

About The Problems of Types of Understanding Law

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Abstract:

Noting that law is a highly multifaceted concept, this article focuses on the issue of types of legal understanding. Critically assessing the positions of Russian scholars on the classification of these types, the paper offers the author's perspective on this theoretical issue. It also critically analyzes the positions of theoretical scholars on the relationship between philosophical and natural law types of legal understanding, as well as the integrative type and broad understanding of law.

Keywords:

law, type of legal understanding, classification, normative type, philosophical type, sociological, relationship, broad concept of law

I. Introduction

Law is a complex, subtle, and multifaceted concept. We use the term "law" when we mean a system of norms, not only legal ones but also those rooted in customs or morality (e.g., moral law). The root of "rights" is found in the words "correct," "fair," and "just." There are many aspects to understanding law. Law is often viewed from a narrow (narrowly normative) and broad perspective, which will be discussed below. Two other aspects of understanding law are noteworthy: objective law and subjective law. In legal theory, a distinction is made between natural law and positive law.

The Constitution of the Russian Federation contains provisions enshrining human and civil rights. For example, Part 1 of Article 20 of the Basic Law states that "everyone has the right to life," while Article 31 states that "citizens of the Russian Federation have the right to assemble peacefully, without weapons, to hold meetings, rallies, demonstrations, marches, and pickets."

We believe the concept of law should be considered from the perspective of the subjects of legal understanding. For citizens with a casual, superficial understanding of the law, law is associated only with rights and freedoms, ignoring both legal obligations and legal liability. For law enforcement entities, law is what is enshrined in the Constitution of the Russian Federation, other laws, and bylaws. Finally, from the perspective of legal science, law is understood differently, based on a particular approach or type of legal understanding.

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 On the Concept of the Type of Legal Understanding

Speaking about the type of legal understanding, scholars emphasize that it is “a philosophical and legal (methodological) approach to substantiating the general concept of law, the laws of its origin, essence, forms (sources) of expression, and relationships with the state, based on the specifics of the methodology of legal knowledge” [8]. It seems interesting to consider the position of Aleksey Aleksandrovich Fedorchenko and Rozalina Vasilyevna Shagiyaeva, who, speaking about the types of legal understanding, write that “these are philosophical and legal concepts containing the initial ideological principles for explaining law as an independent phenomenon” [35].

At one time, bearing in mind this meaning of the type of legal understanding, Vladik Sumbatovich Nersesyants wrote that “just as a certain future plant is given in a seed, so the concept of law in a scientific-abstract (compressed and concentrated) form contains a certain legal theory, the theoretical-legal meaning and content of a certain concept (and type) of jurisprudence” [30].

Many scholars write about the relevance of the problem of legal understanding and its significance. [25; 3]. Vladimir Ivanovich Chervonyuk and other authors, focusing on the practical significance of this problem, argue that the distinction between right and wrong is necessary for the state protection of law (the formation of protective mechanisms), the creation of actual conditions for its implementation, etc. [37; 4].

Andrei Yuryevich Mordovtsev, assessing the problem of legal understanding in domestic jurisprudence, notes that “... there are hundreds, perhaps even thousands of definitions of law. But among them there is not a single so-called generally accepted definition shared by all who study law” [14].

3.2 Classification of Types of Understanding of Law

It should be noted that the issue of classification of types of legal understanding in Russian legal science is resolved ambiguously. Thus, Vladimir Aleksandrovich Tumanov believed that the issue of types of legal understanding should be considered in the context of the doctrine of natural law, positivistic and sociological jurisprudence [34]. Vitaly Vasilyevich Oksamytny believes that sociological jurisprudence, in fact, arose in the depths of positivism, without being its only branch. Among other directions associated with positivism in law, he distinguishes historical jurisprudence, economism (Marxist theory of law), the socio-psychological school, analytical jurisprudence, etc. In addition, the scientist believes that it seems logical to “enlarge” the groups that perceive reality in law, identifying two main directions in classical legal understanding - idealistic (natural law) and realistic (positivistic) [26]. A group of authors identifies four types of legal understanding: 1) natural law; 2) normative; 3) sociological; 4) psychological [8].

According to Orest Vladimirovich Martyshin, the diversity of definitions given to the legal nature of law in our country and abroad, past and present, can easily be divided into four main types of legal understanding. These are legal positivism (normativism), sociological positivism, natural law theory, and a philosophical understanding of law [18].

Valentina Viktorovna Lapaeva's classification of types of legal understanding is based on a methodology for understanding law, which allows for the identification of positivistic, natural law, and philosophical types of legal understanding, oriented toward a non-positivistic research methodology. [31].

The question arises: which classification of types of legal understanding is the most justified? It seems that the types of legal understanding, taking into account the evolution of their formation, should be differentiated into two groups: 1) classical - normative, sociological, natural-legal, philosophical and integrative types and 2) the so-called new theories of law (types) - libertarian-legal [22], communicative [27; 28], natural-positive [39], Orthodox [5; 6; 32; 33].

When discussing classical types of legal understanding, it should be emphasized that when examining various theories and perspectives on it, the following circumstances must be taken into account: firstly, the historical conditions under which law functions and the cultural framework within which the researcher lived and worked; secondly, the fact that the outcome of legal understanding always depends on the philosophical, moral, religious, and ideological position of the subject cognizing it, etc. [13].

Attempts to expand the range of classical types of legal understanding are quite common, bearing in mind that scholars cite the historical school of law, Marxist, and psychological theories as such [2; 12].

According to Orest Vladimirovich Martyshin, this is, in principle, not difficult to do by identifying subtypes within each approach, each distinguished by a certain uniqueness. But, according to the scholar, "... let us not forget that the purpose and meaning of any typology lies precisely in generalization, consolidation, and unification of related phenomena." [19]

As for the historical school of law, which emerged in Germany at the turn of the 17th and 19th centuries, it did not develop its own legal understanding of law, resorting to traditional sources such as custom, judicial decisions, and statute. Vladimir Sergeyevich Solovyov aptly characterized this school in the respect of interest to us, noting that it replaces the problem of legal ontology with the question of the origin of law: instead of a logical definition of law, "ethnographic and historical research" is proposed. [29]

Psychological theory, which traces law to emotions and defines legal norms as "the real-psychological connection between right and duty," shares with sociological jurisprudence legal pluralism, i.e., the assertion that law cannot be reduced to statute. This principle unites Lev Iosifovich Petrazhitsky, one of the representatives of psychological theory, with Ehrlich, one of the founders of the sociological school.

Marxism provided a historical-materialist and class-based, but not a legal, interpretation of law. Orest Vladimirovich Martyshin, quite emotionally, emphasized: "One would have to be very naive to perceive the well-known metaphorical expression 'your right is the will of the ruling class elevated to law' as a definition of the legal nature of law, i.e., to attribute to the founders of Marxism the normative understanding of law, which became official in the USSR in the late 1930s. The classics of Marxism left this question open, since it held little interest for them." [19]

Keeping in mind the above-mentioned classical types of legal understanding, which can be assessed both positively and negatively, attention should be paid, at a minimum, to the following theoretical problems.

The first is that the natural law and philosophical understandings of law are often unjustifiably equated. In our study, we cannot ignore the viewpoint of Orest Vladimirovich Martyshin, who believed that the philosophical understanding of law reduces the latter to the principle of freedom: law defines the conditions under which a person bound or endowed with social status can act freely. In other words, it defines the sphere or boundary of the measure of human freedom, for the latter is understood not as arbitrariness, but as rational social behavior. At the same time, the scholar emphasized that "the first two (legal and sociological positivism) imbue law with entirely real content (norms or relationships), accepting law as it actually is, while the latter are abstract, purely theoretical in nature, proceeding from what law should be" [17].

3.3 The Relationship between Natural Law Theory and the Philosophical Understanding of Law

Distinguishing between these two types of legal understanding, Orest Vladimirovich Martyshin emphasized that while the former is an ideal, the latter is an abstraction, a mathematical formula for a legal norm, equally applicable to both natural and positive law. This principle holds that law is the freedom of each individual, but with the strict respect for the freedom (and therefore, the legitimate interests) of others. This presupposes the restriction of freedom on the basis of reciprocity [17].

Law, according to Immanuel Kant, "is the totality of conditions under which the arbitrary will of one (individual) is compatible with the arbitrary will of another from the standpoint of the universal law of freedom" [10]. According to Georg Wilhelm Friedrich Hegel, law means "the realization of the freedom of free will or, even more briefly, the actual existence of freedom" [7]. At one time, Pavel Ivanovich Novgorodtsev wrote: "Law is unthinkable without elements of freedom and equality, even in their most modest manifestation. The very concept of law contains a limitation of freedom, and the extent of this limitation can vary quite significantly." [23]

This approach is also developed by representatives of Russian philosophical and legal thought. Thus, Henrietta Ivanovna Ikonnikova and Viktor Pavlovich Lyashenko quite rightly assert the following: "Freedom is impossible unless it is guaranteed by the state. The measure of freedom is manifested only in the current law, which determines the position and role of the individual in society..." [9] Another philosophical and legal work notes that external freedom presupposes the search for organic means, methods, and forms of restrictions," which "can include not only prohibitive legal laws... but also the very fact of the coexistence of many individuals with their social rights and freedoms." [36]

An analysis of legal literature on the theory of state and law allows us to draw at least two conclusions. First, insufficient attention is paid to the philosophical understanding of law. Thus, Ilya Lvovich Chestnov believes that it is precisely philosophical concepts that are capable of overcoming... the limitations of the modernist worldview that can serve as the foundation for a new type of legal understanding capable of responding to the challenges of postmodernity. [38] Secondly, this type of legal understanding is often unjustifiably identified with natural law. Thus, Lyudmila Aleksandrovna Morozova, identifying the moral and philosophical approaches to understanding law, believes that, alongside legislation (i.e., law enshrined in law), there exists a higher, genuine law as an ideal principle reflecting justice, freedom, and equality in society" [20; 21]. This equally applies to the point of view of Valery Vasilyevich Lazarev and Sergei Vasilyevich Lipen, who assert that "the philosophical direction in jurisprudence is characterized by the fact that "there is a certain ideal legal principle, which is called upon to predetermine what the law expressed in normative acts should be; the philosophical direction in jurisprudence found

its most complete expression in the doctrine of natural law; this ideal legal principle is the "natural rights of man" [11]. Ruman Khoronovich Makuev categorically stated that "... philosophical law is a universal principle, a criterion for assessing positive law for the degree to which it contains natural law" [15].

Without denying that the philosophical understanding of law is close to the theory of natural law (both approaches are ideal in nature, proceeding not from the current law, but from what the law should be), nevertheless, it does not coincide and does not merge with it. As Orest Vladimirovich Martyshin noted, "unlike the natural law school, the philosophical understanding of law lacks the detail that can be as detailed in natural law as in positive law. The philosophical understanding does not contain specific norms, but only a general rule, a norm of norms, or a law of laws" [18].

3.4 The Integrative Type of Understanding of Law and the Broad Concept of Law

It is noteworthy that the integrative (complex) type of legal understanding ("law is a system of normative principles based on the ideas of human justice and freedom, expressed mostly in legislation, and regulating social relations")[1] is often and unreasonably identified by its supporters with a broad understanding of law.

Thus, it is necessary to critically evaluate the point of view of Orest Vladimirovich Martyshin, who believed that law refers not only to legal norms, but also to social relations (legal relations) arising in accordance with these norms, and to ideas about what these norms should be (legal consciousness)[18].

The point is that, if a type is generally understood as "a form, a kind of something possessing certain characteristics, as well as a sample to which a certain group of objects or phenomena corresponds [24], and a type of understanding is understood as a theoretical and methodological approach to the formation of an image of law, carried out within the framework of a certain methodology of analysis from the standpoint of a particular theoretical vision of the problem [28], then a broad concept of law shows the available elements of the content of law. For example, the well-known theoretical scientist Gennady Vasilyevich Maltsev, considering law as a normative regulatory system, believes that the former is "a set of norms, ideas, and relationships that establishes an order of organization, control, and protection of human behavior supported by the means of power" [16].

IV. Conclusion

In conclusion, we note that various concepts of legal philosophy form the basis of various types of legal understanding. The problem under consideration has not only scientific but also practical significance. Within the framework of classical types of legal understanding, the concept of law is developed; secondly, issues concerning the relationship between the philosophical and natural law approaches, the integrative approach to understanding law, and the "broad" concept of law are resolved.

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