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THE RELATIONSHIP BETWEEN LAW AND EQUITY IN V.S. NERSESYANTS' LIBERTARIAN LEGAL THEORY

Abstract. Any comprehensive legal theory, asserting its own place in the history of legal philosophy, should identify a relationship between law and equity and specify its par- ticular approach to the matter. The libertarian legal theory, that was developed by the aca- demician V.S Nersesyants and the basic philosophical approaches towards understanding of law to which it corresponds are quite innovative: the theory highlights the substantial legal quality and principle of law — formal equality in liberty, is expanded as a trinity of equal measure, liberty and equity. The principle of formal equality includes the ontolo- gy, axiology and epistemology of law; it has shaped the evolution of law, determining the very genesis of law and our vision of its future. Within this approach equity is a substantialprinciple of law; it characterizes the process and the results of legal regulation in society by equating people in liberty.

Other theoretically consistent basic philosophical approaches towards understanding of law such as legal positivism and natural law interpret the concept differently: in positi- vism the concept of equity is excluded from the field of law, yet in natural law it is a moral category which is immanent to the legal order and has a significant moral and legal value. Meanwhile, even if one of the existing versions of natural law axiology recognizes the leading place of equity in the system of values, it doesn't consider equity to be a universal principle in law, and therefore, refuses to consider other values as being modifications or aspects equity.

The concept of equity in Nersesyants' theory is considered in a broad legal philo- sophy discourse, that is focused on the relationship between individual freedom and social solidarity. This binary opposition was studied in the context of legal theories of justice, which is related to two major traditions in the European legal culture: the tradition of Classical antiquity that is based on the idea of equality; and Christian tradition that associates fairness with mercy. Thus, for the purposes of comparative analysis it was appropriate to select concepts of justice that were developed by the proponents of neo-liberal economics (M. Friedman, R. Nozick, F. Hayek), communitarianism (M. Sandel,
M. Walzer, A. Macintyre, Ch. Taylor), deliberative democracy (D. Rawls, J. Habermas) and radical democracy (C. Mouffe, E. Laclau).

Libertarian legal philosophy differs significantly from these visions of equity; however, one can see the similarity between Nersesyanz' thoughts and the ideas of the radical democrats, particularly those arguing for the democratic equivalence principle. This principle, which was designed to counter an extremely individualistic interpretation of human rights and a negative concept of freedom, is relevant to the compensatory legal principle in Nersesyants' theory and his views on legal history. According to
V.S. Nersesyants, law is evolving towards the universality of global legal regulation and the legal pluralism, which is connected with the application of the formal equality principle to an increasing number of social groups. The political potential of the above approach is most clearly manifested in Nersesyants'"concept of civilism," which was suggested as a model for the post-soviet social order from which the de-socialization of the so called socialist ownership could arise.

Keywords: equity, law, liberty, equality, legal awareness, the libertarian legal theory,

libertarianism, communitarianism, deliberative democracy, radical democracy, V.S. Nersesyants

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FREEDOM DEFICIT AS A POLITICAL AND LEGAL CHALLENGE

Abstract. Freedom is a phenomenon continuously coupled with an actor — a human being and the right. The right exists where the human freedom (equal legal personality) is recognized and therefore mutual restrictions of freedom are recognized as well. However, along with a "human-centric" interpretation of freedom there are certain approaches that associate freedom not with a human being but rather with supra-individual phenomena such as state, nation, God, Homeland, sovereign etc. The synthesis of these interdependent, although opposite approaches is an urgent issue. We can trace certain models of such synthesis in the history of the Russian legal thought.

Modern Russia is facing the problem of choosing between conservatism and liberalism, whereby this choice is driven by a move either towards imperial civilization or towards building a state based on the rule of law. The problem of such choice can be illustrated, in particular, on the example of creativity of P.I. Novgorodtsev who worked his way from liberalism to radical conservatism denying the basics of the Western European philosophy of law.

The withdrawal of the principle of an independent (free) human personality results in different options of "statecraft" legal consciousness or fascist doctrine, which were translated, for example, into works of G.V.F. Hegel, K. Marx and F. Engels, K. Schmitt. The conservatives (nationalists), fascists and communists (radical socialists) have a common enemy — liberalism, while they are bound by common values and common (at a certain angle) worldview. In this worldview the objects of criticism are the human rights, democracy and free market economy (in other words, values which the present-day Russian constitution is based upon); the whole (state/nation/society/class) prevails over the part (human personality), and violence and non-freedom are the inherent state of a publicly organized social community. Meanwhile, the state is not a machine of violence and not a self-sufficient whole but a system of communicative relationships between free people. One of the principal objectives of legal science is to safeguard the concept of freedom. The proceedings of academician Nersesyants played an outstanding role in the mainstreaming and clearing the meaning of this concept.

The legal freedom can be addressed in three aspects: (1) as a freedom of will, i.e. a freedom to choose one's behavioral option, (2) as existential freedom — a precondition for existence of a person at law and (3) as a condition and means of developing and improving of a human personality and society (external social freedom). The actualization of all these manifestations of freedom is possible in the context of synthetic liberal & conservative ideology, one of the representatives of which was I.A. Il'in. Today these concepts are maintained within the scope of communicative philosophy of law underpinning the self-ownership (autonomy) of a human being, its dignity, responsibility and self-respect, willingness to fulfill oneself outwardly, performance of legal commitments and struggle for one's rights as well as the commitment of the state to contribute to preservation and creative development of personal freedom.

Keywords: law, freedom, the autonomy of the individual, liberal conservatism, hu-

man rights, V.S. Nersesyants' libertarian legal theory, communicative legal philosophy, P.I. Novgorodzev, I.A. Il'in

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THE SEPARATION THESIS OF THE LIBERTARIAN LEGAL THEORY AND THE FOUNDATION OF VALIDITY OF LAW

The article was prepared within the framework of the scientific project No. 18-011-01195 "Validity and Efficacy of Law: Theoretical Models and Strategies of Judicial Argumentation", supported by the Russian Foundation for Basic Research.

Abstract. The libertarian theory of law, as a non–positivist conception of law, defends the separation of morality and law thesis, a thesis that is typically positivistic. The question of the relationship between morality and law is a part of the validity of law problem, which refers to the fundamental issues of legal ontology: the grounds for the validity of law, the role of coercion in law, etc. Different answers to these and other relevant questions cause fundamental distinctions between two traditions of legal thought — natural law and positivistic. The answers that can be obtained within the framework of the libertarian theory are of great interest in connection with the thesis of its synthetic nature.

In the question of the interpretation of the existence of law and the grounds of its validity, the libertarian theory denies the social thesis of legal positivism and stands on the position of realism (in the logical sense of this concept), according to which law in its distinction with statute is an objective ideal entity, existing before positive law, along with it, and appearing in it. The question of correlation between Is and Ought is considered in the libertarian theory in genetic and ontological aspects: if it gives a contradictory answer to the genesis of the essence of law, then in the ontological aspect Ought — the principle of formal equality — certainly determines the sphere of Is, which is formed by positive law and state. The universal principle of formal equality, as specific to the law and distinguishing the law from other normative orders, is the basis of the validity of positive law. At the same time, the analysis of the libertarian theory leads to the conclusion of the identity of law and human rights, and consequently, it is human rights that form the basis of the validity of positive law.

The separation thesis of the libertarian theory means that the basis of the validity of a positive law cannot be one or another system of morality, therefore, the immorality of a positive law does not deprive it of legal validity. However, the author believes it is possible to talk about the moral foundations of the principle of formal equality.

In the libertarian theory, coercion is understood exclusively as physical coercion — a "force" assigned to law by state. The basis of the validity of positive law — the principle of formal equality — is also the basis of the legitimacy of coercion, allowing it to be differentiated from the illegal use of force — violence. Based on the model of dualism of law and state, the libertarian theory emphasizes their necessary connection: the state is considered as a servant of law — liberty, human rights.

The libertarian theory, taking into account its interpretation of the grounds of the validity of the law, can be attributed to the tradition of natural law, in the development of which it has made an outstanding contribution — natural law has finally acquired its legal character. It can be described as a monistic deontological anthropocentric theory of natu- ral law with historically changing content.

Keywords: libertarian legal theory, legal positivism, natural law, law, morality, ontology of law, validity of law, principle of formal equality, human rights, V.S. Nersesyants

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FUNDAMENTAL UNITY OF LAW AND HUMAN RIGHTS

Abstract. Within the framework of the libertarian concept of law of V.S. Nersesyants, human rights and the law in general are considered to be identical phenomena, different manifestations of the single essence of law embodied in the principle of formal equali- ty. Formal equality, on its part, presupposes recognition of equal freedom for all people and regulation of their mutual relations on the basis of this basic premise. That is why the claims to individual freedom may and shall be recognized as human rights. These claims are of natural and inalienable character, manifesting unchanging human nature being en- dowed by the free will. They are not derived from the state (public power) and the positive law, and shall be acknowledged and provided for by them. This notion about human rights was established in the New Times (due to the works of Th. Hobbes, J. Locke and others) and was enshrined in the first constitutional acts of the era of bourgeois revolutions. How- ever today this interpretation of human rights doesn't find support in the legal science and practice. Most of the modern neo-positivist concepts of human rights deny their proper le- gal nature, they are given religious, moral or social (pre-judicial) character.

The article substantiates the inconsistency of these approaches. They lead to the "watering out" of the notion of human rights and to the limitless expansion of the list of claims which can be qualified in this way. The inevitable consequence of this becomes the arbitrariness of such qualification, and ultimately the lowering of the level of human rights' guarantees. Natural human rights turn into something totally undefined and lose their regulatory significance. It's not by chance that in the modern researches there is a denial of the meaningful, substantive interpretation of human rights and dissemination of their purely applied (so called political, structural, status) concepts, within the framework of which human rights are interpreted as derivative from the existing institutional mechanisms and procedures of their protection. In this case the ensuring of human rights appears to be as dependent on the discretion of the authorities (legislative as well as judicial) as in the case of their positivist understanding.

Giving the natural human rights the proper legal, directly regulative meaning de- mands a clear definition of them, enabling to separate them from other claims, demands, values, benefits and necessities. It's this understanding of human rights that is being established within the libertarian concept of law considering them as solely claims to indi- vidual freedom.

Key words: human rights, law, freedom, morality, religion, the libertarian concept of law, V.S. Nersesyants

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PROBLEMS OF DEVELOPMENT OF LEGISLATION ON IDENTIFICATION OF THE SUBJECTS OF INFORMATION SPACE IN DIGITAL ECONOMY

Abstract. There are lot of changes occurring in the regulation of identification of the subjects of information space, which have not yet led to the creation of the unified and consistent system of subject-specific norms that define a unified terminology and principles of regulation, and establish system of methods and types of identification.

It takes place at the same time that the threat related to *"ensuring human rights in the digital world, including when identifying the subject"* was put in first place in the Digital Economy of the Russian Federation Program approved in the summer of 2017.

In order to improve this emergently negative situation, it is necessary to specify which features of legal relationships in identifying the subjects of information space are of prima- ry importance at this stage of new technological development.

Any legal solutions have a high technological dependence on the nature and functioning of digital technologies. At a time when the Internet started to develop there existed a dogma of openness, bets everywhere were placed on open standards and proto- cols. The question of whether it was necessary to develop regulation of identification, that appeared as a separate set of legal norms only six years ago, had not been even posed.

The state's course regarding anonymity and identification in the information field in Russia and in the world apart changed at the beginning of this decade. In Russia there appeared a trend: states and society began seriously thinking the way mechanisms protecting privacy can be abused, general state control enforced. Legislation that introduced a requirement for mandatory identification and, in a number of cases, prohibited anony- mous interaction began to appear.

Despite growing court practice, which is interesting for analysis, the role of the state in this area is very significant. For Russia this can be demonstrated on the example of Fede- ral Law of 31 December, 2017 No. 482-FZ "On Amendments to Certain Legislative Acts of the Russian Federation", which considerably expanded the subject-specific powers of the executive authorities, and also added a new Article 14.1 "Application of information technologies for the purpose of identifying Russian Federation citizens" to the Law on Information. The amendments implement a new state idea in the area of identification: the cre- ation of a unified biometric system.

Keywords: identification, Internet, digital economy, information technologies, information law, UIAS, biometric system, remote identification

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LEGAL ISSUES OF CREATION AND USE OF STATE INFORMATION SYSTEMS

The article was prepared within the framework of the scientific project No. 17-03-00082-ОГН "Legal Support of Creation, Functioning and Use of State Information Systems", supported by the Russian Foundation for Basic Research.

Abstract. In modern conditions, state information systems are playing an increasingly important role in state and municipal management. However, their legal nature and peculiarities of functioning have not received so far an adequate scientific development. State information systems are being created for exercising authority of state bodies and ensuring the exchange of information between them, as well as in other purposes specified by the legislation. Mode of operation of state information systems is established by federal law, laws of the subjects of the Federation or by other normative legal acts.

State information systems have a number of features that distinguish them from other information systems and determine their specific legal nature. In particular: (1) they are created on the basis of normative legal acts defining the main parameters of their functioning; (2) compulsory application is provided by the force of state coercion; (3) the information placed therein is official.

Information systems in modern Russian information law are being studied mainly as an object of property law, an object of legal protection and an auxiliary technological tool of state administration. However, the role of state information systems goes far beyond this framework; they should be considered as a peculiar legal instrument of influence on social relations. The algorithms and the program code of state information systems con- tain restrictions and requirements for the behavior of the participants in the relevant relationship, which without being formally fixed in any normative legal acts, might quite seriously affect the content of their rights and obligations. Thus, state information systems are sources of rules that are close in nature to legal norms, with the peculiarity that their formalization is carried out in an unusual way for the law — in the code of state information system; whereas state enforcement is provided indirectly — through other norms prescribing compulsory execution of this state information system for participation in le- gal relationships. In connection with this, the program code of state information system might be considered as one of forms of external expression of law (source of law in a for- mal sense) along with normative acts, legal custom, legal precedents and law treaty. Simultaneously state information systems might function as "law enforcement agents" when they perform information processing activities in automatic mode, as a result of which implementation of subjective rights and obligations of participants in legal relations occurs.

Each state information system is a special object of legal regulation with a unique legal regime. This makes it necessary to unite legal norms regulating relations regarding the creation and use of state information systems into an autonomous institute of informa- tion law.

Key words: state information system, information law, legal regime, legal norm, source of law, law enforcement, institute of information law

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PROBLEMS OF LEGAL REGULATION OF THE GRANT SUPPORT OF FUNDAMENTAL SCIENTIFIC RESEARCH IN THE RUSSIAN FEDERATION

Abstract. The creation of conditions for fruitful scientific activity occupies an important place in the politics of any strong and independent state. Recently, grants have become a priority tool of financing research and innovation. In connection with this approach, reflected in the Strategy for Russia's Innovative Development until 2020, the government is working continuously to create a package of legislative acts that provide legal regulation of grant support for scientific activities.

However, the Russian legal system still suffers from a number of gaps in this area. Work has still not been completed to improve this part of the legislation, which places special emphasis on problems of the status of grantors and grantees and the procedure for providing scientific grants. The main problem is the uncertain legal regime of the grant in Russian legislation. Various branches of legislation, such as budget and tax legislation, education and science legislation, qualify differently the legal status of grants, and the interpretation of the concept of grant depends on its type. Russian civil law does not include the concept of a grant as a type of transaction, and the contract governing the receipt of the grant is not fully covered by any of the types of obligations provided for by the Civil Code.

Foreign legislation on science and scientific and technical policy is much clearer than the Russian one, as it defines the goals, tasks, and principles of state policy in the field of science. In Russia a practice has formed of using grants to fill in insufficient basic budget funding for scientific research.

The author comes to the conclusion that it is advisable to pass a law on the legal regulation of the grant, its types, rules and methods for allocating and receiving grants and to fix preferences in federal laws on social contributions with regard to payments within grants to individual grantees, in analogy with tax preferences contained in the Tax Code of the Russian Federation.

Keywords: fundamental scientific research, grant, legislation on science and scientific and technical policy, tax preferences, Russian Foundation for Basic Research (RFBR)

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CRIMINAL PROCEDURE POWERS OF THE MASTER OF THE RUSSIAN SHIP: NATIONAL AND INTERNATIONAL REGULATION

The article is written with the informational support of SPS Consultant Plus.

Abstract. The Master of a ship flying the Russian flag exercises criminal procedural powers granted to him solely in cases of public prosecution.

At the same time the scope of these powers and the peculiarities of their realization largely depend on the international legal regime of the area of the oceans where the ves- sel is located at the time of committing the crime on its board.

If the offence is committed on board a vessel on the high seas outside the jurisdic- tion of any state, the Master shall exercise his criminal procedural powers on the basis of the generally recognized international legal principle of the jurisdiction of the flag state of the vessel on the high seas.

When the Russian vessel navigates in the exclusive economic zone and the adjacent zone of the foreign state, at implementation criminally-procedural powers of the Master of the Russian vessel it is necessary to mean that from the point of view of implementa- tion of navigation the specified sea spaces are close to the regime of the high seas, but at the same time here it is necessary to consider the restrictions imposed by the internation- al law and the national legislation.

If the crime is committed on board a Russian vessel crossing the territorial sea of a foreign state, its criminal jurisdiction in accordance with the rules of international law shall not be exercised, except in specified cases.

When a Russian vessel is in foreign inland waters, including ports, the authorities have the right to exercise criminal jurisdiction, but usually refuse to do so in cases that have been consolidated in international legal customs, as well as in bilateral agreements be- tween the flag state of the vessel and the coastal state.

Key words: international law, the Master, ship, criminal procedure law, inquiry, long sea voyage, high seas, exclusive economic zone, contiguous zone, territorial sea, internal waters, ports

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REVIEW

Zorkin, V.D. (2018) *Pravo protiv khaosa* [Law vs. Chaos]. 2nd ed. Moscow: Norma. 367 pp.

Abstract. The monograph of the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkin deals with the development of law in general and the constitution- al law in particular. This is a book about the notion of law, its correlation with the human nature, the common good, goodness, justice, other systems of social regulation. The study is focused on the problems of constitutional identity, social integration, constitutional jus- tice and fair world order as well.

The author correctly opposes atomization of the Russian society and believes that the strengthening of social solidarity will benefit to the modernization of the society, establishment of legal social state, return to the re-examined and modernized concept of natu- ral law, promotion of the rule of law, equality and justice. The author believes that it's pos- sible to overcome deviations from the essence of law by way of uniting the law, morality and culture. Individual and collective concern for the common good, observance of uni- versal values provide for the conditions for improvement of the life of society and of each person as well.

It's the legal order that V.D. Zorkin considers to be a fair world order. He highlights three levels of the legal order, in relation to which it's possible to contemplate about the fairness of the established systems of relations. The first level is the national legal order in a separate state with its system of values. The second level — the civilizational legal order defined as the legal order being established in separate parts of the world, where the nations are united by the common past and present. Such a legal order is typical for example for the European civilization. The third level — "the fair global world order" or "the global order" being the synthesis of individual freedom and social solidarity. The author believes that justice can unite individualism and solidarism, but opposes militant individualism of the modern capitalism spread by globalization.

Analyzing the bitter experience of Yugoslavia, Iraq and Libya V.D. Zorkin points out that "the spirit" of ten principles of the international law needs a detailed legal implementation by the international community. He believes that it's the high time to reform the UN, but this process should be well thought out and presuppose the retention of the veto right by the leading world powers.

Keywords: law, constitutional law, international law, society, morality, equity, power, world order, freedom, solidarity. Constitutional court, constitutional identity

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