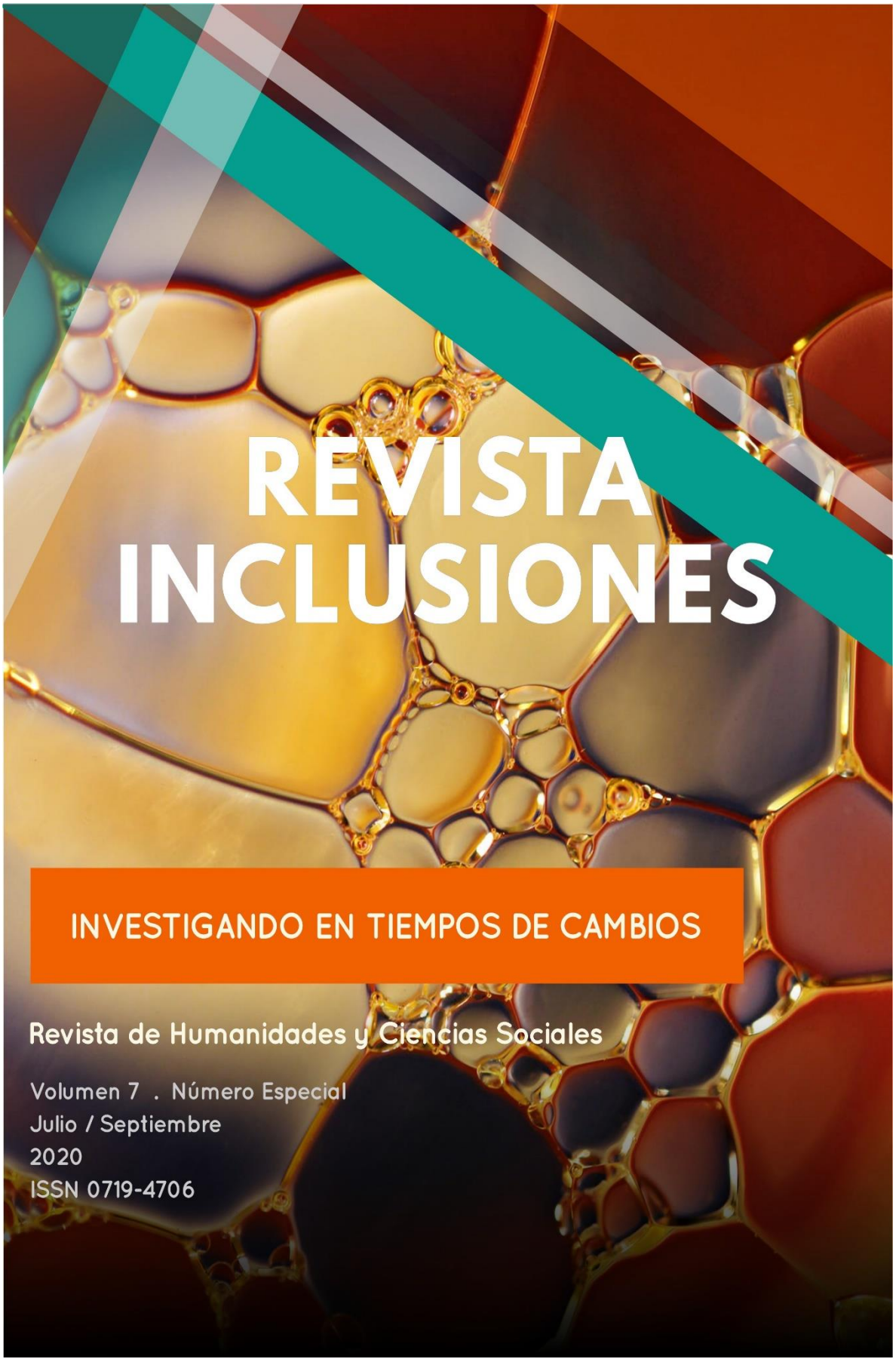

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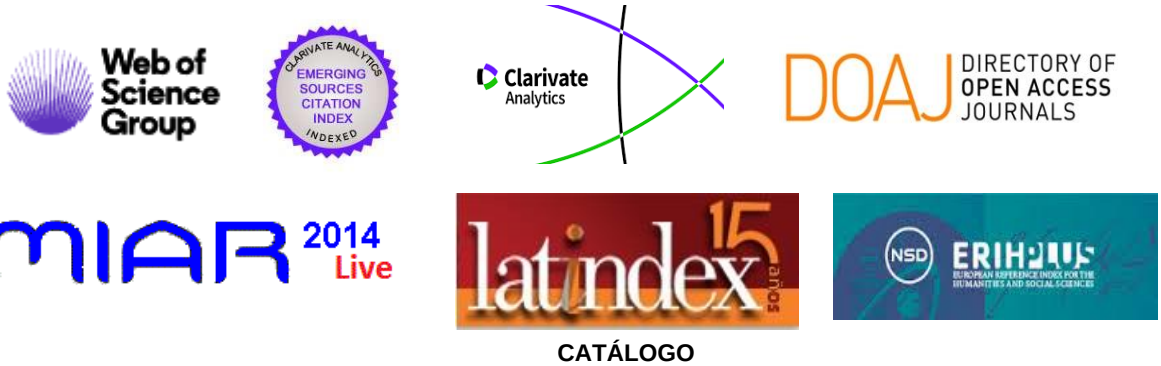

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PHILOSOPHICAL FOUNDATIONS OF PROPERTY AND PROPERTY RIGHTS

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Abstract

The study aims at analyzing the philosophical nature of property and property rights. In the course of the study, the author considered the genesis of philosophical ideas on property, its changing philosophical and scientific paradigms, the general laws of developing such concepts as property and property rights. Based on the results, the author of the article drew the following conclusions: philosophical views on property developed according to the law of dialectics based on the unity and struggle of opposites (private and public interests) conditioning a transition to a qualitatively new state when "private" human interests cease to be the only component in property rights; alongside the scientific and technological progress in Europe, theoretical jurisprudence was developed which would be further based on the hermeneutic interpretation of property with due regard to the rule of law; since there are two dominant legal systems (Anglo-Saxon and Romano-Germanic), two major scientific paradigms of property rights were formed: the Anglo-Saxon legal system contains the concept of "dissipating" property, i.e. disseminated property rights represented as a set of individual property rights. The Romano-Germanic legal system formed the consolidated concept of property rights, i.e. centralized property rights, whose hermeneutic interpretation is conducted within the framework of the above-mentioned concept.

Keywords

Property – Property rights – Dialectical development – Paradigm - Hermeneutic interpretation

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Introduction

Being an ancient axiological category, property was considered by many philosophers to determine its goal and role in the life of state, society and a person. Based on this provision, the subject of property rights is quite wide and might include their axiological-economic and legal aspects. As human consciousness changes, the category of property is also changing to address more and more aspects of social life. In the course of the study, we will consider the dynamics of philosophical views on property and property rights. According to the research hypothesis, the dialectical development of property and the formation of scientific paradigms of property rights in the Continental and Anglo-Saxon legal systems are conditioned by the historical process and understanding of legal experience that are the main factors.

Many scholars and philosophers analyzed the philosophy of property and property rights, including Th. Hobbes "Leviathan", K. Marx "Capital", T. Kun "The structure of scientific revolutions", V.V. Kortunov "Intelligence. Consciousness. Psyche" and "The Russian philosophy between western metaphysics and eastern mysticism", E. Jenks "The Book of English Law (Sources and Judicial Organization. Judicial Proceedings. Criminal Law. Civil Law", U. Mattei and E.A. Sukhanov "The general provisions of property rights", etc.

Methods

In the course of the study, we selected the dialectical philosophical method as the main method of cognition since the philosophy of property and property rights developed in a concentric spiral through the accumulation of its contradictory properties, their further synthesis or denial. We also opted for the analysis and hermeneutic interpretation of philosophical texts, as well as the historical-legal method to reveal the content of property and property rights during the historical process. To consider the Anglo-Saxon and Romano-Germanic legal systems, we utilized the comparative-legal research method.

Results and Discussion

It is known that Socrates did not leave any writings but his student, Plato, emphasized the need to socialize many material things and objects. He claimed, "First, no one is to possess any private property, unless it is entirely necessary. Next, no one is to have any such house or storeroom into which everyone who wants cannot go. And the necessities, as much as moderate and courageous men training for war need, having been fixed as a payment from the other citizens, they are to receive as a wage for guarding"[1]. Thus, Plato tried to form the person's moral component in the form of allegiance to their state and the absence of personal or private interests. If there is no private interests, it is possible to consolidate all personal aspirations for the good of their state. The philosopher and scholar Aristotle described property in the following way: "Property ought to be common in a sense but private speaking absolutely"[2]. In other words, Aristotle highlighted the egoistic nature of people and, therefore, their need to possess certain material wealth.

With the end of Antiquity, Aristotle's ideas still exerted their influence on the scholasticism of Western Europe. For instance, the Catholic theology of Western Europe was built over Aristotle's teachings and his logic. This fact could not but affect the Catholic

[1] Plato, Zakony (Moscow: Mysl, 1999).
[2] Aristotle, Politika (Moscow: Astrel, 2010).

doctrine of property rights. The Catholic theologian Th. Aquinas also regarded private property as the necessary value that should be protected and respected. According to Th. Aquinas, "the possession of all things in common is ascribed to the natural law; not in the sense that the natural law dictates that all things should be possessed in common, and that nothing should be possessed as one's own; but in the sense that no division of possessions is made by the natural law. This division arose from human agreement which belongs to the positive law... Hence the ownership of possessions is not contrary to the natural law, but a super-addition (adinventio) thereto devised by human reason"[3].

The religious crisis of Catholicism and M. Luther's Reformation conditioned the dominance of rationalism in public consciousness, which ultimately led civilization to the following stage of its historical development, i.e. the New Age and the Enlightenment. The English philosopher J. Locke played a significant role in forming the philosophy of ownership. According to this scholar, "God, who hath given the world to men in common, hath also given them reason to make use of it to the best advantage of life and convenience. The earth and all that is therein is given to men for the support and comfort of their being"[4]. Thus, J. Locke interpreted the availability of material objects as a natural and real opportunity for a person to possess some property. V.V. Kortunov rightly noted that "J. Locke's liberal theory unequivocally proclaims the supremacy of property rights over all other types of rights"[5]. However, J. Locke's writings partially accentuate the priority of public interests. V.V. Kortunov further notes, "J. Locke understands that the thirst for acquisition must be limited, otherwise it can have disastrous consequences"[6]. Thus, J. Locke's arguments do not refer to unlimited private property rights but rather their guarantees to every person and legal protection from state abuse, which was relevant during the Enlightenment. Back then, England went through a revolution and the independents headed by O. Cromwell defeated the supporters of Charles I of England (Charles Edward Stuart).

Indeed, the Enlightenment is associated with the strengthening of humanistic principles since the weakening of ascetic principles and the strengthening of individualistic principles occurred during the Renaissance and the late Middle Ages. A person and their needs became the focus of public consciousness. According to Th. Hobbes, the authorities need to regulate property relations in order to protect them. The scholar wrote, "there must be some coercive power to compel men equally to the performance of their covenants, by the terror of some punishment greater than the benefit they expect by the breach of their covenant, and to make good that propriety which by mutual contract men acquire in recompense of the universal right they abandon: and such power there is none before the erection of a Commonwealth"[7]. However, the right of ownership is only capable of realizing itself if it is regulated by law and protected by coercion. Thus, the philosophy of law during the Enlightenment not only justified the significance of property as a value but also property rights as the system of rules and norms protected and supported by state. During the era of the Enlightenment, the doctrine of natural rights also actively developed. Th. Hobbes claimed, "The laws of nature are immutable and eternal; for injustice, ingratitude, arrogance,

[3] Th. Aquinas, Summa teologii (Moscow: Editorial URSS, Krasand, 2014) y N. V. Somin, Katolicheskaya sotsialnaya doktrina: spusk v preispodnyuyu. 2006. Retrieved from: http://chri-soc.narod.ru/catol_soc_doctrina.htm

[4] J. Locke, Dva traktata o pravlenii (Moscow: Sotsium, 2014).

[5] V. V. Kortunov, Rassudok. Razum. Dukh (Moscow: "Fond sodeistviyu sotsialnogo razvitiya-Evraziya": RGUTIS, 2017).

[6] V. V. Kortunov, Rassudok. Razum. Dukh (Moscow: "Fond sodeistviyu sotsialnogo razvitiya-Evraziya": RGUTIS, 2017).

[7] Th. Hobbes, Leviafan (Moscow: Ripol-Klassik, 2017).

pride, iniquity, acceptance of persons, and the rest can never be made lawful. For it can never be that war shall preserve life and peace destroy it"[8]. Th. Hobbes' arguments are connected with the strengthening of rationalistic principles in the philosophy of the New Age and the formation of idealistic philosophy. According to Th. Hobbes, natural rights arise from the generally recognized positive qualities of a person and society. Law and natural rights are the result of positive human existence which is also rational. These provisions clearly demonstrate idealistic components of the philosophy of law.

The philosophy of property and property rights was further developed by classical German philosophers. According to I. Kant, "a right to a thing is a right to the private use of a thing of which I am in (original or instituted) possession in common with all others. For this possession in common is the only condition under which it is possible for me to exclude every other possessor from the private use of a thing (ius contra quemlibet huius rei possessorem) since, unless such a possession in common is assumed, it is inconceivable how I, who am not in possession of the thing, could still be wronged by others who are in possession of it and are using it. By my unilateral choice I cannot bind another to refrain from using a thing, an obligation he would not otherwise have; hence I can do this only through the united choice of all who possess it in common"[9]. The philosopher also stated, "An external object, which in terms of its substance belongs to someone is his property (dominium) and all rights in the thing inhere (as accidents of substance) and the owner (dominus) can accordingly dispose of it as he pleases (ius disponendi de re sua)"[10]. Thus, I. Kant's notion of property focuses on the will of some subject and their ability to determine the fate of things. Before the creation of the first codified document (the French Civil Code of 1804), I. Kant had revealed the main competences of the owner which formed the matrix of such a concept as "property rights".

G. Hegel also dwelled on the essence of property and private property. It is worth mentioning that his ideas had a great impact on the development of civil law in Western Europe. In the "Philosophy of Right", the scholar defined property as the free will of an individual: "In property my will is personal. But the person, it must be observed, is this particular individual, and, thus, property is the embodiment of this particular will. Since property gives visible existence to my will, it must be regarded as "this" and hence as "mine". This is the important doctrine of the necessity of private property. If exceptions may be made by the state, the state alone can be suffered to make them"[11]. Thus, G. Hegel supported the individualistic nature of property rights but still emphasized the role of state and its priority in the regulation of property rights. He put public interests above private ones and proved state power to be crucial in the system of legal values.

The classical German philosophy conditioned the formation of systematized norms on property and legal concepts about property at the state level. The main provisions (theses) of the Enlightenment and the German philosophical school were also used by political leaders of the French Revolution and the Jacobin dictatorship. For example, M. Robespierre noted that "you have drafted numerous articles in order to ensure the greatest freedom for the exercise of property, but you have not said a single word to define its nature and its legitimacy, so that your declaration appears to have been made not for ordinary men, but for capitalists, profiteers, speculators and tyrants. I propose to you to rectify these errors

[8] Th. Hobbes, Leviafan (Moscow: Ripol-Klassik, 2017).
[9] I. Kant, Metafizika nravov (Moscow: Rodina, 2019).
[10] I. Kant, Metafizika nravov (Moscow: Rodina, 2019).
[11] G. Hegel, Filosofiya prava (Moscow: Mir knigi, 2007).

by solemnly recording the following truths: Article 1. Property is the right of each and every citizen to enjoy and to dispose of the portion of goods that is guaranteed to him by law. Article 2. The right of property is limited, as are all other rights, by the obligation to respect the property of others. Article 3. It may not be so exercised as to prejudice the security, or the liberty, or the existence, or the property of our fellow men. Article 4. All holdings in property and all commercial dealings which violate this principle are unlawful and immoral"[12]. According to M. Robespierre, private property rights cannot prevail over the interests of society and state. Public interests consolidate social interests and can be called the will of a rational society that ensures the prosperity of each person and citizen rather than private interests of certain social groups or classes. This provision results from the social contract theory, according to which each state is formed due to the mutual agreement of people and the state's ability to ensure their rights and interests.

New philosophical ideas were developed by Western European lawyers. For instance, R.J. Pothier reflected the following principles of private property rights in his treatise on law: "We defined property rights as a right to dispose of a thing at one's own and sole discretion, however we should add that it shall not prejudice the rights of another person"[13]. The "Commentaries on the Laws of England" compiled by Sir William Blackstone regarded property rights as "the sole and autocratic dominance over a thing"[14]. Thus, the lawyers of that time improved the concept of property rights, revealed its content as a legal institute and determined typical features, including the maximum dominance over a thing (legal authority) and the possibility of state restriction. The dialectical development of property rights was represented as the unity and struggle of opposites in the form of private and public interests which condition a transition to a qualitatively new state when "private" interests cease to be the only component in property rights. Within the framework of capitalist relations, new classes were established and started to struggle; therefore, property began to be considered an instrument of the ruling circles. Indeed, K. Marx and F. Engels were the most renowned scholars and theorists of communism who developed the class theory of property rights. Regarding the acquisition of property rights, K. Marx noted, "The spoliation of the church's property, the fraudulent alienation of the State domains, the robbery of the common lands, the usurpation of feudal and clan property, and its transformation into modern private property under circumstances of reckless terrorism, were just so many idyllic methods of primitive accumulation. They conquered the field for capitalistic agriculture, made the soil part and parcel of capital, and created for the town industries the necessary supply of a "free" and outlawed proletariat"[15]. According to K. Marx, property and property rights serve as a tool in the hands of the ruling class (i.e. the bourgeoisie).

At the intersection of K. Marx's views and Christian teachings, it is worth mentioning the philosophy of St. John Chrysostom. This theologian claimed, "For these last account him an enemy that hath done them no wrong, and desire even to take him for a slave when he is free, and encompass him with ten thousand evils; but the demoniacs do no such thing, but toss their disease to and for within themselves. And while these overturn many houses, and cause the name of God to be blasphemed, and are a pest to the city and to the whole earth; they that are troubled by evil spirits, deserve rather our pity and our tears. And the

[12] M. Robespierre, Izbrannye Trudy (Moscow: Nauka, 1965).
[13] R. J. Pothier, “La traite du droit de domainede propriete”, Traites sur different matieres de droit civil, appliqués a l usage du burrer et jurisprudence fracoise Vol: 4 (1781): 384.
[14] U. Mattei y E. A. Sukhanov, Osnovnye polozheniya prava sobstvennosti (Moscow: Yurist, 1999).
[15] K. Marx, Kapital: Kritika politicheskoi ekonomii (Moscow, Eksmo, 2017).

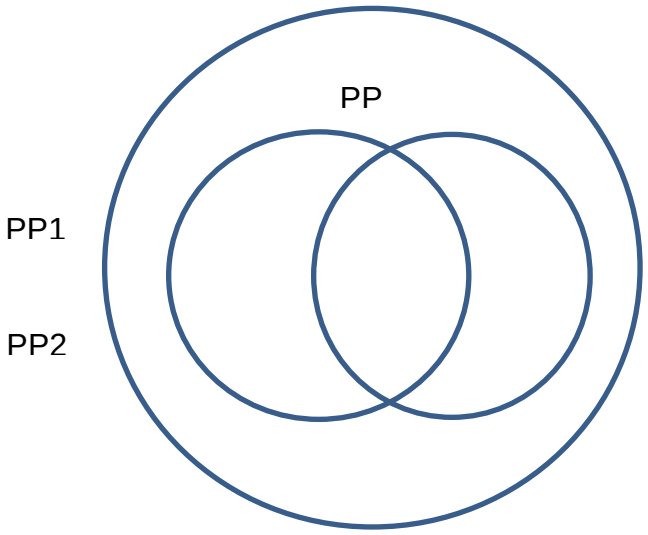
one for the more part act in insensibility, but the others are frantic while they reason, keeping their orgies in the midst of cities, and maddened with some new kind of madness. For what do all the demoniacs so bad, as what Judas dared to do, when he showed forth that extremity' of wickedness? And all too that imitate him, like fierce wild beasts escaped from their cage, trouble their cities, no man restraining them. For these also have bonds upon them on every side; such as the fears of the judges, the threatening of the laws, the condemnation of the multitude, and other things more than these; yet bursting asunder even these, they turn all things upside down. And should any one remove these altogether from them, then would he know assuredly the demon that is in them to be far fiercer, and more frantic than he who is just now gone forth"[16].

However, the philosophy of property rights also developed within the framework of legal science. This process was associated with scientific and technological progress and, above all, the development of theoretical science, including jurisprudence. The existing philosophical views, the formation of scientific and theoretical foundations and the accumulation of legal experience laid the basis for the philosophy of property rights within the framework of law (namely, legal science).

The philosophy of property rights gained the opportunity to be realized not only in the form of ideas and values but also be enshrined in regulatory legal acts. Philosophical ideas and research methods were objectively applied by the science of jurisprudence and the relevant legal acts. Starting from the establishment of jurisprudence as a theoretical science, the philosophy of property went through several ways of its development: the philosophy of property as a value and phenomenon; the philosophy of property rights "outside the law"; the philosophy of property rights "within the law".

The philosophy of property as a value and phenomenon is the primary and broadest system of knowledge about property. It comprised the first views of philosophers and thinkers on the value of property. However, the low level of theoretical jurisprudence did not allow the creation of any property-related rules. The philosophy of property rights was built over the existing norms on property rights and analyzed property both as a value and as a management tool (for example, the Marxist theory or the doctrine of property typical of the Enlightenment). The philosophy of property rights "outside the law" was a system of knowledge about property rights from the viewpoint of the very right of ownership, its essence, purpose and value. The philosophy of property rights "within the law" analyzed the legal nature of property rights and offered the philosophical interpretation of regulatory legal acts, understanding of their actual content and role in public relations. According to the Euler and Venn diagrams, the philosophy of property and the philosophy of property rights can be represented as follows: PP – the philosophy of property; PP1 – the philosophy of property rights "outside the law"; PP2 – the philosophy of property rights "within the law".

[16] J. Chrysostom, Tolkovanie na Evangelie ot Matfeya (Moscow: Sibirskaya blagozvonnitsa, 2010).



In the 21st century, the school of legal positivism began to develop, whose prominent representative was H. Kelsen. According to this philosopher, "the legal authority commands a certain human behavior, because the authority, rightly or wrongly, regards such behavior as valuable for the human legal community. In the last analysis, it is this relation to the legal community which is decisive for the legal regulation of the behavior of one individual to another. The norm that obliges the debtor to pay the creditor protects not only, and possibly not so much, the interests of a particular creditor as the interests of the legal community seeking to preserve a certain economic system"[17]. In other words, law is based on the permissive order established by state in order to comply with the common interests of an individual, society, legal community and state. In case of positive law, priority shifts from the value of property rights to their expediency, thereby stipulating the legal nature of property rights as a set of rules by which the status of one's ownership is regulated. Within the framework of the philosophy of positive law, the hermeneutic approach is applied to the content of property that interprets such a legal term as property rights and its components. We can say that the philosophy of positive law finally formed jurisprudence as a legal science, especially in the Romano-German legal system where the legal scientific doctrine also plays a significant role[18].

The next stage is the direct legal interpretation of property rights with due regard to legal science and the formation of paradigmatic legal thinking on property[19].

Discussion

Since there are two dominant legal systems (Anglo-Saxon and Romano-Germanic), two major scientific paradigms of property rights were formed. The English scholar of the early 20th century E. Jenks defined "property" as the result of acquiring or assimilating natural objects by a person[20]. In turn, a codified law was formed in the Continental legal system where legal concepts played an important role. One of the first legal concepts of property was included into the French Civil Code of 1804 (the Napoleonic Code). According to its

[17] H. Kelsen, Chistoe uchenie o prave (Saint Petersburg: Alef, 2015).
[18] T.V. Kashanina, Yuridicheskaya tekhnika (Moscow: Eksmo, 2008).
[19] T. Kun, Struktura nauchnykh revolyutsii (Moscow: AST, 2015).
[20] E. Jenks, Angliiskoe pravo (Istochniki prava. Sudoustroistvo. Sudoproizvodstvo. Ugolovnoe pravo. Grazhdanskoe pravo) (Moscow: Yurid. izd-vo Minyusta SSSR, 1947).

Article 544, "property is the right of enjoying and disposing of things in the most absolute manner, provided they are not used in a way prohibited by the laws or statutes". The legal worldview on property rights in the Romano-Germanic legal system was formed through the concept given in codified sources.

The Anglo-Saxon legal system regards property rights as a set of rights to some property. It can be real estate in the form of land plots, buildings and rights to these objects. The above-mentioned legal system also highlights personal property. Full ownership is possible only in relation to movable property. Rights to real estate are acquired in the form of titles that are limited property rights. In addition, titles can be acquired in equity, i.e. different persons can simultaneously hold rights to the same object. The Anglo-Saxon legal system provides for fixed-term property rights[21] and complex structural models of property rights[22]. In addition to these types of property, the U.S. and British legal systems utilize the concepts of trust or fiduciary ownership[23]. Different legal systems have various objects of ownership. Thus, Professor W. Mattei noted that "in both legal and technical terms, only tangible objects are subject to property rights in Germany. France and Italy have different approaches. In these countries, the right of ownership can be extended to intangible items, for example, original ideas"[24].

Thus, we can distinguish between two scientific paradigms of property rights. In the Anglo-Saxon legal system, property rights can be compared with the rhizome in postmodernism[25] and described as "dissipating" property (disseminated property rights). The Romano-Germanic legal system formed the consolidated concept of property rights, i.e. centralized property rights, whose hermeneutic interpretation is conducted within the framework of the above-mentioned concept. These paradigms were developed due to different factors in the formation of law in these two legal systems. The main factor in the formation of the Anglo-Saxon legal system is legal experience expressed mainly in the form of judicial precedents[26]. As M.N. Marchenko indicated, "the English law that forms the basis of the Anglo-Saxon legal system does not determine any branches of law if compared with the Continental legal system; the norms of common law (the product of judicial activity in the consideration of specific cases) aim at the resolution of specific problems rather than the development of a general rule of conduct focused on the future; the traditional exaggeration of procedural law and its role in relation to other branches of law, sometimes giving it more importance than substantive law"[27]. We can assume that the legal paradigms of property rights were formed under the influence of historical traditions of particular countries.

Conclusion

Within the framework of this study, we have drawn the following conclusions:

[21] V.N. Litovkin; E. A. Sukhanov y V. V. Chubarov, Pravo sobstvennosti: aktualnye problem (Moscow: Statut, 2008).
[22] E.D. Tyagai, Pravo sobstvennosti na nedvizhimost v SShA. Slozhnostrukturnye modeli (Moscow: Prospekt, 2018).
[23] R.L. Naryshkina, Doveritelnaya sobstvennost v grazhdanskom prave Anglii i SShA (Moscow: 1965).
[24] U. Mattei y E. A. Sukhanov, Osnovnye polozheniya prava sobstvennosti (Moscow: Yurist, 1999).
[25] G. Deleuze; P. F. Guattari, Tysyacha plato. Kapitalizm i shizofreniya (Yekaterinburg: U-Faktoriya, 2010).
[26] E. A. Karpov, Konvergentsiya romano-germanskoi i anglo-saksonskoi modeli prava sobstvennosti v grazhdanskom prave Rossii (Moscow: Mezhdunarodnoe publichnoe i chastnoe parvo, 2020).
[27] M. N. Marchenko, Problemy teorii gosudarstva i prava (Moscow: Yurist, 2001).

– Philosophical views on property developed according to the law of dialectics based on the unity and struggle of opposites (private and public interests) conditioning a transition to a qualitatively new state when "private" human interests cease to be the only component in property rights;

– Alongside the scientific and technological progress in Europe, theoretical jurisprudence was developed which would be further based on the hermeneutic interpretation of property with due regard to the rule of law;

– Since there are two dominant legal systems (Anglo-Saxon and Romano-Germanic), two major scientific paradigms of property rights were formed: the Anglo-Saxon legal system contains the concept of "dissipating" property, i.e. disseminated property rights represented as a set of individual property rights. The Romano-Germanic legal system formed the consolidated concept of property rights, i.e. centralized property rights, whose hermeneutic interpretation is conducted within the framework of the above-mentioned concept.

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