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THE AESTHETIC DOCTRINE OF LAW (AESTHETICS OF LAW) IN THE CONTEXT OF THE DEVELOPMENT OF NBICS TECHNOLOGIES

Abstract

The development of NBICS technologies is one of the factors of transformation of the mechanism of social regulation, including law, which acts as a means and as an object of socio-economic modernization. The scientific search creates new contexts in the study of law, serves as a prerequisite for rethinking its essence and role in the life of modern society, determines the formulation of a number of questions, including the consequences of technological progress for the legal existence of a person. In line with this kind of research, new areas of research have been identified – "legal cognitology", "functional identifycation of law". One of the promising ideas is an appeal to aesthetics, more precisely, to the regularities of the development of law, which can be learned through the methodology of this field of knowledge. The subject of the article is the methodology of knowledge of the law. The purpose is to establish the possibility of expanding the methodology of knowledge of law through the methods of aesthetics and NBICS technologies. The result is a reasonable hypothesis that the development and implementation of NBICS technologies allow us to apply aesthetic methods to the establishment of the regularities of the genesis of law.

Keywords: philosophy of law, law, legal order, NBICS technologies, aesthetics, aesthetics of law, intuitive social interface, beauty, expediency.

Introduction

It is traditional for humanitarian discourse in philosophy and culture that ethics and aesthetics are in a certain dialectical unity. This circumstance was noticed by even the most prominent representatives of ancient philosophy, including Pythagoras, Plato, Aristotle, etc. In our time, this relationship also does not escape attentive observers.

Similarly, law and ethics have been in dialectical unity with each other throughout history. The philosophical problems of ethics are a special section of the knowledge of philosophy of law, and the legal ones belong to the theory of law and state. And if ethical approaches in law have become the basis for the formation of some ethical-philosophical and legal concepts (for example, the concept of natural law, ethical-legal concepts in Russian religious philosophy, etc.), the views of prominent domestic (N. A. Berdyaev, S. L. Frank, I. A. Ilyin, P. I. Novgorodtsev, V. S. Solovyov, E. N. Trubetskoy, B. P. Vysheslavtsev, etc.) and foreign (R. Dvorkin, L. Fuller, G. Hart, G. Hegel, I. Kant, G. Kelsen, J. Mariten, etc.) thinkers, then the use of aesthetic approaches in jurisprudence until recently was limited exclusively to admiration for the beauty of legal maxims belonging to ancient Roman lawyers.

Despite the fact that morality and law implement related functions, jointly ensuring the formation and maintenance of public order, no attempts have been made so far to investigate the genesis of law and the legal order on the basis of

the methodology specific to aesthetics, its main principles and approaches, categories of beauty and harmony.

It seems that the need for knowledge of the law and the legal order from the standpoint of aesthetics has always existed. However, the possibility of a full-fledged implementation of this approach appeared only today, when convergent technologies (NBICS technologies) were developed, and their introduction into the field of humanitarian knowledge began.

The subject of this study is the methodology of cognition of law. Traditional jurisprudence is characterized by a very limited methodology, mainly including such special methods of cognition of legal reality as doctrinal (formal-legal), historical-legal and comparative-legal approaches.

The increasing complexity of social life opens up new aspects of legal reality, posing scientific problems not only of a purely legal but also of an aesthetic nature to researchers, the insufficient study of which at the present stage requires the expansion of the methodology of knowledge of the law, including through methods specific to aesthetics.

The purpose of the authors of this article is to establish the possibility of expanding the methodology of knowledge of law through the methods of aesthetics and convergent technologies (NBICS technologies), as well as to determine the prospects for this direction of development of the general doctrine of law and the legal order.

This article puts forward and substantiates the hypothesis that the development and implementtation of NBICS technologies allow us to apply aesthetic methods to the establishment of the regularities of the genesis of law and the legal order. This approach will significantly expand the cognitive tools not only of the philosophy of law but also of jurisprudence itself, providing an alternative position for understanding legal phenomena, processes and categories.

Results and Discussion

The development of NBICS technologies, also called convergent, and their widespread introduction into various spheres of public life serve as one of the factors of transformation of social regulation, including law, which acts not only as a means but also as an object of socio-economic modernization.

Metamorphoses, occurring with the law, are projected in the legal doctrine, stimulate the interest of scientists to the questions of the evolution of law, the peculiarities of its current stage and the future.

The scientific search in this direction creates new contexts in the study of law, actualizes and exacerbates its philosophical problems, serves as a prerequisite for rethinking its essence, role and significance in the life of modern society, determines the formulation of a number of questions concerning, first of all, the consequences of technological progress for the legal reality and legal existence of a person.

Along with this, the scientific search contributes to the expansion of the methodological tools of legal science, the search for new approaches and methods of cognition of law, the drafting of theoretical constructions that develop, supplement and integrate existing concepts of legal understanding: sociological (Kudryavtsev, 1978; Yavich, 1976; Kazimirchuk, 1970), libertarian (Nersesyants, 2002), integrative (Lazarev, 2004), in order to create a rational picture of the law, adequate to the modern realities of law and its being.

In line with this kind of research, new areas of research have been identified (Khabrieva & Chernogor, 2020), including "legal cognitive science" (Chernogor, Emelyanov, & Zaloilo, 2021b, 2021c), functional identification of law and its system elements (Chernogor, Emelyanov, & Zaloilo, 2021a), etc. One of the innovative and promising ideas, according to the authors of the article, is an appeal to a seemingly unrelated

problem – aesthetics. More precisely, we are talking about the regularities of the development of law, which can be learned through the methodology of this field of knowledge.

I. Brodsky, in one of his interviews, speaks directly about this, calling aesthetics the mother of ethics, emphasizing that a person with taste will not make the mistakes that a person without taste makes (Tyurin, 1994). The first part of this statement reflects the essence of the regularities that will be discussed below. At the same time, it is true not only for ethics but also for the law closely related to it. However, its second part significantly narrows the area through which the relationship between aesthetics and social regulation is traced. It is impossible to limit the effect of the laws of aesthetics and the expression of regularities that have an aesthetic nature exclusively to the realization of taste. Almost all aesthetic categories in one way or another can and should be used to characterize the law, reveal its essence and cognition of the genesis.

In this regard, the authors are impressed by the position of Losev and Shestakov (1964), who emphasized that the object of aesthetics is an expressive form, no matter what area of reality it belongs to. By absorbing and concentrating the specifics of any socio-historical concrete things, any expression of social existence can become a source of aesthetics, a milieu for its refraction.

One reservation should be made here regarding the specifics of the meaning of the category of form in relation to the law. In jurisprudence, there is a stable concept of "form of law", which, as a rule, is identified with the concept of "source of law". In this case, we are talking about the consolidation, the external expression of legal norms, the forms of which are laws and other normative legal acts, judicial precedents, legal customs, contracts of normative content, etc. However, the expressive form of law and the expressive form of legislation are somewhat different.

In the context of the correlation between the content of law (legislation) and its form (in the traditional sense of jurisprudence), it should be attributed to the content, since it reflects the internal structure of a legal norm (legislative provision), its structure, accessibility to the understanding of subjects of law. There are grounds to speak about the expressive power of law in the case when its norms are easily perceived by people, almost on an intuitive level.

In the modern world, it is increasingly possible to hear the concept of "intuitive interface", the interaction with which is simple and clear, which makes it equally accessible for perception and use by a wide range of people, different users with different levels of experience, and does not require the use of special knowledge.

The first intuitive interface was developed in 1976 for the Apple-1 personal computer. It seems that, ideally, the law should become a kind of "intuitive social interface" that ensures the interaction of people without the need for them to obtain special legal knowledge. It is when the law reaches such an expressive form that it will be permissible to talk about its real beauty.

It should be emphasized that the authors do not claim primacy in the issue of recognizing the law as an "intuitive social interface". This direction in the development of the philosophy of law appeared long before the development of Apple-1 and the concept of "interface" itself. Back in the early 20th century, Petrazhitsky (1908), revealing the essence of law through its consideration as a special psychological phenomenon, emphasized that legal communication, like any other, is accompanied by a variety of active and passive experiences. They determine the behaviour of a person. At the same time, the subjective rights of some persons are the debts (legal obligations) of others assigned to them. Objective law itself is a relationship between active, expressed in subjective rights, and passive, reflected in legal obligations, psychological processes occurring in the minds of participants of a legal relationship. As a result, it was concluded that it is necessary to distinguish between positive components of the law, established by

people, and its intuitive components, reflected in the human consciousness. Positive law is formulaic and dogmatic, and it is not capable of self-development. Intuitive law, on the contrary, ensures the adaptability of the legal order to a specific situation. It is precisely this that is the basis for the self-development of the legal order through the correction of positive law.

The significance of a person's aesthetic ideas for the ordering of social relations can be illustrated by one historical episode. In the first half of the fifth century, the Huns were led by two brothers – Bled and Attila. Having decided to strengthen their power, expand their subordinate territory and get additional income, they organized a campaign to the Byzantine province of Illyria. The captured loot was rich, but its division did not quarrel with the brothers. However, among the captured slaves, there was a jester, whose antics amused Bled very much, terribly irritating Attila. The quarrel between the brothers, which was based on aesthetic differences, ended with the death of Bled. Attila became the sole head of the Huns, and Europe shuddered from their invasion (Maenchen-Helfen, 2014). At present, it is difficult to judge what European history would have been if it had not been for the described differences in the aesthetic ideas of the two brothers and their results, but their ethical and legal characteristics are obvious.

It is advisable to start the analysis of law from the standpoint of aesthetics with two simplifications at once, without which the justification of the need to apply the methodology of aesthetics for the knowledge of legal phenomena will be difficult. The first of them is that aesthetic ideas are ideas about beauty. The second is that beauty is an objective reflection of expediency. The latter simplification assumes that people like what is convenient, practical and can be used without unnecessary difficulties. In other words, the beauty of law is the highest level of expediency of its norms and their combination, the degree of harmonious correlation and interaction of contradictory elements in its structure. Let us emphasize once again and the above theses are the result of simplification. However, the law as an expression of social existence is much more complicated, like everything else in this world.

Until now, the aesthetics of law has been limited predominately to admiration for the masterpieces of ancient Roman legal thought, reflected in the statements of Gaius and Ulpian, Paul and Papinian, as well as other famous Roman lawyers. At the same time, representatives of legal science did not seek to establish general regularities and principles of the genesis of law through the knowledge of its aesthetic component. Indeed, it is very problematic to do this since the aesthetics of law has the features of a huge and often quite spontaneous subjective-human life affirmation. The law generally reflects only those processes of integration and differentiation, convergence and divergence that characterize social development at a certain historical stage. Only some representatives of legal science addressed this problem within the framework of sociological and integrative approaches to understanding law (Petrazhitsky, 1909; Durkheim, 1996; Gurvich, 2004; Carbonnier, 1986; Lazarev, 2016).

The noted "spontaneity" in the genesis of law leads to a mixture of various concepts and theories, approaches and methods, legal institutions and families that have a constant tendency to differentiated functioning with an undoubted need for integration, at least in their holistic perception. It is the constant combination of seemingly multidirectional processes of differentiation and integration, cooperation and competition, convergence and divergence in social life that stimulates legal construction, makes it purposeful, determines the need of society for awareness of legal realities.

However, this inconsistency is the cause of certain chaos in the knowledge of the law. One of the means of overcoming it is the development of the aesthetic doctrine of law (aesthetics of law). The aesthetics of law allows us to reveal its essence not through the analysis of particular norms and institutions, systems and families, in-

terests and subjective rights, but through the consideration of it as an integral phenomenon in which measure and harmony, catharsis and Kalokagathy, grace and imitation, taste and ideal can be distinguished.

Someone who begins to immerse himself in the knowledge of law may suddenly be struck by his proximity to various moral and religious systems while simultaneously opposing legal norms to them. Such proximity and opposition, however, should not be understood in the literal sense. It is necessary to be aware of the incredible complexity of all aspects of interaction within the mechanism of social regulation. In the context of the aesthetics of law and the processes of convergence and divergence taking place in modern society, modern constitutional reforms and the most important legislative changes can be presented in a completely different light. A new spirit is increasingly reflected in the aesthetics of law, which ensures the perception of many legal concepts in a much more secular and subjectivistic meaning than they are represented in religion and morality.

The aesthetics of law is based on the primacy of beauty: the beauty of law as an integral system and the beauty of its separate norm. Undoubtedly, the law is based on coercion, the highest form of which is physical violence – ignoring the will of a person through a negative impact on his body, allowing even death. However, this circumstance does not prevent us from admiring the depth and content of the statements of ancient Roman lawyers or particular norms of modern law.

For a long time, the statements of ancient Roman lawyers and the provisions of Roman law, fixed in a different form, could only be compared in their expressive form with mathematical formulas, having an equally capacious and precise meaning. Their logic met the requirements of completeness, independence and consistency, and the content was within the limits of necessary and sufficient. It is no coincidence that the founder of the historical school of law, G. R. von Hugo, wrote that "there are no writers who, as far as the sequence of conclusions is concerned, would so deserve to be put on a par with mathematicians as the Roman jurists" (as cited in Hegel, 1990, pp. 66-67).

With the help of their sayings that have come down to our days, ancient Roman lawyers solved a variety of tasks to ensure public order. One of these tasks can be designated by a rhetorical question: "Quis custodiet ipsos custodies?", which can be translated as follows: "Who will guard the watchmen themselves?". It has a deep and fundamental meaning. Even the very fact of its setting allows us to ensure the stability of legal order. Only the adjustment to the formation of increased social responsibility among government representatives allows us to get closer to overcoming the contradiction in social development that is reflected in this statement and similar ones. Due to the fact that the control of these persons is extremely low, social requirements for them increase many times. It is this approach that underlies a significant number of extant monuments of Roman law.

The second task is also inseparable from the considered one – to fill the professional activity of a lawyer with moral content, to prevent him from turning into an automaton from the law or into a two-faced cynic who covers the satisfaction of his personal needs with legal activity. This problem is usually solved by establishing a relationship between "jus" ("law") and "lex" ("legislation"), on the one hand, and "aequitas naturalis" ("natural justice") and "aequitas" ("justice"), on the other.

If legal positivism postulated the rejection of meta-legal categories and principles in law (Bergbohm, 1892), then Roman lawyers, on the contrary, sought to translate into reality the high concepts of good and justice, to make them a fact of legal existence, the basis of everyday human life. First of all, the relevant legal maxims are addressed to the judge as the key subject ensuring legal order. Here it is fair to recall another Latin legal saying: "Sublata veneratione magistratuum,

respublica ruit", the translation of which may mean that the loss of respect for judges destroys the state.

But the representatives of the ancient Roman legal community have left us a heritage of not only capacious and accurate legal maxims. Their merit in the development of an expressive form of law is much deeper and more fundamental. It was in ancient Rome that the foundations for structuring law and its systematization were laid. Thousands of years before the adoption of system analysis as a scientific method, Roman lawyers applied it first to legal customs and then to the norms of positive law. Guy's "Institutions", "Institutions", "Digests", and other codes of Justinian are examples of how the reasonable application of systematization and structuring allows strengthening the expressive form of social regulation. It is no coincidence that the structure of "Institutions" and "Digests" is the basis for the systematization of modern continental (Romano-German) law.

It should be emphasized that as an integral system, modern law throughout the world is at the stage of its transformation due to a variety of circumstances, which does not make it as beautiful as Roman law of the classical period. If modern law is a transforming system, then classical Roman law is a stable one. It is this stability achieved as a result of the final design of ancient society that allows us to assess the full depth and perfection of legal thought of that period, which allowed Roman law to survive its institutional basis – the Roman community – and form the basis of the legal systems of most modern states.

The instability of modern law has quite objective prerequisites. They are connected with the complication of its system, the appearance, along with domestic (national) law, of international law, which is a relatively independent system that actively interacts with national law, and the complicated interaction between various national legal systems. In addition, the instability of modern law is caused by the current social transformation, which causes numerous critical statements in its address. At the same time, if we analyze such statements about the domestic legal system posted on various social networks, the most common claims relate not to legal norms themselves but to modern legislators and law enforcement officers. They are accused of immorality and lack of education. Therefore, modern critics of the domestic legal system should see a way out of this situation in the education and training of future lawyers, the formation of their extensive knowledge of all sciences, mainly philosophy and mathematics. It is enough to recall that the general principles of thinking in jurisprudence and mathematical science, as already noted with reference to Hegel above, have common roots. However, at the modern technological level, expressed in the emergence of NBICS technologies (nanotechnologies, biotechnologies and genetic engineering, information and communication technologies, cognitive technologies, including cognitive neurotechnologies, social-humanitarian technologies), the interaction of law and mathematics acquires completely new forms and directions, the awareness of which is possible, including through the cognitive tools of aesthetics.

First, for the aesthetics of law, the most significant is not only the form of law. Its main content is the depth and completeness of the reflection of social relations, which are achieved in the process of their ordering.

Secondly, the law is a carrier of social wisdom, a kind of code of the accumulated experience of mankind, which is the basis for the legal programming of social behaviour. By influencing the individual and public consciousness, law, being properly ordered and structured (which is primarily what its beauty is expressed in), provides a deeper and more complete ordering of social relations. Samples of this aspect of legal influence are always "convex", which is reflected in the immutability of the relevant legal acts for a long time. Such an example is the Constitution of the United States of America, adopted at the end of the XVIII century but still relevant today. It is appropriate here to recall the

civil codes of some European states (for example, the Code of Napoleon or the German Civil Code). Developed in the XIX century, they, having ensured the transition from feudalism to capitalism, from an agrarian society to an industrial one, retain their regulatory potential even in the conditions of the current technological revolution, which presupposes another cardinal restructuring (reformatting) of the social order. It would not be superfluous to mention the Constitution of the Russian Federation. Developed in the early 1990s during the deepest crisis of Russian statehood, it retains the ability to solve the tasks facing it in modern conditions (Khabrieva, 2016).

Thirdly, only the achievement of a modern technological level has allowed us to approach the realization of the aesthetics of law, free from the corresponding influence of morality and religion, from the need for direct application of moral and religious norms in legal regulation. The law should occupy an independent place in the individual and public consciousness, free from "sacred crutches" and ethical foundations. Law becomes a truly universal social regulator, addressed to humanity as a whole and not to individual communities – territorial, professional or religious. At the same time, it continues to need external sources of legitimacy.

History has demonstrated the vulnerability and – in some ways – the danger of the approach of supporters of legal positivism, who have attempted to establish internal sources of legitimacy in law. An example of such an error was the appearance of totalitarian political regimes in the first half of the XX century. And further social development refuted the theoretical models of the positivists.

As a direct illustration of the danger of developing the legal order exclusively on the doctrinal basis of legal positivism can be considered the decision of the Federal Constitutional Court of Germany, in which it was stated that "the idea that the constitutional legislator can settle everything at his discretion would mean a return to legal positivism free of any values, which has long been overcome in legal science. The period of the national socialist regime in Germany showed that the legislator could also establish injustice. The Federal Constitutional Court considered it possible not to recognize the quality of law for the national socialist "legal" norms since they so clearly contradict the fundamental principles of justice that a judge who wanted to apply them or recognize their legal consequences would have made an illegal decision instead of a just one. ...Once established, an injustice that clearly violates the fundamental principles of law does not become a law by virtue of the fact that it is applied and enforced in practice" (Federal Constitutional Court of Germany, as cited in Alexy, 2011, p. 34).

It is the analysis of law as an integral system, as well as its particular norms and institutions from the perspective of aesthetic categories, that allows us to establish the main directions for the introduction of these technologies into legal reality. In a certain sense, we can talk about the presence in it of its own, and quite accurate, "geometry", which subjectively proceeds from a person's sensory perception of justice and legality, without which the emergence of a truly effective mechanism of legal coercion would be impossible.

At the same time, a person's subjective perception of the sources of the legitimacy of law can also be described mathematically. Aesthetic categories, reflecting the qualitative aspects of law, can be measured in some way; that is, they are presented in quantitative indicators. A "projective geometry" may appear, which, although it describes human feelings, may nevertheless have the accuracy which is specific to the mathematical sciences as a whole. Thus, the subjective sensitivity of the legitimacy of law, reflected in the aesthetics of the latter, being indifferent to specific social relations, can have its own scientific description that translates the legal impact to a new technological level. In this regard, the connection between science and the sense of beauty

can be characterized by the words of Leonardo da Vinci, who argued that philosophy and wisdom are only fine art (Losev, 2017, p. 7).

With regard to the choice of a method for measuring the qualitative aspects of law and the legal order, their representation in quantitative indicators, one should also not lose sight of the cognitive possibilities of aesthetic analysis. They are very versatile and allow you to get more than unexpected results.

For example, Petrovskaya (2021), studying photogeny in the works of J. Epstein on the example of the preserved materials of the latter's documentary film about the eruption of Mount Etna in 1923, "La Montagne infidèle" ("The Infidel Mountain"), states that physicists are well aware of the nature of the interaction of heat and gravity. So, heat resists gravity that attracts objects to the Earth. Moreover, gravity acts on an inert mass, that is, on passive bodies: they either receive motion or transmit it to others. But heat is an element that transforms a substance, causing a change in its internal properties (transformation). Fire is the real agent of transformation or revolution, and it is transmitted not by an image but by means of self-referential signs, which together form the material semiotics of forces through a set of correlations.

Borrowing the metaphor that fire is an agent of transformation (revolution) allows us to put forward a hypothesis about the agents of transformation of the legal order, which in modern conditions are technologies, and first of all, NBICS technologies. Their introduction accelerates social interaction. That is, it acts as an appropriate analogue of heat (fire). Therefore, this analogy contributes to the construction of a mathematical model, which, in turn, will either conditionally confirm or refute the hypothesis put forward.

This is a fairly general approach to understanding the possibility of introducing NBICS technologies into the sphere of law through the use of aesthetic categories in its cognition.

Conclusion

As a result of the conducted research, a scientific hypothesis was put forward that the development and implementation of NBICS technologies allow us to rethink and apply aesthetic methods to the establishment of the regularities of the genesis of law and the legal order.

This circumstance is a prerequisite for the transformation of the entire system of social regulation, primarily ethics and law. In relation to the knowledge of the latter, there are problems of philosophical, legal and methodological levels. Without their solution, special legal issues related to the rethinking of legal security, protection and regulation of public relations cannot be correctly posed. Therefore, the role of law in the life of modern society cannot be determined, and the legal reality cannot be presented in a relevant way. The legal existence of the person himself cannot be revealed.

The modern cognitive process aimed at forming a general doctrine of law and the legal order objectively needs to expand its methodological tools. The authors consider aesthetics to be a necessary direction of such expansion, that is, a section of philosophy containing ideas about beauty.

The author's argumentation of the proposed hypothesis is based on the idea that a truly scientific approach to beauty allows us to consider it as a reflection of expediency in the device of something. This statement also seems to be true in relation to law, which allows us to distinguish a special section of the philosophy of law – its aesthetics (aesthetics of law). It is based on the primacy of beauty – the beauty of law as an integral system and the beauty of its separate norm.

The achievements of modern aesthetics allow us to solve the cognitive tasks facing it through mathematical modelling, the main direction of development of which is precisely NBICS technologies.

Thus, the proposed approach will signifi-

cantly expand the cognitive tools not only of the philosophy of law but also of jurisprudence itself, providing an alternative position for understanding legal phenomena, processes and categories. The assessment of law and the legal order from the position of their beauty and expediency on the basis of modern mathematics and convergent technologies seems to be the way that will allow us to identify new patterns of social regulation and prospects for its development.

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