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The Methodological Conflict Between Theory and Philosophy of Law: The Conservative Legal Analysis

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***Abstract*---**The subject of this research is the recently intensified competition in modern jurisprudence of two equally respectable scientific disciplines: philosophy of law and theory of law. The goal is to demarcate the meaning of these concepts. Their ontological status (essential significance) in relation to the existence of the law, the reflection of which they are, is also considered. Based on analysis of the existential criticism of the dominant forms of modern ideology, it is proved that the existing theories of law depend on these forms. A stable tendency in modern philosophy to return legal science to the origins of philosophical knowledge of legal reality is stated.

***Keywords*---**attack, contemplation, conservative, philosophy, theory, valence.

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Introduction

From the point of view of ontology, the completeness of the world is made up of the diversity of various kinds of beings: mountains, animals, galaxies, etc. All this is, possesses being. It exists, it is real, which is equal - material. But ontology has limitations. Not only is the material in the world. Man thinks things, this is existence. The being of a person interferes with the being of things. And his thoughts - this double (twin) of existence, perhaps, also exists. Surprisingly, the thought of the existing also exists in a sense. Moreover, in addition, there is still a certain increase in it in comparison with the being, the thought about which it is. After all, it is clear that it has, on the one hand, something of this being, and, on the other, something of itself. Gnoseology, the sister of ontology, emphasizes that sometimes a person's thoughts (these copies of things) do not resemble the original, and then they say: "a lie." When they coincide with the original, they say: "truth". Here thoughts are not independent and essentially depend on their other - being, because they are compared, and not equal to them. And, nevertheless, as Hegel notes in his sophisticated manner: "Even the criminal thought of a villain is greater and more sublime than all the wonders of the world" (Lukach, 1987).

When they talk about reality, which is called legal, the situation is exactly the same. This existence also always accompanies its ideal reflection - the man's thoughts about justice brought into order. This is a *theory of law*. Here, in the horizons of truth, coincidences are also sought, avoiding the inadequacy of error. True, there is in the arsenal of the human language (and this should be recognized as a miracle) One more word, which in turn is combined with this being – "*philosophy*." Both are two ideal copies of the same legal reality. Both versions of imitation (ancient Greek - μίμησις) of this being appeared at approximately the same time. And they arose, respectively, along with the emergence of ancient legal consciousness (Crucitti et al., 2004; Giles & Rothwell, 2007).

How powerful this reality unfolded in the V -IV centuries BC in Greece, at least the fact that in Athens, 6,000 people's judges-heliastes were elected annually says. And this despite the fact that only citizens of the policy could be such. And of the 400,000 population, excluding slaves, strangers, children, and women, there were only 30,000 of them, no more (Bonnard, 1959). That is, almost one-fourth of all subjects of law in Athens not only "stayed" in a certain legal space (trade, war, art, religious rituals, etc. - everything "permeates" the horizon of justice, or what is called "law"), but was forced, in the role of people's assessors, to carry out an initial reflection on this reality every day. So, the Socratic question: "What is justice in general? That it is as such? ", was by definition to arouse the keenest interest of the Athenians (Dahl & Davidson, 2019; Weare, 2019).

"Theory" and "philosophy", and in our case, "theory of law" and "philosophy of law" - what are they? What are these types of being? How do they compare with the distant, or, conversely, standing close, very close? How much do they cost in terms of the fullness of being? Finally, how do these two reflections of the same reality, so similar to each other, relate to each other? Nowadays, all these questions are focused on one, the principal: is any philosophy of law a theory?

And vice versa: is any theory of law philosophical? The range of problems that this issue touches on is extremely wide, from purely academic to ideological. The first category includes the difficulties of placing two equally respectable scientific disciplines in one educational field of jurisprudence; second, problems associated, for example, with the question: are Plato's "State" or Hegel's "Philosophy of Law" technological projects for the reconstruction of society, or do they carry some other meaning? If yes, then which one?

The history of the problem

First, the collocation "Philosophy of Law" appears. It is introduced into circulation by Hugo and Hegel. Then A. Merkel (1870) forms a junction: "Theory of Law". But the subsequent delimitation of philosophical and legal disciplines created a paradoxical situation. So, if within philosophy the specification from the general (logic, phenomenology) to the particular, up to a separate branch of knowledge titled as "philosophy of law", did not raise any questions, then in the legal environment the attitude towards this science was not so liberal. Philosophy of law “not only competes but has been actively and aggressively supplanted over the past 150 years by the theory of law” (Zhukov, 2009). Here is a good example of hot but unanswered love! This phenomenon of "displacement" by one science by another, in our opinion, correctly noted by the above-quoted author, needs close attention. Perhaps, in this case, there is a fact when two types of cognition, dealing with the same legal reality as an object, are trying to understand it from fundamentally different positions?

Formulating the question in this way, let us take into account that it is, in fact, a special case of a more global question of the relationship between two, perhaps, the most precious words for European history: “philosophy” and “theory”. For the Greeks, who created these two names, and, according to Heidegger, who have not yet lost the ability to comprehend the world through their native language, the title “bios theorist” was of enormous importance. “Its two roots, θέα and ὁράω, can sound like θεά and ὡρα with another stress. Θεά means goddess. The goddess of the early thinker Parmenides is “Aletheia” - unconcealment, thanks to which and in which the existing is present” (Heidegger, 1993).

In the modern science of law on the problem of demarcation of two concepts that are of interest to us, three approaches have emerged: the essence of *the first* is reduced to a quantitative distinction between philosophy and theory of law; *the second,* imitating Kant, proposes to recognize the powers of methodological control over the theory of law for philosophy. This is a variant of philosophy as a theory of theories. It is more complicated than the first one. It is usually approached by jurisprudence, realizing the inconsistency of quantitative distinction. But, in our opinion, *the third* approach is of particular interest. This attention is due, oddly enough, the contradictory nature of its position. So, on the one hand, here they categorically insist on the fundamental, qualitative difference (even the opposite) of philosophy and private science, philosophy of law, and its (law) theory. On the other hand, fixing this gap between philosophical theory in the original meaning of the word and theory in its modern sense, the representatives of this approach stubbornly reject the services of “mythological and practical” experience (Husserl, 2000). They insist that the redefinition of the

meaning of the concept of “theory” took place within the framework of the same paradigm of European history (Abgrall & Karni, 2010; Kyrgiou et aL., 2006).

Genuine unity of opposites! Unity - because both here and there are based on the same type of outlook - rationality. The opposite is because here completely different content of the concept of “theory” is to be thought out: one, embedded by tradition in this word; the other, appeared in the middle of the XIX century.

- Let’s take a closer look at the first approach. Its proposal is rather simple: as soon as the consideration of the “limiting foundations of the legal process” Marmor (2010), “morals, customs, value norms” [ibid.], and so on, would be included in the theory of law, this theory itself will turn into philosophy. Expanding the scope of the theory of law, according to the supporters of this method, is a simple panacea for all the troubles caused by the problem of demarcation of these two concepts. And if we supply the undertaken research with a historical excursion - a recitation of ancient and new legal doctrines, then the case can be considered complete. This approach would have yielded positive results if it were not for active resistance against such an understanding that it meets on the part of the theory of law itself. Opponents' counter-arguments are also extremely simple. Indeed, with this "generalization" the very theory of law is able to successfully cope, and cope without any special philosophical training. Why does it need a competing discipline? Moreover, an attempt to leave philosophers with the right to "logical analysis and clarification of basic legal concepts" causes indignation, and in our opinion, quite fair, among lawyers. Any self-respecting science must itself criticize its fundamental categories. The same goes for the "special" philosophical method. The certainty of an object should dictate the certainty of the methods of its cognition. And if legal reality is a certain concrete field of being, then the method that investigates it must have the corresponding specifics. Is this not the origin of the "dislike" of the theory of law for the philosophy of law, which G.F. Shershenevich pointed out at the beginning of the twentieth century? The aforementioned quantitative distinction between the two scientific disciplines rests on the basis that thinking, carrying out the process of cognizing reality, is considered a tabula rasa - a blank slate. And if this is really so, then the “prints” of the same reality of law can and should be identified by different degrees of clarity. It is understandable why then the most “general communities” remain behind philosophy. But is this understanding of the essence of the matter true? Is thinking really *tabula rasa*?
- The second approach defines philosophy for the right to exercise methodological control over various theories. This is a kind of theory of theories of law. This is how one modern author formulates this idea: “The philosophy of law studies various theories that have been put forward during the development of human thought to explain the nature of law” (Sinha, 1996; Husserl, 2000). Let's pay attention to that, here, on the one hand, each theory of law recognizes the peculiarity of its historical form. On the other hand, it reserves the right to such a special form that is able to recognize, compare, and even estimate the degree of development of these diverse theories of law from ancient times to the present day. But, if you

take a closer look at this moment, then this form of research should, by definition, differ from the actual diversity of its subject. As an example of how philosophy came out in its history to understand this moment. Kant, emphasizing the importance of his critical philosophy, for the first time in history subjected various forms of cognition to a thorough analysis. As a result, it turned out that reason, mind, will, aesthetic ability, etc. cognize the world from the point of view of their ultimate foundations (a priori forms), while the critical philosopher cognizes these very foundations (identifies, compares, etc.). But Kant, describing them empirically, brought his own philosophy into the question about the very universal form of knowledge that he used, but about which he never mentioned a word. At this point, Fichte's scientific teaching organically grows out of the philosophy of its predecessor. And it was he who, developing a universal form of scientific knowledge, gave rise to the experience of creating a dialectical method.

The modern author, quoted above, replacing the empirical enumeration with a historical one, has not gone anywhere from this methodological problem that German classical philosophy stumbled upon. He singled out "historical, psychological, idealistic, etc." theory of law (Marx & Engels, 1961). And, from the point of view of what kind of theory did he manage to do this? It is useless to look for an answer to this question from him. It's just not there. That is why such a reflexive approach, firstly, immediately destroyed the originality of the philosophies of law of Plato, Aristotle, Augustine, Spinoza, etc. And, of course, secondly, in the Kantian way, "modestly" left for himself the creation of the first true philosophy. Both the essence of this theory of theories and its dead-end have already been passed by philosophical thought for two hundred years.

- By the beginning of the XX century, there was another point view on the solution to the problem of demarcation of the philosophy of law and theory of law. Husserl, formulating for himself the task of creating philosophy as rigorous science, at first glance, moved even within the second approach. But his struggle for phenomenology, as a counterbalance to the dominance of historicism, psychologism, and naturalism in science, forced him to turn to the origins of European thought. And even at the very end of his scientific career, but quite categorically, he reminded us that the Greeks had a completely different meaning to the concept of " theory & quot; than it does now. For them, it meant, first of all, "epoche from any practical interest" (Husserl, 2000). But "epoche" (Greek ἐποχή) means – "delay, stop, retention, self-control". That is, in the history of European science, within the framework of the same paradigm of total rationality, exactly one hundred years before this remark of Husserl, there was a kind of "break", "turn". Marx stated it very accurately already in his first thesis about Feuerbach. Here he defines all philosophy as well as contemplative, as well as "epoche" from practice. But he interprets this not as a merit, but as a vice! By the way, here it is appropriate to ask a question, for example, to the founders of Marxism themselves: what do they, Marx and Engels, call their views of the world? The answer will be simple: "our theory" (Marx & Engels, 1961). The fact that this turn from the ancient format: "theory from practice" to a new one: "theory for practice", turned out to be ubiquitous, is illustrated at least by the fact that seven years before Marx's theses about

> Feuerbach, A. Tseshkovsky expresses a similar idea. In Hegel, the practice is still absorbed by the theoretical, it still does not differ from the latter, it is still considered, so to speak, as a side outflow of the theoretical. But its true and genuine purpose is to be a separate, specific, and even the highest level of spirit" (Hausman & a Simon, 1994).

But according to Husserl, it turns out that European humanity, together with its connecting link - philosophy, has entered an era of crisis, decline, deviating from the ancient epoche. F. Nietzsche echoes him with his statement of general decadence. But what exactly was this deviation? What does "theory for itself" mean as opposed to "theory for practice"? In 1927, Heidegger makes a sharp remark about the relationship between philosophical knowledge and knowledge of the positive sciences. Regarding our subject, its essence can be reduced to the following: the methodological difference (Heidegger et al., 1975). Between mathematics and the theory of law is not as great as the difference between philosophy and the theory of law. And 25 years later, in the work "Science and Understanding" cited above, analyzing in detail the essence of the Greek "theory", he, using the phrase "theory of natural law" that interests us, says that it (Naturrechtstheorie) rather "obscures" the very essence of law (Gangolly & Hussein, 1996; Uffink, 2001).

It is difficult to find among the thinkers of the XX century an equal to Heidegger in the boldness of opposing philosophy and the private sciences, or, as he calls them: ontological and ontic knowledge (Heidegger, 2002). The fact is that the new understanding of "theory" as a theory for practice (and not theory for theory) has become the fundamental basis for the following three significant innovations of the last two centuries:

- First, the phenomenon of the general decadence of ideology, where social knowledge immediately began to be thought of as a project for the reconstruction of society. Moreover, all three major forms of ideology: communist, liberal-capitalist, and national-socialist.
- Secondly, the independent formulation of natural scientific and humanitarian knowledge, where the ancient thesis about the contemplative type of rationality was discarded on the fly.
- Thirdly, the very history of philosophy began to be viewed as the history of the struggle between materialism and idealism. Here, in a miraculous way, the ideological reason transferred its "sores" - its own dualism of understanding theory and practice, onto its counterpart - philosophy. He announced that it was her, the "poor", starting from Ancient Greece, tormented by the opposition of these two supposedly "philosophical" directions. And this obvious nonsense was received by the enlightened public with enthusiasm! It should be recognized here that if the last innovation became a sign, a forerunner, then the first two are a real event in the nearest history of humankind.

Heidegger in 1927 points out the gap between philosophy and theory, and in 1929 he exposes its essence. And where? - At a meeting of naturalists and humanitarians of the University of Freiburg, assuming the post of professor of philosophy. Before whom? - Before scientists, for whom the consciousness of

reflection of theory into practice, and vice versa, is as familiar as a favorite dressing gown or slippers. And also - like a nightcap, overshadowing the primordial priority of the spiritually contemplative experience over the everyday practice. In addition, not only physical and mathematical formulas have firmly settled in the heads of these scientists. All three social projects of the global reorganization of the world have already been accommodated there – ideology (Polinsky & Shavell, 2007; Grassl et al., 2002).

Heidegger seeks a common basis for this new attitude to reality and states it in the following: science is guided by three "things". "These three - setting, attitude, and intrusion - in their initial unity bring incendiary simplicity and acuteness of presence into scientific existence" (Heidegger et al., 1975). As Hegel would say, here we are dealing with three concepts, which in the general form an inference: "setting- attitude - invasion", where each term mediates the other two. Summarizing we state, that the essence of human presence in the world lies in existence, the essence of which, in turn, is in freedom. But the essence of freedom is in choice. There is one possibility here - to take such a position to the world so that it “closes”, defends itself, and stands still, waiting until the human Dasein breaks it open; the other is to allow this being to be itself. A little earlier, in “Being and Time”, Heidegger defines phenomenality as “self-in-itself-apparent, obvious” (Heidegger, 2002). It turns out that a person relates himself to the world through the set because he himself is the most phenomenal of all phenomena (Berkowitz & Ehrhardt, 1966; Guitart-Masip et al., 2014).

Heidegger does not reproach positive sciences, he simply states a fact. A naturalist who deduces in his theories the regularities of his subject, by and large, is not interested in the truth of nature, which is in itself. The reason for this is that he has already put on the “glasses” of practical goal-setting. Power generating plants, liners crossing space, atomic weapons fortifying state sovereignty, etc. obscure the "eidos" of nature. The same thing happens in the minds of the humanities. Mental health, economic prosperity, constructing a rule of law state, finally, global projects for rebuilding society, etc. precede the cognitive process of this scientist, obscure his eyes. Therefore, when Husserl speaks of ancient theory as an “era” of practice, then in modern science the situation is exactly the opposite. And it’s not that modern science abandoned the theory. No. Theories are created and improved continuously, but always in such a way that their knowledge is, in major part of situations, initially subordinated to practical needs (Zong & Zhen, 2021; Rinartha & Suryasa, 2017).

Heidegger contrasts his philosophy and philosophical tradition in general with such a science. There is not a single work of his where he would not return to this question. Everywhere he is interested in the confrontation between production and work, "techno" and things, the objective picture of the world - "set" and fundamental ontology, ontic and ontological. Here the question naturally arises: what then about his personal fate? Party membership, the first National Socialist rector, finally, his thoughts from the "black notebooks"? Hegel once remarked about the difference between the ancient and modern philosophers. So if in the Greco-Roman world philosophers lived separately from society, and in the Middle Ages exclusively clergy were engaged in it, then in modern times “they live in the conditions of their time, are connected by many threads with the surrounding

world and with the course of events in it, so that they philosophize only in passing, and philosophizing is a kind of luxury for them" (Hegel, 1987).

Here it is - a word of understanding addressed to a modern philosopher and sent to him by a colleague from the last century! To demand from Heidegger a repentant condemnation of his membership in the Nazi Party is as madness as to demand the same of a Soviet philosopher for his membership in the Communist Party of the Soviet Union, imputing the Gulag and the KGB repression to him, or blaming the bombing of Belgrade and Baghdad on a thinker who voted for Republicans in the USA or Democrats. The philosopher of the twentieth century is internally connected with the world and the destinies of his people. It is rooted in all three versions of ideology, behind which there is still a bloody trail. He remembers well the biblical: "Do nothing without reasoning, and wherever you have done, do not repent". Another thing is that he, "in the luxury of his philosophizing," inevitably undermines the foundations of not only one, separately taken ideology, into which he is forced to be involved by his external being together with his people, but ideology as such. He, as a true individual, expresses his authenticity in his own philosophy. This philosophy is his true activity.

"Consider and contemplate" are two different things. Let us take as an example a landscape of a certain area, appearing before the gaze of, say, a builder who decided to build a house on it, and an artist who decided to take it as a subject for his painting. In both cases, the landscape acts as a means, a material, which, naturally, cannot but undergo a change in the attitude of the person looking at it. Only one looks at this particle of being in order to build a comfortable home, to secure his existence and, if possible, to prolong it as much as possible, the second - in order to evoke a special feeling in the future viewer of his picture, a feeling called the feeling of beauty. The activity of both ("even" in thought) by definition affects reality: something is removed (from the interfering goal), something is added (from the missing), and something is rearranged. But the consideration of the builder only differs from the contemplation of the artist in his reflection of the reality that there is and cannot be any integrity. In him, in his contemplating cognition, this sketch serves not for himself, but for practice. But even in practice, each one is not for oneself, but for something else, etc. to infinity.

"Science and technology as ideology" - this thesis of Marcuse, carefully analyzed by Habermas, gets into the very essence of the modern state of affairs (Hegel, 1990). "The concept of technical intelligence is perhaps itself an ideology". Science, understood in a similar way, proceeds from the initial difference between theory and practice, thinking and being, universal (whole) and special (particular). And here it is completely opposite to philosophy, which in all its historical forms proceeded from their unity. But then all types of modern theories of law are a further specification of various projects of social technologies for the reconstruction of society. And either they realize themselves in historical connection with some, specific form of ideology (liberalism, communism or fascism), or not, it does not matter. Since their goal is not to understand, but to transform reality, this means that their position exactly corresponds to an "attack" on the existing order of things, or prepares a "burglary" of the existing existence of law (Heidegger).

How very subtly Hegel felt this moment, when in his "Philosophy of Law" he sharply distanced himself from such experiments of modern theories of law. “To cognize reason as a rose on the cross of modernity and rejoice in it - this reasonable understanding is a reconciliation with reality, which philosophy gives to those who once heard an inner voice that demanded comprehension in concepts, preservation of subjective freedom not in the special and accidental, but in what is in itself and for itself ” (Gadamer, 1960). So, the philosophy of law and the theory of law are two forms of cognition of the same reality, which have completely different directions. One is aimed at understanding this reality, the other - to remake it. What is their “power of being” (lat. Valēns), taken first, in relation to the existence of law itself, and secondly, in relation to them to each other? Simply put, why does legal reality itself create an "intellectual double" - the "theory" of law? And what is the point in doubling this reflection on "pure (philosophical)" theory, and theory aimed at practice?

The development of Gadamer's thought about the hermeneutic relevance of Aristotle and the existential valence of the image can provide answers to both questions posed. It is extremely important that in the central part of his treatise "Truth and Method" he turns to Aristotelian comparative analysis of judicious justice (phronesis) and technology. How much in common between them! Both seem to be practice; and knowledge of the general is required; and in application (to the particular) it is possible to transform the original plan, etc. Only one thing separates them, but this one is worth all the other identities: judicial action has a goal in itself, while handicraft production is "outside of itself". That is, let's take an extreme case, even if an unfair decision will save all of humanity from one hundred percent destruction, it still should not take place in the horizons of phronesis. This was already absolutely clear to Aristotle. But this is only the dawn of European history!

Throughout his work, Gadamer seeks examples of the same “mediation”. In such a valence of the existence of legal reality, on the one hand, the phenomenon of the game is identical to it, on the other hand, the religious application of the Law, carried out in the sermon. Finally, the world of art is nothing more than an example of that very “intellectual contemplation”. Here, a masterpiece is subject to contemplation, that is, something phenomenally existing, created by an action that does not want anything “for itself”, but only expresses its object “for itself”, and at the same time requires from the contemplator exactly the same freedom. All this concerns Gadamer. In all this, he seeks the strength of his being. Only one question escapes his attention; the question of the existential valence of his own project of universal hermeneutics. Why is that? The answer to this question is a matter of independent research. In the meantime, let's pay attention to the basis that allows Gadamer to fill the word "valence" with new meaning. Chemistry by that time was already ready to get rid of it, while in philosophical hermeneutics it found original application.

Trying to understand the peculiarity of European painting of modern times, Gadamer takes "reflection" as the initial concept. Let's take a closer look at his experience of interpreting the “existential valence of the image” [18, p.139] of this painting, with further projection to the question “is the experience of classical philosophy of law a theory? Let legal thought, as well as painting, be a kind of

"copy" of legal reality. But, Gadamer emphasizes, "duplicate", that is, the visual image of this reality, can appear in three fundamentally different forms: reflection, display and image. The nature of the independence of this "copy" for him is the basis for such a distinction. For example, although the reflection in the mirror is some kind of being, its essence is such that the reflected has all the fullness of substance, while the reflection itself is a pure accident. That is, it is something that cannot exist independently at all. The reflected will disappear, and the reflection will immediately disappear. But the reflected one can perfectly exist without its double.

We have a completely different case with the reflection of reality in works of art, for example, in portraiture. There seems to be the first moment - reflection. The portrait painter looks at the original, tries to transfer into the copy what is in the portrayed (prototype). But, here, in addition, he is given a “backlash” of freedom. Something, in reality, he can omit, and something to emphasize. Further, the finished portrait itself carries certain freedom in relation to the original. It carries with it the autonomy of the display. That is, by it, you can also identify a certain real face, as well as vice versa, a portrait can be recognized by this face.

But most importantly, any external reflection, which is used, for example, by guides, historians or art critics, who provide information supposedly for a better understanding of the portrait (especially the biography of the portrait, the randomness of the order, etc.) is basically unnecessary. Here we are dealing with images in art. The frame in which the portrait is placed should emphasize its being in itself and for itself. The real "original" will disappear forever, all the information connected with its existence will be erased from memory, and the reality of the masterpiece will not diminish one iota from this. On the contrary, a certain "growth of being" takes place in him. “The proper content of the image is ontologically defined as an emanation of the prototype. In the essence of emanation lies what emanates excess, and the source of emanation is not diminished. The development of this idea in the philosophy of Neoplatonism, which exploded the area of Greek substantial ontology, substantiates the positive rank of the image's being, since if the original one is not made less after the expiration of much from it, then this should mean that being has increased” (Marcuse, 2013). That is why Gadamer selects a special expression for this total mediation - the existential valence of the image.

Let us now take a closer look at the specific “copying” of legal reality, with which we are dealing in the philosophy of law. Everyone knows about the interpretation of Plato’s “State”, which is most popular for everyday consciousness. He, they say, twice went to Sicily, in order to realize the ideal of social order, which he described in his work. That is the layman who thinks according to the scheme: reality, plus theory (display), plus their mutual identification, and further, another plus - implementation in practice, has already clarified everything for himself. The experience of another famous work, Hegel’s “Philosophy of Law”, has exactly the same meaning for him. They tell him: “Hegel wrote this work in order to perpetuate the Prussian monarchy and recommended that other states be remade in the image of this ”ideal” And the man in the street believes. And not only him. And more serious thinkers fall for this bait. Here is an example. The same Gerber Marcuse, tossing between ideology and philosophy, suddenly (?)

quite seriously declares: “The German idealists connected theoretical reason with practical. There is a necessary transition from the Kantian analysis of transcendental consciousness to his demand to create a society of the Weltbuergerreich, from Fichte’s concept of a pure self to his construction of a completely unified regulated society, from the Hegelian idea of reason to his definition of the state as the unity of general and private interests and, therefore, as the realization of reason”.

But if we allow the philosophers themselves to interpret each other, then why did Hegel, in his "Lectures on the History of Philosophy", categorically objected to such an "understanding", for example, of the same "State" of Plato? In the words of Karl Marx, the essence of his objection boiled down to the following: "Plato did not compose any ideals in the sense of recipes for the kitchen of the future!" Here are his authentic words: "The true ideal should not be real but is real, and it is the only one that is valid" (Hölderlin, 1998). Doesn't Hegel want to say by this that this first Greek experience of the philosophy of law was not a reflection? Not a reflection, but a depiction of legal reality in that antique section of its being? Doesn't he want, at the same time, to bring his own experience of depicting this reality out of the vulgar interpretation of the opposition of theory and practice of everyday consciousness thinking?

Conclusion

It should be admitted that the essence of all modern types of the theory of law dwells in the mentioned reflection of reality, with its subsequent “practical application”, while all types of philosophy of law exist only in the horizons of the image of this reality. And the demand for either one or the other, or both ways of relating to the same legal reality is determined by the reasonable necessity of the history of this reality. Here we find the answer to the question about the "origin" of the philosophy of law. The ancient experience of justice needed an ideal model, which in terms of concepts would recreate its structure and in pure theory would be completely identical to it. For all their importance, the phenomena of game, art, and religious worship still lacked form. This is how philosophy was requested.

Before Hegel inclusively, European thought improved this model. But without reflection in the alternative, both aspects of this system: the reality of law and its philosophical image, remained closed on themselves. In this sense, philosophy itself provoked the emergence of ideology, and philosophy of law - abstract legal theories of the XIX and XX centuries. What was needed was the greatest dissonance in reality between phronesis and techne, so that in overcoming it, philosophy, on the one hand, and the legal reality of European thought, on the other, would regain their identity.

Modernity has unfolded before our gaze a most dangerous situation when, on the one hand, the cycle of the three "highest" values of ideology "closed". When it became clear that liberalism, spread all over the world on the sides of NATO aircraft carriers, is no better, and no worse (!) Than the Nazi concentration camps or the GULAG's "social justice" network. When it is not soon from the memory of the inhabitants of Belgrade and Baghdad, Kabul and Damascus, the Einbruch of the disseminators of these "democratic" values will be erased. When the theories

of law corresponding to these ideologies, suddenly, as if by magic, ceased to seem the only possible experience of comprehending the right reality. But, as you know, "where there is danger, there grows a salutary" [20]. The more clearly and definitely the modern theory of law has offered itself to the needs of the day, the more clearly the contours of its own opposition, and, historically, even preceding it, of the eternal experience of the philosophy of law, are outlined.

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