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SOVEREIGNTY IN THE LIGHT OF RUSSIAN LEGAL PHILOSOPHY

SOBERANIA SOB A PERSPECTIVA JURÍDICO-FILOSÓFICA RUSSA

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ABSTRACT: In the present paper we will analyze one of the trends of Russian legal philosophy which exerts a considerable influence on the political processes on-going in this country. This trend is revealed in so called state-centralism: an ideology according to which the State is omnipotent and can interfere with any matters without any limitation from inside or outside. This "ideology of Leviathan" has been many times articulated in legal philosophy, to begin with Plato or Aristotle. In Russia this ideology has found a fertile soil, as its waste spaces, heterogeneous population and unfriendly environment (both in political and natural senses) made it clear for many that without powerful central authorities there will be no further for such a big country. To wit, it will either fall apart as the French, British and other empires, or will need to get modernized and restructured according to the models of other big Western counties (like the US). This paper is developed on the base of two lectures that the present author gave in 2013 and 2014 at Law School of the Federal University of Parana grace to kind invitation and support of this School and to relentless efforts of Professor Cesar Serbena. We do hope that this paper will be an important adjunct to our lectures and will be helpful to those of our Brazilian colleagues who seek to understand the actual political situation in Russia, its implications and perspectives in the light of philosophical debates that underpin these discourses.

KEYWORDS: Russia. Sovereignty. Legal Philosophy.

RESUMO: no presente artigo analisaremos uma das tendências da filosofia jurídica russa que exerce uma influência considerável nos atuais processos políticos deste país. Essa tendência manifesta-se no chamado centralismo estatal: uma ideologia segundo a qual o Estado é onipotente e pode interferir em qualquer assunto, sem nenhuma limitação interna ou externa. Essa "ideologia do Leviatã" foi por muitas vezes articulada na filosofia jurídica; para começar, com Platão e Aristóteles, e, na Rússia, encontrou um solo fértil, pois seus territórios devastados, sua população heterogênea e seu ambiente pouco amigável (tanto política quanto naturalmente) deixaram claro para muitos que, sem autoridades centrais fortes, não haverá futuro para esse país tão grande. Em resumo, ou a Rússia ruirá como a Inglaterra, a França e outros impérios, ou precisará se modernizar e se reestruturar de acordo com os modelos de outros grandes países ocidentais (como os EUA). Este artigo foi desenvolvido com base em duas palestras que o presente autor apresentou em 2013 e em 2014 na Faculdade de Direito da Universidade Federal do Paraná graças ao convite e suporte

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desta Faculdade e aos esforços incansáveis do Professor Cesar Antonio Serbena. Nós sinceramente esperamos que este artigo seja uma importante adição às palestras e que seja de alguma ajuda aos nossos colegas brasileiros que buscam compreender a situação política atual da Rússia, assim como implicações e perspectivas sob a luz dos debates filosóficos que permeiam estes discursos.

PALAVRAS-CHAVE: Rússia. Soberania. Filosofia do Direito.

INTRODUCTION

Attempts to modernize Russia have been undertaken several times, one of the most known is the project of reforms launched in the 18th century by Peter the Great. The Bolshevik Revolution in 1917 or Perestroika in 1990s can also be considered as such attempts. However, none of them brought any considerable success for Westernization of the country; neither the strong centralization model has ever been reformatted. This state of affairs explains why so many Russians nowadays prefer conservative values, among which are “strong State”, “traditional morality” or “social justice”. Moreover, these collective values have always been in the focus of Russian political philosophers and used to prime over the individual values (freedom, autonomy, self-government) in the discussions of Russian legal philosophers.

One of the powerful concepts that are used in our days by Russian politicians (and the ideologists who legitimate their policies) is that of “sovereignty”. In the previous époques the Russian state-centralism has been justified with reference to the special mission of Russia as a keeper of the genuine Christianity (i.e. Orthodoxy in the Imperial Russia) or as of a liberator of mankind from injustice and exploitation (the communist ideology). Now these references are outdated and the new “historical mission” of the Russian State is, from the standpoint of the official ideology, to protect the international law-and-order and the traditional morality, both attacked by the West. The key concept to this effect is sovereignty traditionally understood as an absolute independence of the State from inside and outside pressure. In the following (chapter 2) we will show the cornerstones of application of this concept in the political and legal life of Russia, and in particular in the discourses of the political elites and in reasoning of the Russian Constitutional Court. Before starting this analysis, we will outline the main trends of development of Russian legal philosophy in the 20th century (chapter 1) in order to show the intellectual framework in which these discourses are taking place.

CHAPTER 1

One can sometimes read about a "mysterious Russian soul", a civilization which is opposed both to the Western and the Asiatic cultures. Many philosophical standpoints were formulated on this issue which still continues to be decisive for legislative and political processes in Russia. It can be implicit, but nonetheless a certain mental outlook has always been present in these reforms, to take the Perestroika reforms imbued with the ideas of Westernization or later Putin's isolationist policy based on the Slavophil conception of uniqueness of the Russian civilization, with the Eurasian philosophy as its part [e.g., the major political project of the last years was creation of the Eurasian union on the base of the ex-USSR republic (except the Baltic countries) ideologically, politically and economically opposed to the European Union]. This led to the last events in Ukraine – just to show an example of influence of philosophical ideas on state and on law, and our life in general. Last time, my lecture was dedicated to the actual philosophical polemic between the Westernizers who are proponents of globalization, and the neo-Slavophiles who insist that Russia should go its own way, protecting its culture and statehood from the decaying influence of the West. It is on this philosophical base in nowadays Russia emerged and continues the discussion about sovereignty and its limits. In the following I will sketch the development of the legal philosophy in Russia in the first three decades of the 20th century which serves as the base of the contemporary debates. I will confine myself to a short description of main philosophical trends in the beginning of the 20th century, which have been central for all the consequent evolution of ideas in this century. After the period of a relative philosophical stagnation of legal thinking (because of the strong ideological censorship from the 1930-s to the years of Perestroika – I will skip this period for the sake of brevity) these ideas reemerged in the actual political debates. Even the political constellation in the Russian parliament reflects in a certain aspect this diversity of political and legal ideas (four major parties: United Russia, Putin's party which stands for strong statehood, positive law and against the natural-law philosophies; Communist Party which evidently sticks to the Marxist legal philosophy; Just Russia with the overtly natural-law stances, and Liberal-Democratic party with the ultraconservative Zhirinovsky which opposes Russia to the West and praises the customary law). From time to time, politicians, judges and leading lawyers articulate their positions with a view to the Russian philosophical doctrines (and not only in the case of sovereignty), so the philosophical past still keeps a firm grip on the present days.

Russian legal philosophy traditionally developed in the mainstream of natural-law conceptions. But at the end of the 19th century the powerful impact of secularization splintered Russian academic culture and turned it into a struggle among liberals, radicals, and traditionalists in

all branches of social science, including the science of law. The threadbare labels "positivism" and "idealism" can be applied only on condition that this distinction does not necessarily denote any definite political affiliation. It is true, on the other hand, that the imperial government of Russia promoted idealism combined with traditionalism and mysticism as the basis of its official ideology, and tended to banish the positivist philosophy, which challenged the sacred official ideological formula "Orthodoxy, Autocracy, Nationality" (Pravoslavie, Samoderzhavie, Narodnost'). However, the effect seemed to go exactly in the opposite direction: The tsarist censure, surveillance, and reprimands could not but contribute to the ever-growing popularity of the positivist ideology in Russian society. The choice I make between various doctrines is rather pragmatic – to wit: the influence exerted by the respective conceptions on the contemporary debates.

Marxism and anarchism were the main inspiration of the October Revolution in 1917. In the second half of the 19th century, anarchist ideology exercised a quite remarkable influence on the political life of Russia. The activity of Mikhail Bakunin and his followers stoked the Russians' traditional scepticism of the state and the law. The chasm between the religious ideological background of power and of the laws issued by it, on the one hand, and the actual content of these laws and their practical implementation, on the other, was fertile ground where anarchism could stir up various popular movements. These movements, and the idea of repudiating the legal sphere as incompatible with moral and religious beliefs, found powerful support in the literary work of the Russian novelist Leo Tolstoy (1828-1910). Tolstoy had a great impact extending beyond Russian literature: His moral indictments and criticisms against the state and the law became one of the main factors in the development of Russian legal philosophy at the turn of the century. Most of the works he wrote at that time expressed a resolute rejection of any power other than the power of God. Even though in his illustrious literary works Tolstoy aimed his attacks at the Russian legal system, his actual target was not just this or that particular regime or set of laws but the very idea of coercion incarnated in the state and the law. Many became the followers of his anarchist doctrine of noncoercion, who gathered in communities claiming freedom from any legal regulation.

The first steps of Marxism in Russia did not give promise of any extraordinary success, nor did they give any hint of the influence this ideology would later exercise in Russian history. The Russian Marxist Party was born in the 1890s and first was headed by George Plekhanov (1857-1917). Convinced of the unavoidability of social revolution, Plekhanov advocated progressive, step-by-step reformative groundwork through legislation, a process destined to lead to industrial and political development and to the consequent growth of the working class: This, in turn, was bound to change society's production system and to eventuate in subsequent social revolution. At the

outset of the 20th century a schism took place among the Mensheviks headed by Plekhanov, and the Bolsheviks – the latter (Lenin, Trotsky) being persuaded of the futility of any bourgeois liberal legal reforms, which would accomplish nothing but to divert the working people from revolutionary activity.

When the Civil War was over, several younger philosophers asserted that the Revolution occurred because of the cosmopolitism furthered by the previous regime, which tried to introduce Western legal values in Russia without questioning whether these values are compatible with the Russian people's ethos. These authors considered Bolshevism a natural reaction against such Westernization, believing it would be overcome by a strong state consolidated through customary law. This logic was followed by Eurasianism, which insisted that Russia belongs to neither Europe nor Asia, and continues the legal practices of Byzantium and of Tartary, all the while creating its own legal reality based on cultural patterns inherited from history and geography.

Idealism in law does not necessarily lead to the assertion of democratic values, and this has been the case with Russian legal philosophy, too. Thus, pursuing the idealist premises of Hegelianism, Ivan Iljin (1883-1954) developed an autocratic legal conception in many respects similar to the conception of Carl Schmitt. Iljin's approach to law initially proceeded from the aim of refuting Leo Tolstoy's anarchist and nihilist conception, thereby protecting law from a nihilist intrusion that might undermine the value of legal regulation. Iljin asserts that law is propped up by communitarian spiritual values that bring individuals together in legal communions. This conception was developed in Iljin's most remarkable book On the Essentials of Legal Consciousness, investigating the nature of legal consciousness. In his opinion, this consciousness coincides with the will to obey the authorities' commands, so long as these commands are legitimated. The legitimization can be achieved in either of two ways: through equality or through hierarchy, a distinction that Iljin accounts to be essential in distinguishing two main forms of government, namely, the republic and the monarchy, the subject matter of his book On Monarchy and Republic. In the former case there appears a "republican legal consciousness", which favours individual independence and is distinctive to Western civilization; in the former case we instead have a "monarchic legal consciousness", which in Iljin's view supports collective harmony and perfectly matches the Russian cultural archetypes. Praising this latter form, Iljin claimed that limitations must be placed on liberal rights until a people fully integrates its cultural values and grows into a spiritual entity capable of making a wise use of its freedom.

Alongside the "idealist" current in Russian legal philosophy – and competing with it – there also existed a "positivist" current, in which there can be distinguished several approaches: a

normative one, a sociological one, and a psychological one, among others. A typical representative of the normative approach in Russia, as well as its most illustrious representative, was Gabriel Shershenevitch (1863-1912), who followed the ideas of John Austin and other advocates of the command theory. He insisted that the basic characteristic of legal norms lies in the state's coercion and in the sanctions the state's officials may impose, and so that the state logically and historically precedes law. Law is the people's reaction to uncertainty, in that they guard against uncertainty by issuing obligatory norms and directives; from which it is inferred by Shershenevitch that the ultimate criteria of law lie in its predictability. Although Shershenevitch did not bring forth anything original by comparison with their Western counterparts, they did mark an important phase in Russian liberalism.

The sociological approach caught on particularly well in Imperial Russia. Sociological thinking was looked upon by the authorities as revolutionary thinking, and for this reason the teaching of sociology was officially banned until the fall of the political regime in 1917. Thus, it was only in Paris that the famous Russian-Ukrainian sociologist Maxim Kovalevsky (1851-1916) could open his Russian Institute of Sociology, as it was then impossible to open a sociological institution in Russia. Internationally recognized as a leading legal anthropologist at the turn of the century, Kovalevsky followed Emil Durkheim's philosophy of solidarism and masterfully demonstrated how legal regulation in human societies slowly develops patterns, and how these become relatively uniform. This process of "legal expansion" does not come to an end with the appearance of the state – social groups do not cease to form such patterns, continuing to develop them vis-à-vis the authorities.

Bolshevism was nominally committed to suppressing such tools of class exploitation as the law and the state, but in reality, after the 1917 coup d'état, it sought to reinforce the state's powers and its administrative machinery. It was in order to work out this contradiction that in 1918 the Bolsheviks' leader, Vladimir Lenin (1870-1922), wrote his famous State and Revolution, which provided the blueprint for the development of Marxist-Leninist legal philosophy for many years to come. Lenin maintained that in order to overcome class exploitation, it is necessary to first suppress the competing classes by setting up a strong and powerful state controlled by ideological authorities. For Lenin, there was no room for law in the Soviet state, the reason being that law was reckoned among the superstructures typical of private property. As soon as the means of production are nationalized, law remains applicable only in the narrow sphere of private relations and will fade away.

This rigorous line of thought was diligently developed by Evgeny Pashukanis (1891-1937), famous for his "exchange conception of law". This conception was first set out in outline in 1924 in his work titled The General Theory of Law and Marxism, where Pashukanis asserted that law is intrinsically bound to the exchange of goods and cannot exist apart from this exchange. Moreover, between the logic governing commodities as a form of exchange and the logic governing the form of law there exists a homology that makes it possible to describe law in economic terms. What explains this homology is that the fundamental legal abstractions inevitably reflect social relations and at the same time solidify these relations into legal categories. Pashukanis accepted law only as civil law: Public law for him was a contradiction in terms because it bears no connection to any exchange relations. Legal relations are always formed by written or oral contracts that set out rules for private transactions, and there is no legal reality outside of these contracts. Even a statute issued by the public authorities is nothing but a symptom on which basis one can predict what the law will be. For Pashukanis, law lies in the coordination of the conflicting volitions of sellers and buyers; he was convinced that bourgeois law is flawless and perfectly fulfils the exigencies of the flow and exchange of goods. As the socialist state does not seek to promote exchange relations, there is no need for law which will disappear once the state takes full control of economic relations.

The Russian-Latvian thinker Peter Stuchka (Pēteris Stučka, 1865-1932) – one of the ideologists of the New Socialist Legality, as well as the chief justice of the Supreme Court of Soviet Russia (1923-1932) – studied law from the standpoint of class theory. He stressed that the function of law is to furnish an ideological background for the commands of the governing class, and hence to justify the de facto inequality among the classes. As long as there is more than one class in a society, society is bound to have law. This explains why even Soviet Russia had its own "proletarian law," which reflected the dominance of the proletariat over the other classes. Claiming that it is the will of the governing class which shapes the contents and the form of the positive law, Stuchka sought to demystify law as nothing but the domination of one class over another. Liberty, equality, and other values of bourgeois legal philosophy are just fetishes serving to control the dominated classes. This understanding of law as a tool of class suppression underpinned the practice of the revolutionary tribunals during the Civil War. In the 1920s Stuchka promoted a definition of law as "a system (an order) of social relations which corresponds to the interests of the governing class and which is protected by the organized power of this governing class". Stuchka's ideas deeply influenced the development of the Soviet legal system, and particularly the judicial doctrine that established class interest as the main criterion for civil adjudication and penal proceedings.

A psychological version of Marxist legal theory was elaborated by Mikhail Reisner (1868-1928). A professor at Petrograd University and a follower of Petrazycki, he tried to engraft psychological theory of law onto a Marxist foundation. After 1917 Reisner rose to prominence as a leading Soviet legal theorist. His main idea was that each class intuitively defines what is just and appropriate with regard to its position in society and to its objectives in the class struggle. These intuitions give rise to a specific class law which is a product of the collective legal consciousness. In Reisner's opinion, there are two basic aspects of law: The volition of the classes, which reflects the classes' subjective laws, and contraction among these classes, which creates an objective law. Both aspects are coordinated into the overall system of law through the classes' struggle for equality in society. The dominant class imposes its legal consciousness and hence its law on the subjugated classes by taking control of the ideological mechanism, which influences formation of the overall legal consciousness. As legal consciousness can directly affect social relations in a single prevailing "revolutionary consciousness", without the intermediation of positive law, the new proletarian law will not need any statutes, for it will be able to govern by psychological suggestion alone.

At the end of 1920s Soviet legal science saw a period of flourishing: Several alternative approaches to law had developed that not only competed on theoretical grounds but also vied for influence in politics and in legal practice. The theoretical discussions had an evident impact on the implementation of political programs such as collectivization. The groundwork for a monist theoretical approach to law was laid during the First Congress of Marxian Legal Theorists in 1931. The aim of this congress was to establish a united approach to law that would echo the general policy of the Communist Party. This objective was not reached immediately, and the debates continued until the mid-1930s. As was suggested by the official ideology adopted by the Communist Party of the URSS, the philosophical background for each investigation had already been laid out in the classics (those of Marx, Engels, Lenin, and Stalin), and legal scientists were thus "exempted" from philosophical speculation and reflection: They were just expected to apply the Marxist-Leninist dogma to legal reality. This explains why the philosophy of law in the 1930s was completely displaced by the theory of law, which was intended to have an exclusively instrumental function. Broad philosophical reasoning about law had been condemned by Lenin and other political leaders as hallmarks of the decadent bourgeois legal science (designed to deceive the working class and divert its attention from class struggle) – and so it was that and the philosophy of law saw its last days in Soviet jurisprudence. The new socialist legal science was to take only one aim as its object: To help design the laws and decrees that would implement the will of the working

class. There evidently was no point for a lawyer to reason about what exactly the will of the working class was and whether it coincided with the will of the governing Soviet elites.

Of all the social sciences in modern society, jurisprudence seems to be the most ideologically laden (because it serves a regulative function that political authorities can seize on). This place that legal theory occupied in imperial Russia explains why all important social issues at the beginning of the 20th century became a subject of investigation in legal philosophy were also importantly discussed as legal issues from the perspective of legal philosophy. This philosophy offered insights and ammunition for those on either end of the sociopolitical spectrum: for those who wanted to bridle social development, fearing its unpredictability (this was the conservative wing of intelligentsia), and for those who sought to bring about change in society, either through legal reform (this was the majority view of the time among intellectuals), or through a social revolution (the Bolsheviks and the Anarchists). In the first years after the October Revolution of 1917, legal theory continued to play an important role in the country's intellectual life. But the rigid ideological control owed to the political realities of the USSR led to catastrophic sequences for this discipline, which was pressed into service as a tool of communist ideology beginning in the early 1930s. In the following sixty years of Soviet rule, legal theory thus existed in isolation, through the action of an ideological iron curtain. The discipline became a mishmash of contradictory precepts and scattered idioms sourced from the "classics" (Marx, Engels, Lenin), stewing in their own juice and seasoned with some schemes and conceptions derived from prerevolutionary legal science. This stew would take a variety of flavours, and in fact it was given to many terminological nuances understood to have far-reaching implications in the intellectual debates of the time (a kind of Scholastics). But the inevitable ideological confines of the Marxist-Leninist social philosophy were such that nothing methodologically or conceptually new could come out. The trouble with this situation became apparent to legal theorists even in the 1980s. The perestrojka of the 1990s spurred intellectual activity among Russian theorists of law, who rushed to package conceptions of their own. Some of these theorists took into view the development of legal philosophy across the world and unwittingly repeated the commonplaces: Their "new" schemes therefore turned out to be ineffectual, failing to contribute anything either original or useful to a worldwide debate. The majority of legal philosophers instead chose not to stray from their course, discarding the precepts of Soviet ideology but keeping the rest, thus working on traditional Soviet dogmatic jurisprudence. This strategy is still apparent in most of the textbooks on legal theory, which reproduce the theoretical schemes of the Soviet era and invest them with new ideological content (human rights, freedoms, democracy, and the like). In the 2000s, this trend held sway in academia. That is why the

Russian legal science is often reputed to be backward, not attentive to the debates in the international science of law. And this is a hard choice the Russian jurisprudence faces now: either to recognize its backwardness trying to keep pace with the world legal theory, or to continue discarding the international development of the legal philosophy. In my mind, these are the two main trends of the theoretical jurisprudence in our country, each of which surely allows for significant variations and nuances.

CHAPTER 2

With its Declaration of State Sovereignty (1990), Russia has de facto declared independence from the Soviet Union (now celebrated on June 12 as Russian Independence Day). This move was followed by similar declarations from other territories. Declarations of sovereignty came not only from Soviet republics but, also, from 'republics' within Russia [including Tatarstan and Chechnya (1990)]. Using the legislative techniques pioneered by Eltsin, these territorial entities began the campaign for independence: more than half of the "republics" proclaimed sovereignty in their constitutions. The 1992 Federal Treaty set Russia on an equal footing with its republics (states), their sovereignty has been mentioned and thereby implicitly recognized in this constitutive document preceding adoption of the Russian Constitution in 1993. But step-by-step, the RF CC annihilated the conception of shared sovereignty (belonging both to the federation and to its states), holding invalid the differently formulated sovereignty clauses in the 'regional' constitutions; these steps were accompanied by the centralization reforms launched by Putin during his first presidency. This marked the first wave of debates about sovereignty.

Once the integrity of the country was restored after mid-2000, the debates took another direction; this time, about the limits of independence of Russia in the sphere of international law and international organizations (the ECHR, the UN Court, the International Criminal Court). These debates in recent years have been marked by a lively polemic about the 'limits of concession' (Chief Justice Zor'kin), controversies between the ECHR, the CC RF and the SC RF about 'limits of interference in internal affairs' (cases of Markin and of Kudeshkina), sharp critics of the SCC's Chief Justice Ivanov against 'unfair competition' of the foreign jurisdictions during the Juridical Forum 2012. Even if according to its Constitution, Russia sticks to the monist conception of legal order, this issue now is reiterated with regard to the sovereignty problem, and quite many officials (including the highest Justices) tend to interpret Article 15 of the Constitution as implying in fact the dualist scheme: only that international legal order is valid which is recognized by Russia as a

sovereign state, the will of foreign and international powers cannot prevail over the sovereign will of Russia. The debates are far from over, and legal scholars are not unanimous. It is interesting to speculate about the conceptual framework of these debates and about the possible outcome(s) thereof. These debates are led in various fields of legal practice and of the theory of law. In the following we will investigate the repercussions of these debates in the field of human rights.

Russia represents a particular case for studying the connection between the conceptualization of sovereignty and the practical steps taken by politicians and lawmakers in the field of human rights and democratic institutions. In the Western legal tradition the accent in a liberal democracy as a system is put on the protection of individual liberty. In Russian political debates references to "genuine" (antique, medieval) democracy the accent is put on the well-being of the polity, and not of the individuals as members of this polity. From this perspective, democracy can also be viewed as the instrument for protection of national rather than individual interests – this is the main thesis reiterated by many influential politicians and judges in Russia.

The treaty of Westphalia in 1648 marked the beginning of the contemporary doctrine of state sovereignty as an absolute unrestricted power. In the XVI century Jean Bodin defines "sovereignty" as "absolute and perpetual power." The sovereign is one who has absolute and perpetual power without any limitation. The German philosopher Georg Jellinek wrote in the XIX century that state power is power that knows no superior power; therefore, it is independent and is the supreme power. He distinguished between external sovereignty (independence of a state) and internal sovereignty (the sovereign's right to arbitrarily decide any issue pertaining to domestic development). This is still the dominant doctrine in the Russian legal theory, also for many scholars in Russian international law; few things have changed since the XIX century. The political situation and ideology of the former Soviet regime and of the today ruling elites have made these changes undesirable before, now the changes are ripe to get implemented.

According to the traditional conception of sovereignty, the sovereign is one who exercises such power; the sovereign has the right to arbitrarily decide on any domestic issue. This understanding is still the dominant doctrine in the Russian theory of international law; few things have changed since the 19th century. Nowadays, many theoreticians claim the end of the would-be monopoly of the nation-state scale on sovereignty. It is asserted that the necessary connection between state and "Westphalian sovereignty" is no longer relevant in the contemporary world. Human rights, global security, trade and commerce, and many other important social fields are regulated and protected on the global level so that particular national states are bound with the

international standards (rules, principles) in these fields and cannot do whatever they want with human rights, even with recourse to the argument of sovereignty.

This perspective became one of the most controversial for the Russian politicians and high ranked lawyers. Can the state refuse from its sovereignty for the sake of protection of human rights? Since 2008 among the officials it became popular to refer to the block of ideas under the label of sovereign democracy. So, Vladimir Putin insist that

> Russia should decide itself on how it best can implement the principles of freedom and democracy, taking into account its historical, geopolitical and other specificities. As a sovereign state, Russia can – and will – independently establish for itself the timeframe and conditions for moving along this path.

This means making a necessary connection between the preservation of state sovereignty and the preservation of state control; this includes control over major industries and a strong state ideology. In this aspect sovereignty means that state is not bound any longer by the international standards and policies in its development; they have only persuasive force and become binding only after authorization (ratification or otherwise) by Russia as a sovereign state. Inquiring if there are any specificity in the position which is formulated by the dominating Russian jurisprudence, one can ask whether these ideas are based on certain basic ideas of the Russian legal philosophy and appeal to the specific representations of the Russians about the laws and the state.

Arguing that there is some specificity in the Russian culture of legal thinking, we do not share the dubious conservative conclusions that Russians have a mentality incapable of understanding the social value of law. The first proposal (a particular mentality) does not necessarily involve the second (legal nihilism). In spite of all the intricacies of the historical development (the Tartar yoke, the tsarist autocracy, or the communist rule), Russia on the whole belongs to the continental legal tradition of the Western civilization. The difference is nevertheless perceptible, and as Bill Bowring argues, “there is a distinctively Russian tradition of thought and argument about human rights”. This tradition can be found not at the level of a mystique Volksgeist, but rather in the manner students are taught law, judges and law-enforcement officers are instructed to find, protect and enforce law.

Historically, this world outlook expressed itself in the philosophical ideas about a religious-mystical unity between society and individuality, in what Berdyaev characterizes as “the eternal conflict between the instinct of statehood’s power and the instinct of freedom and sincerity of the people”. According to Berdyaev, one of the results of these ideas can be seen in the unhappy experiment with Russian Communism pretending to carry out the traditional Russian values of Sobornost or communitarism (the mystic idea of religious integration of an individual into the

collective spirituality). An insight into these cultural patterns can explain some contemporary official ideologemes and their acceptance better than allusions to the interplay between the crafty politicians and the naïve people cynically manipulated by mass media, or than the reiteration of the idea of the reappearance of the Soviet ideology.

The emphasis on the collectivity which superposes the individuality has often been mentioned as one of the key elements of Russian culture. This cultural peculiarity is seen as promoting egalitarian values and community fellowship, to shift the emphasis away from the solitary communicant to the congregational experience of community. This shift for Russian ideal-realist philosophy does not result in the annihilation of individuality for the sake of universality, but ideally aims at a fuller development of the personality which can exist only as a part of the totality {the people, the Church, the rural community [Mir (World)], etc.}. The gap between this ideal dimension and the historical reality of the domination of the collective over the individual for Berdyaev, Vladimir Soloviev and many other Russian intellectuals is explained by Orthodox religiosity where the individual existence is justified solely in the eschatological perspective of salvation which, in its turn, is possible only through a collective action. This philosophical hypothesis of the union between the social and the individual could easily divert Russian thinkers from the "Western" model of democracy whose main function is to check the behavior of government against the people. The idea of the spiritual union of the people and government is undergirded by the "antique model" of democracy where state (polity) and people should work in a "symphony" (the old Byzantine idea penetrated into Russia in the early Middle Ages) to safeguard the totality from disintegration. The organic relationship between the people and the government presupposes that they are spiritually united to accomplish a "national idea" (another powerful slogan in the vocabulary of the Russian conservators), which has recently appeared in the form of "sovereign democracy".

The main ideologist of this idea is Vladislav Surkov, who in 2006 was the deputy head of the Administration of the Russian president. The rhetoric around sovereign democracy was developed by Surkov with reference to the set of ideas introduced by the famous neoconservative Francis Fukuyama. The most impressive contribution to the debates was made during the Round Table "The sovereign state in the conditions of globalization: democracy and national identity" (August 30, 2006), where, referring to the Slavophile ideas ("The Russian people must develop themselves organically, must have a total representation of themselves"), Surkov called for sovereign democracy which "appeals to the dignity of the Russian people and the Russian nation in general." The position of the proponents of this concept was laid down in a collection of articles

where Surkov and other authors insisted that Russia has a special vocation to protect its national specificity against Western nihilism.

In the speech of 2007 "Sovereignty as Political Equivalent of Competition", Surkov posited "sovereign democracy" as a societal structure where the supreme power (suprema potestas of Jean Bodin) belongs to the Russian nation which is entirely independent on the external (that is: Western) forces. There are three basic conceptual premises of sovereign democracy: sovereignty legally prevails over (liberal) democracy; one can correctly balance the sovereign rights of the state with individual human rights because there is an "organic relationship" between the people and the government, and because an individual is nothing more than a part of the collective; the democratic tradition shall not be introduced to Russia from abroad but shall be found in the Russian thousand-year culture of statehood which is based on the communitarian traditions. Individual interests cannot stand above societal ones, and in the case of a conflict, the rights of certain individuals can be sacrificed on the altar of national, collective rights (i.e. the rights of the people/nation to be sovereign – politically, economically, culturally and in many other aspects). The main political conclusion of this doctrine is the connection between maintaining state sovereignty and the preservation of the state control, including the introduction of a strong state ideology to insulate political power from international criticism. The primary task of this conservative ideology is to secure the country's integrity, which requires promptly averting any threat coming from the West and from its insiders in Russia. Russia must move toward democracy cautiously, under the permanent parental control of the government. It is questionable whether this political concept undermines the universal idea of democracy, and whether there are any universalities in the multicultural postmodern world, but such a question would redirect us to the vast philosophical debates, which are beyond the scope of this work. In the context of the present article it suffices to point out the main philosophical implication of this position: the collective interest takes precedent over individual interests.

Sovereign democracy was discussed for several months, and after about a year of discussions it fell into desuetude. The (then) President Medvedev claimed that "if you take the word 'democracy' and start attaching qualifiers to it, that would seem a little odd" and Zor'kin suggested this idea was a confused form of constitutionalism. At the same time, Vladimir Putin did not expressly take a stance on Surkov's concept, but indirectly supported the ideological and philosophical basis on which his assistant built the idea of sovereign democracy. This basis was formed in 2005 when, in his Address to the Russian parliament, Putin emphasized that Russia had to find its own path to build a "democratic, free and just society and state." And in February 2012

Putin referred again to this idea "to reanimate the state, [and] restore popular sovereignty which is the basis of true democracy." [Vladimir Putin, "Demokratija i katchestvo gosudarstva" (Democracy and Quality of State), Kommersant (6 February 2012), No. 20/П (4805)].

This reluctance to concede to the priority of human rights over all other concerns (national security, integrity of the country…) is quite explicable not only from the political, but also from the theoretical point of view. In the contemporary debates sovereignty is mostly understood as external sovereignty, that is, the integrity and independence of the state as regards the other states and the international community (which in fact translates the will of the super-powers, according to the official ideology). At the same time, there is a lack of distinction among sovereignty of people, of a nation, of a state; sovereignty is uncritically used in all meanings for the same ideological purpose. The 'sovereignty debates' are also not always separated from the question about a monist/dualist legal order; thus accepting priority of international law easily (but erroneously) can be considered as a threat to sovereignty. Distinction is also missing between the conception of sovereignty and that of binding force of human rights (do they depend on a state's endorsement, on international legal standards, or on natural laws of reasonableness and sociability?). A more critical approach to the problem of sovereignty is needed which would take account of all these nuances.

The limitation of the sovereignty of nation-states within the framework of interstate associations, for example, the European Union; the extensive powers of the supranational organizations; the economical globalization with emerging of self-regulating transnational groups; the right to a pre-emptive strike against a sovereign state which seriously threatens international stability; if the state commits human rights violations en masse or for other critical reasons (UN Charter). These realities fall outside the traditional scheme as described above, their explanation requires revision of this scheme; both quite many politicians and legal scholars in Russia are reluctant to do so, finding it easier to stick to the old conceptual schemes dating from the Soviet legal science (and also from the prerevolutionary philosophy of law in the Imperial Russia at the beginning of the XX century).

Reiterating this idea of a "democracy à la russe" by political leaders and senior judges (with or without reference to sovereign democracy) conveys to Russians three main ideological messages about the correlation between individual and collective rights.

The first says that the sources of legitimacy and sovereignty are found in state power itself, not in society or in the international community. The sources of sovereignty are found in state power itself, not in society or in the international community. This message is translated by a simple syllogism: given that the Russian people are the only bearer of sovereignty (Article 3 of the

Constitution of Russia), and given that the people do not realize their will directly (except during elections and referendums) and delegate its realization to the government, it follows that the government is entitled (on behalf of the people) to take any measures to protect the popular and national (these aspects are hardly differentiated in Russian political science) sovereignty indispensable for survival of the people. Therefore, no international courts or agencies can interfere with the activities of the government or criticize even based on humanitarian or other standards.

Second, the 'correct' way of thinking about sovereignty allows the Russian state and society to survive in the context of globalization and other external super-threat: human rights and democracy are merely a pretext for the West to interfere in Russian internal affairs and to take control over its sovereignty ('legal realism' instead of 'idealization of pseudo-objective values'). The international community which is friendly only in appearance but in reality is a conglomerate of envious states and corporations which search to take hold of the national resources belonging to the Russian people, thus depriving it of its sovereignty. The main function of the state is therefore to detect the ideological dangers coming from the West in the guise of the liberal rhetoric for "idealization of pseudo-objective values", and to avert these dangers through dismissing the malevolent criticism of the West. Human rights and democracy are merely a pretext for the West to interfere with Russian internal affairs and to take control over its sovereignty.

Fear of social and political unpredictability and traditional communitarism create an atmosphere favorable to the isolationism predicated by the officials as 'a separate way of development' of Russia. In this light the protection of sovereignty at any cost can easily be justified as conditio sine qua non for the survival of the Russian people. In the opinion of some authors, such historical experience contributed to the formation of a "spirit of misadventure in the public sphere" in the Russian culture which results in the passive abstention and mistrust in any kind of political discourse including that about democracy or human rights. Given this traditional inertia of Russians in political issues, the government may act independently of public opinion as long as Russians are not "ripe" enough to be widely engaged in political deliberation. Even if such conclusions are highly questionable, they can at least, partly explain the objectives of the "mobilization strategy" employed by the authorities to urge intellectuals to be vigilant towards the Western values. If there is some mistrust in the great narratives about human rights among some of the Russians, the rhetoric about sovereignty can increase this distrust and reinforce the legitimacy of the authorities, otherwise challenged by the Western critic.

Thirdly, the West goes in a wrong direction (the old idea of the "decaying West' offered by the Slavophiles and appreciated by the Soviet regime) and Russia should not follow it, abandoning

its sovereignty. Abandoning sovereignty in favor of softer international regulation would lead to the rule of transnational corporations and oligarchs. Russia shall not follow this new paradigm as it does not conform to the Constitution and the laws of Russia (they are evidently based on the Westphalian model of sovereignty), and is destructive for society. This old idea of the "decaying West" offered by the Slavophiles and appreciated by the Soviet regime ("decaying capitalism"), plays its role also in dismissing the globalization arguments ("it can be true for the decayed West but not for Russia which keeps faithful to its statist traditions"). The globalization dangers could come true if Russia engaged itself in cosmopolitan culture and would admit the universality of democratic or humanitarian standards, destroying thereby its national uniqueness. These arguments, reiterated by Putin and other conservative politicians nowadays, had already been widely expanded on in the 19th century. Therefore, such engagement can be dangerous and Russia should keep a safe distance from the legal ideology promoted by international courts and organizations.

Russia is now at a dangerous point in its history; this country is conceived by its leaders as great power with glorious history and promising future. But even in possession of large potentials (natural resources, human capital), Russia does not have equal footing with the Western democracies in "value talks". It provokes feeling of unfair treatment by others, which becomes source of the described worries about democracy and sovereignty. At the same time, anxiety about disintegration of the country is still there: the so-called 'parade of sovereignties' from the beginning of 1990s is not forgotten, as well the instability of that time. These two main factors (along with the official propaganda, better life condition obtained under the new regime, fear of social and political unpredictability, and traditional communitarism and etatism of the Russian legal thinking) create an atmosphere favorable to the isolationism predicated by the officials as 'a separate way of development' of the sovereign Russia.

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SOVEREIGNTY IN THE LIGHT OF RUSSIAN LEGAL PHILOSOPHY

ABSTRACT: In the present paper we will analyze one of the trends of Russian legal philosophy which exerts a considerable influence on the political processes on-going in this country. This trend is revealed in so called state-centralism: an ideology according to which the State is omnipotent and can interfere with any matters without any limitation from inside or outside. This “ideology of Leviathan” has been many times articulated in legal philosophy, to begin with Plato or Aristotle. In Russia this ideology has found a fertile soil, as its waste spaces, heterogeneous population and unfriendly environment (both in political and natural senses) made it clear for many that without powerful central authorities there will be no further for such a big country. To wit, it will either fall apart as the French, British and other empires, or will need to get modernized and restructured according to the models of other big Western counties (like the US). This paper is developed on the

base of two lectures that the present author gave in 2013 and 2014 at Law School of the Federal University of Parana grace to kind invitation and support of this School and to relentless efforts of Professor Cesar Serbena. We do hope that this paper will be an important adjunct to our lectures and will be helpful to those of our Brazilian colleagues who seek to understand the actual political situation in Russia, its implications and perspectives in the light of philosophical debates that underpin these discourses.

KEYWORDS: Russia. Sovereignty. Legal Philosophy.

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