his vision of the social order, namely, the idea of absolute morality – the spirit of the people.

In Hegel's so-called "philosophy of the spirit," various stages of the spirit are considered. In addition to the objective spirit as a stage of objectification (external form, presence) of forms of freedom through law and the state, the Hegelian philosophy of the spirit also sees the subjectivity of the spirit (anthropology, phenomenology and psychology) and the absolutization of the spirit (art, religion and philosophy) as parts of the system of dialectical development.

Despite the high mean the cost of his philosophy for the awareness of being and thinking, to find the "Absolute idea", let’s focus specifically on those aspects of Hegel's philosophy, which, in our opinion, directly contain explanations of essence and value of the legal law, has had an important influence on recognition of the "rights as the Kingdom of realized freedom" (Hegel, 1990).

In his fundamental work entitled " Philosophy of Law "(182,00) Hegel outlined his understanding of the philosophical science of law. From the position of the absolute spirit in work on a par with morality, dialectically (that is, through the ascent of abstract forms to concrete ones) the author reveals the understanding of law as an "objective spirit".

In general, in Hegel's philosophy, law appears in several variations. First, Hegel's philosophical science of law is based *on the idea* of law, that is, freedom. Thus, freedom and law are understood in the same sense. Second, a

right is "a certain level and form of freedom" (a special right) (Hegel, 1990). In this case, it is also a child of rights, which is represented as a system hierarchyя of "special rights" (from abstract forms to concrete ones), which Hegel refers to as "the realm of realized freedom" (Hegel, 1990). At the base (at the top) of the hierarchy of "special rights" is the law of the state. Further down the stage, the concept of law is specified in order to deepen the idea of freedom and its establishment. He explains this as follows: "The subsequent ' special right', which dialectically 'removes' the previous (more abstract) 'special right', is its foundation and truth. A more concrete "special right" is more primary than an abstract one " (Hegel, 1990). Third, the law is the law (positive law)"one of the "special rights" (Hegel, 1990) is that which exists in its objective existence and acts as regulator of human relations.

Thus, the subject of Hegel's philosophy of law is not the analysis and drafting of current legislation, which, according to the philosopher, deals only with contradictions and is a subject for jurisprudence, but the idea – its concept and implementation (Hegel, 1990), to is "the comprehension of thoughts underlying law" (Fulda, 1968), which should be understood *as freedom as the basic definition of the will*.

Subjective spirit, according to Hegel's system, is a rational spirit based on free will. At the same time, the subjective spirit is free "in itself, but not for itself", i.e., it is free in relation to itself, and not in relation to another. In order, to be free and in relation to the other, the subjective spirit must rise above itself and thereby become objectified, that is, acquire the form of an existing being, become official, legal. This transformation is the expression of Hegel's dialectic-the movement from the abstract to the concrete concept of law. On this basis, the subjective spirit as the content of free will becomes real and factual, namely, the objectification of law as the original form of manifestation of the free spirit.

Abstract law (issues of property, contract, and untruth) is considered to be the main level of development of the concept of law in Hegel's philosophy., morality (intent and guilt, intent and good, goodness and conscience) and morality (family, civil society and state). So, free will is the concept according to Hegel, the essence of the right and the so-called *"abstract right*" originally appears as the right of ownership and directed to external things; the right to contract as an appeal to another, freedom, tis about as opposed to separate entities; the right to punishment as an appeal to the materialist dialectic, which is based on formulated by Hegel's "phenomenology of spirit" (1807) third law "the negation of the negation" [2 of 3]. It is the certainty of punishment is the basis for the relief of falsehood, deception, coercion and means of production in the "spirit" the good and conscience (teachings on *morality*). Teat the "subject" links internal and similar forms of existence and is conscious of himself as one. And otherwise speaking, specified in morality and takes the form of the family (Weber, 1986), civil society and the state. This is how the dialectical method, based on the expansion of abstract forms to concrete ones, unfolds into a system.

In terms of the content of laws (positive law) and legal legality, Hegel did not rule out the inconsistency of official legislation with the requirements of natural law (also called "philosophical" law) using the example of legislation on slavery and the code on the status of Negroes. He pointed out the uncompromising advantage of the latter: "... the former refers to the latter as institutions to pandects" (Hegel, 1990). "The fact that violence and tyranny can be an element of positive law is for him something accidental and does not affect its nature" (Hegel, 1990). In addition, it is important to emphasize that Hegel's natural law approach is somewhat original, not characteristic of the classical doctrine of natural law, based on the difference between law (natural law) and law (positive law). On the contrary, Hegel insisted on the inadmissibility of their juxtaposition. In the Hegel's understanding of rights and laws, it is "only an internal distinction between definitions of the same concept of law at different stages of its concretization" (Hegel, 1990). That is Hegel allowed for the possibility of a discrepancy between positive law, but not with natural law, but as a result of distorted legislation. According to Hegel, in order for legislation to be legal and just, it must take into account regularity. The philosopher writes: "what is natural is the source of knowledge of what is right, or, strictly speaking, what is right" (Hegel, 1990).
In addition, natural law is understood by Hegel in reality, as an idea based on the historical development of a free person, who "creates his own world of freedom, law and the state and himself as a free entity" (Nersesyants, 1983), and not because of his natural nature.

According to Hegel's theory, it is possible to realize the idea of freedom only in developed countries with a constitutional monarchy, where there is a division of the branches of power between the power of the sovereign, legislative and governmental.

Thus, the legal law in the understanding of Hegel, that, in the first place, the degree of "objective spirit", his objectification; secondly, it is – the law, which is based on freedom, which develops from an idea to its objective

existence; thirdly, the content of the legal law must take into account the natural living conditions of the people, the national character, the stage of its historical development.

4. SUMMARY

To conclude the analysis, without exaggeration, it can be said that the philosophy of the law of Kant, Fichte and Hegel played an unprecedented, fundamental role in the knowledge of the essence of the law and the development of the theory of the law. Despite the height of their metaphysics and conclusions, the teachings of philosophers contained certain, practice-oriented conclusions and proposals aimed at eliminating wars from the life of society, establishing universal law and order (Gulyga, 2001). Thus, for example, certain conclusions made by Kant about the moral law, or the categorical imperative became the basis for the organization of the rule of law state, headed by the principle of legal law, and found their direct implementation in the modern basic laws of states. The imperative of mutual restriction of citizens' freedoms as a condition for ensuring the free existence of people, proposed by Kant and Fichte, is also today a fundamental starting point for jurisprudence, legal regulation and, in general, the modern world order. Not to mention the fact that Hegel's distinction between essence and phenomenon in law became the main one for substantiating the principle of legal law as a phenomenon that distinguishes law from positive law.

In addition, the methodology presented by the philosophers allowed to present a complete and meaningful view of the ontology and axiology of legal law in a new way, focusing on the principles and values of the anti-theological and anti-feudal worldview and, most importantly, referring to the rationalistic approach in the study of the theory of natural law, social contract, equality and freedom.

5. CONCLUSIONS

In our view, the philosophical and legal conceptions of legal laws considered in terms of their fundamental and social significance are clearly expressions of reasonable selection, the rational search for and construction of social interaction through the appropriation and reduction of non-viable, destructive patterns of social existence and development.
Overall, the analysis identified on the basis of fundamental laws of the development of ideas about the nature and content of the legal laws, and generalizations made under earlier studies (Gilmullin, 2021) lead to the conclusion that: the effective mechanism and product of the culture of all mankind, capable of ensuring human security and development, is the right and its understanding, It is based on the imperative of preserving human nature and is implemented in the context of State regulation of social relations.

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