

Methodological Principles of Knowledge of the State and Law

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Abstract:

This scientific article is devoted to the problems of methodological principles of knowledge of the state and law. In particular, the question of whether they are elements of the methodology of knowledge of state and legal phenomena is considered. Particular attention is paid to one of these principles, such as objectivity. Examples from domestic legislation that do not correspond to it are demonstrated.

Keywords:

methodology, legal science, scientific pluralism, objectivity

I. Introduction

Among the methodological principles of knowledge of the state and law, i.e. those initial, starting points from which science starts in the study of its subject - a comprehensive study of law, historicism, complexity [1], systematicity, scientific pluralism [2], concreteness [3], a special place is occupied by the principle of objectivity.

II. Research Methods

When preparing a scientific article, the following methods were used:

General Philosophical

General philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Result and Discussion

3.1 Etymology of the Word "Objectivity"

Before analyzing the problem, it seems necessary to turn to the etymology of the word "objectivity" from the point of view of other social sciences - philology and philosophy. From the position of Sergei Ivanovich Ozhegov, objective - "existing outside of us as an object", "unbiased, impartial" [4]. The authors of the Soviet Encyclopedic Dictionary interpret the objective as "that which belongs to the object itself, does not depend on the subject, exists outside and independently of human consciousness" [5].

A similar position is observed in philosophical dictionaries [6]. In the Philosophical Encyclopedic Dictionary, one of the meanings of the concept of "objectivity" is the following: "objective character, liberation from everything subjective, from subjective influences; reality, neutrality" [7,8]. Philosophers, addressing the problem of the objectivity of knowledge, quite rightly believe that "the art of the researcher is to find ways and means of penetrating into the essence of a phenomenon without introducing anything external or subjective."

On the contrary, scientists believe that the method of introspection, which does not correspond to the principle of objectivity, assumes that objective reality, including the inner world of man, is unknowable and that, at best, this reality can be known, grasped only through self-observation, self-contemplation [9].

Vitaly Yuryevich Yakovlev noted that "in the classical understanding of the principle of objectivity, a judgment is true if and only if it corresponds to reality" [10]. Lyudmila Alekseevna Pafomova and Roman Valentinovich Fedorov, analyzing the relationship between the ontological and the epistemological in the process of scientific research, came to the conclusion that attempts to present scientific theory as a completely arbitrary logical construction seemed justified as long as it was a matter of creating and analyzing abstract and highly formalized structures that were not included in the context of developing science. A comparison of such formal constructions with the results of real scientific and technical activity showed their practical uselessness, which, when developing general methodological principles, led to a revision of those philosophical and methodological attitudes that dominated the philosophy of science in the first half of the 20th century. Attempts to consider the epistemological level as absolutely independent, existing outside the ontological foundation and independent of it, characteristic of this period, turned out to be so untenable that by the end of the 20th century, most scientists recognized the consideration of objective reality as the basis of any theoretical representation as an absolutely necessary condition for the effectiveness of scientific research activity itself [11].

3.2 On the Relationship between the Objective and the Subjective

Representatives of general philosophy, noting that the method exists and develops only in the complex dialectic of the subjective and the objective with the latter playing a decisive role, emphasize that in this sense any method is objective, meaningful, "factual"; at the same time, it is subjective at the same time.

The subjective side of the method is expressed not only in the fact that certain principles, rules, and regulators are formulated on the basis of the objective side (the recognized patterns of reality), but also in the sense that its "bearer" is a specific individual, a subject for whom this method is intended [12].

Vitaly Vitalyevich Balakhonsky also addressed the problem of the relationship between the objective and the subjective in the process of conducting scientific research, expressing a number of fruitful provisions. Thus, he defined the following pattern of change in the ratio of subjectivity and objectivity at various stages of the scientist's research search: the influence of subjective factors in the process of scientific search decreases as the study progresses from its scientific stages to the completion of the work, and scientific objectivity is achieved in the final results and conclusions [13].

According to the scientist, in addition to the results and conclusions of research, the objective basis for the implementation of a scientific strategy in the field of science is formed by two most important forms of scientific knowledge - facts and laws. These are the components

of the methodological basis for the implementation of the most important heuristic procedures - explanations, predictions, retrospection and proof, which determine the scientific nature of the methodology used.

Vitaly Vitalievich Balakhonsky believes that the possibilities of achieving objectivity are less evident in the procedures of interpretation and evaluation, which leave a lot of room for subjectivity. However, here too, “such specificity of cognitive procedures of interpretation and evaluation... requires researchers to pay special attention to their objective use and methodological caution aimed at avoiding or at least minimizing subjective influence”[13].

3.3 Methodological Principles and Methodology of State and Law

The question naturally arises as to what relation do methodological principles, including the principle of objectivity, have to the methods of cognition of law, other legal phenomena and processes, and to methodology in general? There is a group of scientists who consider methodological principles as an element of the methodology of cognition of law. Thus, Vladimir Ivanovich Chervonyuk asserts that the methodology of jurisprudence in the narrow sense is “the doctrine of the principles, methods, and techniques of scientific cognition of the subject of the theory of state and law” [14].

From the position of Valentin Nikolaevich Khropanyuk, the methodology of the theory of state and law is the application of a set of certain theoretical principles, logical techniques, and special methods for studying the general patterns of the emergence and development of state and legal phenomena [15]. The principles of cognition are included in the content of the methodology of law by a number of other scientists [16, 17, 18]. It should be noted that the inclusion of principles in the methodology of law was also justified by Soviet legal scholars at one time, saying that “for legal science, Marxist-Leninist methodology is a doctrine of the principles, forms and methods of scientific cognition of legal reality...”[19].

In fact, Dzhangir Abbasovich Kerimov identifies the methodology of jurisprudence with the entire set of principles, means and methods of rational cognition, who once wrote: “The methodology of law is nothing more than a general scientific phenomenon that unites the entire set of principles, means and methods of cognition (worldview, dialectical methods of cognition and teachings about them, general and specific scientific concepts and methods), developed by all social sciences, including the complex of legal sciences, and applied in the process of cognition of the specifics of legal reality, its practical transformation”[20]. It seems that the concept of methodology of law should be guided by the philosophical idea of it, according to which, “methodology has two main meanings: a system of certain methods and techniques used in a particular field of activity (in science, politics, art, etc.); the doctrine of this system, the general theory of method, theory in action” [12].

At one time, Anatoly Borisovich Vengerov believed that “methodology is a system of methods, a set of methods and techniques of research activity, knowledge about them” [21]. And although there is a position of Vladimir Mikhailovich Syrykh, according to which “methodology in the exact sense of the word is a doctrine of methods, a special science that sets as its immediate task the development and improvement of a system of techniques, methods of scientific knowledge” [22], the author should answer a number of questions: “If methodology is only a doctrine of methods, where do the methods themselves go? Is it possible for methodology to exist without methods? How is a doctrine of methods created outside the methods themselves?” [23].

Thus, without including principles as an element of the methodology of legal cognition, nevertheless, the former should in no way be underestimated, for they should be understood as the guiding principles of cognition, the requirements that the researcher should be guided by. The methodological principles of scientific cognition of legal phenomena include the regulatory rules of scientific research, which a legal scholar can use when carrying out scientific research. They act as a vector for the development of scientific theory and allow the systematization of existing scientific data [24].

Nikolai Andreevich Pyanov interpreted the principles of cognition as “... those initial, starting principles from which science starts when studying its subject” [25]. In our opinion, the fundamental position is that “it is possible to overcome the isolation between socio-humanitarian epistemology (epistemology is a philosophical and methodological discipline that studies knowledge as such, its structure, structure, functioning and development. - Vladimir Valentinovich Kozhevnikov) and legal theory only in the form of a study of the most general patterns, principles and concepts that make up legal science as an organic whole. These include the concepts of paradigm, object and subject of legal theory, its methodological foundations” [26].

3.4 Objectivity as a Methodological Principle of Knowledge of the State and Law

Objectivity as a methodological principle of knowledge of the state and law, other state-legal phenomena and processes, is interpreted differently by scientists. Thus, Nikolai Andreevich Pianov believed that this principle requires studying the state, law, other state-legal phenomena as they were or are in reality [25].

Vyacheslav Nikolaevich Zhukov, interpreting the principle of objectivity, believes that “theoretical and legal knowledge should strive for maximum objectivity in the presentation of the essence of the phenomena studied” [27]. The principle of objectivity, the authors believe, means that in the process of knowledge one should approach the phenomena studied as they exist in reality, without distorting their essence, without idealizing them [28]. Objectivity as a methodological principle means the desire to obtain the most reliable information about the phenomena being studied, while the influence of subjective factors (personal attitude, public opinion, established tradition) is reduced to a minimum if possible [29].

Vyacheslav Nikolaevich Zhukov, stating that science is the most important type of cognitive activity aimed at developing objective, systematically organized and objective knowledge about the world, emphasizes that scientific knowledge is characterized by the desire to obtain extremely precise, objective knowledge about the properties of things [30].

At the same time, the author, speaking about truth, wrote that it is precisely this that is “a necessary property of knowledge, revealing the nature of the correspondence of knowledge to the objective parameters of reality”, drew attention to the fact that “the thesis about the objectivity of truth should not be understood literally as an absolutely precise, comprehensive and complete copy of reality”. The scientist claims that “facts of reality, passing through countless labyrinths of human consciousness, often acquire a form far from the original,” and “our ideas about things are always a mental image, a concept, and not the thing itself.

Between the idea of things and the things themselves there will always be a distance of greater or lesser size” [30]. In the words of the author, “a large distance” took place in Soviet social, including legal, extremely politicized science, which partly moved into the sphere of modern science. Many scientists have drawn attention to this circumstance.

Thus, Evgeny Nikandrovich Tonkov, speaking about the fact that the concepts of socialist legal realism used in Russian law (ideas about the gradual “withering away” of the state and law, about the destruction of crime as a phenomenon, about the stages of building communism, about the “unity of the party, government and people”) did not require proof of their practical suitability, asserts that “the gap between academic legal science and the practice of applying norms that was established in the socialist period should be considered a feature of Russian law” [31].

Andrei Nikolaevich Koliev noted: “The vice of modern political science (which includes the theory of state and law - Vladimir Valentinovich Kozhevnikov) is the constant attempts to derive a real state from speculative premises, building a logical chain from an invented state to a state of the near future [32].

According to Sergei Vitallyevich Evdokimov, “a political utopia is a concept of a society that does not exist in reality and is localized in history (in the past or future), built on the basis of an alternative political hypothesis; which is organized at the level of social and political structure more perfectly than the existing one. A political utopia reflects the aspirations of individuals, social groups, strata and classes to change the nature of the worldview and principles of political leadership that dominate politics”[33].

3.5 The Principle of Non-Objectivity and Legal Utopianism

In relation to the theory of state and law, the principle of non-objectivity in scientific research is associated with legal utopianism (idealism), which scientists understand as an overestimation of law. Leonid Petrovich Rasskazov, who designated this form of deformed legal consciousness as legal fetishism, believes that it represents a “hypertrophied idea of the role of law, legal means in solving socio-economic, political and other problems” [34].

Roman Anatolyevich Kurnosenko gives the following definition of the analyzed phenomenon: legal idealism is “a negative direction of legal consciousness at a certain (rather low) level of development of legal culture, characterized by hypertrophied ideological ideas about the social, political, economic and other possibilities of law and the law and a psychological attitude towards them as omnipotent and self-sufficient means of solving any problems of society” [35]. While generally agreeing with this statement, it is difficult to agree that legal idealism is associated with legal culture, even at a low level. We should be talking about a low level of legal consciousness, one of the deformed forms of which is precisely legal idealism.

As Nikolai Ignatyevich Matuzov once wrote, although outwardly legal idealism is less noticeable, not so striking, it causes harm to society and the state no less than legal nihilism. Legal idealism is extremely destructive in its social consequences. This is realized, as a rule, in the end, when the result becomes obvious. The scientist categorically asserted that one should not place inflated, unrealistic hopes on law, it is not omnipotent. One should not demand more from it than it can obviously give: it must be given the place and the role that follow from the objective capabilities of this institution. Insurmountable tasks can only compromise law. Therefore, it cannot be elevated to an absolute. Legal laws by themselves cannot improve the well-being of people [36]. It is recognized that legal fetishism is widespread in our society: this refers to the prevalence of the idea that by urgently adopting a legislative act on this or that occasion, any acute problem can and should be solved - to overcome shortages and departmental monopoly, saturate the market with goods, overcome organized crime and mismanagement, significantly improve the culture in society, etc. The implementation of such an approach in practice leads to

an excessive increase (expenditure) of regulatory and legal resources, the adoption of acts that were not caused by social needs. As a result, such acts lose their meaning, leaving only an unpleasant aftertaste for the addressees.

From the point of view of Igor Dmitrievich Nevvazhay, legal idealism lies in the fact that a certain type of legal culture absolutizes its own value and reality [37]. Vitaly Viktorovich Sorokin, turning to the analysis of legal consciousness in the transitional period of social development, believing that at its first stage legal romanticism (idealism) dominates, which can be defined as an exaggeration and overestimation of the role and place of law in the life of society, on the contrary, he evaluates legal idealism dialectically. In particular, according to the scientist, “the declaration of legal ideals can be recognized as an acceptable variant of legal idealism in the transitional period. Moderate legal romanticism maintains respect for the law and the legal system as a whole, reveals reserves of creative activity of subjects of legal activity. And then legal phenomena that seemed unattainable can become reality. An illustration of this is the rapid spread of new legal ideas that were previously banned” [38]. It is interesting to note that legal utopianism is objectively conditioned by the fact that some legal theorists include in legal ideology “legal utopias - a product of legal mythology, which unites part of the legal concepts with the aim of achieving not just a non-existent, fictitious, but also an ideal, perfect society and a corresponding legal system” [39, 40].

As noted in the literature, utopia absorbs something individual, expressed in the unrealizable dream of the creator of the utopia. This dream contains an image of a perfect society in the future or already forgotten and previously existing ideal states. Oppressive social reality makes it possible to realize in utopias the image of a beautiful society in which there is no injustice, where all mechanisms are aimed at achieving universal happiness and prosperity. And to this day, utopia is a unified idea that makes it possible to embody in it an unrealizable dream of a beautiful future [41].

Analyzing legal utopia, Ivan Aleksandrovich Shapovalov argues that it is projective by its nature; derivative and organically connected with a certain legal and ideological ideology; based on the installation of mythological consciousness on the creation of such social structures and forms of social life that can be created in a completed form on the basis of some and someone's plan, conviction [42].

Valery Vasilyevich Lazarev and Sergey Vasilyevich Lipen note that the inertia of political and legal idealism comes from the old communist times, when a kind of cult of "historical", "fateful" plans, decisions, decrees prevailed. Inflated programs and promises, slogans about a bright future were favorite methods of work. All this was translated into legal language, but remained unrealized, since they were far from the existing reality. The authors believe that in the post-Soviet period, the tendency to adopt obviously unfeasible regulatory legal acts has persisted. Decrees and other acts on combating corruption and crime, adopted in the 90s of the 20th century, but not supported by targeted policies and specific practical measures, are characterized in the press as “Manilovism” [43].

Nikolai Ignatyevich Matuzov, who has been fruitfully and long-term engaged in the problem of legal idealism, noted that even today, relapses of right-wing idealism are encountered, but in the form of populism, ill-considered statements and promises, shocking leaps, feigned optimism, unjustified forecasts, etc. As before, laws, decrees or individual legal norms are hastily adopted that are obviously unfeasible and reflect only the desperate desire of their authors to run “ahead of the train” [44].

Citing quite a few laws that are the product of legal idealism, including the Declaration of Human and Civil Rights and Freedoms of 1991, the author wrote that “the provision enshrined in the new Constitution of the Russian Federation that Russia is a state governed by the rule of law (Article 1) can be considered a certain running ahead.” The scientist reasonably believed that “this is more of a goal, a symbol, a prospect, but not a fact, although as a programmatic moment this idea... deserved to be proclaimed in the Basic Law of the country” [44].

In another work, the scientist notes that “... it is good that such an idea has been declared, legislatively enshrined, because silence on this matter would be completely incomprehensible. But a state governed by the rule of law cannot be introduced “from above” in one fine moment, by decree. It will be gradually created in the course of the long and difficult development of Russian society” [45]. Analyzing the method of idealization, Vyacheslav Nikolaevich Zhukov asserts that this method means presenting something in a more perfect form than it actually is. Using the method of idealization, the scientist creates a model of a real object endowed with perfect qualities. The presence of such a model allows one to evaluate real objects, analyze the trends of their positive or negative development. From the position of the scientist, the ideal legal state serves as an evaluation criterion when analyzing a real state that is far from the model [46].

Note that a number of scientists, in relation to both the previous and new versions of the Constitution of the Russian Federation, make a number of significant reservations related to the problem of legal utopianism. Thus, characterizing the rule of law, which in all its activities is subject to the law and considers the main goal to be ensuring human rights and freedoms, Marat Viktorovich Baglai and Boris Nikolaevich Gabrichidze emphasize that “... to create a rule of law state (meaning in the Russian Federation. - Vladimir Valentinovich Kozhevnikov) its proclamation alone is not enough, it must actually take shape as a system of guarantees against unlimited administrative interference in a self-regulating civil society, against anyone's attempts to resort to unconstitutional methods of exercising power” [47].

Vladimir Konstantinovich Babaev argued that Russia is a rule of law state, which is based on the following principles: 1) the rule of law, the primacy of law over the state; 2) the separation of powers into legislative, executive and judicial; 3) the responsibility of the state to its citizens; 4) the equality of citizens before the law, their legal protection. Without entering into a discussion with the author about the need to differentiate the principles and characteristics of a state governed by the rule of law, we will pay attention to his position: “Russia has embarked on the path of forming a state governed by the rule of law, but has not yet become one. A state governed by the rule of law is a goal for our country, but not yet a reality”[48].

Nikolai Ignatyevich Matuzov and Alexander Vasilyevich Malko note in this regard that “today, a state governed by the rule of law appears to a greater extent as a constitutional principle, a slogan...”[49]. In her commentary to the Constitution of the Russian Federation, its author Galina Dmitrievna Sadovnikova directly states that “the constitutional enshrinement of Russia as a state governed by the rule of law can be considered a promising norm that defines one of the main guidelines for social development. The embodiment of the idea of a state governed by the rule of law is rather an ideal to which all civilized countries should strive. The presence of a norm on a state governed by the rule of law in the Constitution is of great importance. It is intended to have a decisive influence on the entire system of relations between the individual, society, and the state”[50].

It seems that the authors who recognize the rule of law in the Russian Federation [51, 52] simply ignore the numerous problems that need to be solved to turn the ideal (model) into fact (reality).

Maria Konstantinovna Zhdanova, showing inconsistency and contradictoriness in her judgments, first asserts that “from a legal point of view, the idea of a rule of law is fully realized in modern Russia. The Constitution of the Russian Federation is completely permeated with the ideas of a rule of law, the legislative system complements and ensures the implementation of the principles enshrined in the basic law; “the judicial system is also aimed at protecting human rights and freedoms, this is also facilitated by the system and principles of the functioning of judicial bodies”, and then emphasizes that “despite significant democratic transformations, the consolidation of the priority of human rights and freedoms as the most important goal of the activities of state bodies, certain problems still remain in the implementation of the basic ideas of a rule of law, indicating a deviation from the implementation of certain rights, problems of combating corruption and the formation of” [53]. The problems of forming a state based on the rule of law in the Russian Federation, according to scientists, are different, but they concern the characteristics, principles and prerequisites (economic, social, moral and political). In particular, scientists very often turn to the problems of forming a self-developing civil society in Russia [54, 55. 56].

For example, Sergei Sergeevich Alekseev drew attention to the need for a radical transformation of the socio-economic and political systems, primarily the transformation of property, since with the undivided dominance of monopoly state property, which inevitably requires strict administrative-command power, a state based on the rule of law is in principle impossible [57].

Alexander Vasilyevich Malko, noting that Russia in the modern period is in a state of crisis, which exacerbates the difficulties and obstacles that stand in the way of moving towards a state based on the rule of law, asserts that “among them, the public is particularly concerned about the hopeless situation in the field of human rights, the rise of crime, corruption, the rise of bureaucracy, etc.” [58].

According to Anna Andreyevna Chiglintseva, one of the most important problems in the development of a state governed by the rule of law is the gross violation of the principle of the rule of law in the country. A significant portion of the norms enshrined in federal legislation are not implemented and operate only formally. The state is not always able to ensure the rights and freedoms of citizens in various spheres of life. The principle of separation of powers in the Constitution of the Russian Federation shows that the legislative branch is not able to fully organize parliamentary control over the executive branch to ensure the implementation of federal laws. A successful solution to this problem will help create favorable conditions for the creation of a state governed by the rule of law. It is necessary to achieve a high level of legal and political consciousness: the creation of consistent legislation, the development of a common culture and legality, the assertion of the principle of pluralism of opinions and judgments in all spheres [59]. Of course, there are other negative factors that hinder the formation of a real state governed by the rule of law in Russia.

At one time, Orest Vladimirovich Martyshin, discussing the prospects of a state based on the rule of law in Russia, wrote that “...the country does not have the socio-economic and political conditions, moral climate, or cultural level that would allow the principles of the proclaimed state based on the rule of law to be implemented,” which “...remains an ideal for us

for now, but at the same time serves as a program requirement, a guideline”[60]. Elsewhere in the article, the scholar particularly emphasized that the main task, the necessary first step toward creating a state based on the rule of law, is to restore basic legality. Legal policy should be aimed at solving this problem; all legislative, administrative, and judicial activities, as well as measures for its propaganda and education, should be subordinated to it [60].

IV. Conclusion

In conclusion, we note that compliance with the requirements of the principle of objectivity of knowledge of the state and law is one of the criteria for the truth of knowledge about them. On the contrary, failure to comply with the relevant requirements determines the untruth of knowledge, legal idealism (romanticism), one example of which is the rule of law proclaimed and enshrined in the Constitution of the Russian Federation. Addressing the problem of the truth of knowledge about the state and law, we emphasized that “various types of methodological rules reflect not only the characteristics of the object of knowledge, but also the practice of scientific research. Their violation can also lead to unfounded, false scientific conclusions ... It can be argued that, in essence, any science is an activity for the production and organization of knowledge about the object it is studying. The knowledge obtained by science must be objective, reliable, substantiated and verifiable, which requires adherence to certain principles and methods of cognition, and the degree of development of the methodology of scientific research is one of the main criteria for the development of science ”[61].

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