

ON THE UNDERSTANDING OF THE STATE IN LEGAL THEORY AND DOCTRINE OF THE MODERN AGE

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Abstract: *There is a large number of teachings about the state in legal philosophy and theory; however, even today in the 21st century, the idealistic and realistic view (teaching) about the state stands out. In the first, the essence of the state is contained in a surreal environment, and in this regard, this direction emphasizes what the state should be like. Three views of this direction still dominate today: utopian, natural, legal, and ethical-cultural. In realistic theories, the state is seen as a phenomenon of the real world in which the essence is contained in the experiential world, determined by laws. Considering that legal theories about the state are relatively young because their largest number originated in the 19th and 20th centuries, this contributes to determining the state as a logically regulated unity of legal norms that regulate the behavior of people in society.*

In this paper, the emphasis is placed on presenting the modern point of view of the utopian, natural law, ethical-cultural, sociological, and political point of view on the state today. The modern state is considered as an institution within which modern social theories operate.

Keywords: *State, Theory of the state, Natural law, Utopia, Legal philosophy, Society.*

1. INTRODUCTION

When we discuss the state from a purely legal point of view, then we view the state as a legal phenomenon, i.e. as a legal entity, as a type of society (corporation). What arises as a question in the philosophy of law is: how to distinguish the state from other such societies? Thus, the state as a legal entity is the personification of that community or legal order, which is the connective tissue of that social group. The difference is actually in the normative order that makes up that state-society. There is no absolute law, except for natural law (metaphysical state of justice and law as such), and only different systems of legal norms can be distinguished - English, French, American, etc. - whose spheres of validity are divided in a specific way, as evidenced by international law. The task of the theorists of the philosophy of law is to explain the specific nature of those systems of norms that represent empirical manifestations of positive law, what is the interdependence of these systems of norms, and how they are mutually delimited. The idea of the interconnectedness of the state and rights without supremacy over each other was emphasized by Robert Schmidt, Icilio Vani, Josef Kohler, Josef Binder, and others. (Radbruch, p. 123) With the help of rationalization, law transforms the state into a structured organization, regulates its functioning, makes the process of modifying the activities of the state into the application of the law, and limits its power. Law also influences the state through the process of transforming the state into a legal organization, as evidenced by the fact that the state is a legal organization from the very beginning, as long as it exists. The state is primarily a legal organization because it creates law, but more importantly, the state implements and enforces its sanctions based on law. The state is also a legal organization because it is organized on the basis of legal norms. However, the law at the same time enables the life of the state and this is achieved by clearly defining the type, position, composition, and the scope of work of state bodies, and then by regulating the actions of those same state bodies.

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2. IDEALISTIC THEORIES OF THE STATE

There are a large number of theories and teachings about the state in the philosophy of law, but according to what understanding of the state prevails in each of these teachings, they are divided into idealistic and realistic theories. In idealistic theories, the state is considered as an idea outside the real world. According to this teaching, the essence of the state is contained in an idea that transcends the real, experiential world. Precisely for that reason, idealistic theories are important because they show and indicate, for example, what a state should be like. Within the Idealist theory of the state, we can speak of three subtypes, namely: utopian, natural-law, and ethical-cultural theories.

2.1. Utopian theories of the state

Utopian theories for the subject of study have either an ideal state or an ideal ruler. There is a third subject of interest of idealistic theories, and that is the creation of the state in which the majority of the people have power. However, there is another subject (direction) of study, and that is the abolition of the state as another delusion of humanity. (Mitrović, 2015: 16) However, that utopian theories can be ahead of their time which is proved by Francis Bacon's "New Atlantis" (New Atlantis, published in 1624 in Latin and 1627 in English), which is considered an important ideological and programmatic stimulus, in fact, a real inspiration for the founding of the United States. Authors who speak in favor of utopian-idealist teaching are Plato, then the utopians of the Middle Ages: Thomas More, Thomas Campanella; nineteenth-century socialist-utopians: Mablia, Morelia; anarcho-socialists: Saint-Simon, Proudhon; anarchists: William Godwin, Mikhail Bakunin, Piotr Kropotkin, Max Stirner, Emma Godman, Bertrand Russell, and Noam Chomsky. Of all these authors, Noam Chomsky is still alive today. In his work "Necessary Illusions: Control of Thought in Democratic Societies" he speaks about utopian forms of the state, with a strong reference to the so-called "Failed states."

2.2. Natural-legal theories of the state

Natural-legal theories about the state are an expression of the search for what can be achieved in the creation of a better or best state. Plato was the first to deal with the state in a theoretical way, then Aristotle. Aristotle was the first to develop teaching about the state that is not utopian but purely rationalist and natural law. With such a constellation of the state doctrine, Aristotle became the founder of scientific research of the world, the state, law. After Aristotle comes the period of Hellenistic theorists (Seneca, Polybius, Epicurus, Marcus Aurelius), and after them comes the so-called. "Roman-equal-political thought" (Cicero). With the strengthening of Christianity, which gained strength precisely in the collapse of the Roman Empire, an increasingly strong philosophical-theological thought is being formed, which puts the heavier part on the church-state relation. This relationship opened several questions and dilemmas, among which the most prominent is: Who is the legitimate holder of power in society? This question was answered by Aurelius Augustine in 420 in his work *De Civitate Dei contra Paganos* and Thomas Aquinas in 1274 in his work *Summa Theologiae*. Modern natural-law theories appeared among the Sophists, then the Jews, and also among the Epicureans. The essence of natural-legal theories is that they see the emergence of the state in the conclusion of the Social Contract. From the point of view of the philosophy of law, the most important feature of natural law is that it is predominantly non-experiential and thus objectively a true symbol of perfection, and therefore can serve as a model for positive law. (Lukić, 1995: 396) The state is established based on a natural legal contract, and in that way, its character is also established. One of the important factors of natural law theories is in the fact that they believe

that all people by birth acquire certain natural, innate and inalienable rights, while the state is only an institution for the protection of their rights. Representatives of this theory are Thomas Hobbes, John Locke, Jean-Jacques Rousseau; and today - John Rawls, Otfried Hefe.

2.3. Ethical-cultural theories of the state

The characteristic of ethical-cultural theories is that they investigate the correct or the most correct states, which they designate as “the highest person”, “realized morality and freedom” or as “builders of culture”. In a word, these theories are the result of a rational explanation of the idea of the “smart state” (Immanuel Kant, Johann Gottlieb Fichte, Friedrich Wilhelm, Josef Schelling).

3. REALISTIC THEORIES (TEACHINGS) ABOUT THE STATE

Here, the state is the appearance of the real world, space, and time in which it exists as such. The essence of the state is conceived on the empirical dimension and is determined exclusively by the laws of that dimension. However, this theory deals with the state regardless of whether it exists at this moment or once existed. Therefore, realistic theories are more comprehensive than similar theories that consider a typical state, whose image is derived from reality by distinguishing in real states those features that are common to them. (Mitrović, 2010: 61) Within realistic theories, we can talk about three main types of these theories: legal, sociological, and political.

3.1. Legal theories of the state

Relatively young, considering that most of these theories originated in the 19th and 20th centuries, these are theories that determine the state as a legal institution, i.e. as a synthesis of legal norms that regulate the functioning of the state. These theories primarily deal with the organization and legal regulation of the state. The essential teaching of this doctrine is the law and the legal idea in general. Legal theory connects the details of the state organization with each other, showing how they are all derived from several main ideas - in a diversity of these ideas it finds a certain logical unity. (Jovanović, 2011: 60) Legal theories prevail even today because only the legal understanding of the state as a subject (i.e. legal entity, its uniqueness, continuity and permanence, power, sovereignty, and internal organization) can be explained, including, most importantly, its will, which is lent to it by individuals as its organs. (Mitrović, 2015: 18)

3.2. Sociological theories of the state

Sociological theories are the oldest theories about the state, and as such, they study the relationship between society and the state. These theories view the state as a social phenomenon. There are two dominant variants of explaining the origin of the state. The first, modern, socio-political theory considers it impossible to determine the essential elements (common elements) of ancient, medieval, and modern states because there is a qualitative, not a quantitative difference between them. According to another (older) theory, the state exists as a global, universal phenomenon. (Tadić, 2007:254) There are also those sociological theories that explain the social role by the conflict of interests of social groups (Rudolf von Jering, Rudolf Stamler). Finally, we should mention purely class theories that explain the social role of the state exclusively by class struggle (Hans Kelzen, Karl Marx).

3.3. Political theories about the state

These theories see the state and consider it as a political phenomenon. Their primary goal is to determine who exercises (the one who has) political and state power in society. These theories study whether political power in the state is executed by the economically ruling class, the political ruling class, the elite class, the ruling elite, the ruling class, or the supranational or world elite. The state is a political organization as it is an order that regulates the use of force because it monopolizes the use of force - therefore, the state is a politically organized society since it is a community composed of a forced order, and that forced order is right. (Kelzen, 2010: 283) In his work "Sociologische und der Juristische Staatsbegriff" Kelzen points out that the state is a specific normative entity and not an entity that can be understood based on causal laws. It is the personification of the legal order as a supra-individual will, and the dualism of state and law is only an inadmissible duplication of what can only be the subject of legal and normative knowledge. (Troper, 2014:149) Like the political groups that historically precede it, the state represents the relationship of people's power over people that relies on legitimate violence (i.e., violence that is considered legitimate); for the state to exist, subordinate people must submit to authority claimed by those currently in power. (Weber, 2014: 48)

4. CONCLUSION

The state is, therefore, a legal, political, sociological, cultural creation, and as such it represents a system of organized government that uses force, the apparatus of coercion, for the sake of its survival. Of all the mentioned theories about the state, today in the modern age the most developed and most diverse are natural law, sociological and political theories. The situation seems simpler when the state is discussed from a purely legal point of view, then the state is viewed as a purely legal phenomenon. This thesis is supported by the fact that positive law empirically appears in the form of state legal orders, which are interconnected by the international order, so - there is no absolute law, there are only different systems of legal norms. It is indisputable that in the very interior of the state there are interactions that take place in different relations of its population, as well as that on the other hand there are objective theories of "collective will" or "collective interest". However, if the theory of the state should not exceed what gives us experience or degenerate into metaphysical speculation, then the so-called "collective will" cannot be the consciousness of one being. Under political fiction, we can bring the claim of all citizens "who have the same state of consciousness about one phenomenon". We can also say that the state is a natural organism, so the real goal of organic theory is to ensure the value of the institution of the state as such. The state cannot be identical with any of those actions that can be the subject of a social process (interaction), but all social processes are processes that take place within the state as an institution. The state is the order of human behavior that we call the legal order, the order according to which certain human actions are determined; the state is the idea to which individuals adapt their behavior. Accordingly, modern society uses scientific knowledge obtained from all analyzed theories of the state, because all theoretical approaches that chronologically explained the state still exist and are empirically applicable, which is only a scientific confirmation of the necessity of knowledge and use of legal doctrine from its inception to this day, in order to determine more clearly and precisely the progressiveness of the philosophy of law.

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