

Part I

Values of Legal Philosophy: Contexts of Reevaluation

UDC 321:342

Viktor N. Rudenko

Institute of Philosophy and Law,
Ural Branch of the Russian Academy of Sciences,
Ekaterinburg, Russia

E-mail: rudenkovn@yandex.ru

ORCID: 0000-0003-1802-2198

SPIN-code: 2836-8813

Sergei S. Alekseev: from Philosophy of Law to the Human Constitution

Abstract. The article is dedicated to the philosophical views of Sergei S. Alekseev, an outstanding Russian legal scholar and organiser of science. In particular, the discussion considers the question of lawful freedom and Alekseev's understanding of the purpose of law in achieving this freedom. The article discusses Alekseev's key philosophical views and ideas, which determined his general theory of law and understanding of the problems of constitutionalism in Russia. Alekseev's deep and systematic analysis of Kant's views on legal issues and demonstration of a holistic Kantian legal doctrine have a pre-eminent position in Russian legal science and an important global dimension. In developing Kant's ideas, Alekseev substantiated the value of law in modern society. To this end, he deeply rethought – in essence, reintroducing into scientific circulation – the categories of “pure right” and “human rights”. Thus, Kant's legal theory underpins Alekseev's advancement of a liberalist approach to law, which is manifested in the idea of human rights as objective rights, in the permissive nature of the law itself, and in the need to develop a rule-of-law society. The article also shows the organic connection between Alekseev's philosophical ideas and his notions about the constitutional process, which are expressed in his formulation of the concept of the Human Constitution.

Keywords: freedom; purpose of law; human rights; Kantian legal doctrine; Human Constitution

Alekseev Sergey Sergeevich was one of the most prominent Russian constitutional lawyers of the period spanning the late 20th and early 21st centuries. In addition, he is considered as an outstanding philosopher of law. At the theoretical seminars organised by Alekseev in his capacity as Director of the Institute of Philosophy and Law of the Ural Branch of the USSR Academy of Sciences (now the Ural Branch of the Russian Academy of Sciences), problems of jurisprudence were invariably discussed with the active participation of philosophers (Kazantsev, Rudenko 2024: 20-21).

The majority of Alekseev's legal theoretical works are presented on a rigorous philosophical basis. This philosophical foundation is inherent both in works on the general theory of law and in individual theoretical discussions of problems of general permissions and prohibitions, issues of state and law, the foundations of the constitutional system, as well as in works of a general ideological nature.

Alekseev's philosophical views underwent significant evolution from the late 1980s to the late 1990s. This involved an evolution from classical Marxist philosophical ideas, according to which the economic basis of society determines the superstructure, whose constituent parts are the state and law according to their class understanding, to more general and profound views on the origin and essence of law, based on the legacy of German classical philosophy, primarily on the works of Immanuel Kant¹. During the post-Soviet period of scientific creativity, Alekseev turned to a consideration of the general problems of human existence and the presence of reason in the universe.

It goes without saying that Alekseev's philosophical understanding of reality is most closely connected with problems of law. In his most philosophical, *The Most Holy Thing that God has on Earth. Immanuel Kant and the Problems of Law in the Modern Age*², Alekseev overcomes the Marxist dogmatic paradigm of "base and superstructure" to discover the foundations of law in contradictory human

¹ The most famous philosophical works of Alekseev include: Alekseev S.S. *The Most Sacred Thing that God has on Earth: Immanuel Kant and the Problems of Law in the Modern Era*, Moscow, Norma, 1998, 410 p.;

reason and human freedom. Following Kant, he shows that man is the only rational being capable of acting freely. However, the history of freedom as a work of human hands begins with evil through the abuse of one's own mind. In its striving towards the greatest possible freedom, human self-will results in constant antagonism between all members of human society, whose most abhorrent features are revealed in ingratitude, envy, and schadenfreude (Alekseev 1998: 37-44), leading to violence and lawlessness. In essence, Alekseev agrees here with Kant that ultimate freedom is an essential attribute of society, but with the important caveat that one's determination and maintenance of the boundaries of one's own freedom is inextricably linked with the freedom of others (Alekseev 1998: 44). For this reason, law is the antithesis of violence and the destructive rule of force; moreover, somewhat paradoxically, law is an antithesis without an alternative. A figurative expression of this paradox involves a hypothetical situation in which the entire nation would consist of devils: the desire for self-preservation entails the need for the supreme power of law (Alekseev 1998: 44).

Thus, the objective logic of the development of human society leads it to a legal state and the inevitability of law, whose main functions and purpose in providing for the ascending development of the human race is "the definition and preservation of the boundaries" of freedom (Alekseev 1998: 46). The purpose of law in Kant's understanding as interpreted by Alekseev is to "define for each their own and protect it from the encroachments of each other, where

Alekseev S.S. *Philosophy of Law, Collected Works. In 10 vols. [+ Reference vol.]*, Moscow, Statut, 2010, vol. 7, pp. 9–320; Alekseev S.S. The Universe and Man. An Attempt at Understanding (fragments), *Collected Works. In 10 vols. [+ Reference vol.]*, Moscow, Statut, 2010, vol. 9, pp. 260–267; Alekseev S.S. Selected Philosophical Notes, *Ibid.*, pp. 268–278; Alekseev S.S. Ascent to Law: Searches and Solutions, *Collected Works. In 10 vols. [+ Reference vol.]*, Moscow, Statut, 2010, vol. 6, pp. 8–553; Alekseev S.S. Two Names, *Collected Works. In 10 vols. [+ Reference vol.]*, Moscow, Statut, 2010, vol. 9, pp. 8–22.

² "The Most Holy Thing that God Has on Earth" is undoubtedly Alekseev's most significant philosophical work. It was here that he most clearly showed himself as a philosopher. First published in 1998, the book republished 15 years later. It is also included in Volume 5 of the Collected Works. Immanuel Kant was undoubtedly Sergei Sergeevich's favourite philosopher. For this reason, he considered the book connected with Kant to be his magnum opus.

the centre of legal regulation becomes what is determined by law and protected by law” (Alekseev 1998: 47). Therefore, freedom based on law is the meaning and purpose of law itself. These fundamental Kantian ideas came to express the essence of Alekseev’s philosophical quest – and, ultimately, his personal worldview. In this connection, we may note the following contributions made by Alekseev in the field of philosophy.

The first Russian legal scholar to systematically analyse Kant’s views on legal issues, Alekseev reveals philosophy of law to be one of the integral and defining elements of Kant’s organic philosophical system and in no way inferior to his writing on ethics. Alekseev’s substantiation of Kant’s legal doctrine was mirrored in the work of other prominent researchers. By the time *God’s Most Holy Thing on Earth...* was written, similar ideas had been expressed in the works of K. Ritter (Ritter 1971), G. Stolz (Stolz 1972), F. Kaulbach (Kaulbach 1982), W. Busch (Busch 1979), B. Ludwig (Ludwig 1988) and W. Kersting (Kersting 1984) (Aronson 2015: 7). However, there have also been many opponents of this approach. It is noteworthy that even today theoretical arguments advancing a refined Kantian concept of law, which underlies both moral and other laws of society, remain little studied in the extensive Kantian literature. As a result, new books on the topic may still be perceived as breaking new ground³.

Nevertheless, many compelling arguments in favour of the existence of Kant’s philosophy of law and its significance for the modern era can be found in Alekseev. Having briefly described the philosopher’s critical method, developed during the famous “Copernican revolution” in philosophy that took place at the end of the 18th century, Alekseev refutes the thesis that the Königsberg thinker’s fundamental philosophical ideas on legal issues are characterised by their absence, groundlessness, or vagueness. Contrary to the common characterisation of Kant’s statements on legal issues as incidental, Alekseev substantiates the directly opposite premise, namely, that Kant’s philosophy of law became the starting point for his subsequent writing of *Critique of Pure Reason* and other clas-

³ Thus, one of the comments on Eric Watkins’ book “Kant on Laws” claims that this book is the first monographic study entirely devoted to Kant’s theory of law as a whole (Abaci 2020).

sis works. According to Alekseev's thorough exegesis, the German philosopher reveals himself to be a master of the subtleties of legal terminology and Roman law. As Alekseev shows, while Kant's philosophy of law is not embodied in a special general work and only latently present in his three *Critiques*, it is presented explicitly in a series of special works devoted to this question. Alekseev's thorough characterisation of these works of Kant by means of three temporal and substantive layers (Alekseev 1998: 28-30) is of particular interest to legal scholars. According to Alekseev's summary, Kant's articles and treatises "contain a developed, integral philosophical concept of law, in which his ideas about the universe, reason, history and prospects for the development of the human race, the ideals of liberal civilisation were realised..." (Alekseev 1998: 30). Underestimated and not sufficiently understood to this day, the legal component of Kantian philosophy acquires a new significance for the development of modern society in which law becomes a central priority.

In his development of Kant's ideas, Alekseev demonstrated and substantiated the value of law in society, especially at the current stage of its development. To this end, he deeply rethought – in essence, reintroducing into scientific circulation – the categories of *pure right* and *human rights*. In terms of legal content, Alekseev considers pure right to be the most important product of pure reason and the highest expression of spiritual culture. "In the real, practical lives of people in society, there is only one institution in the sphere of regulation (management) that is capable of... making the mind correspond to the highest indicators, i.e. become pure. This is law..." (Alekseev 1998: 177-178). Thus, this category represents a kind of sacred ideal image that should serve as a model for practical action that embody the fundamental principles of law in the development of society. "Human rights" ("the rights of people") are, according to Alekseev, a category interconnected with "pure right", characterising law in civil society along with such institutional formations as the state, religious institutions, objectified forms of spiritual life, science, and art. "Human rights", in other words, are a phenomenon of the objective right associated with the law and legal consciousness, existing as an institutional formation centred on the social value of man and need to ensure his freedom (Alekseev 1998: 82, 211-221).

In Alekseev's legal-philosophical works, the phenomenon of freedom has a dominant meaning (Alekseev 1998: 218). Law is both the abode of freedom (Alekseev 1998: 54) and the regulator of the boundaries of people's freedom, correlated as it is with the freedom of all "others" (Alekseev 1998: 129). In his consistent pursuit of this philosophical idea, Alekseev recognises Kant as the thinker who gave the most profound philosophical justification to modern liberalism (Alekseev 1998: 110). This leads to an association of the prospects for the development of a modern society – both democratic and legal – with liberalism and its articulation of the idea of freedom. On many pages of his works, he focuses on "modern liberal civilisations" (Alekseev 1998: 78-79, 112) and "civilisational-liberal development" (Alekseev 1998: 178), characterising the modern historical stage of development of society as a "liberal era in the life of people" or "the era of liberal civilisation" (Alekseev 1998: 184, 215-217, 220, 240, 257, 331)⁴. In the second paragraph of Chapter 1 of *The Most Holy Thing That God Has on Earth...*, Alekseev vividly characterises the modern era as an era of liberal civilisations. Addressing the formulated question, "why Kant?", the author outlines the features of Kant's life that provide a background of the new era into which humanity had entered following the French Revolution. Thus, Kant's philosophy of law is analysed by Alekseev not so much in the context of German classical philosophy, but rather in its epochal European and global significance. Alekseev demonstrates the significance of Kant's ideas for past and contemporary liberal-oriented thought. In relation to law, it manifests itself in the idea of human rights as an objective right, in the permissive nature of the law itself, and in the consequent need to develop a legal society.

In his consideration of the problems of the legal state of society, Alekseev reflects on the coming "universal legal society" at the level of the world community (Alekseev 1998: 259-263). Much attention is paid to issues of the culture of freedom, along with the elevation of the legal status of a citizen through a gradual transition from legal support of his subjective rights to a more comprehensive and objective human right (Alekseev 1998: 253-258). The philosophical

⁴Alekseev mentions this many times in his fundamental work "Ascent to Law", as well as in other books and articles.

methodology he developed is also implemented in the examination of purely legal topics; thus, it is no coincidence that he pays great attention to issues of contract law and the problem of permissive legal regulation. It is noteworthy that he considers the permissive right to be one of the characteristics of liberal civilisations, referring to it as the right of modern civil society (Alekseev 1998: 240)⁵.

Nowadays, liberalism, neoliberalism and followers of liberal policies in Russia are frequently criticised. Indeed, liberalism is widely seen as the cause of failures in the social and economic spheres of Russian society. It seems important to note, however, that the liberal ideas themselves have not been discredited themselves in any way. Rather, it is the practice of implementing these ideas according to their subjective interpretation that can very often carry vicious consequences and experience consequent setbacks, as Alekseev himself frequently noted: “The most significant and sorrowful of such losses is the loss in people’s perceptions of the priority significance of the main, original category of freedom – the right and responsibility of a person to decide his own affairs and his own destiny” (Alekseev 1998: 351). The free activity of man acquired an ugly expression in pursuing in the desire for self-enrichment at any cost, while in the sphere of state building it found embodiment in the nomenklatura-clan system of relations, which is the antithesis of the ideal liberal model of government. Alekseev retained this kind of assessment of the practice of implementing the idea of the rule of law and the assertion of law as an absolute social value along with human rights and his other philosophical ideas until the end of his life. He wrote about this with some bitterness in his later work *The Collapse of Law* (Alekseev 2010: 497-514). As he predicted, the fate of liberal values in Russia will remain uncertain for a long time, including being subject to periods of backlash. However, he remained convinced of Russian society’s potential for a strong legal structure in the future (Alekseev 1998: 357-361).

The essentially liberal ideas of Alekseev remain relevant today. The ideas of Alekseev and other jurists with liberal views are

⁵ Similar ideas were expressed by Alekseev in 1989: the generally permissive order “is a direct and organic expression of the currently expanding deep social freedom, embodied in it at a new level of the universal and generally permissive principle” (Alekseev 1989: 132).

embodied in the interpretation of modern constitutionalism, whose essence is stated as follows: “Constitutionalism is a set of interrelated concepts, principles and practices that organise and thereby limit the power of government in order to prevent despotism” (Sajó, Uitz 2021: 16). This interpretation of constitutionalism finds expression in modern constitutions and theoretical models of constitutional structure, which are enshrined in the legal consciousness and in the practice of state building in many countries of the world. Modern constitutionalism finds its documentary design and normative consolidation in the texts of constitutions that embody the ideal of the “Constitution of Freedom”⁶. In the countries of Eastern Europe and in Russia, the need to achieve the designated ideal was articulated at the end of the 20th century, when it became clear that if the principles of constitutionalism are implemented, “the established relations form a system of restrictions in which ensuring the freedom of citizens comes first” (Sajó 2001: 12). In this sense, Alekseev can be considered as the herald of the idea of a constitution of freedom in Russia. The idea is enshrined in his jurisprudential terminology, in which he includes the concept of the Human Constitution. In developing the principles of constitutionalism, Alekseev substantiates the unacceptability of implementing in the constitution the principle of the priority of society and power over the individual, which was criticised as characteristic of all Soviet constitutions (Alekseev 2009: 7-8). He advocates for the fundamental ordering of state power to permit the development of the institution and culture of human rights (Alekseev 2009: 18). The meaning of his concept of the Human Constitution is associated with his hope that *“man with his high dignity and inalienable rights would rise above power and this would determine the essence and development of the entire state and legal life”* (Alekseev 2009: 17-18). The jurist devoted many years of his life to identifying and substantiating ways to implement this concept.

Thus, Alekseev’s philosophical ideas, including his concept of human rights, have been embodied in general ideas about constitutionalism and the possible development paths of the consti-

⁶ This model is explicitly presented in the fundamental work of Hungarian legal scholars András Sajó and Renáta Uitz (see: Sajó, Uitz 2021).

tutional process in the Russian context. This testifies to the multifaceted personality of the thinker and the organic interconnection of fundamental philosophical and legal ideas in his worldview.

References

Abaci U. 2020. *Eric Watkins, "Kant on Laws"*, Cambridge University Press, 2019, 297 pp. : review, 15.02.2020, available at: <https://ndpr.nd.edu/reviews/kant-on-laws/> (accessed October 10, 2024).

Alekseev S.S. 1989. *General Permissions and General Prohibitions in Soviet Law*, Moscow, Yuridicheskaya literature, 286 p. (in Russ.).

Alekseev S.S. 1998. *The Most Sacred Thing That God Has on Earth: Immanuel Kant and the Problems of Law in the Modern Era*, Moscow, Norma, 410 p. (in Russ.).

Alekseev S.S. 2009. *At the Origins of the Constitution of Russia: Subjective Notes*, Yekaterinburg, Institut chastnogo prava, 64 p. (in Russ.).

Alekseev S.S. 2010. The Collapse of Law. Polemical notes, S.S. Alekseev. *Collected works. In 10 vols. [+ Reference. vol.]*, Moscow, Statut, vol. 7, pp. 497–514. (in Russ.).

Aronson D.O. 2015. *Kant: the Transcendental Justification of the Principles of Law : Dissertation*, Moscow, 175 p. (in Russ.).

Kazantsev M.F., Rudenko V.N. 2024. The Rise of Law – the Mission of S.S. Alekseev (on the 100th Anniversary of the Outstanding Jurist), *State and Law*, no. 6, pp. 7–32, doi 10.31857/S1026945224060011 (in Russ.).

Sajó A. 2001. *The Constitution of Freedom. Introduction to Legal Constitutionalism*, Moscow, Yurist", 292 p. (in Russ.).

Sajó A., Uitz R. 2021. *The Constitution of Freedom: An Introduction to Legal Constitutionalism*, Moscow, Institut prava i publichnoy politiki, 580 p. (in Russ.).