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PHILOSOPHICAL AND LEGAL FOUNDATIONS OF THE COMPREHENSIVE THEORY OF LAW

Abstract

The article is devoted to the clarification of the essence of the law. The article examines the ontology of law, and the epistemology of law reflects the philosophical problems of law. The conclusion about the law as a contradictory social phenomenon is formulated. The article substantiates the theory of the comprehensive (all-encompassing) study of law as a philosophical and philosophical-legal theory, the purpose of which is characterized not in the justification of any one theory of law but in the comprehensive study of law, taking into account all available theories. The comprehensive theory allows us to look at the law philosophically, stating the different properties of the object, their manifestations and contradictions. The article argues that it is the philosophical attitude to the law that many scientists lack.

Keywords: philosophy of law, theory of state and law, law, comprehensive theory, essence of the law.

Introduction

The question of what is law, what is its essence, has always interested a person. Philosophers and lawyers, sociologists and politicians have studied law from Antiquity to the present day, comparing it with other social phenomena, the legislation, the state. On the basis of the prepared scientific works, several legal theories have been formed, the most famous of which are the iusnaturalism, positivism, divine, historical, sociological, contractual, psychological theories and a number of others.

However, something else is surprising. With the brilliant achievements of mankind in the technical and humanitarian sciences, the question of what law is still open. Dozens of definitions of law have been formulated, various approaches to its cognition have been proposed. However, over the millennia of human existence, no single approach has been developed that suits everyone.

Does this fact mean that the law is impossible to comprehend? We believe in the power of knowledge and proceed from the fact that any social phenomenon is fundamentally knowable. In the study of law, the problem, we think, is different.

From the point of view of cognition, law reminds us of a diamond. As you know, the most common diamond cut is 57 facets. And now it seems that scientists see this or that facet of the stone, sometimes even consider it in detail, while losing sight of the fact that there are at least 56 more facets of the same stone. The same thing happens with the law. Experts on one facet of this phenomenon study it as a whole. It is obvious that the theories obtained in this way eventually run into insoluble contradictions. Then new thinkers appear, who also, sometimes sincerely believing that they see the whole subject, sharpen their views on one of the manifestations of the subject. Their theories are also refuted by other concepts that are also far from perfect. Historically, how many different concepts of understanding law have there been? It would seem that not a little. However, there are not as many of them as the facets of a diamond.

Research has allowed us to suggest that until

a significant number of independent concepts are created that objectively and fully disclose specific facets of law, we will not be able to create a single and general concept. But as soon as the number of definitions of law reaches a critical mass, it will grow into quality, as a result of which we will get an understanding of the law at a completely new level, which may be surprising for all of us.

Results and Discussion

If we combine everything we know about the law, will we get something bigger and more satisfying for everyone? Apparently not. So far, we have only reached the understanding that it is impossible to dwell only on one concept or theory of law, to try to "make" it dominant, the main one. It is necessary to strive to embrace the law entirely, to study the law comprehensively. Such a comprehensive approach (from the Latin Komprehendo – all-encompassing) to the study of law, in this case, is the most appropriate (Zakharcev, 2014, 2021; Zakharcev & Salnikov, 2015, 2019).

We formulated the comprehensive theory of law in 2014-2015. During this time, this theory has become known not only in Russia but also abroad. It has been translated into several foreign languages. This theory became most notable after a monograph dedicated to it was published in Cambridge (Zakharcev & Salnikov, 2018).

Positive reviews of our research were written by D. A. Kerimov, I. F. Pokrovsky, A. I. Ekimov, A. G. Khabibulin, V. M. Baranov, F. M. Rayanov, F. H. Galiev and other specialists. We thank them for their support and want to return once again to the philosophical and legal foundations of the comprehensive theory of law.

We are convinced that the knowledge of the law, like any other phenomenon, should begin with philosophy. It is the philosophy that allows us to "rise" above the problem, evaluate it in the historical aspect, in dynamics, taking into account the development of scientific knowledge about the world and being. It seems that in philosophical terms, a significant number of legal studies, although having global goals, actually represent work at the foot of the pyramid. And it is naive to believe that we will overcome the "huge distance" quickly. And sometimes, instead of rising to knowledge, work is carried out "in a circle". For example, more than a century ago, N. M. Korkunov summed up the convincing result of the attempts to create the so-called encyclopedia of law. In particular, he wrote: "It turned out to be impossible to create a science of sciences from an encyclopedia that would at the same time be an independent, special science and would embrace the content of all individual sciences" (Korkunov, 2019). At the same time, a century later, it is proposed to return to the named idea anew.

Another typical example. Currently, there are attempts to combine the theories of natural and positive law into an integral theory of law. But the law is not only these two theories. So the design in this form is doomed to failure. Philosophically rise above the problem and appreciate that the unification of only these theories will be absolutely incomplete - not everyone succeeds.

Philosophical assessments are required by the modern attitude of legal science to law. So, at present, it is clearly observed that many experts have begun to write about the phenomenon of "law" "sublimely well". They say that everything connected with true law is fair and honest. But what is unfair, totalitarian, undemocratic (although contained in legal norms) is no longer a law. Hence, expressions became commonplace – illegal law, anti-legal authority, anti-legal relations, etc. That is, the law, especially recently, has become idealized.

This approach has become so widespread among students that teachers of a number of branch legal disciplines complain that in universities where students are inspired with the idea of the difference and contradictions of law and the legislation, it is extremely difficult to encourage future lawyers to study codes and other legisla-

tive material since many students are convinced that almost all of this is not law (Lejst, 2015).

It is important to understand that if we look at the phenomenon of law "through rose-coloured glasses", we will not come close to understanding law and its essence. It should be recognized that if the legal norms of reform laws lead to mass impoverishment of the population, infringement of the needs for education and health care, then this is a legal arbitrariness. Arbitrariness! But it is legal. At the same time, the popular phrase "illegal law" used protects the law itself, as if everything explains and suits everyone. Under such circumstances, the law becomes a shrine, an idol, to which everyone prays and does not allow criticism. Like: the law is by definition good, honest, clean, free from bad impurities. About the same thing: the law is freedom, justice, equality and nothing else. For example, V. S. Nersesyanc (2020) began a book on the philosophy of law as follows: the philosophy of law deals with the knowledge of the law as a necessary form of freedom, equality and justice in the public life of people.

But such an understanding of the law is one-sided, not critical and not objective. Uncritical cognition of any phenomenon contradicts the very essence of philosophy. For the philosophy of law, this provision is fraught with great danger. An uncritical approach brings the understanding of a phenomenon to hypertrophied forms. This inevitably leads to a perverted understanding of the phenomenon, the essence, the concept. Subsequent criticism, which sooner or later breaks through, sometimes destroys not only the formed approaches to the phenomenon under study but also discredits the phenomenon itself, the concepts and ideas associated with it.

The current attempts to shield the law from criticism, it seems, are doomed. Even if we proceed from the divine origin of the law, then they will pray to God, not to the la, which is natural. To oppose God to the law or to supplement God with the law is absurd and meaningless.

Again, if we try to somehow idealize the law, to create a law that everyone should strive for, then it is still not right to reduce it to a form of freedom, equality and justice. The law is much more multifaceted and ambiguous than the above categories. Moreover, even precisely defining these philosophical categories is a very difficult philosophical question.

Law is an important and necessary phenomenon of public life. But other phenomena are of the same importance – culture, economy, etc. Is it possible, for example, perfect justice in the economy if one simply wants to sell more expensive, and the other wants to buy cheaper? Is perfect justice possible in a legal dispute between persons in the division of property - everyone has their own justice? Is an unambiguous assessment of cultural works (say, Malevich's "Black Square") possible? Will it be completely fair? At the same time, no one writes about an uneconomical economy, an uncultured culture, etc.

It should be said here that we do not identify law and legislation. However, we consider it fundamentally wrong to contrast these concepts, to oppose one-sidedly, shielding the law as a phenomenon from criticism. We would like to ask why they write "non-legal legislation" and not, for example, "non-legal law"? Why whitewash legal norms? Moreover, it happens that the norms that seem to us today to be legal and fair in every sense do not seem legal after a historical period. For example, the reforms in Russia carried out in the 1990s and formalized by the relevant legal norms initially seemed to be legal, liberal. However, after a short amount of time, they led to significant negative consequences: the collapse of the state, separatism in Russia, nationalism, impoverishment of a significant part of the population, armed conflicts, etc. The ambiguity of the results of the reforms was also recognized by the country's leadership. Now it is obvious that the norms of legislation that established the course of these reforms can hardly be attributed to the legal (in the sense that is laid down by individual idealist scientists).

But there are also reverse examples. The or-

der of Marshal G. K. Zhukov on the protection of Leningrad at any cost in its cruelty would seem unlikely to fit into the legal framework. However, the course of history has objectively demonstrated the supreme justice of such a decision, rightness and correctness, that is, precisely the legal nature. Now it is obvious to everyone that if Leningrad had not been held, the number of people killed would have been many times greater, and the question of victory over fascism would have remained open. It must be said that in the history of mankind, a lot of legal norms have accumulated, which nevertheless contain violence and cruelty.

In addition, it must be borne in mind that the same legislative act at different stages of social existence can be both legal and wrong. Moreover, the same action (for example, speculation) can be both a criminally punishable act and a positive, effective economic activity.

Thus, the concept of legal and non-legal legislation cannot become a reference point for state bodies and officials applying the law. Such a concept is a kind of speculative construction that cannot be implemented in the application of the law. Here, at this stage, the issue of scientific, dialectical verification of ideas and constructions is once again clearly highlighted.

A deep study of the problem of "legal / non-legal" legislative acts was conducted by O. E. Leist. In his fair opinion, a serious obstacle to the formation of meaningful philosophical directions in the study of law in recent years has been the concept, which until recently was called by its supporters the "historical-materialistic concept of the difference and correlation of law and legislation", and now it has been renamed "libertarian" by him. This concept opposes the law, the essence of which is seen in freedom, equality and justice, to legislation adopted by the State. This is the basis of the concept of "non-legal legislation", which does not correspond to the ideas of freedom, equality and justice. Based on such a concept, it is generally difficult to find "legal legislation" in the centuries-old history of mankind. If we consider the law to be the embodiment of freedom, equality, justice, then the history of law begins only from the XVII-XVIII centuries, and all previous law (Hammurabi Laws, Manu Laws, Roman slave law, all the law of the Middle Ages, in Russia – the Russian Truth, all Judicial Codes and Regulations, etc.) should not be considered as law. It turns out that the "libertarian concept" seems to have abolished most of the history of law. Paying tribute to the theoretical courage and consistency of the founder of this concept, V. S. Nersesyanc, we note that he recently abolished most of the history of the state. The state, in his opinion, is constituted only on the basis of "legal legislation", and everything else that has been considered a state in history so far has been various types of despotism, fundamentally different from the state.

Furthermore, As O. E. Leist continued his thought, on the basis of abstract reasoning, which always opposes good law against often bad legislation, it is difficult to formulate any specific recommendations to a modern legislator who fundamentally recognizes the ideas of freedom, equality and justice, but does not always know how to embody them in a legislative act. In addition, the opposite ratio has completely fallen out of the field of view of the supporters of the criticized concept – good legislation and a shaky, unsecured and therefore bad law. An example of such a ratio is art. 59 of the Constitution of the Russian Federation on the right to replace military service with alternative civil service and the inability to exercise this right due to the lack of a legislative definition of the procedure for its implementation. Proponents of the distinction between law and legislation did not notice that law differs from legislation in its ability to be implemented in specific legal relations, in the rights and obligations of members of society, and therefore excessively general formulations of (good by design) legislative act cannot be embodied in law, which does not have a developed mechanism for their translation into specific legal relations (Lejst, 2015).

We fully agree with the above arguments.

Thus, the law should not be idealized. It is a phenomenon of social life, human life and reflects the processes that occur with people. Speaking about natural human rights (the right to life, freedom of conscience, movement, religion, etc.), no one will argue with the fact that all these rights appear to a person after birth, but not before birth. That is, the law is inextricably linked with a living person who was born and thus appeared in public life. Accordingly, it is impossible to separate law from man and society. The law is not a cloud hovering somewhere outside of people. And since the law is inextricably linked with man and society, it should not be talked about as something supernatural, sublime. It simply reflects both society as a whole and specific people - their virtues and their vices.

For us, it was and remains a mystery why the law is subject to such idealization among legal scholars (mainly legal theorists). Experts in these fields evaluate the economy, culture, and politics more carefully and objectively, without illusions.

Perhaps the phenomenon of law itself contains a constant human desire for kindness, honesty, justice. Or maybe the ideal of law is created by scientists who are somewhat divorced from specific legal realities, the stagnation of many legal mechanisms, red tape in disputes, injustice, dishonesty, sneaky tricks, bribery or pressure on the court, etc.? Note that these qualities have always been in law throughout history. They are repeatedly described in the literature, historical works, and by lawyers themselves.

We must live in reality. In the course of our research, we found that many Russians primarily associate the law with prohibition and punishment! What happens? Scientists write about the measure of freedom, equality and justice, and for people, society, it is mainly associated with prohibition and punishment? And why are the prohibition and punishment in law more significant for people than mandatory established rules or a legalized procedure for carrying out any actions?

On the one hand, it is good that the law is not associated with violence and cruelty among Russians. However, on the other hand, prohibition and punishment are not a positive reaction of a person. They do not please and, as a rule, do not cause positive emotions. So it is logical to assume that the law does not cause positive emotions in most people. And to be more precise, it causes negative ones.

What are the dangers of prohibition and punishment? People do not seek salvation and protection in them!

There is a lot of idealism in the proposed modern concepts (natural, libertarian, integral, and others). However, humanity has not yet succeeded, and in the near future, undoubtedly, it will not be possible to create an ideal society, at least a society that is absolutely fair. Outside of an ideal society, the models of idealized law are not fully realized; they will be refracted in a variety of directions, possibly reaching anti-legal ones. Examples of when bright ideas turn into lawlessness and terror are known to everyone.

It is necessary to take into account the dependence of law on external factors, for example, on the economy. According to Engels, the law is almost entirely dependent on the economics. The law depends on the economy according to positivism. The law partially depends on the economy according to iusnaturalism. Even if we recognize the law as a given, dominant and ruling in the world, without a strong economy, many natural human rights will become slogans containing nothing and having no practical meaning (the right to a decent life, the right to respect, the right to a protected old age, etc.). That is, the law is at least partially, to some extent, dependent on the economy. This conclusion is important because, in this case, it must be objectively recognized that the law cannot be completely fair. After all, the economy cannot be fair. And if the law at least partially depends on the economy, then it is at least sometimes unfair by definition.

Many modern specialists, learning the law, start from any concept of the origin of law that suits them. However, we would suggest first as-

sessing the essence and content of the law. This process is very interesting.

After all, the law is both protection from violence, and violence under duress, and a regulator of violence. Moreover, in each society, taking into account its mentality, traditions, culture and other social factors, the parameters of regulating violence are different.

Law is both the realization of human needs and their limitation and the regulator of needs. At the same time, if we can say so, the law ensures human life.

Law is both specific legislative acts issued by the state, and being independent of specific legislative acts and even prompting to issue these legislative acts.

Law is both a reasonable regulator of vital activity and nonsense, absurdity, recklessness (for example, well-known senseless and comical laws in case law). The law shows both the intellectuality and the recklessness of humanity.

The law strives for justice but, at the same time, allows injustice.

The law is aimed at establishing the objective truth, and at the same time, allows its non-establishment.

Law is dynamic and, at the same time, contradictory in its dynamics. So, depending on external social factors, the same act can be considered a crime, or it can be effective conduct of business (e.g. speculation).

The law is simple and understandable from the point of view of eternal values (do not kill, do not steal), but at the same time, it is difficult from the point of view of the qualification of these acts.

In some cases, law forms policy and, at the same time, is a policy instrument. At the same time, the law cannot solve all the problems of humanity, although, for some reason, many people see it that way.

Law regulates the economy and, at the same time, depends on economic processes.

Does the law regulate murder? Paradoxically, yes. In a number of states, the law permits euthanasia – the killing of a sick person. Or is it not, in fact, a veiled murder to place seriously ill people in hospices without providing them with medical care? And the death penalty of criminals, too, is actually the murder of a person.

Speaking of the inconsistency of law, another example is appropriate here: the number of supporters and opponents of the death penalty is approximately equal. And each of the parties in the argument refers to the law.

Such reflections can be continued and continued. Ultimately, it seems that law is undoubtedly a complex dialectical multifactorial social phenomenon, multidimensional and contradictory, depending on objective and subjective factors. Subjective factors, for example, include the tyranny of a person authorized to issue legal norms (there are many such examples).

This conclusion underlies the formation and formulation of our theory of the *comprehensive study of law*.

We are not entirely satisfied with the definitions of law that are widespread in our time because, although they reveal certain features of the law, they are, firstly, rather one-sided, and secondly, as already noted, they consider law idealistically and not objectively. It seems to us that lawyers - scientists and practitioners - need to be closer to philosophy, be based on it, and therefore doubt more, look at legal phenomena critically. A step in this direction will be the beginning of a movement from the observed mythical legal idealism towards legal realism, a comprehensive study of law.

Now, probably, there is not a single area of public relations that has not been regulated by law to one degree or another. The norms of law in their own way reflect and characterize the economy, culture, politics, history, intelligence, way of thinking, attitude to a person, etc.

In such circumstances, the law is one of the forms of reflection of being. And since the law is not conceivable without human existence, it is a form of reflection of social existence, designed to regulate emerging social relations.

Legal existence is dialectical and accordingly contains internal contradictions. This is most clearly manifested within the legal regulation of public relations. On the one hand, society strives for the maximum regulation of public relations by law. Literally so that for any life situation, firstly, there is an appropriate legal norm, and secondly, so that this norm is not contradictory, unambiguously understood and applied. Everyone sees and feels the movement in this direction. The legal array is noticeably increasing. Recently, the understanding of a lawyer as a person, if not knowledgeable, then at least oriented in all laws, has gone into oblivion. A narrower specialization in specialists in the field of criminal, civil and administrative law was required. However, even there, the growth of the legal array objectively necessitated even narrower differentiations of specialities. Thus, specialists in the land, family, labour law, etc., were "nurtured" from civil law. However, the further growth of legislative and sub-legislative acts continues, requiring even more "narrow" specialists. For example, lawyers who are specialists in such a small part of administrative law as traffic rules are currently very valuable. The rules of the road, their application, analysis of road accidents has thousands of legal nuances. And such nuances are significant for people: to determine their guilt, measures of responsibility and even freedom.

But, on the other hand, it is desirable for any society that the legislative acts are known, simple and understandable to everyone. Now even a lawyer is not always able to deal with the many subtleties of the modern legal system of the state. As a result, most people, paradoxically, are quite defenceless before the norms of law. This conclusion is confirmed by countless examples when educated people with a wealth of life experience were easily deceived not only by fraudsters but also by government officials (the same traffic police inspectors), clever lawyers.

In legal existence, another paradox and internal contradiction turned out. Society and people, on the one hand, are interested in everything being clearly regulated by law, and on the other hand, they can no longer "digest" the already existing legal array. At the same time, the law, alas, for objective reasons, can act against a person and society. If not so long ago, the phrase: "It is impossible to take a step without breaking something!" was perceived with humour, now there is more and more tragedy in it. Moreover, in this case, everyone - both ordinary citizens and government officials - are in principle in the same conditions. Government officials whose service is regulated by a set of instructions and orders can also easily become subjects of both administrative and criminal liability. To match the Russian folk saying: "If there was a person, there would be an article".

Conclusion

The above makes it possible to formulate the theory of the *comprehensive study of law* in "large strokes". Initially, it should be said that the relevance of the formation and formulation of this theory is caused by the need to turn to the concept of law from a philosophical standpoint, evaluate it comprehensively and honestly, rejecting the method of idealization of law often used today. This theory, according to our plan, should fulfil the role of a private theory in the philosophy of law.

The object of the theory is objectively existing social relations regulated by law. The subject of the theory of the comprehensive study of law is the law itself as a complex, contradictory, multidimensional, dynamically changing social phenomenon, assessed without the dominance of any legal concept.

The subject of the theory of the comprehensive study of law also includes:

- Regularities of essential dialectical contradictions in law and legal existence (some of them have been named).
- Patterns of influence on an adequate and objective assessment of law and legal reality of exter-

nal factors (such factors include economics, politics, ideology, the role of the head of state, etc.)

- Prospects for the development of law in the context of legal reality.

We started the study with the fact that a diamond turned out to be a diamond when we justified the need for its 57 facets. We believe and hope that as soon as the researchers of law discover the same set of facets and features of the law, its essence and purpose will be clearly defined. This will not happen now, and, we think, not in the near future.

By the way, we state that interesting legal concepts have recently appeared in the legal environment. For example, V. M. Shafirov (2016) justifies the special status of the Constitution in the knowledge and understanding of the law. He writes that the Constitution is not a kind of legislation. It cannot be both a law and give a name to a separate branch of law. That is, according to the author, the Constitution has a supra-sectoral character. Yu. P. Borulenkov (2014, 2015) tries to develop the ideas of postmodernists, in particular H.-G. Gadamer and tries to substantiate the methodological status of hermeneutics in legal cognition. We are specifically moving away from criticizing these new concepts. They are, of course, not indisputable. But these concepts are important because they focus on new facets of law, which is actually very valuable for a comprehensive theory of legal cognition.

But here, it must be emphasized again that comprehensive knowledge of law does not imply a persistent justification of any one concept of law, which is often "sinned" by many scientists. And at the same time, not through an integral theory of law, which boils down to attempts to take the "best" of separate legal concepts. Without fully knowing the law, it is impossible to say what is "the best" and what is "the worst" in it. In addition, the knowledge of the law, without assessing its negative features, is not complete, and therefore not objective. It is not about combining different legal concepts.

We see the meaning of the proposed approach in a strictly objective, real, deidealized knowledge of the law without allowing the dominance of any concept. The more objectively we evaluate law as a complex, contradictory, multifaceted social phenomenon, the clearer we reveal all its contradictions and flaws, strengths and weaknesses, opportunities and limits of these opportunities, etc., the sooner we will come to the knowledge of the law. It is the knowledge of the essence of law that is one of the main tasks of the philosophy of law.

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