THEORETICAL-METHODOLOGICAL BASES OF DISCLOSURE OF NATURE AND CONTENT OF LEGAL CONSCIOUSNESS

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Introduction

For both philosophical-legal thought and theoretical-legal thought, the law is the form of establishment of a system of social goals, values and ideas[1]. However, within the philosophical-legal and theoretical-legal thought, such goals, values and ideas have substantially different forms of existence and expression.

It should be pointed out that the structure of the public consciousness is reproduced and cannot but be reproduced in line with its each individual form, that is, in legal, political, economic, moral, religious, aesthetic and other forms. It follows that in any form of public consciousness one can discover a philosophical-legal layer. Furthermore, for now on it is likely to ensure the completeness of the inclusion of the subject and give a complete idea of it when that layer is revealed, in other words, when legal, moral, economic and other thoughts begin to function in that layer[2].

However, in that case it would be logical to allege that if we wish to find out the essence of the law along with its completeness, then the only adequate option for that purpose would be the philosophizing of legal consciousness. The philosophy of law can then be perceived as a reflexive legal consciousness, as a view of law from “inside” of its shell. Hence, by moving within that boundary from inside we will only enrich our understanding of the law.

If the philosophy of law is only a part of social philosophy, the peculiarity of which is summarized in its content, rather than in methodology and logic, then the chances for penetration into the essence of the law are sharply reduced. Being "out" of the law, without identifying ourselves with the law, we only diminish our chances of understanding the law by mentally moving its boundaries.

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[1] Тихомиров 2015, 53-54.

[2] Теоретико-методологические проблемы права 2007, 19-20.

The philosophy of law must be understood as an outcome of the thought deriving from the logic of legal consciousness itself. Therefore, one's own position on the legal consciousness must be expressed in a categorical manner[3].

Nonetheless, if the uniqueness of the philosophy of law relates to the logic of legal consciousness, then in that case on what basis does the general theory of law develop? To say that this too is based on the logic of legal consciousness would mean to allege in fact that the philosophical-legal and theoretical-legal views on law are not qualitatively different from each other. And that's not the case.

On the one hand, as already noted, the theory of law is science, which means that it is subject to the logic of scientific recognition and is developed as a system of scientific knowledge. On the other hand, if it refers to the common law (as a general theory), then it is a theorizing legal consciousness, an embodiment of the logic and principles of legal consciousness. This reflects not the nature of the general theory of law, but the historically established fact that the legal theory of law has, in reality, always regarded the law as an element of the political organization of the society.

This very law is the subject of legal thinking. It is no coincidence that for both political scientists and for most lawyers the law is inextricably linked to the state and can only be understood if that link is taken into account. Therefore, the law, in its borderline expression, is the result of the reflection of legal consciousness.

As a consequence of the fundamental difference between the types of social theory underlying the theory of law, the law for philosophy is a subject, that is to say, an field of study applied, and for the general theory of law it is an area of authority (the law administered through the authority). In addition, the latter is only one of the forms of manifestation through the social force. After all, for the philosophy of law there exists an individual sphere of people's being which is very important, and in case of general theory of law it is only a sphere of social (collective) being of people[4].

As a rule, there is no qualitative difference between the logics of political consciousness and legal consciousness in the history of legal-political thought. That is the reason why the theoretical debates on many issues often prove ineffective. And the differences are unnoticeable, and above all it is due to the lack of sufficient awareness of the fact that the political and legal consciousness is based on qualitatively different ideas. For example, in the context of the logic

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[3] See, for example, Чернявский 2016, 77-78.

[4] See Стандарты научности и homo juridicus в свете философии права. Отв. ред. проф. В.Г. Графский 2011, 120-121.

of legal consciousness, the idea of natural human rights is an obvious product of thought. And the idea of claiming human natural rights is, first of all, developed in the context of the logic of scientific consciousness. It is clear that the advocates of each of these ideas, by arguing with each other and uttering the same words, speak different languages, so the arbitrary arguments of both parties are unconvincing. We are faced with the exact same problem when we consider the idea of the relation between law and state. The integrity of the state and law is, of course, in line with the logic of the political consciousness. And understanding the law as a civil society institution designed to protect citizens from the arbitrariness of the state is inherent to the legal reflection of social reality[5].

The arguments presented are deemed quite obvious, if we remember what theoretical and practical implications they have. However, a detailed clarification of this issue is not among the priority issues we have chosen

Let us now formulate a number of conclusions regarding the nature of interrelationship of the philosophical-legal and theoretical-legal approaches to the understanding of the nature of law and legal consciousness.

1. The philosophical approach to law is non-legal and in the sense that it is not scientific and in the sense that it serves as a means of reflecting a phenomenon of the law in the context of logic, which is not inherent to legal theory.

2. Legal understanding is not a part of the philosophical understanding of law just as the philosophy of law should not be viewed as an interpretation (or generalization) of legal knowledge. The philosophical categorical and methodological toolkit should not be the basis for legal analysis of law. However, referring to the philosophical-legal interpretation of the subject enables to essentially replenish and enrich the legal interpretation of the law.

3. There are no impassable boundaries between the philosophical-legal and legal theories. And such boundaries become dynamic and transparent as we transition to the level of link between the philosophy of law and the general theory of law. Their differences are consciously pushed to the foreground and are strictly observed only in order to avoid the well-known and spontaneous intermixture of various planes of understanding of the subject. The practical interaction of these two forms of understanding of law is an indisputable fact.

In this regard, we find that the philosophy of law can play a rather constructive role for the general theory of law. It can help the co-legal theory to realize the principle fragmentation of its understanding of law[6]. Such a position will certainly have a positive impact on the results of further and legal

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[5] Осипов 2015, 167-168.

[6] For details See Ստեփանյան 2016.

analyses. The philosophy of law [7]helps the analysis of law to link to the operation of a system of the conditions and factors that are typical of social reality in its full extent and in its entirety. The general theory of law should not consider scientific methods of cognition and the results of scientific cognition as self-sufficient, otherwise, fragmentation in the understanding of law will not be realized and taken into account. Still within the domain of scientific recognition, the general theory of law must be combined with philosophy. Without dissolving into the philosophy of law and not attempting to dissolve it in itself, one must form an organic integrity with philosophy in understanding the essence of law.

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ԻՐԱՎԱԳԻՏԱԿՑՈՒԹՅԱՆ ԲՆՈՒՅԹԻ ԵՎ ԲՈՎԱՆԴԱԿՈՒԹՅԱՆ ԲԱՑԱՀԱՅՏՄԱՆ ՏԵՍԱԿԱՆ-ՄԵԹՈԴԱԲԱՆԱԿԱՆ ՀԻՄՔԵՐԸ

Ամալյա Հարությունյան

Անդրադառնալով իրավունքի և իրավագիտակցության բնույթի ըմբռնման նկատմամբ փիլիսոփայական-իրավական և տեսական-իրավական մոտեցումների փոխկապակցվածությանը՝ կարելի է եզրակացնել՝

1. Իրավունքի նկատմամբ փիլիսոփայական մոտեցումը լինում է ոչ իրավաբանական և' այն իմաստով, որ այն գիտական չէ, և' այն իմաստով, որ տրամաբանության համատեքստում ծառայում է որպես իրավունք երևույթի արտացոլման միջոց, ինչը հատուկ չէ իրավաբանական տեսությանը:

[7] Ստեփանյան 2019.

2. Իրավաբանական ըմբռնումը իրավունքի փիլիսոփայական ըմբռնման հատված չէ ճիշտ այնպես, ինչպես իրավունքի փիլիսոփայությունը չպետք է դիտարկվի որպես իրավաբանական գիտելիքի մեկնաբանություն (կամ ընդհանրացում): Փիլիսոփայական կատեգորիալ և մեթոդաբանական գործիքակազմը չպետք է հիմք դառնա իրավունքի իրավաբանական վերլուծության համար: Սակայն առարկայի փիլիսոփայական-իրավական մեկնաբանությանը դիմելը թույլ է տալիս էականորեն համալրել, հարստացնել իրավունքի իրավաբանական մեկնաբանությունը:

3. Փիլիսոփայական-իրավական և իրավաբանական տեսությունների միջև անանցանելի սահմաններ գոյություն չունեն: Դրանք դառնում են շարժուն ու թափանցիկ այն դեպքում, երբ անցում ենք կատարում դեպի իրավունքի փիլիսոփայության և իրավունքի ընդհանուր տեսության միջև գոյություն ունեցող կապի մակարդակը: Իրավունքի ըմբռնման այս երկու ձևերի գործնական փոխազդեցությունն անվիճելի փաստ է:

Բանալի բառեր՝ իրավագիտակցություն, իրավունքի փիլիսոփայություն, իրավաբանական մտածողություն, սոցիալական մտածողություն, իրավունքի իրավաբանական տեսություն, հասարակական գիտակցություն, քաղաքական գիտակցություն:

ТЕОРЕТИКО-МЕТОДОЛОГИЧЕСКИЕ ОСНОВЫ ВЫЯВЛЕНИЯ ПРИРОДЫ И СОДЕРЖАНИЯ ПРАВОСОЗНАНИЯ

Амалия Арутюнян

Рассмотрение природы и содержания правосознания, характера взаимосвязи философско-правового и теоретико-правового подхода к пониманию сути права и правосознания приводит к следующему заключению:

1. Философский подход к праву бывает не юридическим как в силу того, что он не является научным и служит лишь средством выражения феномена права в контексте логики, что не характерно для юридической теории.

2. Юридическое понимание не является частью философского понимания права, равно как и философия права не должна рассматриваться как интерпретация (либо обобщение) юридического знания. Категориальный и методологический философский инструментарий не должен служить основой для юридического анализа права. Однако философско-правовая интерпретация предмета позволяет существенно дополнить, обогатить юридическое толкование права.

3. Между философско-правовой и юридической теориями нет непреодолимых рубежей. И эти рубежи становятся динамичными и прозрач-

ными, когда мы переходим на уровень связи между философией права и общей теории права. Их отличия специально выдвигаются на первый план и рассматриваются лишь с той целью, чтобы избежать общеизвестного и спонтанного слияния различных уровней понимания предмета. Практическое взаимодействие этих двух форм понимания права является неоспоримым фактом.

Ключевые слова – правосознание, философия права, юридическое мышление, социальное мышление, юридическая теория права, общественное сознание, политическое сознание.

THEORETICAL-METHODOLOGICAL BASES OF DISCLOSURE OF NATURE AND CONTENT OF LEGAL CONSCIOUSNESS

Amalya Harutyunyan

In his article referring to the nature and content of legal consciousness, discloses the nature of interrelationship between the philosophical-legal and theoretical-legal approaches to understanding the nature of law and legal consciousness, arrived at the following conclusion:

1. The philosophical approach to law is non-legal both in the sense that it is not scientific and in the sense that it serves as a means of reflecting a phenomenon of the law in the context of logic, which is not inherent to legal theory.

2. Legal understanding is not a part of the philosophical understanding of law just as the philosophy of law should not be viewed as an interpretation (or generalization) of legal knowledge. The philosophical categorical and methodological toolkit should not be the basis for legal analysis of law. However, referring to the philosophical-legal interpretation of the subject enables to essentially replenish and enrich the legal interpretation of the law.

3. There are no impassable boundaries between the philosophical-legal and legal theories. And such boundaries become dynamic and transparent as we transition to the level of link between the philosophy of law and the general theory of law. Their differences are consciously pushed to the foreground and are strictly observed only in order to avoid the well-known and spontaneous intermixture of various planes of understanding of the subject. The practical interaction of these two forms of understanding of law is an indisputable fact.

Key words – legal consciousness, philosophy of law, legal thinking, social thinking, legal theory of law, social consciousness, political consciousness.