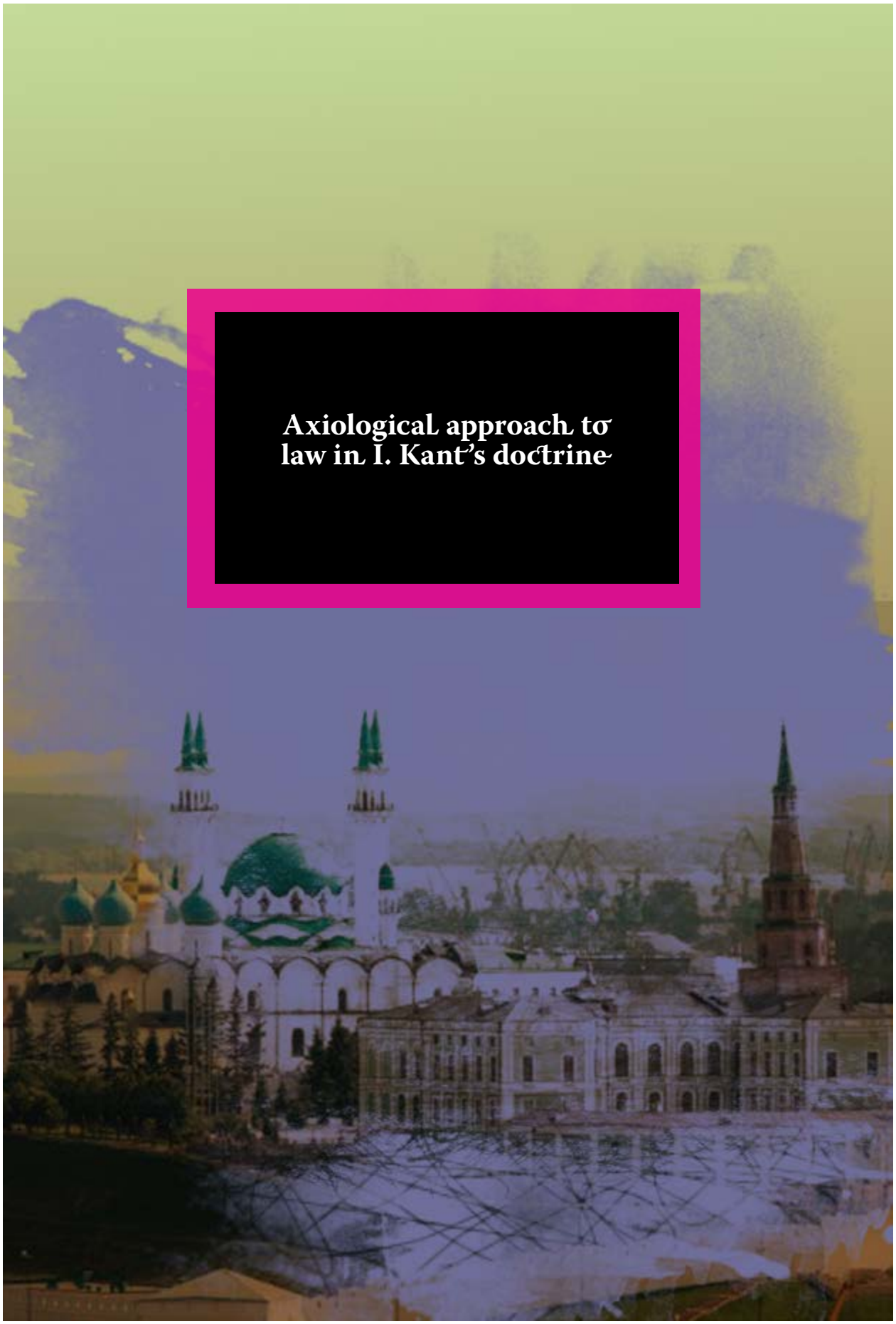
Axiological approach to law in I. Kant's doctrine



Axiological approach to law in I. Kant's doctrine

Enfoque axiológico de la ley en la doctrina de I. Kant

ABSTRACT

This article outlines the views of the founder of the German classical philosophy of Immanuel Kant on the nature and essence of the state and law, namely, studies the concept of the state as a "night watchman", analyzes the draft of the jural state, reveals the concepts of categorical and hypothetical imperatives, from which the thinker deduces morality and legality of people's actions. Kant is first to draw attention to the need to comply with a number of conditions (basic and preliminaries) when concluding peace treaties between the states.

Kant, an advocate of the contractual theory of the origin of the state, saw the goal of the state not in "the achievement of happiness by every citizen of society" as Aristotle did, but in the formation of the state of the greatest conformity of the state structure with the prescriptions in law. He became the founder of the value approach to law. The concept of law is interpreted by the thinker exclusively as a combination of coercion with the freedom of the person: "law is a set of conditions under which the arbitrariness of one person is compatible with the arbitrariness of another in terms of the general law of freedom". Thus, the law of Kant is reduced to the system of laws, i.e. to the objective law. In this case, natural law is called by the thinker as private law, and positive law as public law.

KEYWORDS: Kant, categorical imperative, hypothetical imperative, the legality of an act of man, a law-based state, a project of everlasting peace between states.

RESUMEN

Este artículo describe los puntos de vista del fundador de la filosofía clásica alemana de Immanuel Kant sobre la naturaleza y la esencia del estado y la ley, es decir, estudia el concepto del estado como "vigilante nocturno", analiza el borrador del estado jurídico, revela los conceptos de imperativos categóricos e hipotéticos, de los cuales el pensador deduce la moral y la legalidad de las acciones de las personas. Kant es el primero en llamar la atención sobre la necesidad de cumplir con una serie de condiciones (básicas y preliminares) al celebrar tratados de paz entre los estados.

Kant, un defensor de la teoría contractual del origen del estado, vio la meta del estado no en "el logro de la felicidad por cada ciudadano de la sociedad" como lo hizo Aristóteles, sino en la formación del estado del mayor conformidad de la estructura del estado con las prescripciones de la ley. Se convirtió en el fundador del enfoque de valor de la ley. El concepto de ley es interpretado por el pensador exclusivamente como una combinación de coacción con la libertad de la persona: "la ley es un conjunto de condiciones bajo las cuales la arbitrariedad de una persona es compatible con la arbitrariedad de otra en términos de la ley general de libertad". Por lo tanto, la ley de Kant se reduce al sistema de leyes, es decir, a la ley objetiva. En este caso, la ley natural es llamada por el pensador como ley privada, y la ley positiva como ley pública.

PALABRAS CLAVE: Kant, imperativo categórico, imperativo hipotético, la legalidad de un acto del hombre, un estado basado en la ley, un proyecto de paz eterna entre los estados.

Olga M. Belyaeva

Kazan Federal University. Russian Federation

olga.beliaeva@mail.ru

ARTÍCULO RECIBIDO: 16 DE DICIEMBRE DE 2017
ARTÍCULO ACEPTADO PARA PUBLICACIÓN: 25 DE DICIEMBRE DE 2017
ARTÍCULO PUBLICADO: 31 DE DICIEMBRE DE 2017

INTRODUCTION

Immanuel Kant (1724-1804) is a professor at the University of Konigsberg, the founder of German classical philosophy, the legal thinker of the Enlightenment, the founder of the theory of the rule-of-law state, the author of the project for the establishment of the everlasting peace between states, the founder of critical philosophy. Surprising is the fact that a citizen of one of the most absolutist states (Prussia) has become one of the most prominent representatives of classical liberalism, and, as correctly noted in the literature [1], of liberalism, not described in books, as in J. Locke, but suffered by the very author.

Kant himself faced a personal crisis when the Prussian government condemned his published book, Religion within the Limits of Reason Alone. As long as Frederick the Great, "the Enlightenment King," ruled, Kant and other Prussian scholars had broad latitude to publish controversial religious ideas in an intellectual atmosphere of general tolerance. But Frederick was succeeded by his illiberal nephew, Frederick William II, who appointed a former preacher named Wöllner as his reactionary minister of spiritual affairs. The anti-Enlightenment Wöllner issued edicts forbidding any deviations from orthodox Biblical doctrines and requiring approval by official state censors, prior to publication, for all works dealing with religion. Kant managed to get the first book of his Religion cleared by one of Wöllner's censors in Berlin. But he was denied permission to publish Book II, which was seen as violating orthodox Biblical doctrines. Having publicly espoused the right of scholars to publish even controversial ideas, Kant sought and got permission from the philosophical faculty at Jena (which also had that authority) to publish the second, third, and fourth books of his Religion and proceeded to do so [2].

It is necessary to distinguish among the main works of Kant the following:

- "Critique of Pure Reason" (1781);

- "Critique of Practical Reason" (1788);

- "Criticism of Judgment" (1790);

- "Towards Everlasting Peace" (1795);

- "Metaphysics of Morals and Manners" (1797);

- "On the proverb "Maybe this is true in theory, but not good for practice" (1793).

Kant's legal and political views were greatly influenced by the ideas of the French Enlighteners, J.-J. Rousseau, Ch.-L. Montesquieu, etc. Also Kant was well versed in the work of rationalists (such as B. Spinoza, R. Descartes) and the representatives of empiricism (J. Berkeley, D. Hume, J. Locke). Moreover, the fact that Kant managed to bring philosophy out of the impasse which it reached in the dispute between the rationalists and the empiricists is regarded as a merit.

Kant analyzed the work of Newton, Hume and, above all, Rousseau who, in his own words, had 'put him on the right track' and sparked off 'a revolution in his personal thinking [3].

Kant was a man of such permanent habits that people started their watches the moment he left his doors for a walk, but one day his schedule was frustrated for several days: this was when he was reading "Emil" [4]. True, some researchers [5] still point out that this was another work by the same author - J.-J. Rousseau "On the social contract".

At the same time, I. Kant underwent severe criticism of the teaching of I. G. Fichte: "... I declare that I consider the Science of Fichte to be a completely untenable system" [5].

METHODS

The methodological basis of the research is a set of methods of scientific knowledge, among which the dialectical method takes the leading place. The article uses universal (dialectics and metaphysics), general scientific (analysis and synthesis, systemic and structural) and private scientific methods (formal legal, comparative legal, hermeneutic).

RESULTS

On the categorical imperative. In the Kant's doctrine, morality is of great importance, and it is not without reason that he is also called "the philosopher of morality". In this connection, Kant introduced the concept of categorical imperative - the rule of appropriate conduct, which is not related to the specific goal attainment. The meaning of the categorical imperative is "one must, because one must" and the pragmatic goal is completely absent here. It contains only the general idea of "duty in the face of humanity" [6], giving the individual full scope for deciding on his own, which line of behavior goes with the moral law most of all. Therefore, a person who follows a categorical imperative is a moral person. Kant called the categorical imperative to be the law of moral freedom and used these concepts as synonyms. Kant contrasted categorical imperative with hypothetical imperative - this is the rule that a person lays down in order to attain a specific goal. The philosopher believed that a moral personality cannot be guided by hypothetical or conditional rules which depend on circumstances.

Kant proposed several formulations of the categorical imperative (moral law) [7]:

- "act only according to such maxim, guided by which you may at the same time wish that it became a general law";

- "do in such a way you to always treat humanity in your face and in the face of everyone else like towards the goal, and never to treat it only as a means".

At first glance this is a rendering of the demand of the New Testament: "Treat people in such a way you want people treat you". But in fact, this expression has deeper roots. Since, as Kant pointed out, each individual for another one has an absolute moral value, i.e. the happiness of others for the individual is as a goal and at the same time as an obligation. According to Kant, the benefit of others is primarily a debt, because each individual hopes for love and understanding of others and thereby turns himself into a goal for the rest. At the same time, he must make others the goal of his own activity.

In "Critique of Practical Reason", Kant introduces the notion of morality and legality of an action. "Since they (the laws of freedom) concern only external acts and their laws, they are called legal laws; if they set up a claim that they (laws) themselves are the determining bases of actions, they are called ethical, and in this case they say: compliance with the first is legal, with the second - the morality of the deed". Continuing further: "since we are not allowed to know the motives of the act - they are hidden in the person as noumenon - we will never know whether the person acted on the basis of a sense of duty or his action was determined by some other ones, perhaps even selfish motives, but we can appreciate what manifests itself in the phenomenal world, i.e. in the external act of man" [8]. So, to act in accordance with duty means to act legally, and to act out of a sense of duty - morally, i.e. in the first case, observing only the letter of the moral law, and in the second, both the letter and the spirit [9].

At the same time, Kant clearly realized the insufficiency of the categorical imperative as a regulator of human behavior, and he saw the way out in law. Considering the relationship between law and morality, Kant characterizes legal laws as a kind of first stage of morality, anticipating thus the well-known expression by V. Solovyov that "morality is a minimum of morals" The general source of moral and legal laws, namely, practical reason or free will of people also testify in favor of this expression.

If the philosophers-educators (S.-L. Montesquieu, F. Voltaire, J.-J. Rousseau) considered reason to be an inherited quality of the individual, I. Kant considered it to be a consequence of the progress of culture, which should be regarded as a world-historical process. It is not for nothing that a priori nature of the categorical imperative is defined by the philosopher as the people's striving for moral perfection, this is the leading internal idea, the need of reason. In the society where only law without morality is dominant, "a complete antagonism" persists between individuals.

On law. Law as a social regulator is opposed to more universal rules - moral - and is a kind of general ethical norms.

Kant's law is different from legal system and has a value dimension, in particular, it is measured through the concept of "freedom". "Law is the restriction of everyone's freedom with the condition of its consent to the free-

dom of each other, as far as possible under the general law" [8]. These conditions include: the existence of compulsorily implemented laws, the guaranteed status of ownership and personal rights of the individual, the equality of members of society before the law, as well as the resolution of disputes in court.

In point of fact, the definition of law as a system of external laws is before us, that is, law is objective, written. Kant understands all the inadequacy of such definition of law, therefore he introduces the notion of a general principle, or a general legal law, which can be called a categorical legal imperative [1].

In practical and ideological terms, Kant's definition of law is consonant with the ideology of early liberalism, proceeding from the assumption that individuals free and independent from each other are able by themselves, by mutual agreement, to regulate the relations that arise between them, and need only these relations to have a reliable protection.

According to Kant, the general legal law should be formulated in such a way as to exclude any moral demands from it. And it was done not in vain. First, in order to exclude any discrepancies on the part of "ordinary" citizens.

Kant believes that the question "what is law?", addressed to the lawyer, is akin to the question "what is truth?", addressed to the teachers of logic. He can still indicate what follows by right (quid sit iuris), i.e. what the laws say or said in one place or another at one time or another; but the right (recht) is what they require, and what is the universal criterion on the basis of which one can distinguish in general between legal and non-legal (iustum et iniustum) - this remains a secret for him, if for some time he does not give up these empirical principles and does not seek the source of these judgments in one mind only (even if the above-mentioned laws served him as a good guide) to establish the basis for possible positive legislation. A purely empirical doctrine of law is the head (like a wooden head in Phaedra's fable), which can be beautiful, but, alas, is brainless [10].

Legal practice is carried out by legal lawyers, for whom the question of legality of the current legislation sounds, according to Kant, absolutely ridiculous. "The legal lawyer", - writes the thinker in the work "The Dispute of Faculties", - seeks laws that guarantee mine and yours, not in one's mind, but in the legal code that is promulgated and sanctioned by the highest authorities". It cannot be demanded from him for justice to prove the truth and validity of these laws, as well as to defend against the reasoning expressed by reason against them. Indeed, only the decrees indicate that it is in accordance with the law, and the question of whether the orders themselves correspond to the law, the lawyer should reject as odd. It would be ridiculous to avoid subjecting to the external and higher will on the grounds that it is allegedly inconsistent with the reason. After all, the prestige of the government lies precisely in the fact that it gives its subjects the freedom to judge what is right and wrong not according to their own concepts, but according to the legislative authority.

His [lawyer's] obligation is only to apply the existing laws, and not to investigate whether they need to be improved ...". As we see, Kant unambiguously advocated the literal interpretation of law.

On the state. Kant characterized the state as follows: "state is the unification of a multitude of people subordinated to legal laws". As we see, Kant gravitated toward the contractual theory of the origin of state and the natural-legal theory of the origin of law.

At the same time, the primary treaty on the formation of the state appears to the thinker exclusively as a speculative construction: "... this treaty is nothing but an idea of the reason, which, however, has an unquestionable (practical) reality in the sense that it imposes the duty on each legislator to promulgate one's own laws so that they can proceed from the united will of the whole people" [11]. "Indeed, - Kant noted, - it is difficult to suppose that the people agreed to a law on the hereditary privileges of the estate class. Such law, which elevates one part of society over another, seems unlawful ..." [10].

The development of this position enabled Kant to overcome the contradiction so characteristic of the natural-legal theory that represented the state simultaneously as a real agreement reached between the state and each individual in particular and as a model for the future organization of political power.

On law-based state., Kant, like many preceding thinkers and jurists, raises and analyzes the question of the rule of law in his works. Kant opposed the ideal of a legal state (Rechtsstaat) to a paternalistic state (imperium paternale) [7]. For in a paternalistic state, "the sovereign wants to make people happy according to his ideas and becomes a despot".

The project of everlasting peace. The desire of mankind to prohibit wars dates back to antiquity. The idea of an eternal peace occupied the minds of thinkers not only of antiquity and the Middle Ages, but also rode on a wave of popularity among the scientists and statesmen during the period of bourgeois revolutions.

Kant also devoted a separate work to the problem of peace-building – "To the Eternal Peace" (1795), which rode on a wave of popularity among contemporaries. Suffice it to recall that during the lifetime of the author this work had been published 12 times.

I. Kant singled out six preliminary (preliminaries) conditions and four basic (definitive) conditions necessary for establishing everlasting peace. Among the preliminaries, the following conditions were named [12]:

1. when concluding a treaty of peace, there should be no secret reasons for rekindling the war, namely, it is impossible to include in the text of the treaty those provisions that can break out the war between the parties;

2. one cannot give, inherit, hand down as a portion, etc. the territory or a part of the territory of the state;

3. permanent armies must be disbanded;

4. state loans taken to finance military operations are prohibited;

5. interference of one state with the internal policy of another state is inadmissible;

6. military actions must not be conducted with such means that would undermine the trust of the parties in the future, for example, sending secret killers, poisoners, violation of the conditions of surrender, incitement to treason in the enemy state.

Kant lists four conditions among the basic conditions for concluding a peace treaty,:

1. it is more difficult to levy war under the republican system, so the republics must become the parties to the treaty;

2. as a result of the conclusion of a treaty, states are united in a union (a federation of free states) in which each state retains its sovereignty;

3. cooperation and mutual hospitality are established between the states;

4. (a secret condition), rulers must confer with philosophers in making state decisions.

It is worth noting that the listed conditions formulated by the thinker are important today as well.

SUMMARY

According to Kant, the goal of the state is not the good and not the happiness of every citizen, but the condition of the greatest conformity of the state structure with the principles of law, "for which the reason requires us to strive with the help of a categorical imperative". This radically differentiates Kant's views from the traditions of ancient philosophy, which saw the achievement of common good as a goal of the state. The general good, from the point of view of Kant, is not a legal principle, as it cannot be realized everywhere and understood by every citizen in their own way.

Therefore, I. Kant concludes: "the sovereign does not have the right to coerce its citizens into actions that contribute to the common good, but must use violence so that private goals not to interfere with everyone else". Consequently, the rule of law should give a guaranty civilians freedom to citizens, and not care about the well-being of individual citizens.

Kant developed the anti-statist tradition in interpreting the state as "a night watchman", limiting the scope of state regulation, primarily by the function of legal protection of the interests of the private owner and removing educational, social and other functions from the list of state functions [11].

Kant considered the parliamentary republic and the constitutional monarchy with the separation of powers to be the ideal forms of government. It should be emphasized that Kant treated the principle of separation of powers not in the context of the idea of "control and balance", the so-called system of checks and balances, but functionally. That is, the three branches of power complement each other "for perfection" and none of the branches of power can take over the functions of the other.

All three branches of power can be represented as judgments in the syllogism: "a great premise containing the law of generally united will; a smaller premise containing the order to act, that is, the principle of behavior under this will, and the conclusion containing the court decision (judgment) as to what in this case corresponds to the law" [10]

CONCLUSION

As a conclusion to the work "Critique of Practical Reason" (1788), Kant himself sums up: "Two things fill the soul with a new and growing surprise and blessing, the more often, longer we reflect on them - the starry sky above me and the moral law in me" [8].

As Popper notes, "Kant believed in the Enlightenment, he was his last great proponent" [13]. Kant himself wrote about the idea of Enlightenment: "Enlightenment is a person's going out of the minority status in which he is through his fault. Minority is the inability to use one's mind without the guidance of someone else. Minority through one's own fault is caused not by a lack of reason, but by a lack of determination and courage to use it without the guidance by someone else. Sapere aude! - Have the courage to use your own mind! - this is, therefore, the motto of the Enlightenment".

I. Kant exerted a significant influence on the political and legal thought of Russia: P.I. Novgorodtsev, B.A. Kistyakovsky, M.M. Speransky, L.N. Tolstoy, as well as the West - Del Vecchio, G. Radbruch, R. Stammler, and others.

Kant's doctrine of law and state is the perfection in the development of West European political and legal thought in the eighteenth century. It raised such crucial issues as the methodological foundations of the general theory of law, the differentiation between law and morality, the philosophy of law, international public law, and others.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

BIBLIOGRAPHY

1. Kozlikhin I.Y. Selected Works. SPb: «Juridical Center Press» Publishing, 2012. P. 583, 569.
2. Manfred Kuehn. Kant: a Biography. Cambridge University Press, 2001. ISBN 0-521-49704-3.
3. Heinrich Kanz. IMMANUEL KANT. The quarterly review of comparative education (Paris, UNESCO: International Bureau of Education), vol. XXIII, no. 3/4, 1993, p. 789–806.
4. Bertrand Russell. A History of Western Philosophy. New York, Simon & Schuster, Inc., 1972.
5. Taranov P.S. The Philosophy of Forty Five Generations. M.: «AST» Publishing, 1998. P. 521.
6. The History of Political and Legal Doctrines / edited by O.E. Leist and V.A. Tomsinov. M.: "Zertsalo" Publisher, 2009. P. 348.
7. Marchenko Machin I.F. The History of Political and Legal Doctrines. M.: TK Welby, Prospect Publishing, 2007. P. 204, 205.
8. Immanuel Kant. Critique of Practical Reason. Cambridge University Press, 1997. 181 p. ISBN 139780521599627.
9. Kozlikhin I.Y., Polyakov A.V., Timoshina E.V. The History of Political and Legal Doctrines. SPb.: Saint-Petersburg State University Publishing House, Law School of the SPSU Press, 2007. P. 248.
10. The History of State-Law Doctrines: Reading-Book / Compiler S.V. Lipen'; Edited by V.V. Lazarev. M.: Spark, 2006. P. 304, 309.
11. Mukhaev R.T. The History of Political and Legal Doctrines. M.: Prior Publishing, 2004. P. 303, 305.
12. Immanuel Kant. Perpetual Peace and Other Essays, trans. Ted Humphrey (called "Essays"). Indianapolis: Hackett, 1983.
13. Popper Karl R. Immanuel Kant Der Philosoph der Aufklärung // Popper KJR. Die offene Gesellschaft und ihre Feinde, 4 Aufl., München, 1975. S . 9-19.