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DIALECTICS OF PHILOSOPHICAL PILLARS OF THE LAW AND DEVELOPMENT DOCTRINE

Abstract

This article analyses the philosophical foundations of the Law and Development doctrine, which has been used as a practical tool since the 1950s in many countries in an attempt to improve their socio-economic conditions. Since the adoption of the UN Resolution on Sustainable Development Goals in 2015, most countries have been making efforts to achieve it. We emphasize two philosophical-legal traditions in Law and Development under consideration, which in many respects display antagonistic attitudes to each other: liberal legalism and the ideas of postmodernism philosophy, in particular, the ideas of post-development. The dialectics of this contradiction is revealed in an attempt by liberal legalism to spread itself beyond the western legal systems. Postmodernism, which has been influenced by left-wing political and legal doctrines (neo-Marxism), is aimed at taking into account the interests of local cultures and more equitable distribution of global public goods as a development priority. Following the logic of G. F. Hegel, the evolution of Law and Development can be presented as the spiral reflecting the interaction of law and development theories that began to unwind in the second half of the XX century and continues its upward movement to the present moment.

Keywords: Law and Development doctrine, liberal legalism, post-development, postmodernism, sustainable development.

Introduction

The study of the deep foundations connecting philosophical and legal theories and ideas in the field of socio-economic development of the world community is one of the most vital problems of modern social science in the light of the fact that many issues on the global agenda continue to remain unresolved, new challenges and threats are appearing, as well as cross-cultural interactions are becoming more acute. The current global problems primarily comprise food security issues, including the problem of hunger and poverty in all its forms, environmental and climatic threats, international security issues, human development and opportunities for quality education, clean water and sanitation, decent works and economic growth, sustainable cities and peace, justice and strong institutions, etc. To solve most of the pressing problems on the global agenda at the beginning of the new millennium, a program of collective actions of the world community was developed. It was approved by the heads of states and governments of 193 countries of the world and enshrined in the Resolution "Transforming our World: the 2030 Agenda for Sustainable Development" adopted by the UN General Assembly in 2015.

The movement towards the development of the program of collective efforts to combat global challenges began shortly after the formation of the United Nations in 1948. At the beginning of 1949, the doctrine of Law and Development, which initially studied the political and legal aspects of providing international assistance for socio-economic development in Third-World

countries, was established. Since its foundation, the doctrine has combined many philosophical and legal ideas, theories and principles. In the 1960s, a research group was established at the International Legal Center (1974) to research the interaction between law and development in developing states. The participants of the group called for expanding the field of legal research, cooperation between legal scholars and sociologists in the study of Law and Development for a deeper analysis of the problems related to the interaction of law and socio-economic processes. The research in the field of Law and Development is characterized as an interdisciplinary field that goes beyond the traditional legal doctrine.

The philosophical basis of Law and Development is geopolitical concepts based on the teachings of social evolution. In a brief summary, they cover the following arguments. Social development is carried out intermittently and unevenly. For this reason, some countries are developed in economic, political, legal and cultural terms. Other states are backward. The proximity of backward and developed states can be dangerous for the latter. It is argued that backward states are sources of social tension and international conflicts, wars, revolutions, a "hotbed" of dangerous diseases and crime. To prevent the negative geopolitical consequences of such a neighbourhood, it is proposed to develop a mechanism to help backward countries in their economic and legal development (Kuzmenko, 2009).

An important component of the geopolitical concept under discussion is the doctrine of the socio-state ideal, which in the future should be approached by any backward country. According to this ideal, a developed state should have a market economy, a democratic regime, the rule of law and guaranteed human rights. Therefore, the goal of Western countries is to accelerate social evolution in backward states via economic, political and legal mechanisms. The above-mentioned philosophical concepts later developed into the ideology of liberal neocolonialism, which was the ideological basis of Law and Development.

Many researchers have paid attention to various philosophical aspects of the Law and Development doctrine. D. Trubek and M. Galater (1974) presented liberal legalism as the philosophical and legal basis of Law and Development. The reaction to the first impulse in the attempt to establish Western legal systems outside their traditional agglomeration was numerous concepts related to the philosophy of postmodernism, which asserts multiplicity and, therefore, does not present an opportunity to combine various ideas into a single theory, except for using the umbrella concept of "post-development" for their nomination. This article attempts to link the key philosophical principles that underlie Law and Development and analyse the history of their interaction in different periods.

The Genesis of Law and Development

The emergence of the theory of development in the West occurred shortly after the end of the Second World War. In the inaugural speech delivered on Capitol Hill on January 20, 1949, Harry S. Truman, who was elected for a second term as US President, announced the US intention to "making the benefits of our scientific advances and industrial progress available for the improvement and growth of underdeveloped areas" (Truman, 1949). This appeal was formalized in the "Point Four Program"[1], which was named after the number under which the proposal of the head of state was located in his solemn speech.

In 1950, the US Congress adopted the Act for International Assistance, under which a specialized structure was created within the US State Department – the Technical Cooperation Administration (TCA). In the 1950s, the TCA launched the work of the Mutual Security Agency, which implemented projects in 35 countries in Asia, Africa and Latin America. In 1961, the United

[1] See collection of documents of the Point Four Program, which is covering the years 1948 through 1953, on President Harry S. Truman's Museum & Library. Website: https://www.trumanlibrary.gov/

States passed the Foreign Assistance Act[2] (2003), which united all existing development programs abroad under the auspices of the US Agency for International Development (USAID), whose activities continue to the present day.

In the late 1940s, the idea of providing international development assistance to the United States was not new. A few years before the "Point Four Program", the country had adopted "The European Recovery Program" (G. Marshall's Plan), which assisted in establishing postwar peace by providing substantial financial and technical assistance to Europe. Unlike Marshall's Plan, the "Point Four Program" combined two ideas: providing international development assistance and spreading freedom in its American sense. The adoption of the Law on International Assistance and the beginning of the implementation of development projects abroad shows the intensified confrontation between the United States and the USSR for influence in the Third-World countries at that time and the beginning of America's struggle against the spread of socialist regimes.

In addition to political motivation in the implementation of programs aimed at providing international development assistance, there was a significant economic component, implying the need to create markets for the export of goods produced in the United States. Today, the representative offices of the USAID (United States Agency of International Development History, 2021) are engaged in promoting America's foreign policy by supporting democratic societies, expanding the free-market zone and creating conditions for a national business in more than 100 countries around the world. This motivation has been confirmed in empirical studies of law in other countries. For example, the program of assistance to Lesotho, located in Southern Africa, was recognized by the Canadian government a few years after its completion as a mistake, whereas the real interests of the North American country had commercial goals (Ferguson, 1994).

In the middle of the XX century, academic communities, which began to study the processes of development in Third-World countries, started to thrive in the United States, while development itself formed a separate scientific field (development studies). The first attempts to identify the theoretical basis for development projects were made by economists. The theory of modernization, based on the idea that all nations go through the same stages in the process of their development, has become the basic model of economic development in Third-World countries. Subsequently, developing societies need to borrow the institutions of developed states in order to prosper.

In the early 1960s, lawyers joined the study of development science. Several American universities launched academic research on projects for the development and interaction of law and socio-economic progress in Third-World countries. Soon enough, the practitioners of implementing development programs discovered the inconsistency of the idea of modernizing societies according to Western models and faith in the possibilities of transforming developing countries with the help of the ideas of liberal legalism that were the basis of the theory was lost. As a result, Law and Development fell into decline even before its representatives were able to unite forces to create a strong research field.

Fundamentals of Liberal Legalism

As noted above, the philosophical foundations of Law and Development are represented in liberal legalism, in particular, in J. Rawls' "A Theory of Justice" and the principle of rationality. Liberal legalism is distinguished by such ideas as individualism, egalitarianism, universalism, meliorism. The paradigm of liberal legalism includes a number of provisions on the role of law

[2] An Act to promote the foreign policy, security, and general welfare of the US by assisting peoples of the world in their efforts toward economic development and internal and external security, and for other purposes (Preamble).

in public relations and the interrelationships of legal systems and development processes. This paradigm contains the following prerequisites. First, it was believed that society consists of individuals and mediated groups in which individuals voluntarily organize themselves and the state. At the same time, the state was presented as a structure through which individuals formulate the rules of general self-government through group participation. Secondly, the state exercises social control and carries out changes through the law, which is a set of universal norms for all individuals who are in the same position. Thirdly, it was assumed that laws were developed to achieve social goals and implement social principles. No single group dominates the process of developing legal norms, and no group has any advantages in the rule-making process. The fourth premise implies the existence of the principle of universal equality before the law. The fifth point of the paradigm of liberal legalism presupposes the existence of a legal system that applies, interprets and changes laws. And the last premise is connected with the fact that the behaviour of social authors mainly corresponds to accepted norms.

In the system of values of liberal legalism, special attention is paid to property rights, the ideas of equality, freedom, justice, independence, democracy, the principle of separation of powers, market economic relations and the system of ensuring civil rights. The theoretical basics of deontological liberalism in Rawls' "A Theory of Justice" were founded in the XIX century, in I. Kant's philosophy. Deontological liberalism, which asserted the morality of an act by fulfilling a duty, gave way to utilitarianism and was revived in the United States in the second half of the XX century. According to J. Rawls (1971), the highest virtue of public institutions is justice, and if laws and institutions are not fair, they should be rejected. Among the main public institutions, the scientist ranked the institutions of constitutional liberal democracy with a pronounced social policy and the functions of distributing benefits, which are reflected in private property, a free market and the protection of rights and freedoms.

The institutions of constitutional liberal democracy in "A Theory of Justice" of J. Rawls' principles follow from two grounds: (1) the principle of equal freedom, according to which every individual should have an equal right in relation to a general system of equal fundamental freedoms, correlated with the freedom of all, and (2) the principle of honest equality of opportunities, which believes that social and economic inequalities should be organized in such a way that they simultaneously serve the benefit of the least prosperous part of society. Thus, according to the views of J. Rawls, people born in different social conditions should receive equal access to public goods. B. N. Kashnikov (2004) notes that as a result of the implementation of "A Theory of Justice", fair institutions appear: the constitution, which enshrines fundamental rights and freedoms; the economic and social structure, containing mechanisms for overcoming injustice; the impartial application of fair rules and laws by judges and officials.

The paradigm of liberal legalism showed little interest in non-state forms of legal and social order in Third-World countries, where there was a tendency for non-formalized legal systems. The legal model of liberal legalism assumed the presence of social and political pluralism, while in most Third-World countries, social stratification was combined with authoritarian and totalitarian political systems. Instead of the power of state institutions in most Third-World countries, the power of the tribe, clan or local community was often stronger than the power of the state. If the model assumed the reflection of the interests of the majority of citizens, then the realities of the countries of Asia, Africa and Latin America revealed the imposition of legal norms by a relatively small group of the ruling elite. The judicial system in Third-World countries did not correspond to the proportions of the ideal model either. In the model, the independent subject of

social control was considered, but, in fact, it was not as significant as in the US legal system.

As a result, criticism of liberal legalism has contributed to the assertion that the model does not reflect reality not only in Third-World countries but also in the United States itself. Thus, the model of liberal legalism was an obstacle to understanding the social role of law in the United States and Third-World countries. Development assistance to Third World countries in the field of law initially focused on ensuring access to legal education and providing legal assistance to vulnerable segments of the population. Numerous projects in this area, in particular, did not bring the expected results and did not have a noticeable impact on public relations. This was due to the fact that an increase in instrumental rationality in legal processes, combined with state regulation of economic life, can contribute to the economic prosperity of only a small elite stratum, while for the rest of the population, the situation is changing not for the better, but for the worse. Gradually, it became clear that solving the problems of poor countries based on the export of an idealized model of the US legal system is inadequate for the task at hand.

D. Trubek and M. Galanter (1974) noted that the revision of the basic prerequisites of the paradigm of liberal legalism among researchers of Law and Development occurred as a result of the practical accumulation of knowledge about the structure of legal life in Third-World countries and the cumulative effect of the negative application of the model in practice. Scientists identified four factors that caused the change in the paradigm of liberal legalism:

- improving empirical knowledge about the legal reality in developing countries;
- loss of faith that the model of liberal legalism accurately reflects the role of law in the United States;
- growing doubts that American society can serve as a model for Third-World countries;
- the awareness that politicians in the United States and Third-World countries are not adherents of the values of liberal legalism.

The appeals of supporters of liberal legalism to provide legal assistance for development were based on the idea that the United States can and should act as a model for developing countries. The opponents of this approach in the Third-World countries in the early 1970s presented the theory of dependence, which assumed that the US policy in the field of development and academic support for these projects by American universities is a reflection of their desire for political and economic hegemony over the Third-World countries. In the second half of the XX century, representatives of postmodernism, political feminism and the Frankfurt School opposed the ideas of liberalism, which as a result, led to the modification of Law and Development.

The Influence of Postmodernism

The reaction to the desire of the West to include the former colonies in its own orbit was the theory of dependence, which explained the failures of modernization projects by the subordinate position of the Third World countries in relation to the great powers. In political terms, the reaction to development assistance programs in 1961 was the creation of the Non-Aligned Movement, which united countries that adhered to the principle of non-participation in military blocs and alliances.

In the late 1980s, as a result of the failure of western development policy, as well as under the influence of the ideas of postmodernism, a post-development movement appeared which criticized the basic theory of development based on the principle of economic efficiency. As a result, post-development has modified the traditional (western) concept of development, primarily aimed at achieving economic growth. These processes have found support not only in the works of a large number of scientists from developing regions but also have become widespread in the West.

A. Escobar (2018) criticized the use of an

economic approach in the implementation of development programs. Deconstructing the development, A. Escobar gave preference not to global but to local projects implemented in local communities. According to the scientist, it is necessary to realize multiplicity, implying the existence of different worlds in many parts of the planet, which are under threat of extinction due to the implementation of the idea of development. Later, A. Escobar (2020) introduced the understanding of development through the concept of "pluriverse policy" aimed at creating plurality, which shows that the world consists of many worlds, each of which has its own exceptional value. Thus, the pluriverse policy was declared to be the key to the necessary social transformations that would allow overcoming global crises.

A well-known Iranian diplomat, who represented his country at the UN for many years, M. Rahnema, noted that the post-development era should free the world from the illusions that accompanied the development project and start searching for new grounds for further movement since the ideas of progress and development had disastrous consequences for the life of many national societies. In his opinion, the end of the era of development should not be considered as the end of the search for new opportunities for change and for genuine regulatory processes that can generate new forms of solidarity. The end of the development era only means that the binary mechanical, reductionist and self-destructive approach to change has ended. M. Rahnema (1998, pp. 397-400) also drew attention to the concept of contemplative passivity "Wu-Wei", the philosophy of which would be useful to take into account in the process of forming a new development paradigm. The author also hopes for the emergence of new leaders who will be able to rethink modern management in the spirit of this concept since the era of post-development needs to create a new aesthetic order that will replace the modern perception of reality. In order to create such an aesthetic order, it is necessary to find new paradigms that would substitute the outdated concepts of progress and development.

According to W. Sachs (2010), the Euro-Atlantic model of development cannot be universal and suitable for distribution throughout the world since it has developed and formed in certain, in many respects, exceptional conditions. This model is not able to maintain justice on a global scale, and accordingly, it cannot remain the guiding concept of international politics. In order to achieve prosperity for all citizens of the planet, a different approach, which will include environmental issues and other problems, is needed.

S. Latouche (2009) proposed the concept of a "degrowth" of society. In his opinion, in the developed world today, people consume much more than is necessary for life. The discussion of the degrowth project began at the end of the twentieth century in anti-globalization and green movements, whose supporters began to actively form network communities and spread their practices through individual and collective actions. Supporters of the concept of "degrowth" reject the idea of growth because the natural environment, future generations, human health, working conditions of workers and the countries in the Global South suffer from it. In their opinion, a cultural revolution that would put the development policy on new foundations is needed. S. Latouche (2004) also considers "degrowth" as a local project that includes political innovations and economic autonomy. The author sees the solution in the concept of eco-municipalism, which implies the implementation of the principle of local ecological democracy, in which important decisions are made by small communities of people living in these territories. With such a system, many eco-municipalities make up an ecoregion that implements the principle of a polycentric and multipolar network. Degrowth society sets high barriers to unfair competition but also greater openness to similar communities. As the scientist claims, the formation of local communities according to these principles is already beginning to occur in the north of Italy in

the Tuscany region. Another example of the concept is the slow food movement, which unites about 100,000 small agricultural producers from around the world in the fight against product standardization.

G. Rist (2008) drew attention to the fact that the social constructions common today in the form of market laws appeared relatively recently, and before their appearance, people had been doing without them for a long time. The author believes that the state in which the achievement of development requires great sacrifices and at the same time guarantees only temporary prosperity of a few is not fair. Nevertheless, the idea of development has been preserved and continues to exist, even if it has been reduced to achieving the Sustainable Development Goals within the framework of international institutions.

The theory of post-development, which appeared as a critique of the classical paradigm, tried to develop ways of alternative movement of society. Despite the efforts that were directed by the ideologists of post-development at shifting the classical paradigm, they could not achieve the desired result, but they had a noticeable impact on the classical concept. The main principle of the classical concept of development, based on economic growth and efficiency, has not been overthrown but has been supplemented by other important indicators, such as caring for people and the environment. As a result of the criticism of development projects from developing countries and the failures of many programs in this area, representatives of the Law and Development movement turned to the search for new approaches to achieving socio-economic progress.

The revival of the doctrine of Law and Development was associated with the emergence of neoliberal economic theory in the 1980s. After the collapse of the Warsaw Pact and the end of the existence of the USSR, numerous development projects based on the ideas of the Washington Consensus came to Eastern Europe. The transition period in Eastern Europe allowed international organizations, primarily the World Bank, the International Monetary Fund, the International Bank for Reconstruction and Development, as well as agencies and non-profit organizations, to implement many projects in the region. During this period, development became a "big business", which revived interest in the problems of Law and Development on the part of the academic community.

At the turn of the century, there were changes that modified the principles of international development. At the end of the XX century, scientists, along with the dynamics of economic growth, began to include in the theory of development various non-economic parameters that measure social well-being, such as environmental protection, human capital development, etc. Based on these principles, in 2000, the UN adopted the "Millennium Development Goals" (MDGs), designed to improve living conditions in developing countries. In 2015, these goals were significantly expanded, resulting in "Sustainable Development Goals" (SDGs). Compared to the MDGs, the SDGs were significantly expanded. In addition, their implementation was meant not only in developing countries but in all countries of the world. Y.-S. Lee (2020) believes that at the moment, the concept of sustainable development represents a new paradigm of international development. Currently, the international development agenda consists of many directions that form a polyvariant landscape, which opens up various ways to choose the optimal mechanisms for regulating the processes of international development.

Conclusion

The contemporary Law and Development is the result of the evolution of the doctrine, which synthesized various aspects of classical and critical philosophical and legal thoughts. The doctrine is not static; the search for new paradigms that allow us to successfully transform the social environment and get closer to solving the global

problems of humanity is constantly continuing. In this regard, Law and Development, as one of the programs of empirical legal research, can assist in the study of law in action in specific socio-economic conditions. The analysis of development policy shows that attempts to spread legal orders outside of one's own legal culture can cause the opposite effect, which can lead to changes in the system that has seen this process.

It is quite obvious that in this regard, a philosophical and legal understanding of both the geopolitical significance of the Law and Development doctrine and many other problems is necessary. First of all, it should provide answers to such questions as: "Is liberal democracy the best political regime for developing countries?"; "Will the transition to market-based economic mechanisms configured according to the Western model be effective from the point of view of production in states that have relatively recently moved away from the appropriating economy?". The expediency of the expansion of legal values (in the form of the rule of law, as well as the legal protection of individual interests and human rights), historically unusual for collective communities based on tribal relations and ancestral customs for centuries, also raises many questions. In general, only a philosopher can assess the final prospects for the total legal acculturation of some non-Western civilizations.

At present, we have to state with regret that a deep philosophical understanding of Law and Development is almost completely absent in non-Western legal literature. Therefore, all of the above problems are still waiting for their objective researcher, who looks at the problem not only as a liberal legalist but also from the point of view of postmodern philosophy.

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