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WHAT IS A COMPREHENSIVE THEORY OF LAW?

Qurbonov Doniyorbek Davlat o'g'li
3rd Year Student of the Faculty of Law of Samarkand
State University named after Sharaf Rashidov

Abstract
This article reflects on the importance of philosophy to legal theorists. It is also taught that the law is a rational, legitimate regulator of the use of coercion and violence, and that it is a completely unreasonable regulator of the behavior of both individuals and authorities.

Keywords: Comprehensive theory, law, philosophical theory, violence, legal theories.

Introduction

It has been about three years since we formulated a comprehensive approach to the knowledge of law. This approach later became better known to the legal community as a comprehensive theory of legal cognition. Since we are talking about the same thing, but the latter phrase has become widespread in the legal environment, we will talk specifically about the comprehensive theory.

What is a comprehensive theory? This is primarily a philosophical and philosophical-legal theory, the purpose of which is characterized not by imposing or justifying any one theory of law, which is often the sin of legal scholars, but by a comprehensive study of law, taking into account all available theories. The comprehensive theory states that law, depending on different approaches, may have one or another facet, and the allocation of such facets is not erroneous. There is no need to argue about them, since law is a complex, multifaceted social phenomenon. It is necessary to look at the law philosophically, stating the different properties of the object, their manifestations and contradictions. It is the philosophical attitude to law that, oddly enough, many scientists lack.

This is partly due to the desire to prove one's case in any way. This fact, of course, impoverished research and narrowed the horizons of the researchers themselves. It was typical for such scientists to exaggerate somewhat and, one might even say, to emphasize those facets of law that supported their arguments, and at the same time to belittle, gloss over, not attach importance to those facets that did not suit them, did not fit into their ideas. In general, we did not try to think about the fact that law can be one, and another, and the third, and the fourth ... and the tenth, opposite properties can manifest themselves in it and often manifest themselves. Many legal scholars did not want to evaluate the law more philosophically.

Perhaps the following reason played a role here. The fact is that for a long time in Soviet-Russian jurisprudence, the philosophy of law occupied a place not "above" the theory of state and law, but as if "inside" it. In other words, the philosophy of law was considered as one of the directions of the theory of law. This was the opinion of many scientific authorities, whose

opinion could not be ignored by lesser-known specialists, i.e. legal scientists were not based on philosophy and philosophy of law, but philosophized within the framework of the theory of state and law.

This approach, of course, was fundamentally wrong. Philosophy and its direction called "philosophy of law" are the basis, the basis for other legal sciences, especially for such as the theory of state and law. For a clearer understanding of the place of the philosophy of law, we proposed to call it a philosophical specialized science. We recommended using this term for other relatively independent philosophical areas: philosophy of economics, philosophy of medicine, philosophy of history, etc. We are very pleased that the term has become entrenched in philosophy and science. At least, we can repeatedly see it on the pages of scientific publications.

Consideration of the philosophy of law only within the framework of the theory of state and law impoverished the philosophical component of research, did not teach people to look at law and legal sciences more broadly, provoked them to prove the correctness of any one of the numerous concepts of law.

The comprehensive theory of law does not admit the advantages of a particular concept of law, but studies and takes them into account.

In this sense, another question is asked: in this case, is the comprehensive theory of law a textbook on the theory of state and law, which describes various legal concepts and theories? No.

All textbooks on the theory of state and law present the material differently. In the textbook, the authors are either based on one concept of law, or, as in the textbook, they simply give material about different concepts. In both cases, the concepts are completely disconnected. There are practically no attempts to look at the law philosophically and comprehensively. Legal theorists (again within the framework of this science) tirelessly, permanently prove the advantage of one or another approach to law.

We believe that only by philosophically summarizing all existing and future approaches, it is possible to achieve a complete understanding of law – this contradictory, most complex social phenomenon. We see the right as a big diamond. As you know, the most common diamond cut is 57 facets. It seems that scientists see one or another 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 right. Experts on one facet of this phenomenon judge it as a whole. It is obvious that the theories obtained in this way eventually run into insoluble contradictions. Further, new thinkers appear, who also, sometimes sincerely believing that they see the whole subject, focus 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, there have been many different concepts of understanding law (positivist, natural, contractual, psychological, historical, sociological, etc.). However, there are not as many of them as the facets of a diamond.

Our 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. However, 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 law at an entirely new level, perhaps surprising for all of us.

In our opinion, at this stage, legal theorists really lack philosophy. Insufficient attention to philosophy and philosophy of law both in Soviet times and after it, of course, negatively affected the completeness and depth of legal research. Let's give the most banal example. Law is the will of the ruling class, elevated into law. Is that true? So. At the same time, law is an instrument for preventing the violence of the ruling class and limiting its will. Is that true? So. Law is a reasonable, law–based regulator of the use of coercion and violence. Is that true? So. But in some cases, law is also a completely unreasonable regulator of the behavior of both a person and the authorities. This is also true. However, there are few scientists who understand that all four mutually exclusive manifestations are right. They usually try to justify the correctness of the first concept in terms of the will of the ruling class, then the second (now popular concept of natural human rights), then the third, or even others. All this work, in our opinion, is absolutely hopeless, because it puts only one facet of law at the forefront and does not take into account others sufficiently.

We went the philosophical way and prepared a philosophical theory of the knowledge of law, which we called a comprehensive (from Latin. Comprehendo is all-encompassing). We are glad that this theory has aroused great interest among both philosophers and lawyers. Many people supported us [1].

Nowadays, many concepts of law are known, formulated from strictly legal, and by no means philosophical positions. A surgical operation can be viewed solely from the point of view of medicine as a set of actions to remove something, but it is also possible from a philosophical point of view about whether surgical intervention is good in principle, the criteria for the admissibility of such intervention, the reality of maintaining the quality of life after surgery, risks, etc. The experience of medical sciences convincingly shows that the second way is more productive. It allowed us to take a full look at the problem, which made it possible to develop both therapy and prevention, both rehabilitative medicine and hospices, etc.

It's the same with law. From a legal point of view, law has patterns studied by the theory of state and law. From a philosophical point of view, the question is broader: These are the value of law, and the knowability of its norms, and the correctness of the methods chosen for cognition, and the humanity of law, and the question of the original justice or injustice of restricting the rights of other (same) people, and the permissibility of violence in law, the limits of violence, and the reality or impossibility of obtaining proper legal regulation, etc.

Law is both protection from violence, and violence under coercion to comply with norms, 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.

Further:

– law is both the realization of human needs, and their limitation, and the regulator of needs, while, so to speak, law makes human life humane;

– law is both specific laws issued by the state, and being independent of specific laws and even encouraging the issuance of these laws;
– law is both a reasonable regulator of vital activity, and nonsense, absurdity, recklessness (for example, senseless and comical laws in case law), law demonstrates both the intellectuality and recklessness of humanity [2];
– law strives for justice, but at the same time allows injustice;
– the right is aimed at establishing objective truth and at the same time allows it not to be established;
– 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 an effective conduct of business (for example, 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 politics and at the same time is a tool of politics, while it cannot solve all the problems of humanity, although for some reason many see it that way;
– law regulates the economy and at the same time depends on economic processes.
Such reflections can be continued and continued. Ultimately, it seems that law is a complex social phenomenon, multidimensional and contradictory, which must be considered without idealization and without the domination of any particular concept. This conclusion underlies the formation and formulation of our comprehensive theory of law [3].
Sometimes the question is asked: is the comprehensive theory an integral theory of law? The answer is: it is not.
We have repeatedly written about the integral theory of law and its criticism [4]. As you know, the term "integral jurisprudence" came to us from the USA. The founders of the integral theory of law are well-known American scientists Harold Berman, Jerome Hall and Ronald Dworkin. Thus, G. Berman believed that integral jurisprudence should unite three classical schools: legal positivism, the theory of natural law and the historical school. Integral theory "is based on the belief that each of these three competing schools has identified one of the important dimensions of law, excluding the others, and that shifting several dimensions into one focus is, firstly, possible and, secondly, important"[5]. Russian legal scholars have actively joined the discussion on the problem of integral jurisprudence. Interesting original works on this topic have appeared in Russian legal science [6].
Let us draw attention to the differences between the integral and comprehensive theories of law.
Firstly, approaches to law are not at all limited to legal positivism, the theory of natural law and the historical school. This means that the design in this form is doomed to failure: combining only these theories will be completely incomplete.
Secondly, although G. Berman called his integral theory philosophy, it was legal theories that he tried to combine. It is not surprising that lawyers within the framework of the general theory of law began to develop an integral theory of law, both in Uzbekistan and abroad.

This turned integral theory into a legal theory, and by no means a philosophical theory. In other words, the integral theory of law has involuntarily become legal and limited by the framework of the general theory of law. Philosophy, on the other hand, does not tolerate restrictions in views and concepts. The comprehensive theory of law is primarily a philosophical theory that takes into account the views on law of both lawyers and philosophers.

Thirdly, we fundamentally disagree with the proposal to combine the "best" of these theories into an integral theory. In our opinion, it is impossible to say exactly what is "the best" in a particular theory of law, and what is "the worst" accordingly. The main thing, as we have already said, is that by discarding the "worst", we thereby ignore and do not take into account all facets and manifestations of law.

At the end of the article, we would like to thank everyone who is interested in the comprehensive theory of law, begins to comprehend and develop it. We will be grateful for feedback, critical comments and suggestions.

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