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The Quality of Literature on Jurisprudence as the Most Important Prerequisite for the Formation of a Modern Lawyer

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Abstract:

Believing that high-quality literature on jurisprudence is the most important prerequisite for the training of practicing lawyers, the author, based on an analysis of one of the textbooks, shows that the former often does not meet the relevant requirements. In conclusion, it is emphasized that the problem under consideration remains relevant at the present time and its solution necessarily requires positive moral responsibility of both authors of educational literature and responsible editors and reviewers.

Keywords:

Quality literature, jurisprudence, practices lawyers, state, law.

I. Introduction

Having repeatedly addressed this problem [1; 2; 3; 4], we have previously emphasized that high-quality literature on jurisprudence is the most important prerequisite for the training of law enforcement entities. It seems that the relevance of the problem under consideration is also due to the fact that modern students of law schools and faculties, when mastering the relevant subject, first of all turn to educational literature (textbooks, teaching aids, etc.). The appeal to scientific legal literature (monographs, articles) is due to the need to prepare abstracts, scientific reports, diplomas, and final qualifying works. It should also be taken into account that educational legal literature sets out the simplest legal concepts and categories, which are a specific "step" for the transition to the analysis of more complex scientific literature. However, often the relevant literature does not meet the requirements, does not take into account the achievements of domestic legal science. An example is the textbook “Jurisprudence” / edited by Georgy Genrikhovich Bernatsky. St. Petersburg: St. Petersburg University of Economics, 2023 [5].

II. Research Methods

2.1 General Philosophical general philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

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III. Result and Discussion

3.1 The author claims that in jurisprudence the state is interpreted in two senses:

Narrow and broad (although other approaches are also distinguished: legal arithmetic, cybernetic, etc. - Vladimir Valentinovich Kozhevnikov). In the narrow sense, it is interpreted as "a system of legislative (representative), executive and judicial bodies operating throughout the country" [5]. The question arises, why did not the President of the Russian Federation, the prosecutor's office, the Accounts Chamber and other state bodies enter this system of state bodies?

3.2 Among the features of the state analyzed by the author, special attention is drawn to such features as

"1. Socially heterogeneous (differentiated) society as the social basis of the state" and "8. Leading ideology (state ideology) as the spiritual basis of the state" [5]. It is easy to notice that the term "basis" is used twice. In fact, society is not a feature of the state, it is the basis, the prerequisite for the emergence of the state, the social basis, in the presence of appropriate reasons of a socio-economic nature, the phenomenon of the state is distinguished.

As for the second of the identified features, here too there are great doubts. Prof. Georgy Genrikhovich Bernatsky contradicts himself, citing the norm set out in Part 2 of Article 13 of the Constitution of the Russian Federation, prohibiting state ideology. The question arises: did the Russian state exist in the presence of this "dangerous norm"? Moreover, the author further mentions the so-called "de-ideologized state", "... in which no ideology is dominant, different groups of the population follow the principles of different, even opposite types of ideology, ideological pluralism is implanted" [5].

3.3 It seems that there are quite a lot of comments on the presentation of the issue of the typology of the state and especially on the characteristics of the civilizational approach to it

Here it is necessary, firstly, to define the concept of "type of state and law"; secondly, do not get carried away with the types of civilizations (according to the author, there are 8 of them), but focus on the essence of the civilizational approach, which is based on the idea of the relationship between the state and the socio-political system, but taking into account the spiritual, moral and cultural factors of social development. Arnold Toynbee, one of the famous representatives of this approach, once wrote that "the cultural element is the soul, blood, lymph, the essence of civilization"; "in comparison with it, economic and political factors seem artificial, ordinary, insignificant" [6].

Thirdly, it appears that the author has presented the types of state very incompletely from the perspective of a civilizational approach, taking as a basis such criteria as the state's attitude a) to the church and religion [5] and b) to ideology [5]. Although there are other classifications of states in legal literature, for example, depending on the features of the state and legal system (estate, modern representative, civilized), by the methods of emergence and essence (traditional and modern (constitutional), classifications of states from the position of Georg Jellinek, Hans Kelsen and other scientists.

3.4 Critically assessing paragraph 1.9. The concept of the form of government

it should be noted that the author devoted only three lines to non-traditional forms of government, without determining the reasons for their emergence, naming without giving

examples only such forms of government as an elective monarchy, lifelong presidency and dictatorship [5].

A very superficial analysis of the democratic political regime [2], which, in our opinion, should be called a state and legal regime, is given. Question to the author: are there varieties of this regime?

It is difficult to agree with the statement that a regional state, along with a federation and an empire, belongs to complex states [5].

In reality, the point is that this is a kind of intermediate form between a unitary and a federal state. This is a state (Italy, Spain, Sri Lanka, South Africa), in which the territory of an integral unitary state is divided into large administrative-territorial units and they are granted independence in the legislative sphere, as well as the right to self-organization. The features of a regional state are revealed through a system of features: 1) the right of territorial autonomy to adopt laws on local issues, the list of which is small: markets, agriculture, environmental protection, etc.; 2) the authority adopts an act (charter), similar to a constitution, which is approved by the national parliament; 3) the delineation of powers between the center and the autonomies (regions) is legislatively enshrined; 4) control over the activities of regional bodies on the part of central bodies is carried out by the constitutional court, government, etc.; 5) the absence of representation of regions in the upper house of parliament, the absence of powers in the judicial sphere. Thus, it can be stated that the regional state is not defined by the constitution as a federation; it is considered a unitary state, but in fact has the features of a federation.

3.5 The position that the subjects of the political system of society include

"organized criminal groups of an extremist, terrorist nature, religious sects" that "... impose their ideology via the Internet, actively recruit their supporters, especially among young people, bribe government officials" seems controversial [5].

In fairness, we note that a similar position is present in legal literature. Thus, Nikolai Aleksandrovich Vlasenko argued that "the direct impact of criminal communities on political and legal processes in society testifies in favor of their recognition as an independent component of the political system of the Russian Federation" [7].

Alexander Vasilyevich Malko and Alexey Yuryevich Salomatin, discussing mafia structures, write that they "have a tendency to merge with legal structures and can have a serious influence on them, up to and including hidden participation in the political life of individual political regions" [8].

The well-known theorist of state and law Vladimir Mikhailovich Syrykh is convinced that entities prohibited by law (associations of a fascist, extremist nature, other parties, movements) are institutional components of the political system. In his opinion, in modern conditions, criminal communities can have a serious influence on the political life of the country, the activities of state bodies, officials, which "having a significant fortune... bribe government officials, put their representatives in legislative bodies, try to put pressure on executive bodies" [9].

From our point of view, the diametrically opposite point of view is more justified. For example, Lyudmila Aleksandrovna Morozova rightly states that prohibited (criminal)

communities and associations "do not have the right to officially participate in the political life of the country. They are outside the law, their activities are illegal..."[10].

It is noteworthy that scientists who recognize criminal organizations as subjects of the political system use such expressions as "impact", "influence", "pressure". From this, from the standpoint of logic, the conclusion follows that criminal organizations, not being subjects of the political system, act as one of the factors that can influence the political system of society.

3.6 Much "interesting" can be gleaned from the content of the textbook

which concerns issues of legal understanding. Thus, speaking about law in a narrow and broad sense, the author believes that in a narrow sense (or rather, in a narrow normative sense - Vladimir Valentinovich Kozhevnikov) law is "a system of generally binding legal norms established and protected by the state and aimed at regulating social relations", and in a broad sense law is "a complex social phenomenon that includes a system of law, a system of sources of law, legal consciousness and legal practice" [5].

Meanwhile, it is well known that the "broad" understanding of law, formed in domestic science, is opposed to the "narrow normative" approach to law. This concept is based on the idea of law as a unity of legal ideas, norms and relations. Attention is required to the position that within the framework of the "broad" approach, several directions have emerged: one group of authors was inclined to reduce law to legal ideas (law-normatively expressed justice, measure, scale of freedom); another group understood law as ideas, norms and relations; the third identified law with the system of social relations. Thus, back in the late 40s, Alfred Krish'yanovich Stalgevich, and in the 50s, Stepan Fedorovich Kechekyan and Andrei Andreevich Piontkovsky proposed to include in the concept of law, along with legal norms, also legal relations, and then Yakov Filippovich Mikolenko - legal relations and legal consciousness, and the latter were considered as forms of implementation of legal, i.e. legislative, norms. Agreeing that "law in the subjective sense (apparently, we are talking about subjective law. - Vladimir Valentinovich Kozhevnikov) is a measure of legally possible behavior aimed at realizing his interests", it is difficult to agree with the following statements: "subjective law includes, first of all, the rights and freedoms of man and citizen: the right to life, freedom, property, labor, education, the right to freedom of conscience, religion, etc."; "subjective law is formulated in legal documents of objective law ..." [5]. If we clarify the concept of a subjective right, which objectively implies the existence of a legal obligation, it should be said that this is a measure (volume) of possible (permitted) behavior of an authorized person, provided for by the norms of positive law (or individual legal acts), guaranteed by the state. Indeed, the volume and limits of subjective rights and legal obligations are determined by the rule of law. In legal relations, there is a transition from general provisions of legal norms (objective law) to specific subjective rights and legal obligations of participants in legal relations. It is interesting to note that the author further proposes directly opposite concepts of the rule of law. On the one hand, the rule of law is defined as "a measure of a certain behavior, established and protected by the state", on the other hand, it is "a rule of behavior, generally binding, formally defined, established and protected by the state for the purpose of regulating social relations" [5].

3.7 A comparative analysis of the author's provisions allowed us to conclude that law in the broad sense

Which was discussed earlier [2], is practically unjustifiably identified with the legal system of society, which is understood as "a historically established organization of law in a separate state, including the system of law, the system of formal sources of law, legal order and legal consciousness" [5].

3.8 Unfortunately

It must be acknowledged that the reviewed section of the textbook contains contradictions. Thus, speaking about the analogy of the law, it is said that this is "a way of overcoming a gap, in which a law enforcement decision on a case is made on the basis of a specific legal norm regulating a similar (analogous) social relationship with the unregulated relationship under consideration. For example, a gap in labor legislation can be overcome with the help of norms from civil legislation." [5]. The author, discussing the subsidiary effect of the law (we are talking about the subsidiary application of law. - Vladimir Valentinovich Kozhevnikov), writes that "... it is applied not to its subject, but to a related type of social relations. This occurs in cases where the laws of the core industry are applied to relations of a special industry. For example, the laws of civil law are applied to relations of labor law if the latter has noticeable (or rather, discovered. - Vladimir Valentinovich Kozhevnikov) gaps." [5]

3.9 In the textbook under review

far from all general theoretical provisions correspond to the current domestic legislation. Thus, for some unknown reason, correctly noting that "intent can be direct and indirect, and carelessness can be frivolity and negligence," he then reveals only direct intent and frivolity [5]. Calling "mandatory signs" (or rather, elements - Vladimir Valentinovich Kozhevnikov) of the objective side of the offense ("illegality of the act, socially harmful consequences that occurred after the act, a causal relationship between the act and the consequences that occurred"), the author ignores optional elements. Speaking about such types of offenses as crimes and administrative offenses, the former are interpreted as "offenses that infringe on the most important social relations and are therefore characterized as the most dangerous unlawful acts for society compared to misdemeanors," the latter are "offenses for which the Code of the Russian Federation on Administrative Offenses establishes administrative liability" [2]. Meanwhile, in Part 1 of Article 14 of the Criminal Code of the Russian Federation, "a crime is recognized as a culpably committed socially dangerous act prohibited by this Code under threat of punishment," and "an administrative offense is recognized as an unlawful, culpable action (inaction) of an individual or legal entity for which this Code or the laws of the constituent entities of the Russian Federation on administrative offenses establish administrative liability." (Part 1 of Article 2.1 of the Code of Administrative Offenses of the Russian Federation). It seems that the last remark has the most direct relation to the assertion that scientific (doctrinal) concepts and categories that should be distinguished must necessarily correspond to official (legal) legal concepts and not contradict them.

IV. Conclusion

In conclusion, it should be noted that the problem of the quality of educational literature on jurisprudence is still relevant: a large number of low-quality products have recently appeared on the book market. Its solution necessarily presupposes positive moral responsibility of both authors and responsible editors and, of course, reviewers.

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