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VLADIK NERSESYANTS'S PHILOSOPHICAL AND LAW THEORY

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Abstract: Firstly, this article considers the main aspects of the libertarian legal approach to the understanding of law developed by Soviet and Russian philosopher of law Vladik S. Nersesyants.

Secondly, the article shows the contributions of this philosophical and law doctrine to the development of the world philosophy of law and its importance for the improvement of Russian legal theory and practice.

Thirdly, the article substantiates the thesis that the libertarian approach to the understanding of law is a logical rationalisation of the jusnaturalist tradition of law understanding as an expression of equality in human relations as reinterpreted by Nersesyants by looking at the efforts in rationalizing the jusnaturalist doctrine reflected in the history of the development of philosophical and law thought from the beginning of the Modern Era.

Fourthly, the article pays special attention to the analysis of the concept of civilism as a new post-socialist social system developed by Vladik Nersesyants on the basis of the libertarian approach to the understanding of law. Therefore, the article reveals the content of this concept related to the law approach to the desocialisation of the former socialist property that creates the basis for the formation of a new system of law.

Keywords: Vladik Nersesyants, philosophy of law, libertarian legal understanding, legal positivism, jusnaturalism, essence of law, principle of formal equality, concept of civilism.

Introduction

Current law and political situation in Russia beginning with the collapse of socialism and the start of the post-socialist transformation of all spheres of public and state life in the country requires a deep philosophical and law understanding. Indeed, in the philosophical abstractions of law, "behind the external conditionality, it is about the most important and essential things in the life of every individual and society: freedom, justice, equality" (Nersesyants, 2006,

p. 64). Therefore, from the very beginning of the post-socialist transformations, and especially after the adoption of the Constitution of the Russian Federation in 1993, the prospects for the legal development of Russia were associated with a change of the system-centric positivist doctrine of the Soviet model to the human-centric type of law understanding.

With all the abundance of the most diverse (often ill-conceived) concepts of law that still compete within the framework of the modern Russian philosophy of law, the most serious claims to the status of a general doctrinal approach are made by three types of law understanding that are most consistent in their theoretical and methodological basis: legal positivism, different versions of the jusnaturalist doctrine, and Vladik Nersesyants's libertarian law theory. Along with these approaches developing in line with classical rationality, the so-called post-classical concepts of law focused on non-classical theories of knowledge, which are often described as integrative, have become quite popular. And although these concepts in some cases contribute to the multidimensional perception of law phenomena, it turns out upon closer examination that they, in fact, do not integrate the classical types of law understanding, but lean towards one of them. Where they deviate from classical rationality, they often shift away from rationality in general, which seems to be methodologically incorrect if only because law is the quintessence of the rational principles of social life.

That said, the differences between Soviet-style positivism, in one respect, and the jusnaturalist doctrine and libertarian law theory, in the other, are ideological in nature. Human-centric and system-centric ideologies apparently seem to collide. In the world as a whole, the long-running dispute between supporters of positivism and jusnaturalism is no longer ideological in nature, since the positivists, having long and painfully fended off accusations of theoretical complicity with Nazism, have brought their concepts in line with liberal values. In contrast, Soviet positivism had no experience of such a "purgatory", meaning one should therefore not hope for its transformation towards the liberal concept of "soft positivism".

As for jusnaturalism, the absence of a clear theoretical distinction between law and morality, which is characteristic of this approach, significantly complicates its application in Russia, since it is difficult to overcome the claims of the state to express the requirements of public morality within the framework of a system-centric type of legal culture. Therefore, Russia needs a legal doctrine that offers a theoretically clear and practical criterion for measuring individual freedoms based on the principle of formal equality, derogation from which (even towards morality) leads to arbitrariness. The libertarian law theory developed by Vladik Nersesyants and analysed in this article meets these requirements fully.

Main Milestones of the Biography and Creative Path of Vladik Nersesyants

Vladik Sumbatovich Nersesyants (2 October 1938 - 21 July 2005) was a Soviet and Russian academic and expert in the philosophy of law, the theory of law and state, and political and legal doctrines. He was founder of the *libertarian legal type of legal understanding* as an independent discipline within the framework of the philosophical understanding of law and author of the *libertarian legal theory of law* and the concept of *civilism* as a post-socialist social regime.

Vladik Nersesyants was born in Stepanakert in the Nagorno-Karabakh Autonomous Region of the Azerbaijan SSR into an Armenian family. In 1941, his father was arrested on charges of hostility to the Soviet regime, only to presumably be shot a year later. This event undoubtedly influenced Vladik Nersesyants's choice of his main research (philosophical and legal) area and left an imprint on his attitude towards the Soviet regime and the Communist Party, of which he was not a member for reasons of principle. After his father's arrest, the family was forced to move to Yerevan, where, in 1955, Vladik Nersesyants graduated from school with a gold medal. After an unsuccessful attempt to enrol at the Lomonosov Moscow State University Faculty of Philosophy (documents were not accepted from the son of "the people's enemy"), he entered the Lomonosov Moscow State University Faculty of Law by hiding the fact that his father had been repressed. In 1961, he graduated from the Faculty of Law with honours and joined the Ivanovo Region bar association. Vladik Nersesyants worked as a lawyer (initially in the regional and

later in the city bar association of Ivanovo) for several years, during which time he prepared his PhD dissertation at Lomonosov Moscow State University on the topic "Marx's Critique of Hegel's Philosophy of Law during Marx's Transition to Materialism and Communism" under the supervision of Professor S. F. Kechekyan, which he successfully defended in 1965. Choosing such a topic allowed Vladik Nersesyants, by paying tribute to the study of Marxism, to pay special attention to the study of Hegel's philosophy of law, which he regarded as the pinnacle of world philosophical and legal thought.

After defending his dissertation, he worked for several months as a junior researcher at the All-Union Research Institute of Soviet Legislation under the Ministry of Justice of the USSR, and then moved to work for the Soviet State and Law journal. From 1970 until his death, Vladik Nersesyants worked at the Institute of State and Law of the Academy of Sciences of the Soviet Union (later known as the Russian Academy of Sciences). In 1975, he defended his doctoral dissertation on the topic "Hegel's Political and Legal Theory and Its Interpretation". In 1994, Vladik Nersesyants became a corresponding member of the Russian Academy of Sciences and in 2000 became an academician of the Russian Academy of Sciences.

Vladik Nersesyants is the author of more than 350 scientific works (including 16 individual monographs and textbooks), as well as three collections of poems ("At the Crossroads of Timelessness", "Moods", and "Creations").

The author's main scientific works include "Hegel's Philosophy of Law: History and Modern Times", "Socrates", "Hegel: Political Works", "Political Teachings of Ancient Greece", "Hegel", "Law and Statute", "Plato", "Our Path to Law. From Socialism to Civilism", "Law – the Mathematics of Freedom", "Philosophy of Law", "History of Political and Legal Doctrines", "Jurisprudence. Introduction to the General Theory of Law and the State", "Hegel's Philosophy of Law", "General Theory of Law and State", and "The National Idea of Russia in the Historical Quest for Equality, Freedom, and Justness. The Civilism Manifesto".

Vladik Nersesyants was co-author and editor-in-chief of a number of major collective works, including "History of Bourgeois Constitutionalism", "History of Law: England and Russia", "World History of Political and Legal Thought", and "Political and Legal Values: History and Modern Times". He participated in the preparation and publication of such sources of legal thought as "Hegel. Political Works", "The Digests of Justinian", "The Saxon Mirror", was a co-author of "New Encyclopedia of Philosophy" – the first and so far the only academic philosophy encyclopedia published in post-Soviet Russia within which he published the articles "Law" and "Philosophy of Law".

For several years, he was Chairman of the Russian Section of the International Association for the Philosophy of Law and Social Philosophy, a member of the Scientific and Coordinating Council for Social Sciences under the Vice-President of the Russian Academy of Sciences, and a member of the editorial board of the Philosophical Heritage series. He was engaged in educational and teaching activities, successfully training 10 PhD.

Vladik Nersesyants began his scientific journey as an expert in political and legal doctrines, deep knowledge of which later allowed him to propose his own philosophical and legal theory based on an independent approach to understanding law that was different from other types of legal understanding developed in the context of world philosophical and legal thought. The starting point in the formation of this approach was the *concept of the distinction between law and statute*. In the mid-70s of the last century, the formulation of this problem, which has a long tradition in world philosophical and legal thought, met with sharp criticism from the majority of Soviet legal theorists. This is because this approach, firstly, was out of tune with the official legal doctrine equating law and statute, and secondly, was fundamentally different from the so-called broad understanding of law, supporters of which tried to mitigate the legist rigorism of official legal understanding. Moreover, Vladik Nersesyants interpreted *law as a form of freedom*, which made his approach particularly unacceptable.

After defending his doctoral thesis, he began to express his scientific views more actively in his public statements. However, he was unable to publish his article on this topic in the Soviet State and Law journal for a long time. His 1977 article "Law and Statute: Their Distinction and Correlation" received negative reviews from two leading

legal theorists. In 1979, the Soviet State and Law journal held a round table on the topic "On the Understanding of Soviet Law", which marked a new milestone in the development of Soviet jurisprudence associated with the newly opening opportunities for serious scientific discussions on the problems of legal understanding. In his speech at the round table, Vladik Nersesyants (1979) put forward theses that were fundamentally important for his approach regarding "the correlation of freedom, law and statute", law as "a form, norm and measure of freedom", "law designates the sphere, boundaries and structure of freedom", regarding the role of statute as a form of expression of the measure of freedom, etc. (pp. 70-71). He did not focus on the difference between his concept and the broad legal understanding, but simply noted its logical inconsistency (Nersesyants, 1979, p. 72).

In 1983, Vladik Nersesyants published his book "Law and Statute" in which he considered the philosophical and legal tradition of distinguishing between law and statute on the basis of an extensive amount of historical material. Only after this book had been published did Vladik Nersesyants (1983, pp. 26-35) go ahead and publish his policy article "Law: A Diversity of Definitions and Unity of the Concept" in the Soviet State and Law journal. A significant part of the article is devoted to polemics with L.S. Yavich, who singled out "different essences of law", and S.S. Alekseev, whose views Vladik Nersesyants described as not extending beyond legal positivism. From that time onwards, Vladik Nersesyants almost wholly avoided discussions with colleagues, choosing rather to focus on the presentation and explanation of his own theory.

Vladik Nersesyants's Libertarian Law Theory

In the years following the dissolution of the Soviet Union, Vladik Nersesyants would go on to give a detailed philosophical and law justification for his approach to understanding law, which he described as a *libertarian legal type of law understanding*. According to the author, this term, first, indicates that law includes (ontologically, epistemologically and axiologically) freedom. Law, he believed, is not just a form of freedom, but the only possible form of existence and expression of freedom in public life, and the understanding of law as a form of freedom is an instrument for understanding the whole variety of legal (and, therefore, non-legal and anti-legal) phenomena. The adjective "legal" means that people's freedom in their public life is associated only with law and is possible only in a legal form. This term emphasizes the fact that freedom, being an immanent sign of law, is not a form of expression of moral or religious principles.

The main difference between the libertarian lawl approach and legal positivism and the natural law doctrine is related to the interpretation of the problem of the *correlation between essence and phenomenon in law*. Legal positivism, which equates law and statute, is well known to deny the existence of any essential feature of law that expresses the specific nature of law as a special social phenomenon. As for jusnaturalism, it considers the natural law essence as something self-sufficient not requiring any external forms of manifestation. "In other words", Vladik Nersesyants (2006) writes, *"natural law is the equivalence of essence and phenomenon, being and existence"*. Natural law concepts that criticise legalism for denying the objective essence of law fall into the other extreme – "into the denial of the need to express the essence of law in the form of a generally binding legal phenomenon established by the state – a legal law (positive law corresponding to the essence of law)" (p. 60). In contrast to these two approaches, "each of which in its own way breaks the necessary connection between the essence and the phenomenon in law", in the libertarian law concept, "the relationship between the law essence and the law phenomenon in the context of the distinction between law and statute is necessary and covers all legally and logically significant variants of the relationship between law and statute" (Nersesyants, 1998, p. 7).

It is the recognition of the existence of its own essence that distinguishes law, on the one hand, from arbitrary power in the form of statute, and, on the other hand, from the norms of public morality and religion, that is, a kind of "visiting card" of libertarian law theory. In this context, Vladik Nersesyants (2002) understands the essence of law as the *principle of formal equality* expressed through "the unity of three essential and mutually supportive properties (characteris-

tics) of law – the universal equal measure of regulation, freedom and justice" (p. 4). As the author explained, the concept of freedom includes equality (people are free, that is, independent of each other, only to the extent that they are equal to each other), and this, in turn, means that freedom is immanently linked to justice expressed through equality. From the standpoint of this approach, justice is a result of applying an equal measure to the actual diversity of relations in order to arrange them in such a way that ensures equality in freedom. Law expresses people's freedom precisely because it speaks and acts in the language and measures of equality (in this sense, Vladik Nersesyants defined law as "the mathematics of freedom").

The dialectical unity of essence and phenomenon in law is represented by *law statute* (in the broad sense of the concept of "statute", which includes precedent and legal custom). Vladik Nersesyants's interpretation of law as a law statute (that is, a phenomenon expressing the essential law principle of formal equality) is based on the recognition of the *conceptual unity of law and state* as a unity of normative and institutional forms of freedom. When Vladik Nersesyants speaks about the state that establishes or authorises a law statute and ensures its implementation by means of state coercion, he describes the word "state" not as a form of organization of public power that has means of coercion, but as a law form: he uses the concept of "state" to describe a system of power organised on the basis of law that creates law and obeys law in its actions.

In summary, it can be said that from the standpoint of the libertarian law approach*, law is defined as a system of norms of positive law meeting the requirements of the principle of formal equality as an equal measure of freedom that is ensured by the likelihood of state (in a broader sense covering international law, governmental) coercion.*

In Soviet times, Vladik Nersesyants's philosophical and law concept was acutely criticised by numerous adherents of legal positivism, with the main accusations, which were essentially ideological in nature, being that his approach to law leads to the destruction of socialist legality, since it allegedly justifies the refusal to comply with non-legal statutes. It is telling that such critical attacks continued even during the post-Soviet period (Syrykh, 2008, p. 510), which clearly indicates the intensity of their polemics. In modern time, the other critical statements deserve more attention, as they, with varying degrees of politeness, cast doubt on the claims of the author of the libertarian law understanding to an independent position in world philosophical and law thought.

One of the areas of criticism is most expressively represented in the works by O. V. Martyshin, who calls into question the novelty and independence of the libertarian law theory. The whole difference between the natural law approach and the libertarian concept, according to O. V. Martyshin (2002), consists only "in the criteria or in the understanding of law: for "jusnaturalists", it is a set of specific principles equated with justice, and for "libertarians", it is a single principle of formal law equality". Inasmuch as one may agree with this statement, it is not clear why the author believes that there is no significant difference between theories based on a "set of concrete principles" (meaning the absence of a fundamental, essential principle) and an approach to understanding law based on a single, that is, essential principle of law. He argues that Vladik Nersesyants's interpretation of law as an equal measure of freedom does not bring anything new to the concepts of law developed by I. Kant and G. Hegel. However, he readily admits that "the statement 'law is freedom' does not represent a single or comprehensive definition of law, neither for Kant nor for Hegel" (p. 9), and regarding I. Kant, he also specifically stipulates that "Kant understands the principle of equality quite differently from Vladik Nersesyants" (pp. 10-11).[1]

More substantive arguments of a critical nature are given by E. V. Timoshina (2018). Ac-

[1] It is telling that, against all logic, O. V. Martyshin believes that the philosophical understanding of law that reveals the essence of law "is intended only for philosophers and those who create laws, giving them a criterion for distinguishing between legal and non-legal phenomena" and "every competent lawyer and every citizen who refers to the protection of their interests regards the essence of law as an opportunity to resort to its enforcement" (Martyshin, 2002, pp. 10-11). It is against this background that he considers "legal literacy" as a refusal to understand the essence of law, and the citizens' ability to protect their interests is determined by their ability to involve mechanisms of state coercion for these purposes.

cording to her, Vladik Nersesyants's theory should be attributed "to the tradition of natural law, towards the development of which his theory has made outstanding contributions" (p. 82). In her opinion, libertarian law theory can be characterized as a monistic deontological anthropocentric theory of natural law with historically changing content. The key here is the attribution of Vladik Nersesyants's theory to the natural law approach, that is, the denial of the author's claims to developing an independent type of law understanding.

Agreeing with the assessment of Vladik Nersesyants's theory as a monistic, deontological, and anthropocentric approach, it should first be noted that from the author's own point of view, the doctrine of natural law (unlike libertarian theory) is not at all monistic. Vladik Nersesyants (2006) wrote that according to jusnaturalist ontology, the existence of law "is represented in two opposite forms: as a genuine existence (the existence of natural law) and as a non-genuine existence of law (the existence of positive law)" (p. 59). The consequence of this gap between natural and positive law "is the law dualism inherent in the jusnaturalist approach, that is, the assumption of the parallel existence and simultaneous operation of both natural law and positive law".[2]

However, E. V. Timoshina believes that Vladik Nersesyants reduces his analysis to archaic variants of jusnaturalism that "mainly belong to the ancient version of the natural law approach" and does not take into account the fact that the more modern versions of this doctrine are often monistic in nature. However, recognizing that philosophical and legal thought has paid a great deal of attention to the search for universal rational principles of law starting from the beginning of the Modern Era, Vladik Nersesyants believed that although it led the philosophy of law away from classical and logically consistent jusnaturalism, movement in this direction did not completely remove it beyond this approach.

Regarding such philosophical and law doctrines as neo-Kantianism, neo-Hegelianism, phenomenologism, existentialism, intuitionism, etc., he wrote that their supporters (who often did not consider themselves jusnaturalists) "did not take" law to mean "natural law", but "as one or another version of "philosophical law" ("idea of law", "correct law", etc.)" (Nersesyants, 2006, pp. 787-788). These teachings, as Vladik Nersesyants emphasised, involve theoretical constructions based on various principles and values (such as freedom, justice, equality, human dignity, truth, etc.) when none of these values rises to the level of a universal and essential principle. Otherwise, the supporters of the corresponding approach should have interpreted these law principles and values as modifications of the essential principle, and not as principles equivalent to it. Consistent progress in this direction would lead, as the author emphasized, to overcoming the natural law approach itself. This is what Vladik Nersesyants (2006) meant when he noted that "the entire past and modern philosophy of law, except for the libertarian law concept..., represents some variants and versions of the jusnaturalist philosophy of law" (p. 50).

However, the main indicator that a particular theory does not go beyond the jusnaturalist type of law understanding is not its dualistic nature at all, but the absence of a clear distinction between law and morality as essentially different phenomena. It is this dividing thesis fundamental to libertarian law understanding that is disputed by E. V. Timoshina when she relates Vladik Nersesyants's theory to the natural law approach. In her opinion, the principle of formal equality only seems to be free from morality but in fact "presupposes certain moral assumptions: it is based on the reciprocity of recognition and respect for freedom. The recognition of another person's freedom is an ethical act (action) without which formal equality would not be possible and therefore one can speak about its own moral grounds" (Timoshina, 2018, p. 75).

Meanwhile, according to Vladik Nersesyants, the reciprocity of recognition and respect for freedom is not a "moral assumption" at all, but a prerequisite for *law* communication, that is, the ability inherent in the nature of humans as rational beings to perceive other people as equal

[2] Vladik Nersesyants (2006) recognized that "law dualism" is *partially* overcome (italics by the authors) in those philosophical and law concepts that, while remaining within the framework of natural law concepts, at the same time interpret natural law as a philosophical idea of law, as a philosophical concept of law, etc. "However," he noted, "even in these philosophical concepts, the corresponding idea of law, etc., is not brought to the concept of law statute (to a consistent legally formalised concept and the construction of positive law corresponding to the objective essence of law)" (p. 93).

subjects and communicate with them based on the law principle of formal equality. In the genesis of law, reciprocity as a genetic feature of human nature formed in the course of biosocial evolution acted as an independent source of the law principle with a corresponding essence. The ability to reciprocate led to the principle of retribution expressed in the Law of Talion, and the Golden Rule of normative regulation in its negative formulation ("Don't do unto others what you don't want done unto you"), and Kant's Categorical Imperative (which, in Vladik Nersesyants's interpretation (2006), appears as a "*modification of the principle of formal law equality*" (p. 623), and increasingly developed modern manifestations of the law principle of formal equality as an essential component of the law statute. After all, if we consider law as a phenomenon with a special essence, we proceed from the fact that this phenomenon is identical to itself, that is, it expresses its essence at all stages of development, starting from the moment of its inception (Nersesyants, 2004, pp. 232-233).

The difficulty faced by various interpreters of the non-positivist (essence-oriented) approach to the differentiation of law and morality proposed by Vladik Nersesyants lies in the fact that the tradition of recognising the generic unity of these phenomena established in philosophical and law thought is sanctified by I. Kant, who proceeded from the fact that morality and law are based on "one and the same practical law of freedom, differing from each other in that from the law perspective, they concern external actions (including their maxims), and from the moral perspective, they themselves become the determining basis of actions, serving as a pure obligation" (Guseynov, 2018a, p. 11). However, in his interpretation of the German philosopher's teaching, Vladik Nersesyants (2006) came to the conclusion that Kant's Categorical Imperative is one of the manifestations of the principle of formal equality and that, therefore, his "concept of the morality of law has a legal meaning and is significant for the philosophy of law precisely because and insofar as this morality itself is essentially legal" (p. 623). By the way, a similar view of the problem (although not expressed in such a categorical form) can be traced in the works of some philosophers. A similar position was held, for example, by German philosopher G. Simmel, who considered the moral law proposed by I. Kant as "a force external to the individual and suppressing him, depriving him of individuality and responsibility" (Apresyan, 2021, p. 22), which, in terms of its impact on a person, is close to positive law. Well-known Russian expert in Kant's work E. Yu. Soloviev (1992), noting that in I. Kant's interpretation, "from the very beginning, the individual's morality has the sense of law capacity," asks the highly logical question: isn't Kant's ethics at all "not ethics, not an analysis of morality, but a full-fledged theory of law consciousness?" (p. 187).

Fundamentally different approaches to the *strategy of law development* are hidden behind the purely theoretical, at first glance, discrepancies between libertarian and natural law theories in the interpretation of the relationship between law and morality. If we assume that law as a system of human rights expresses certain moral universals, we will be forced (whether we want it or not) to link law with the ideas about these values that have been developed in the most law developed countries and regions of the world. This approach focuses on bringing the Russian legal system to the level of universal world standards of human rights and freedoms given to it from the outside in the formation of which Russia has not participated. Moreover, such standards appealing to basic moral universals in practice appear in the form of universal human values that are given a generally significant law character. In contrast, Vladik Nersesyants's libertarian law theory proceeds from the need for priority provision of institutional forms of freedom, that is, the creation of appropriate national institutions of a state governed by the rule of law. Based on this, there is now a need to develop a system of law that best suits Russian realities to meet the requirements of formal equality as the basis for coordinating the legitimate interests of all participants in legal communication. These differences between the two approaches are even more pronounced at the level of international legal relations. It is for these reasons that libertarian law theory is also rejected by those who believe that the formulation of moral universals and universal human values on which national and international law should be based is the prerogative of the chosen peoples who have created a culture of the law type.

It is also worth paying attention to the criticism of the libertarian law theory from the sup-

porters of the communicative law understanding[3], who consider law as a means of communication conditioned by the socio-historical context. So, for example, according to I. L. Chestnov (2021), the shortcomings of the libertarian lawl theory include the fact that it does not disclose the "historical and socio-cultural contextuality of the determination of the content of justice" and it lacks a "mechanism for determining justice" (p. 265). As for contextuality, it is worth recalling the words of Vladik Nersesyants (1996) that "different stages of the historical development of freedom and law in human relations have their own scale and measure of freedom, their own circle of subjects and relations of freedom and law, in a nutshell, their own content of the principle of formal equality" (p. 12). He gives concrete analyses of the historical and socio-cultural context of the development of freedom and law in many works, for example, in the monograph "Law and Statute", or in the monograph "Our Path to Law. From Socialism and Civilism" (relating to the socialist and post-socialist periods of Russian history), in the "Civilism Manifesto", etc. As for the fact that Vladik Nersesyants did not have any mechanism for determining justice, it is obvious that in a state governed by the rule of law (and he spoke specifically about this state), the mechanism for developing a just, that is, legal, solution is a democratic procedure of law formation during which quite concrete law-forming interests carrying the historical and socio-cultural contextuality of real life are coordinated on equally just principles.

Despite the ongoing criticism from various sides, Vladik Nersesyants's libertarian law theory has now occupied a firm position in the Russian philosophy of law. Nevertheless, as we rightly noted, this theory is "luckier to be mentioned than to be understood" (Grafsky, 2006, p. 159). It is indicative in this regard that there exist very serious disagreements with a number of concepts of Vladik Nersesyants's theory among the authors who position themselves as its supporters. This is partly because the libertarian type of law understanding was in basic terms developed by Vladik Nersesyants back in the socialist period when the pathos of striving for freedom as the antithesis of arbitrary power attracted a number of researchers who were focused, rather, on the political and economic theory of neoliberalism in the spirit of L. Mises, F. Hayek, M. Friedman, and J. Buchanan substantiating the relationship of human rights with the free market economy. From these positions, they basically deny the law nature of social justice and the law nature of social state and do not recognise the theoretical relationship between the libertarian law understanding and the concept of civilism (Lapaeva, 2012, p. 377-392).

In this regard, it should be noted that the essence of such a neoliberal approach to understanding justice was most clearly and frankly formulated by F. Hayek (2006), who noted that people agree to "enforce uniform compliance with those rules that have significantly increased the chances of everyone to satisfy their needs, but they have to pay for it with the misfortune of unmerited failure for individuals and groups" (p. 239). This thesis, of course, could not be shared by Vladik Nersesyants (2006), for whom "unmerited failure" is injustice that goes beyond law. The social policy of the state meant to overcome such injustice to the extent that society, at this stage of development, can afford it, will, in his opinion, be of law nature if it does not go "beyond the boundaries of law compensation", that is, does not lead "to the emergence of privileges that violate law" (p. 509). Therefore, the compensatory principle[4], as one of the concretisations of the principle of formal equality, is a law principle that distinguishes public or private charity from the social policy implemented by the state within the boundaries of law. The amounts and directions of such compensation are the result of a decision taken within the framework of a democratic parliamentary procedure that is aimed at coordinating legitimate social interests.

[3] By the way, Vladik Nersesyants's theory does not exclude the recognition of law as a communication tool: for him, law is a means of communication carried out on the basis of formal equality of the parties.

[4] This approach echoes a number of theoretical constructions proposed by supporters of radical democracy (left-wing Western political philosophy) who interpret the idea of such legal compensation in the context of the "principle of democratic equivalence" (Laclau & Mouffe, 1985, p. 183).

The Concept of Civilism as a New Post-Socialist Social System – the Author's Development of a Libertarian Approach to the Understanding of Law

In Soviet times, when revealing the principle of legal formal equality as a trinity of equal measure, freedom and justice, Vladik Nersesyants emphasised freedom and did not pay particular attention to the topic of justice. After the collapse of socialism, his prime task was to unmask the arbitrariness of the new post-Soviet power which manifested itself in the violation of justice in the transformation of property relations. During the post-Soviet period, Vladik Nersesyants developed this topic mainly in the context of the concept of civilism (from Latin civis – citizen) as a post-socialist system that could develop in the country as a result of the legal desocialisation of public property. In contrast to the hasty write-off of socialism from the accounts of history in which the powerful beneficiaries of post-socialist transformations are interested, Vladik Nersesyants proposed a fundamentally different vision of Russia's future prepared through the real and only possible, in his opinion, socialism which was implemented in its most complete form in the USSR.

Vladik Nersesyants (1989) wrote that the transition from socialist equalization to law, from consumer property to individualized property, that brings real profits and incomes should be universal and should apply to all members of society in accordance with the principle of universal legal equality (p. 3). Socialism, he believed, was not at all a tragic mistake of Russian history, but a natural stage in the dialectical development of mankind from capitalism as a society based on private property, through socialism as a complete denial of private property (anti-capitalism), to a new social system based on a new type of property – individual, that is, personalized, but at the same time not private, property of every citizen of the country.

From the standpoint of this approach, all citizens of the country are equal heirs of the former public property. The concept of civilism was not accepted by domestic (Chetvernin, 2003, pp. 46-47) and foreign (Sproeder, 2004, pp. 35-38) liberals who considered it one of the many versions of pro-communist egalitarianism. Against this background, social practices followed the most illegal path of the so-called insider (and, in fact, nomenclature-criminal) privatization, thereby predetermining the extreme degree of illegitimacy of large property and blocking the normal development of the country. It is not that this privatization was carried out in violation of the laws in force at that time. And it is not that privatization has resulted in an oligarchic form of ownership of the main means of production. It is not even that the oligarchs appointed by the government have not become effective owners. The main thing is that the *very idea of the resocialization of socialist property through its privatization was initially non-law idea.* Vladik Nersesyants pointed out that in a post-socialist country, legal privatisation (that is, denationalisation of property by transferring it to private individuals based on the understanding of law) is impossible in principle, since the socialist state represented by the party-state nomenclature was not the owner in the legal and economic senses of the concept and therefore had no right to transfer it to private hands at its own discretion.

As such an informed expert as the Chairman of the Constitutional Court of the Russian Federation V. D. Zorkin (2021) put it, "it is privatisation, the manifestly unfair (and therefore non-law) nature of which is recognised even by its beneficiaries, that has become one of the main causes of excessive social stratification and extremely uneven distribution of the burden of economic reforms implemented in the country" (p. 153). The problem of the legitimisation of property that has come about as a result of privatisation, he writes, "will one way or another have to be solved, and solved not behind the scenes, but as part of a broad democratic discussion, more precisely, within a model for finding a solution which Vladik Nersesyants once described as a kind of "social contract on property" (Zorkin, 2021, p. 163). The expected deterioration of the economic situation of the broad masses in Russia will inevitably put the idea of a more equitable distribution of social wealth on the agenda by reviewing the results of privatization.

Importance of Vladik Nersesyants's Libertarian Law Theory for the Law Understanding of Modern Trends in Social Development

Is currently taking place that many workers are

losing their former connection with the state as a result of their transition into the ranks of the precariat (Standing, 2011). Moreover, in the foreseeable future, the advancing automation and robotisation of production processes will most likely force many of them out of their jobs altogether. All this significantly weakens the position of workers in the social contract underlying modern legal statehood and therefore undermines the foundations of law and order. The situation is aggravated by the ongoing processes of polarisation of the world's middle class (Milanovich, 2014), which is the main bearer of law and democracy, work ethics, etc.

From the point of view of the *concept of law statute* underlying the libertarian law approach that proceeds from the idea of the conceptual unity of law and a state governed by the rule of law, this weakening of the law nature of the state leads to the replacement of law regulation with regulators that are of an entirely different nature. This conclusion can be illustrated by the example of the idea of universal basic income that is now replacing the ideology of the social contract on the social state between representatives of labor and capital that dominated in the twentieth century. This is about guaranteeing each person (regardless of age, wealth, social status, etc.) a stable financial income necessary for life. This idea is currently being actively discussed all over the world, including Russia. For example, during the COVID-19 epidemic, when the governments of many countries allocated monthly disbursements towards helping their citizens without any conditions and targeted differentiation, there was a sharp surge in its actualization.

At first glance, the idea of universal basic income may seem to fit well into Vladik Nersesyants's concept of civilism. However, this view is erroneous (Lapaeva, 2021a, pp. 99-113). Unlike Russia, which, as a result of enormous efforts and sacrifices, has done the tough work of socializing property, developed countries have not created any prerequisites for the law transformation of the private property of individuals into the individual property of each citizen. Therefore, the guaranteed income of their citizens is just a fixed monetary allowance that comes about from the charitable offerings of owners to the benefit of non-owners. In Russia, however, if the concept of civilism is implemented, civilian property will be exactly property (that is, income-generating property) in the law sense of the concept. Most importantly, it will be a qualitatively new property that is individual in its nature, without being private property, and that corresponds to the new inherent and inalienable right of ownership of each citizen to a specific share of the national heritage.

Another problem outlined above is the danger of dehumanisation of public life, and in the future – of people themselves as the final outcome of technological development. The most "advanced" technologies are now those related to human genome editing (Lapaeva, 2021b, pp. 4-35). Various approaches to the normative regulation of the creation and application of these technologies are concentrated in bioethics, where each problem is a complex tangle of intertwined legal, moral, and religious components. And if science and practice do not have a clear criterion for highlighting legal principles, it is impossible to offer a generally valid legal solution to the problem. There is no such criterion in bioethics, since it grew out of medical deontology and is guided in its legal aspects by the theories of natural law, which get along very well with the declarative and recommendatory international regulation dominating in this area at the "soft law" level within which legal norms in their very nature are combined with moral and religious regulators.

However, it has recently become increasingly obvious that "soft law" does not cope with the normative regulation of the creation and application of biotechnologies. The task of building full-fledged international legal regulation in this area of relations, long set by the world medical and biological community, needs to be addressed. The philosophy of law will be able to contribute to the solution of this problem only if it is able to properly distinguish law from moral and religious norms. And this can be done only based on the libertarian law theory, which, unlike the natural law doctrine, does not dissolve in public morality and religion, and unlike positivism, is not ethically neutral. Rather, it offers its own ethical principle, that is, its own principle of distinguishing between good and evil: good for law is equality in freedom, and evil is inequality in the form of any arbitrariness, including acting in the form of moral or religious requirements.

Conclusion

The libertarian approach to the understanding of law, which was the result of the author's comprehension of the achievements of world philosophical and legal thought, the experience of socialist lawlessness, and the difficulties of the first decades of the post-socialist development of Russia, fully confirmed its importance as a theoretical and methodological tool for studying law reality and, above all, as a criterion for distinguishing between law and arbitrariness in the legal form of. In recent years, criticism of this approach (especially sharp in the Soviet period) has significantly diminished. The libertarian law theory has taken a prominent place in both scientific and educational literature. The dissemination of this approach in Russian jurisprudence is also facilitated to an appreciable extent by the fact that the Institute of State and Law of the Russian Academy of Sciences holds annual all-Russian philosophical and law readings in memory of Vladik Nersesyants on the basis of which an entire series of collections of scientific papers has been published.

The concept of civilism, which is still to be accepted by society and even the scientific community of Russia, has not lost its relevance. As the impossibility of any normal option of Russia's return to the once interrupted capitalist path of development is being revealed and world capitalism itself is entering a state of systemic crisis in an increasingly deeper way, the general public is now faced with the task of searching for some other, new future.

Russia's participation in this discourse is now significantly hampered by a number of circumstances, the main one of which is most likely that in Russian society, as academician A. A. Guseynov (2018b) rightly noted, "there's no real aspiration for the future understood as a qualitative renewal of life forms. That is, we've lost the taste for historical existence, the interest in our historical existence. ...It is as if... we do not want a future in which there will be no violence, social injustice. ...In short, we must admit: we have problems with the future" (p. 244). The theory of civilism offers its own version of the post-socialist and post-capitalist future in which the idea of social justice takes a qualitatively new law form. Vladik Nersesyants himself was sure that the dialectics of world history, with its powerful charge of historical optimism, would sooner or later bring the idea of civilism to the surface of public life.

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