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THE ORIGINS OF RUSSIAN LIBERAL JURISPRUDENCE: B.A. KISTYAKOVSKY'S PHILOSOPHY AND SOCIOLOGY OF LAW

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ABSTRACT

The theories of Russian liberalism were a search for the limits of what is possible in the evolutionary development of the state and law. They proposed various combinations and configurations of models of the transformation of statehood, the concept of revived natural law, constitutionalism, law and freedom, etc., which were the theoretical basis of Russian liberal jurisprudence. The representatives of liberalism were based on the ideas of neo-Kantianism, neolibianism, neonegalianism and other currents of Western philosophy, looking for political and legal concepts that could predict and substantiate the future development of the Russian state and law. One of the representatives of the new liberal philosophy was B.A. Kistyakovsky, the importance of his research for modern legal science, practice and the formation of Russian liberal jurisprudence is presented.

Disciplinary: Multidisciplinary (Philosophy, Sociology and Modernization, Law, Political Sciences, History).

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1. INTRODUCTION

The reforms carried out in the Russian Empire in the second half of the 19th century did not lead to stability in a heated political struggle of ideas and parties about the future of the state and law, which became the subject of discussions, which were mainly conformist in nature. The conservative intelligentsia, relying on the Russian national idea, proposed an audit of the foundations of the revolutionary worldview, which, in their opinion, boiled down to seizing state power and the national treasure. They did not consider their philosophical opponents to be scientists, but exclusively publicists. The representatives of liberalism demanded the modernization of public authority, administrative structures, guaranteeing political rights and freedoms, which was widely recognized in the public mind and reflected the interests of those who sought to rebuild the

state and society on the basis of bourgeois market relations. In parallel with them there was anarchism, advocating self-government and rejection of the state; populism, trying to raise the peasantry to the revolution and others. Russian philosophers, representatives of a religious school, advocated a spiritual revolution in the minds of people. Hopes were also pinned on the *raznochintsy*, but, as it turned out, not one of these theories was ready for a revolutionary mission.

One of the representatives of the new liberal philosophy was Bogdan Aleksandrovich Kistyakovsky (1868-1920). He completed his university education in 1898 with a defense of his dissertation on the subject of “Society and Individuality,” which was published in Berlin and was highly praised by the scientific community. It analyzed the concepts of sociology and psychology used in the philosophical sciences of that time and concluded that the idealistic constructions of the sociological theory of Slavophilism and Narodism were sterile. Over the years, he studied law at the University of Heidelberg, repeatedly went abroad to study the concepts of legalization conducted by scientific schools at renowned universities in Europe.

His further activities in St. Petersburg, Kiev and Moscow were connected with educational, scientific work and the publication of its results in left-wing journals. In 1919, B.A. Kistyakovsky was elected a full member of the Ukrainian Academy of Sciences and, together with its first president V.I. Vernadsky, made a trip to Rostov-on-Don to General A.I. Denikin in order to protect the interests of science and the academy. During this trip in 1920, he fell ill and died. Despite the fact that the work of Bogdan Alexandrovich is a century away from the present, his works can be considered the most noticeable contribution to the formation of Russian philosophy and sociology of law, based on the methodology of social sciences and the general theory of law.

2. METHOD

At the beginning of his scientific activity, B. A. Kistyakovsky was one of the followers of legal Marxism, uniting a number of brilliant philosophers and publicists, such as P. B. Struve, N.A. Berdyaev, S.N. Bulgakov, L.S. Frank, V.V. Rozanov and others. In parallel with legal Marxism, B.A. Kistyakovsky was interested in the ideas of neo-Kantianism by G. Simmel, W. Windelband, who argued that philosophy is “... a critical science of universally binding values” (Windelband, 1904). As a normative doctrine, philosophy is based on value judgments and knowledge of what is due, that is, it reflects social problems, which in principle can be reduced to ethical ones. In his research, B.A. Kistyakovsky developed the ideas of liberal democracy, considering them a creative continuation of Marxism (Kistyakovsky, 1998), from which he gradually departs and comes to philosophical idealism. He is interested in questions of the essence of law, legal relations, legal understanding, and liberation movements of the beginning of the XX century. As a result, a peculiar synthesis of the advanced ideas of neo-Kantian methodology and sociology took place in his work, which made it possible to use them in the process of analyzing the possibilities of preventing revolution through the formation of legal awareness and legal culture. The field of law becomes the object of his work; it revealed his ability to generate ideas that were controversially perceived by contemporaries, making them an object of discussion.

3. RESULT AND DISCUSSION

3.1 LIBERALISM OF B.A. KISTYAKOVSKY AS A MODEL FOR REFORMING RUSSIAN STATEHOOD OF THE LATE XIX - EARLY XX CENTURIES

Most of the scientists, politicians and public figures of the Russian Empire in the late XIX - early XX centuries agreed that the constitution, as the main law of the state, should take into account the interests of all segments of the population. But the surviving survivals of feudalism in the form of autocratic rule, social division of the society, privileges of the nobility, state control of the economy, etc., did not allow the bourgeoisie, intelligentsia and other sections of the population to fully participate in the political and economic life of the country.

In the context of the pre-revolutionary situation, liberal ideology, Russian philosophers and publicists, opposed the modern state and law, but had no true idea of their future. This gap was filled with love for the people and blind faith in his special mission. The assumption of the leading role of the working class in the revolution met with objection and distrust in the scientific community and society. M.A. Bakunin wrote that “that beggarly proletariat, about which Marx and Engels speak with deep contempt and in vain, because in it and only in it, and not in the bourgeois layer of the working mass, lies the whole mind and all the strength of the future social Revolution ” (Bakunin, 1989). Any revolution is a socially significant event, but its uniqueness is not absolute. For example, in the 90s. XX century socialism in the USSR was dismantled by the same forces that in 1917 were the driving force of the revolution. According to the anarchists, wage laborers, due to the instability of their socio-economic and legal situation, are ready to quickly respond to slogans calling for the destruction of the existing rule of law. But spontaneous riots, expropriation of property, etc. are not a social revolution and cannot change any social relations.

The Western European model of reforming public relations in the form of Protestant values of bourgeois society was not popular because of its opposition to Orthodox and popular values containing ethical maximalism. The Russian people’s negative attitude to power and law is not surprising if we recall that for centuries its interests were not taken into account and not protected by them. The people did not believe in power; they considered it unjust and hypocritical. If you draw a parallel, the modern legal system contains many legal norms aimed at combating corruption and other antisocial phenomena, but practice shows that these efforts are inadequate to the results.

The theories of Russian liberalism can be seen as an experiment, a search for the limits of what is possible in the evolutionary development of the state and law. They proposed various combinations and configurations of models of the transformation of statehood, which were variations on the theme of developing imperialism, which tried to hide the vestiges of capitalism associated with the appropriation of the surplus product and the exploitation of man by man. Representatives of liberal thought were based on the ideas of neo-Kantianism, neolibianism, neo-negaglianism and other currents of Western philosophy, looking for political and legal concepts that could predict and justify the future development of the Russian state and law.

Bogdan Alexandrovich perceived the Russian revolution not as a social phenomenon, but as a spiritual one, since in parallel with the breaking of the material (economic) foundations of society, there was a process of understanding its moral content from opposite positions. Unlike the Marxist theory of historical materialism and classical economics, ethical socialism justified moral and

humanistic principles as an addition to the theory of scientific socialism. Russian philosophical idealism paid more attention to evolution than revolution at a time when its political and legal ideas and slogans suppressed other points of view. The achievements of liberal philosophy were recognized by many scholars and politicians who considered them an alternative to revolution and class struggle, as they justified the evolutionary nature of the development of social relations, the preservation of private property and a market economy. Formulated by B.A. Kistyakovsky's ideas about the multivariate nature of social development did not abolish historical necessity, but allowed alternative options within its framework. He did not see a contradiction in the fact that revolution and anti-revolution are the result of a single historical process and can be evaluated from different points of view. Discussions about the essence of the revolution led to its understanding as a historically necessary form of transformation of social relations.

Public opinion gradually began to trust science more than ideological constructions that could never be justified by history and exist because of people's credulity or their unwillingness to be responsible for their choice. After the revolution of 1905, the process of state-legal reforms began in Russia, actualizing the problems associated with the transformation of statehood. At this time, B.A. Kistyakovsky moves to the position of constitutionalism, exploring the possibility of establishing a constitutional monarchy in Russia. A. Zimin writes that “Kistyakovsky took the manifesto on October 17, 1905 as a full-fledged Constitution: the future constitutional order in Russia immediately became the object of his scientific interests, which prompted him to turn to understanding the “metaphysical” problems of state law and the practical issues of building a representative regime” (Zimin, 2000). The reforms required a scientific analysis of the forms of representative government, legal mechanisms for delimiting the powers of the branches of government, the essence of a system of checks and balances, which was reflected in a number of his articles (Kistyakovsky, 1998).

3.2 THE RULE OF LAW AND LEGAL CULTURE IN THE STUDY OF B.A. KISTYAKOVSKY

A concretization of philosophical views is contained in the work “In Defense of Law”, in which he defines law as a socio-psychological and normative phenomenon, and the state as a form of legal organization of society with independence. Philosophical idealism leads B.A. Kistyakovsky to the idea of ethical validity of law, giving the opportunity to use it in state and cultural activities. The idea of cultural determinism of the entire social sphere, which, although it was a secondary product of his creative activity, made it possible to include Bogdan Aleksandrovich in a number of theorists who promoted it. As a Eurocentric, he transfers the principles of a European worldview into the legal practice and legal consciousness of non-European peoples, which made it possible to justify the essence of international law in the future.

He considers law as the reason for the emergence of the state, while real states did not arise as a result of law, but because of socio-economic conditions. In this, Kistyakovsky does not contradict the Marxist philosophy of law, which believes that the state is a product of historical development. He believed that the law, which is formed in the bowels of the formations, promotes state building, being both the goal and, in this sense, the “formal cause” of the state. Law becomes the real force of the organization of the state, that is, the political, social, economic and cultural life of society. Thus, Kistyakovsky concludes that law is the basis of the modern state, linking with its modernization the

reform of the modern Russian empire.

The rule of law, in his opinion, is the highest form of political organization of society that mankind has developed, since power loses its initial violent character in it. From his point of view, the state “generally” does not exist, but there are separate ones that have their own history, economy, politics, and culture. The functions, mission, features of the institution of the state are recognized by the theory of state and law on the basis of the comparative method. The bourgeois state, having become the basis of a new paradigm of social development, put forward such values as “freedom, equality and fraternity”, enshrining them in constitutional law as the rights and freedoms of man and citizen, which raised social relations to a higher level of development. Recognition of them as the highest value, observance and protection has become the norm for a democratic state, which materialized the ideas of Russian social liberalism.

Using the historical experience of developed countries to analyze the future of the Russian state, Kistyakovsky concludes that the rule of law is a natural result of the development of European statehood. A police state, driven over time by internal causes and contradictions, is able to become legal and democratic in the reform process. Contrasting the progressive nature of the rule of law of an absolute monarchy, he theoretically substantiates the place that Russia can occupy in the global socio-political and legal spaces.

Kistyakovsky believed that Russian legal awareness and legal culture are significantly different from European ones. He wrote that “the dullness of the legal consciousness of the Russian intelligentsia and the lack of interest in legal ideas are the result of our long-standing evil - the absence of any legal order in the everyday life of the Russian people” (Kistyakovsky, 1991). Realizing the difference between the features of Russian culture from European, he considered it a universal standard for future social and cultural progress. This conclusion is equally explained by his commitment to both Marxism and neo-Kantianism, between which, from the point of view of the methodology of science, he did not see a significant difference. Marxism and neo-Kantian idealism equally appealed to the scientific and theoretical arguments in the history of state and law. Philosophical idealism in his works was specifically interpreted and used as a methodological basis for understanding the essence of contemporary ethical socialism, which implies the fact of evaluation, that is, the judgment of truth and lies, good and evil, beautiful and ugly and its consequences.

4. CONCLUSION

Distinguishing the sciences of nature and society, man and his spiritual world (culture), focused on value standards, B.A. Kistyakovsky comes to the idea of human freedom in general and his personality in particular. As a supporter of philosophical idealism, he defines human nature not as a form of material existence, but as a culture understood as a spiritual phenomenon. From the fact of personal autonomy follows the principle of self-worth and equal value of people among themselves, which is reflected in the idea of subjective public rights and contributed over time to the formation of their legal consciousness. Man himself creates ideals for himself, based on autonomy and freedom, seeks their implementation through activity. There is a need in nature, there is no freedom in it, nor justice, understanding of which is an essential feature of human nature, as well as the

ability to create ideals. Therefore, the philosophy that limits metaphysics opens up opportunities for scientific studies of the ethical, aesthetic, social and legal spheres of human existence.

A special place in the methodology of B.A. Kistyakovsky is concerned with the problem of logical obligation, which takes place both in the natural sciences and in the humanities. Norms and categories are inherent in human thinking and are obligatory for him; therefore, logical obligation penetrates both the natural sciences and the humanities, taking the form of specific laws, and determines the attainment of ultimate philosophical knowledge. Thus, Bogdan Aleksandrovich solves the complex problem of methodological substantiation of general laws in the humanitarian sphere and lays the methodological foundations for the development of social and legal sciences for the future. All of the above, makes B.A. Kistyakovsky is interesting for modern researchers and testifies to the importance of his work for the future.

5. AVAILABILITY OF DATA AND MATERIAL

Data used or generated from this study is available upon request to the corresponding author.

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