

I. Kant's transcendental ideas in understanding the essence of law

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Abstract. The article examines the relevance of the application of the transcendental ideas of the ethics of I. Kant in the modern understanding of the essence of law. When considering the idea of natural law, the question of the ontological status of the norms and prescriptions of natural law is considered, as well as the question of the source of natural law. The axiological aspect of natural law allowed the author to consider law as a value identical to the idea of law, which immanently contains the basic legal values of I. Kant's ethics.

Keywords: I. Kant's transcendental ideas, the essence of law, the axiological aspect of natural law, the ethics of law

Introduction

Currently, the transcendental ideas underlying the ethics of I. Kant are becoming increasingly relevant in connection with the return to the idea of natural law. For more than two centuries (from the Enlightenment to the end of the XX century), the consideration of the essence of law, primarily as a positive right, prevailed for more than two centuries, led to a crisis in legal consciousness, the way out of which many researchers see in the return to the idea of law, to the idea of justice, the content of which is Kant considered, first of all, freedom as a transcendental idea preceding any possible apperception of the subject of cognitive activity. When considering the idea of natural law, the question of the ontological status of the norms and prescriptions of natural law necessarily arises, but, first of all, the question of the source of natural law inevitably arises.

Purpose of the study – to reveal the application of the transcendental ideas of the ethics of I. Kant in the modern understanding of the essence of law.

Research objectives:

- explore the philosophical paradigm of I. Kant in the analysis of state and law in German classical philosophy;
- consider the moral and practical teaching of I. Kant, which regulates the activities of the subject in complex legal education processes;
- to determine the role of the subject in the application of the transcendental ideas of the ethics of I. Kant in the modern understanding of the essence of law.

Philosophical paradigm of I. Kant in the analysis of state and law

In ancient philosophy, nature or a pre-established order, the harmony of nature was recognized as the source of natural law.

In medieval philosophy, the source of natural law was the will of God, and the interpreters of such a will was the Catholic Church in the person of the Pope.

In the era of the Enlightenment, the laws of nature, which can be comprehended by man with the help of reason, are considered as the source of natural rights. This historical period is associated with the emergence of civil society in its modern understanding, which approved and ensured the existence of democratic forms of government in modern times. In addition, the ontological status of natural law was substantiated by the theory of social contract, which assumed the recognition of citizens of their natural rights based on mutual obligations between citizens and the state represented by the ruler.

The definition of rationality as the basis for natural law in the works of J. J. Rousseau, G. Grotius, J. Locke, paved the way for I. Kant to substantiate the transcendental ideas of freedom, law, justice, duty, morality, and law.

The political and legal theory of the German philosopher Immanuel Kant (1724-1804) is the logical conclusion of theoretical research in the field of state and law of the Enlightenment [1]. Having criticized the theory of natural law, I. Kant formulated a new philosophical paradigm in the analysis of state and law, laying the foundation for German classical philosophy. His views were set forth in the works: "Critique of Pure Reason", "Critique of Practical Reason", "Criticism of the Ability of Judgment", "Towards Eternal Peace", "Metaphysics of Morals". The essence of Kant's philosophy consists in denying the possibility of cognition of an objective world independent of the cognizing subject ("things in themselves"). He explains the knowledge of the world as the process of combining our sensations with the so-called pure forms inherent in human cognitive ability, namely, the forms of space and time, categories of reason (which includes causation) and ideas of reason, which give the highest generalization to our knowledge. This knowledge is objective only insofar as it is generally obligatory for the human race. But it cannot pretend to know things in themselves.

The content of his "Metaphysics of Morals" or ethics, where I. Kant draws a clear line between the laws of nature and the laws of freedom, is a moral and practical doctrine that regulates the activity of the practical mind of the subject, in which he opposes the world of phenomena to the world of "things in themselves."

Man, according to the teachings of the thinker, belongs to two worlds. As an empirical being, he is in the world of phenomena, therefore, is subject to the law of causality and therefore not free. But at the same time, he is a "thing in itself." In this respect, he is free, and his actions

are subject to the law of freedom. According to the teachings of Kant, morality does not depend on any external reasons, feelings and authority. The moral law is the command of duty for the sake of duty itself, and since this law does not depend on the above conditions, it is unconditional, and the moral will is autonomous. The command of the moral law is expressed in the so-called categorical imperative. This is an unconditional and obligatory requirement of the will, independent of external influences; he calls such a will "pure."

In his philosophy, the role of human reason, namely, practical reason, is immanently inherent in the subject and manifests itself in the form of freedom of arbitrariness in relation to the object. I. Kant, identifying the laws of freedom, considers their a priori (that is, pre-experienced) character (inherent in the special nature of man) a necessary condition for their existence - reasonable awareness as independence from sensual impulses, as well as "the ability of practical reason to be practical for itself," is expressed in his understanding of the maxim of an act, that is, such an arbitrary act that can be recognized as a universal law.

The indicated laws of freedom of arbitrariness, as the highest law and determining grounds, set the form in which practical reason is considered as the ability to create principles or maxims of arbitrariness in the form of an imperative of prohibition or command.

I. Kant calls such laws of freedom moral, and, depending on the scope of their application, if they concern only external actions, he calls them legal, and if they determine the grounds for actions, then ethical. And thus, those laws, the obligatory nature of which can be cognized by reason without external legislation, I. Kant calls natural laws; positive laws refers to those laws, the binding of which cannot be found without external confirmation in legislation. Positive laws must be preceded by a natural law in order to substantiate and confirm the authority of the legislator [10].

Moral and ethical doctrine of I. Kant, regulating the activities of the subject in complex legal educational processes

The highest meaning of man is the so-called maxim according to I. Kant, he believes that the maxim is the subjective principle of action, which each subject accepts for himself. The objective basis of duty is considered to be a direct indication of practical reason how to act.

Kant called the categorical imperative the law of moral freedom, which he opposed with a hypothetical imperative - a rule for achieving a specific goal. A moral person, the philosopher believed, cannot be guided by hypothetical or conditional rules that depend on external circumstances [1].

Kant proposed several formulations of the categorical imperative (moral law), one of which is given as an example [4, p. 204]:

"... Act so that you always treat humanity both in your own person and in the person of

everyone else the same way you treat the goal, and never treat it only as a means."

In Kant's doctrine of law, there is an opposition between the legal and moral behavior of the subject. When a person's behavior is consistent with the legal norm, regardless of the motives of the act, then it can be considered legal, permissible. A person's awareness of his internal duty is the moral law inside, therefore Kant considers law to be a regulator of behavior, for which the subjective side of an act, its motives, is indifferent. Law is characterized by coercion, and it cannot be applied in the field of morality, the laws of which are based on a free inner consciousness of duty. Kant distinguishes between natural and positive law. He divides law into public and private, and the latter is based on natural law.

The real right is defined by him as the result of the initial acquisition, which gives the absolute right to the thing. At the same time, he believes that the object of private law can be not only a thing or action of a person, but also the person himself. So Kant explains the relationship between husband and wife in marriage and the relationship between parents and children, and he requires the complete subordination of women to men.

Kant considers the source of natural law or moral-practical law both our own reason and "Divine will", by which he understands "the idea of a moral being, whose will is law for all."

Thus, in the philosophy of I. Kant, natural law necessarily precedes positive law or written law, and also indicates its broader content as a concept.

The role of the subject in the application of the transcendental ideas of the ethics of I.

Kant in the modern understanding of the essence of law

Kant's doctrine of law became the basis for the idealistic trend in legal science - normativism (pure theory of law), which gives the rule of law a character that is absolutely independent of the laws of development of social life.

The essence of state law, according to Kant, is determined not by the happiness of citizens, but by their law. According to Kant, only the rule of law allows individuals to unite and guarantee everyone civil freedom and obliges citizens to observe only universal legal norms: "So, the general legal law says: act outwardly so that the free manifestation of your arbitrariness is compatible with the freedom of everyone, in accordance with by the general law ... "[3].

However, the development of the guiding will of reason by I. Kant in understanding the essence of law, as well as the further fundamental development of the idea of natural law, as well as the idea of freedom, morality, law, undertaken by G.F.V. Hegel did not stop the dominance of legal positivism, which questioned the truth of natural law and reduced the understanding of the essence of law to written state laws.

Among the reasons behind the predominance of legal positivism when considering the essence of law are the following: an attempt to establish the rule of law instead of the rule of

government; the natural-legal idea, according to which everyone must obey the law established in the state, which has roots in antiquity, including in the philosophy of Plato; the attribution of transcendental ideas that make up the content of natural law to "judgments about what should be" in the spirit of D. Hume's agnosticism, which are not verifiable.

The refusal to recognize the ontological status of the idea of natural law revealed the limitations of positive law, which was expressed in its inability to take into account all the diversity of social relations and respond in a timely manner to their changes.

In this regard, along with the normative direction, a sociological and psychological direction appears in the philosophy of law, which, along with the legislative sources of law, takes into account sociological, psychological, cultural, and economic factors. In addition, the principle of equalizing and distributive justice, introduced into the doctrine of natural law by Aristotle, is still used, despite its natural-legal nature and all the efforts of the positivists to "etch" natural-law ideas from the doctrine of positive law.

Kant believes that the question "What is law?", Addressed to the lawyer, is akin to the question "What is truth?", Addressed to the teachers of logic. What follows by right (*quid sit iuris*), i.e. what the laws say or say in one place or another at one time or another, he can still indicate; but whether the right (*recht*) is what they demand, and what is the universal criterion on the basis of which one can generally distinguish between legal and non-legal (*iustum et iniustum*) - this remains a mystery to him, if he does not abandon the indicated empirical principles even for a while and does not look for the source of these judgments in the mind alone (even if the laws mentioned served him as a good guide for this), in order to establish the basis for possible positive legislation. A purely empirical doctrine of law is a head (like a wooden head in Phaedrus's fable), which may be beautiful, but, alas, brainless [5, p. 304].

The role of the subject in complex legal education processes at any historical stage is key (political subjects, civil society actors) or society as a whole [9,10,11].

"A legal norm is always objectified (finds its external expression) in three forms: in the form of a legal relationship, within the framework of which the corresponding rule of behavior is implemented; in the form of the legal consciousness of the participants in this relationship, evaluating it as something normal, should be, and in the form of a legal text, oral or written, that fixes its content"[2,12,13]. This approach corresponds to the legal tradition of the hypertrophied role of the state in legal education.

Conclusion

Law is conceived by Kant as a regulator of people's behavior, for which the subjective side of an act and its motives are indifferent. Law is characterized by coercion, and it cannot be applied in the field of morality, the laws of which are based on a free inner consciousness of duty.

Kant distinguishes between natural and positive law. He divides law into public and private, and the latter is based on natural law. Kant's doctrine of law became the basis for an idealistic trend in legal science - normativism (pure theory of law), which gives the rule of law a character absolutely independent of the laws of development of social life.

The refusal to recognize the ontological status of the idea of natural law revealed the limitations of positive law, which was expressed in its inability to take into account all the diversity of social relations and respond in a timely manner to their changes. In the philosophy of I. Kant, natural law necessarily precedes positive law or written law, and also indicates its broader content as a concept.

The emerging crisis of legal consciousness in modern society forces us to reconsider the essence of the understanding of law and return to the doctrine of natural law, albeit in a slightly different way. As one of the reasons for such a crisis, one can single out a kind of disappearance of justice in the individual legal aspect, when it was replaced by ideas of social and corporate solidarity, economic expediency, the principle of maximum utility, and it was declared that in a number of cases social justice is present immanently in any legal system. However, in fact, such a substitution was expressed in the priority of the state interest over the interests of the individual, which leads to a deficit of legal literacy in the social environment, a violation of the value perception of the legal sphere, de-actualization of law as a regulatory principle, deformation of legal consciousness, and a violation of trust in social institutions.

Modern studies prove the axiological aspect of social norms in legal genesis, as a criterion of proper behavior, which allows us to consider law as a value identical to the idea of law, which immanently contains the basic individual legal values - the transcendental ideas of the ethics of I. Kant, which are relevant in understanding the essence of law and are in demand.

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