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THE MAIN FEATURES OF THE RELATIONSHIP BETWEEN STATE AND LAW

Abstract: *In this article, we reflect on the model of the relationship between state and law, analyzes the totalitarian, liberal, pragmatic approach of the correlation between state and law*

Keywords: *totalitarian, liberal, pragmatist, states, rights, model*

ОСНОВНЫЕ ОСОБЕННОСТИ ОТНОШЕНИЙ МЕЖДУ ГОСУДАРСТВОМ И ПРАВОМ

Аннотация: *В этой статье мы размышляем модели взаимоотношений государства и права, анализирует тоталитарная, либеральная, прагматическая подходы соотношение государства и права*

Ключевые слова: *тоталитар, либерал, прагматик, государства, права, модель*

In the modern literature, three models (approaches) of relations between the state and law are indicated:

Totalitarian (the state is above the law and is not related to them);

Liberal (right above the state);

Pragmatic (the state supports and strengthens the power of law, but is bound by it).

The totalitarian model suggests that law is a product of state activity, a consequence of the state. In the domestic legal literature, until recently it was believed that the law is in a subordinate relation to the state. The actual condition for this etatist approach was our political practice of seeing in law a certain appendage of the state. The theoretical prerequisite for this was a formal

dogmatic attitude to the concept of law as a set of norms issued by the state. However, for modern Russia, this approach is no longer appropriate.

A pragmatic approach to the problem under consideration allows to some extent integrate etatist and liberal views and at the same time avoid extremes in assessing the relationship between law and the state. According to this approach, the link between law and the state does not have such an unambiguous cause-effect character (the state generates the right, or vice versa). Communication seems to be more complicated, having the character of bilateral dependence: the right and the state without each other can not exist, and therefore there is a functional connection between them. This approach allows us to reveal the deep links between morality and the state, to avoid one-sidedness, to understand what gives the right to the state, to find out the true role of the state in securing the right. He currently dominates our legal science. In addition, the analysis of such dependencies is of fundamental importance for the entire Russian social practice.

Based on the pragmatic (third) model of the relationship between state and law, we can focus on the following three main aspects: unity, difference, interaction.

Unity is expressed in their simultaneous origin for the same reasons; a similar typology; the same to a certain extent due to economic, cultural and other conditions; common historical destiny; finally, in that they act as a means of social regulation and regulation, accumulate and balance common and individual interests, guarantee the rights of the individual. This does not mean that everything inherent in the state is inherent in law and vice versa. They remain quite autonomous and original entities. According to the figurative expression of one author, the state and law do not remain alone for a minute, face to face. Each of them has its own life, its goals, tasks, methods. Interaction the differences follow from the definitions of these concepts. The state is a special political-territorial organization of public power, which is a form of

society. The law can be characterized as a set of rules of conduct that define the boundaries of freedom and equality of people in the implementation and protection of their interests, which are fixed by the state in official sources and whose enforcement is provided by the compulsory power of the state. The state exercises its power, and the law exercises the will. They do not coincide in form, structure, elemental composition, or content; They belong to different spheres of social life. They (each in its own way) reflect reality, mature needs, differently perceived and evaluated by social consciousness. Under certain circumstances, the state and law can act in opposite directions. The interaction of the state and law is expressed in their diverse influence on each other.

The impact of the state on the right The impact of the state on law is primarily that the former creates a second, modifies it, improves, protects from violators, and puts it into practice. Therefore, we can say that the state's influence on the law is carried out continuously - from the creation of law to its implementation in public relations. The state, therefore, promotes the dissemination of law in the social space, obliges the participants of public relations to act in accordance with the law, to exclude unlawful approaches in achieving socially significant results. There are objective limits of the state's influence on the law. They are due to the regulatory potential of the law itself, the ability of the state to ensure the operation of law in these social conditions. The possibilities of the state should not be overestimated, as this always leads to the idealization of legal means, and ultimately reduces the social value of law. The state can not use the law in contradiction with its true purpose. We need a scientifically sound, effective legal policy of the state, which allows the most rational and in the interests of society to use legal tools.

No less creatures Equally significantly the opposite effect of the right to the state. Historical experience shows that for its existence the state as an organization needs the right not less than the law in the state. Dependence of the

state on the law is manifested: In the internal organization of the state, In his activity.

With the help of law, the internal organization of the state, its form, structure, apparatus (mechanism) of management, status and competence of various bodies and officials, the principle of separation of powers are fixed. The fundamental importance of law in the internal organization of the state is manifested in the fact that the law will create legal guarantees against the possibility of usurping the entire power of one of its branches. Thus, the internal functioning of the state is put on a legal basis, legal prerequisites are created for the effective operation of all parts of the state machine.

In the activity plan, through the law, the state's goals, tasks and functions are carried out, its domestic and foreign policies are carried out, the constitutional order and the position of the individual in the society are legislatively determined and consolidated. Without the right, the will of the state can not become universally binding. Figuratively speaking, the main language, on the Cahors, the state talks with its citizens and maintains relations with legal entities, is the language of law. Consequently, a democratic modern state can not act outside and in addition to law. The right is "imposed" on the state by necessity, therefore it can not in principle neglect the legal form. The state, without prejudice to the society, can not manipulate the law or get rid of it. We can say that the right ennobles the statehood, makes it mature and full. In modern conditions, the binding role of law in relation to the state is growing. The following regularity is observed: the more accurately the law reflects the objective needs of social development, the more it connects the state. The activity of the state in this case is not suppressed, on the contrary, it is spent efficiently and exclusively in the interests of society and the individual. Only by being bound by law, the state can act freely, and therefore corresponds to historical destination.

The unending common principle of any legal state is its coherence by law. In its principles, norms and regulations, law expresses interaction in the system "individual - society - state". Mutual balance of these elements is the necessary balance of freedom, the condition for ensuring legal justice, in which law is possible, is a state structure that meets its purpose. Kant also substantiated the idea of a state of law as a state power whose purpose is law. From the standpoint of modern analysis, this means that, only being bound by law, the state can act freely. Proceeding from this position, some domestic jurists come to the conclusion that the legal statehood in general is characterized by a special nature of the relationship between the state and law, since the main thing in a state of law is the recognition of the rule of law over the state, unconditional subordination of all its bodies to law. Indeed, in a state governed by law, state bodies and officials are connected by nature. But we must not forget that the "state-right" attitude is the attitude of people. And in the rule of law at the center of this connection is a person in his social aspect. The lack of a right in the relations between the state and the individual turns against the person himself, ultimately affecting the person and his freedom. The main thing in the right-state system is not the rule of law in itself, but the extent to which the interrelation between the state and law ensures the harmonious and progressive development of the individual, the expansion of her freedom. If the value of the right is due to the connection with the state, this is only to the extent that the state itself is put in the service of a person.

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