

The Concept of Values of Law: Classical, Non-Classical and Post-Non-Classical Anthropological Discourses

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ABSTRACT

The paper addresses a comprehensive study of legal values (values of law). The study is of current relevance since the overwhelming majority of scientific publications consider legal values within the framework of schools of legal positivism. However, the analysis of the values of law shows that the legal literature did not touch upon the issues related to values of human consciousness. The paper aims to study the values of law within the framework of anthropological programs – classical (neoclassical), non-classical and post-non-classical. To achieve the aim, the following tasks were fulfilled: 1) publications that reveal the definition of legal values were reviewed; 2) the values of law are considered as the embodiment of the outer and inner truth in terms of classical, non-classical and post-non-classical approaches. The values of law were studied using diverse set of methodological tools: 1) general philosophical methods (dialectical and idealistic); 2) general scientific methods – analysis and synthesis, deduction and induction, analogy, comparison; 3) particular (special) methods – logical, comparative legal, formal legal, normative dogmatic; 4) method of interpretation, including the problem-theoretic reconstruction method. In the study, all legal values were classified into three groups: 1) classical (neoclassical) values are an objective givenness not related to the legal subject that is expressed in a normative fact – the outer truth; 2) non-classical legal values reflect stable formation of the human psyche – a personality formed through assimilation of the external content and acquisition of the experience of the legal life of society that represents the inner truth; 3) post-nonclassical value manifests itself in legal entity – an act of conscience that reflects eternal and unchanging principles as the inner truth.

Keywords: axiology, anthropology, value, legal awareness, right, truth

1. INTRODUCTION

In theoretical legal science, scientists often discuss the value foundations of law, the link between law and morality, justice, and moral aspects of legal prescriptions. Most lawyers adhere to the view of the inextricable link between state and law, and do not share the standpoint that law is inherent in a person. In addition, legal principles have never existed in isolation from the spiritual and moral foundations of a person as a member of society.

Legal literature reports numerous points of view on the concept of legal value and its classification. However, the outlined views of scientists on the values of law are considered only in line with the scientific schools of legal positivism that render the classical paradigm of thought. This paradigm of thinking presumes a kind of 'impartiality' and 'autonomy' of the subject of cognition from the object – law as a system of signs.

The subject of law endows the sign constructions of concepts enshrined in the texts of normative acts [1] with a certain meaning, however, the individual in the classical intellectual framework is not the creator of law. In positive law, a person is represented as an abstract entity with inherent rights and obligations. For this reason, the legal

value is embodied in the legal text of legislation and expresses the outer 'truth' of the subject.

The above makes the situation paradoxical: on the one hand, a person, his rights and freedoms are recognized as the highest value. On the other hand, no common understanding has been worked out in legal science of what a person is as a subject of law. Therefore, numerous discussions about whether robots developed using artificial intelligence technologies can be a legal subject are underway [2–4]. Undoubtedly, any answer to the question will depend on its perception by a lawyer.

In this regard, the tasks set to outline the structure of the paper are as follows: 1) to give a general description of the classical (neoclassical), non-classical and post-non-classical research anthropological programs; 2) to review publications that focus on the concepts of legal values; 3) to classify legal values in accordance with the types of research programs.

Scientific and legal problems. While fulfilling the tasks, the author faced the following problems. First, the use of the methodology of legal positivism excludes comprehensive perception of legal values. As a result, the studies by lawyers and philosophers describe only the values of the external aspects of law – outer truth. Secondly, within the classical (neoclassical) epistemological line, the overwhelming majority of scholars do not study the values

of law in relation to the consciousness of homo juridicus. Meanwhile, non-classical and post-non-classical discourses describe legal value as an inalienable property of a person's legal consciousness as the inner truth.

2. METHODS, APPROACHES AND PROCEDURES (PRACTICES) OF COGNITION

The study of the values of law employed a diverse set of methodological tools that depended on the type of the research program (paradigm of thought).

The classical (neoclassical) paradigm of thought, where the legal values of the external hypostasis of law are studied, is characterized by the following methods: 1) universal (dialectics); 2) general scientific (analysis, synthesis, systemic and functional approaches, the method of social experiment); 3) private scientific (sociological, statistical, cybernetic, formal legal and comparative legal).

The non-classical scientific discourse describing the values of the legal psyche is based on phenomenological (reduction) and psychological (introspection) procedures of cognition.

The post-non-classical approach to comprehending a value of law such as a legal entity (the sense of presence 'I am') is based on the metaphysical method, as well as on non-phenomenological procedures based on a priori forms of sensory cognition that are not associated with organs of perception of the physical body. These methodological techniques cause misidentification with the psychophysiological construction of the individual.

3. REVIEW OF LITERATURE ADDRESSING LEGAL VALUES

In the classical general legal theory, legal values are regarded in the context of the legislative consolidation of provisions that indicate positive significance of the legal system of society to meet the needs of society in general and the individual in particular. Generally speaking, legal values in the classical paradigm of legal thought are considered in terms of normative legal regulation. Within this conceptual approach, legal values are addressed in studies by N. Nenovski, A.N. Babenko, S.V. Mikhailova, I.I. Pogorletskaya, V.S. Nersesyants, L.P. Volkova, S.G. Drobyazko, P.S. Baranov and many others.

N. Nenovski refers basic social values to the values of law if they are integrated through legislation and other legal forms, and designates the functionality of its structural content as values in law. However, the Bulgarian jurist not only considers a person to be the center and focus of all values, but he also specifies a group of basic values, which includes a person [5].

A similar definition of legal values is given by S.V. Mikhailov, who distinguishes between the values of law and legal values (or values in law), where the former imply a set of values that ensure the existence of universal law that

results from the universal spirit of laws. In other words, the values of law are values (freedom, justice, equality) personified by law in whole or in part due to the fact that their sphere of action is borderline between morality and law. Legal values are bearers of the law itself, that is, the values integrated by law [6].

A.N. Babenko points out in his dissertation: 'Legal values are the forms of their positive attitude towards the legal system of society, experienced by people and derived from culture, which determine the choice of behavior corresponding to this system, and legal assessment of events' [7. P. 12].

According to the libertarian legal axiology, the value of law is a universal, absolute, necessary and obligatory form of expression of such fundamental values as justice, equality and freedom [8. P. 37].

Specific perception of the values of law within the non-classical discourse is due to the focus on the knowledge of the legal psyche (consciousness) of the individual. The scientists who have studied the legal psyche include E.R. Bierling, L. Knapp, R. Löning [9], D. Chalmers [10], E. Tsitelman [11. P. 16], L.I. Petrazhitzky, V.I. Pavlov and many others, who associated the emergence of law with the human psyche. The legal scholar M. Rebinde argues that the findings of research on the psychology of the unconscious should also be the object of the study of the psychology of law to determine its share in legal thinking [12].

Knapp sees the nature of law in physical and psychological mechanism of 'legal phantasms', i.e. special mental experiences generated by 'muscular-forced thinking' [13. P. 43, 193, 215]. German jurist E.R. Bierling outlined the main views on the nature of the value of the psyche in a two-volume monograph *Zur Kritik der juristischen Grundbegriffe* (1877–1883) and in a five-volume work *Juristische Prinzipienlehre* (1894–1917). The psychological theory of law includes two basic concepts – 'norm' and 'mutual recognition'. The first category is interpreted by E.R. Bierling as 'expression of intention that expects others to fulfill it' [14. P. 29]. Recognition which he uses to formulate the definition of law means 'continuous habitual behavior' [15. P. 82].

Features of perception of the values of law in post-non-classical discourse are revealed in studies by I. Kant, I.A. Ilyina, V.P. Malakhov, V.V. Sorokin and others. V.P. Malakhov formulated the concept of legal essence as the value of law in his philosophical and legal concept, described in detail in his doctoral dissertation [16]. V.V. Sorokin devoted many of his studies to legal conscience, which expresses not only value but also the inner truth [17].

4. RESULTS

The study of the values of law through the prism of the anthropological approach showed that they are interpreted in terms of the schools of legal positivism. Positive law is a system of linguistic sign structures, which are provided with a specific meaning by the subject of law. Nevertheless, the source of law can be the state, society, but not the

individual. The paradigm of thought, where *homo juridicus* can only be an interpreter of legal texts, but not a subject of law-making, is referred to as a classical (neoclassical) style (discourse). In this legal discourse, law exists independently of a person's legal consciousness. Meanwhile, the value of positive law is a legal text as a symbolic system of legislation, which is perceived by the individual as the outer truth – the truth of the state.

However, when law is investigated in conjunction with the consciousness of a legal person, non-classical and post-non-classical approaches are employed, which perceive the inner truth. The non-classical model of cognition of legal reality is a type of legal thinking, where the legal value is the psyche of an individual formed through borrowed experience of the legal life of society and legal ideas of society. The subject of law who has mastered external social and legal values that have become the content of individual consciousness is referred to as the legal personality. The non-classical paradigm of thought, considers imperative-attributive experiences to be the inner truth.

Within the post-non-classical discourse, legal value is treated as an expression of the universal laws of being founded, according to I.A. Ilyin, on a kind of instinctive feeling or, from the standpoint of I. Kant, on the awareness of the inner court of conscience in a person, which makes his thoughts accuse and forgive each other, which are referred to as conscience in the legal sphere. In contrast to the non-classical episteme, where 'truth' manifests itself through the content of the legal consciousness of the individual, in the post-non-classical model of cognition, law as the embodiment of 'truth' is realized through person's clear conscience. The feeling of presence 'I am' is the driver of all actions and the standard of judgments of a legal person.

5 DISCUSSION: CLASSICAL (NEOCLASSICAL), NON-CLASSICAL AND POST-NON-CLASSICAL APPROACHES TO COGNITION OF THE VALUES OF LAW

5.1 Classical (neoclassical) scientific anthropological paradigm

The majority of scientific publications consider legal values in the context of the postulates of legal positivism, which are reduced to legislative regulation of rights, freedoms, and their protection, as well as to the development of legal consciousness of the subject. Yu.Yu. Vetyutnev defines legal values as typical social preferences that gain formal regulatory recognition and protection [18. P. 28, 29]. Moreover, the legal scholar Vetyutnev interprets values as a component of consciousness that includes ideological and emotional complexes to transmit significant experience during social communication [18. P. 3].

The definition of legal values by S.G. Drobyazko and D.V. Stolyarenko is associated with legal consciousness. S.G.

Drobyazko defines legal values as 'the achievement of a continuously developing legal science as a prerequisite for formation of a stable progressive legal consciousness, an objectively necessary law-making process, legal legislation, forms of its expression, systematization and implementation in accordance with the foundations of law and order based on the recognized principles of law [19. P. 153].

D.V. Stolyarenko writes: 'Legal values are the features of law that are important for an individual, determine his legal consciousness, motivate his legal behavior, that is, the individual is convinced of the expediency and justice of the standards of law, of the need to comply with the rule of law as a value [20. P. 2]. Thus, legal values are postulated as an external value either officially normatively enshrined, or significant for the development of the legal consciousness of an individual. At the same time, the study of the legal values of an individual as a subject of law is ignored due to the fact that his consciousness is reduced to a biophysical organism, which cannot be a source of law within the framework of the classical paradigm of thought.

5.2 Non-classical scientific discourse of anthropology

In this regard, Yu.A. Gavrilova notes that the value of law can be not only an external object but also represent a reality that is significant for the subject and has its own ontological status [21]. No doubt, psychologically law is perceived through the value orientation of the individual. In this context, the Austrian philosopher and psychologist V. Frankl argues that an individual, while realizing the meaning and values, thereby realizes himself [22]. The approach to realization of an individual as a legal value is based on his mental nature, the relationship between his individual and social properties [23]. Numerous scientific works address the issue of the interaction between the human psyche and law.

The German lawyer L. Knapp in his work *System der Rechtsphilosophie* explains the essence of legal phenomena through the reduction of 'legal feelings' to special 'muscle reactions' of individuals [13. P. 43]. According to the German jurist E.R. Bierling, the legal values of his psychological theory of law are 'norm' and 'mutual recognition' [14. P. 42]. Meanwhile, E.N. Moroz believes that a legal norm cannot be considered as a kind of value because it is a rational and formalized external regulator of behavior [24]. This contradiction in opinions on the legal norm indicates its unequal understanding: Moroz considers it as a legal text, and Bierling believes that the norm is rooted in the mind. Similar to Bierling, the legal scholar A.V. Polyakov notes that the legal norm is not in the text, but in the psychosocial and cultural reality [25. P. 9].

Scientists L. Volker and J. Monahan consider the interaction between law and psychology in the framework of their interaction with social sciences in order to use their results in legal proceedings [26–27]. The German lawyer and sociologist of law M. Rebindler defines the psychology

of law as ‘the science of the psychological dimension of law, but not as psychology in the service of justice, that is, as forensic psychology, police psychology, criminal psychology, etc.’ [12].

The American lawyer J. Frank believes that the law is determined by such psychological factors, which are cognizable in psychoanalysis, as the desire to subjugate the paternal authority, the Oedipus complex, etc. [28]. According to K. Hani, professor from the University of California, the interaction between psychology and law can be reduced to three approaches: 1) psychology in law; 2) psychology and law; 3) psychology of law [29].

The first approach (psychology in law) indicates that psychology is used by law to attend legal activity, in which the legal system dominates and determines the form and application of psychology in law [29. P. 153, 170]. The second approach (psychology and law) implies equal and joint use of psychological principles for the analysis and investigation of the legal system, as well as the study of those psychological factors that have a significant impact on legal decision-making [29. P. 154, 155, 170]. The third approach (psychology of law) provides explanation of the term ‘law’ and studies its nature and sources of legal force. Anthropologists play a significant role in the development of this approach [29. P. 156, 157, 170].

Therefore, the most acceptable option for the interaction between law and psychology within the framework of non-classical discourse is the ‘psychology of law’ by K. Hani, and the approach to understanding the psychology of law by M. Rebinder. In this regard, the used non-classical model of cognition of the values of law aims to study the psyche (its components) of an individual, which acts as a source of legal reality and dominates over his physical body. The scientific school that primarily explicates the non-classical research is the psychological theory of law developed by the sociologist and legal scholar L.I. Petrażycki.

According to Petrażycki, the legal nature of the psyche of an individual is manifested in emotions, the passive side of which is related to imperativeness – the consciousness of duty, and the active side roots in attributiveness (claim). In other words, the right implicates passive-active experience, characterized as motor stimuli or as impulsive excitations of a bilateral nature, and referred by the professor to emotions [30].

Moreover, the legal norm and obligations are the result of emotional projection, which in reality are manifested in ethical motor excitations associated with a specific behavior [31]. In this regard, the value of law is the experience of ethical motor excitement due to a specific behavior. E.V. Timoshina notes that the normative value basis in the psychological teaching of L.I. Petrażycki implies self-sufficient, or normative, motivation as a binding force of law, which is inherent in the emotional experience itself [32].

Thus, the legal value in non-classical discourse of anthropology is the experience of legal emotions, and the truth is those beliefs and attitudes that are embodied in the individual consciousness and do not require recognition by the state or society.

5.3 Post-non-classical anthropological model of cognition

The post-non-classical anthropological research paradigm is based on perception of an individual as a legal entity that is not identified with any of the attributes (predicates) of the subject of law – neither with the biophysiological organism nor with the legal psyche of the individual – inherent in the classical (neoclassical) and non-classical paradigms. V.P. Malakhov writes in his thesis that a legal entity is ‘not a legal subject, because a completely different semantic meaning is associated with the concept of a subject ... We also do not mean a legal personality as a certain social quality ... We are referring to a phenomenon that has immanently inherent features of law, which considers legal being as all-embracing and self-sufficient ... Law is a trait of a person and a person is a substance of law ... A legal entity (or legal essence of a person) should be taken for granted ... legal reality can neither be identified, nor comprehended, nor justified outside the legal substance’ [16. P. 188–189, 193].

Representatives of the natural law concept associate the value of law with the possibility of its perception as spirituality that controls people through their minds using rational norms’ [33]. Moreover, different notions about God give different notions about the concepts of natural law – metaphysical and theological, which reflect either the spiritual world as a special hypostasis of a person or his mind (consciousness) [34]. I. Kant, in particular, defines this spiritual hypostasis as ‘the awareness of the inner court of conscience a person,’ where his thoughts accuse and forgive each other [35. P. 35].

The unifying quality of a legal being is a person’s clear conscience, which is his spiritual and moral law. It should be noted that conscience is not a rational category – mind, but an eternal matter in a person – the sense of presence ‘I am’. V.V. Sorokin notes that consciousness is a form of conscience inherent in the subject of law from birth that ‘sees’ and ‘differentiates’ legal and illegal behavior. The consciousness, which is a manifestation of the spirit that guides and strengthens the volitional efforts of the subject of law, should be referred to as legal [17. P. 2–6].

Thus, the spiritual essence of a person is a legal entity that manifests itself through identification as an individual and a legal person. The value of law is a legal entity with the qualities of immutability and eternity that is a clear conscience (sense of justice), which expresses the inner truth. Moreover, the Sense of presence ‘I am’ is the source of all actions and the measure of judgments of a legal person.

6. CONCLUSION

Legal values were considered in terms of three scientific anthropological paradigms – classical (neoclassical), non-classical and post-non-classical. The classical (neoclassical) anthropological paradigm is based on perception of values of the legal text itself, which regulates the protection and

defense of the integrity of an individual biopsychophysical organism. This paradigm of thought excludes the conceptual position that the subject of law as a biopsychophysiological organism can be the source of law. For this reason, scientific schools of legal positivism render law as a reality objectified and alienated from the subject. In this regard, the bearer of truth is not the subject of law, but the state or society.

The values of law in non-classical anthropological discourse are represented by the consciousness (psyche) of an individual, which exhibits an independent ontological legal being, in contrast to the classical paradigm, where the psyche of the individual is identified with the neural activity of the brain. The consciousness of a legal person, more precisely, the experience of legal emotions is the source of the regulation of legal reality. The bearer of truth in the non-classical cognitive paradigm is the person himself – the content of his consciousness, that is, his beliefs and attitudes.

The post-non-classical anthropological model of cognition is focused on perception of a legal entity that is the spiritual essence (pure consciousness) of a legal person. It is the spiritual essence of a legal person that shows the value of law, which is manifested through identification with the legal person and an individual. In this model of cognition, the truth is an invariable clear conscience as ‘the ultimate truth’, which distinguishes legal and illegal behavior.

Thus, within the framework of anthropological research paradigms, the truth can be classified into external and internal truth, and legal values can be divided into: 1) classical (neoclassical), 2) non-classical and 3) post-non-classical legal values. In addition, the values of law can be ranked by the degree of significance, where spiritual values are primary and mental and biophysiological values are secondary.

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