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Anthropological Relevance of Legal Cognition

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Abstract: The objective of the article is to analyze legal cognition through the philosophical substantiation of its value-existential level and critique of the normative-technical level, namely, to understand the problem of choosing descriptive and perspective (value) directions. The purpose stated is to consistently solve the following tasks: a) to investigate the anthropological relevance of legal cognition; b) to substantiate the attribution of value orientations and attitudes in the cognitive professional activity of a lawyer; c) to characterize the initiative-cognitive model of decision-making.

Keywords: Consciousness, value orientations, emotional regulations, responsibility, cognition, legal cognition.

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Introduction

The development of post-non-classical scientific paradigm completes the overcoming of subject-object dichotomy as the basic structure of cognition. Actualizations of the concepts of meta-anthropology and transhumanism define the contour of the new anthropological turn in the evolution of scientific knowledge, and testify to the dominance of an important plane of the problem – the more often there are reflections on reality, the more often one has to return to the cognitive intensity of the subject, since it is possible to take any decision when having some methodological and value orientations that brought him to life. The problem of which sides, fragments and qualities of objective reality are involved in the cognitive relation, depends only on the subject, and the separation from the objective reality of the part that acquires the cognitive quality of the object, depends just on his cognitive activity.

Today, in the field of any science one can observe the typical epistemological situation when the creation of a new reality determines the release from the long-term and pathologically acting myths of positive, linear and superficial perception and corresponding thinking. These myths are in the deviant sense of the objective world, functionally incapable of essentially identifying and naturally defining the needs of contemporary social development. The analytical discourse of positivist methodology reduces a human being as a subject to his physicality, turning the way of his existence into an objective one. The human being becomes the object that lacks freedom and responsibility for his own actions (Skyrtach, 2018, p.7).

Criticizing the positivist basis, which in its worldview plane is subordinated to dogmatic schemes, built on simplified ideas of classical mechanics and is not able on the basis of dominant thinking to fundamentally clarify the type of legislative movement which arises, a modern scientific paradigm is oriented towards a non-classical methodological plane of measurement, which is a nonlinear, non-positive, volumetric, hierarchic and complex one, that makes it possible to characterize reality as a dynamic, complex and diverse phenomenon. As adequate means of cognition, in addition to the methods of traditional thinking (formation of concepts, judgements, conclusions), new cognitive means are actualized

here, which by their intentions are interdisciplinary, communicative, conventional and open to dialogue. In such a reverse of doctrinal approaches, thinking becomes not the purpose of "reasonable calculation", but rather the realization of living unity of being and consciousness, the desire for harmonization of chaos and cognition of the unknown. Based on perspective methodological characteristics, the cognitive process is largely determined by psychology of the human being, his specific perception of legal ideas and peculiarities of definite mechanisms for their implementation. Accordingly, the practical activity is no longer satisfied with a purely official function, its prime cause is searched not in the field of dogmatics, but in expectations, desires, attitudes and valuations of the subject.

Cognition is closely related to the answer to the following question: does our knowledge correspond to reality? And if so, what reality is that – the one which exists in itself, or the one that is somehow constituted in the process of cognition? Thus, reality itself appears as we know it, that is, for us it depends on our cognitive abilities, forms and principles of cognition. At one time I.Kant stated that constituting was a decisive force that made our knowledge of the world possible. Although the world exists in itself, we know it only as an orderly world of phenomena, the existence of which is possible for us by means of a priori forms of sensuality and categorical structures of reasoning (Kozlovskiy, 2016, p.32). The Kantian judgements also revolutionized the substantiation of objective and a priori sources of legal cognition. Within the aforementioned paradigm, a priori synthetic thinking has become the basis of normativity. It was determined that if the law is a human creation, then the realization of its essence is impossible without understanding the human nature in all its manifestations, without penetrating into the needs of the human being, his abilities and desires.

Among the modern trends of classical Western philosophy, which fetishize practical knowledge, one can distinguish the pragmatism that underlies the principles of the "marginal utility of knowledge" for activity and the "capacity of truth" introduced by C. Peirce. Considering the various types of human thinking, another representative of this trend V.James insisted on their equality. "Common sense is better for one

sphere of life," he wrote, "exact science for the second, and philosophical criticism for the third; however, no one knows (only God) which of those types of thinking is true in the absolute sense of the word." The initial, more ancient ways of thinking are by no means completely crossed out by the following. The so-called common sense is "a great stage of balance in the development of the human spirit. All other stages developed on the basis of that primary one but they will never be able to completely eliminate it". According to V. James, theoretical thinking about things imitates practical thinking. The latter is "active", and when "life goes beyond the logic of science, then the theoretical mind seeks out arguments in favour of the conclusions already made by the practical mind" (James, 2000, p.26).

On the basis of the universal hermeneutic method, the bases of the interdependence of cognition and interpretation are substantiated in the works of H.-G. Gadamer. Gadamerian hermeneutics is a philosophy of understanding as a means of existence for a human being who cognizes, evaluates and acts. Understanding is a unique means of cognition, the ability to think and make judgements. In his fundamental work "Truth and Method" the scientist made at attempt to contrast the "logic of research" with the dialectics of hermeneutic understanding of the holistic existence of a human being. The most important goal that the German scientist set before hermeneutic philosophy is to achieve the theoretical recognition of the hermeneutic experience. To analyze this concept, the author used a model of the relationship between the reader and the text, which is the prototype for the model of the relationship between the subject of cognition and the object cognized by him. Using this model, he demonstrated the continuity of the three components of experience – understanding, interpretation and application (Gadamer, 1988).

The concept of interpretation as a fundamental ontology, a public form of cognitive axiology and an axiomatic way of the normative thinking, the unity of formal and meaningful essential features, the unity of senses of freedom and justice is revealed in the researches of Arthur Kaufmann. The scientist is deeply convinced that "true" law combines the complementary elements of essence (justice as the natural state of a human being) and existence. A hermeneutic method gives understanding

of the "true" law, and the basis of its finding is something "ontological" (freedom as the natural state of a human being), which cannot be removed directly from the abstract norm and which the lawyer cannot "use at his discretion", that is "thing- law". The ontological "thing- law" is not something "material-substantive", but a human being himself as a "person" (legal personality).

In no way diminishing the achievements of the famous scientists, there is still the layer of ideas that specifies the conclusions concerning value-metaphysical and existential-sense bases of legal cognition, which remains unexplored. In the aforementioned studies, such ideas are still sporadic. In addition, in the plane of a certain algorithm, this problem acquires actualization both within the framework of philosophical science, and from the standpoint of branch-practical understanding.

The Statement of Research

Classical cognitive strategy is based on the mechanical-deterministic acquisition of empirically verified knowledge. The features of cognitive activity express the following theses: "pure knowledge fixes the world as it is", and "the quarantee of the objectivity of truth is its "absolute" character". The forms of thinking are definitely correlated with the content of thinking, which, firstly, opens the possibility for statements about the coincidence of ideas about reality with reality itself, or, otherwise, for ontological isomorphism, and, secondly, contributes to "shackling" of ready forms of substantiation of knowledge. In this context, reality is built on the principle that underlies the Newtonian physical picture of the world, that is the non-alternative harsh casual link between "cause and effect".

Today, the situation is fundamentally changing. In today's world the processes of differentiation, competition and cooperation, exchange of material goods, information, finances, human resources, etc are rapidly developing. If in a stable world there was not a lack of attributive features of rationality because, by revealing the typical situations, standard solutions could be developed for them, then in a temporal, pluralistic, spontaneous, unstable and integrative world, there is a need for somewhat different thinking. Characterizing this state of affairs and criticizing the

exclusivity of cognition by means of logocentrism, the idea that throws doubts on the statement that dogmatism is the only way of organizing the human thinking capable of truly describing and explaining the external reality, is increasingly being approved. As a methodological and normative expression of cognition, as a form of consolidation and development of its achievements, dogmatism is dominant and effective just at the stages of evolutional and continued development of knowledge. But when a certain type of problems is exhausted, and when in the presence of spiritual, economic, political factors of influence the new problems are not resolved by accepted methods, it becomes obvious that all experience of rational cognition, all accumulated by mankind "common truths" will have only official character. Excessive passion for dogmatics, logics and rationality will inevitably lead to schematization and simplification of the changing "flow of life", but not to the comprehension of its value bases. An important component of the contextual problem, which in the ideological and worldview plane characterizes deeper, more active, dynamic, non-linear sides of dynamic development of reality, which in such conditions cannot in principle be truly defined and predicted through static dogma, will remain aside.

The real process of regulating social relations is a complex process of interaction between people, mediated to a greater or lesser extent by legal norms. This process begins beyond a narrow understanding of law and manifests itself as a system of interactions between the subjects of the law-making intention and the law-making practice. Trying to technically construct a system of legal regulation means not understanding its complex nature and deliberately simplifying epistemological and methodological tasks in practice, because a number of problems (in particular, the mechanisms of formation and functioning of legal reality) cannot be explained without going beyond the framework of "strictly legal".

Non-classical methodology teaches us to see the world differently. If the attributive features of classical dogmatics include the emancipation of thought and appeal to the mind in spite of feelings, consistency, conceptuality and reflexivity of thinking, logical rigidity, persuasiveness and criticality, then the defining characteristics of non-classical approach will be somewhat different, namely, irreflexivity, intuitive perception, existen-

tial belief. This approach is a fundamental theoretical and methodological constant of cognition of legal reality, which not only reveals the limits of dogmatic possibilities, but also leads to adequate awareness that law is not only an objective phenomenon, but also a specific explication of the thinking of a human being with the dynamics of his value position.

Attaching particular importance to the factors of value, representatives of the modern ontology (Iaspers, 2009) emphasize that cognition, in addition to logical and epistemological discourse, also includes the will, emotions and feelings of a human being, his emotional experience and evaluation. By asking the question "if we look at ourselves in our inner lives do we just find normativity and rational thinking there?", the answer will be clear. The latter is justified by the fact that it is rational thinking that is often conditioned by the emotional experience of a human being. Investigating the correlation of emotional and rational factors in the process of making moral decisions by a human being, V.V. Nadurak states the following, "rational arguments are a post-fact justification for instinctive reactions. This thesis depicts well one of the types of interaction between emotions and rational reasoning in the process of making moral decisions, that is, the emotions and actions they evoke may be followed by a rational substantiation" (Nadurak, 2016, p.26).

Requirements for legal decisions made by legislation and legal tradition provide for the argumentation of such a choice, which should be rational and logical. However, in the 1960s in the works of H. Perelman it was substantiated that a rational explanation of value choice is impossible. Instead, the scientist proposed to follow the rules of Aristotelian rhetoric. Later, this approach was developed in the works of J. Habermas (and in legal theory by R. Alexy) into the concept of rational discourse.

A pragmatic view of the value nature of decision-making has gained considerable radicalization in the works of representatives of legal realism (K. Llewellyn, J. Frank, K. Olivecrona). Attaching decisive importance to the empirical factors in the legal process, realists demonstrated a frankly negative attitude to the normative principle in general. Undermining the confidence in neutrality of legal norms, thereby destroying the syllogistic model of thinking, legal realism has proved that moral, political and other

views of judges influence the process of making judicial decisions. The way judges make decisions testifies to the fact that they do not pass judgements on legal grounds, but on the basis of their inherent sense that tells them what a fair decision should be in this particular court case. The source of cognition and realization of law is the individual experience of the judge, his or her psychological qualities, emotional motives, mood and other irrational factors. Reference to the norm is made only after the decision has actually been made in the mind (Huralenko, 2013, p.29).

Emotional regulation is complementary to the active and creative principles of a human being, his ability to go beyond adaptive and appropriate behaviour, determining the relativity of cultural standards of norms. Emotional regulation exists from the remotest times, it is independent and self-sufficient, available both in cognition and in being. On this basis, through the techniques of experimental psychology, it can be stated that the entire human life is identical with emotional experience, and the human existence is a continuous change of feelings, emotions, desires and evaluations. The flow of emotional experience is considered as the true and only reality, and it is in it that law is born. The law is a phenomenon of the human psyche, it exists only within us and not outside of us, it begins and ends with legal consciousness and human emotional life. The real law is something that comes from feeling. Its basis is not the norms created by the legislator, not external authority, but above all the inner world of a human being. The law cannot presuppose the absence of irrational phenomena of the human spirit. It combines individuality and uniqueness with universality, intersubjectivity and inclusiveness. It also embraces "fitting in" of individual uniqueness into the universal social being. This "fitting in" allows the transposition or "transfer of oneself to another place", whether the behaviour of the subject or the product of his activity, such as a legal act or a court decision. In every sense there is necessarily emotional experience, and therefore the evaluation. Understanding cannot be represented solely by the formulas of logical operations. It is impossible to begin to think rationally about what must first be experienced individually.

The metatheory of appeal to free and active spirituality, according to K. Iaspers, actualizes "certain forms of awareness as certain "moments" of

the formation of spirit, as moments that even develop and appear as their own forms in reality, but in fact existence and reality are realized by spirit. The spirit itself has the isolation of moments as a prerequisite, or it exists only in it, which is existence. Their visibility is existence to such a degree as if they existed; but to what extent they are merely moments that disappear, their further rotation and return to cause and essence show; and this essence is also the movement and the resolution of these moments (Iaspers, 2009, p. 337).

The presence of human, spiritual, personal and individual factors makes the question of the nature of decision-making and the nature of identifying facts that are always existentially full even more acute. From all the infinite set of sides and connections of this or that phenomenon (in the process of establishing the truth), the subject distinguishes, above all, what is important and essential to him. The latter is not completely subjected to rational control and is defined as "tacit knowledge", formed by the previous legal and life experience, and sets the context for the interpretation of certain actions. As a result of the situation the subject acts not from the position of the objective observer, but always from the engaged position, despite the fact whether he is aware of it or not. Investigating the circumstances of the situation, the subject gives his own assessment of the processes in terms of the level of his culture. The latter, being the basis of interpretation, is not fully objectified because it is included in the subconsciousness of the subject. In addition, the problem of evaluation, which should mean that the subject in the process of his interpretation of reality is invisibly for himself engaged in justifying the starting positions by choosing a favourable methodological toolkit, makes special sense in the field of practical activity. Therefore, in the field of law, a specialist in the process of cognizing legally significant events deals with the substantiation of a decision already made at the level of legal consciousness.

Thus, the basis of cognition is not so much a process of deductive thinking with strictly consistent discursive reasoning, but the value-ideal bases of being as the initial prerequisites for human understanding of the society and the like. Value is the main determinant of the dynamics of any cognitive process. The proclamation of some value as being true leads

to the fact that its universality must be recognized as undoubted in every new situation, while the infinitely diverse world of a human being makes it impossible. The hierarchy of values can be fixed in every specific situation by experiencing this situation. It cannot be reduced or eliminated. One should realize what value is "higher" every time. For this there is an "obvious preference", which cannot be replaced by any logical deduction. Therefore, each norm created to measure a particular action, meaning the scale of the equivalence of remuneration for such an act, requires a specific correlation within the overall assessment.

The variety and complexity of life situations (including legal) create the preconditions for the emergence of numerous thinking operations, the vast majority of which are not algorithmic but creative. Subordinating life to formal rules of behaviour is often imperfect, and requires the productive supplement through interaction. In order to correctly evaluate specific cases, the ability of judgement to determine the scale of "common" in each case is necessary. However, to "see" the common in the individual, the creativity is needed.

As the word acquires its unique and individual shade and essence in each case of its usage (Schweidler, 2017, p. 59), so does the norm, as a general one, acquires individual features in each situation. Taking this into consideration, a lawyer should apply the current legislation creatively in his practical activity, relying on legal cognition, life and professional experience and intuition in his work. He is like an architect who, according to approximate tasks, must create a design project and develop it to specific features. Logic cannot determine whether the action is "insignificant" or the evidence obtained in the case is "sufficient". In each case, one should use legal thinking on the basis of a "general sense" and common sense to determine whether a particular situation corresponds to a general rule. This general sense will generate intuitive one, evaluating from the point of view of "generality" and "directing" thinking to it.

Actualizing the development of paradigmatic anthropological challenges, which testify to the requests of developed societies for the total introduction of moral principles, V.V. Khmil and T.V. Khmil point out that "a human being who lives in harmony with moral values seeks to be the subject of self-creation, and not the object of external manipulation"

(Khmil, 2015, p. 11). Otherwise, such external manipulation becomes something amorphous to the human being, imposed on him from above.

Unambiguous characterization of cognitive activity as arising from purely formal dogmas, is based on a set of logic and legal a priori laws and regularities, puts as a basis, first of all, a form, overpassing the inner layers of the content of such thinking. The basic tenet of such an object-centric position of understanding of a human being is that not the human being asserts himself in the world, develops and realizes moral values freely, but formally fixed conditions dictate a form of life to him.

The main positivist principle on which professional legal activity is built, is that the law is the only, objective, independent, special, full of the autonomy of value defender of the order. The methodology of legal formalism emphasizes that the norms are applied mechanically in order to find the correct answer in each case, without using the subject's opinion and his estimates. The lawyer only proclaims the law, has no will of his own and is devoid of value orientations. At the same time, the limitations of such methodological view is obvious, taking into consideration the sacralization of the legislative authority, the perception of the lawyer as a "passive registrar" of real things, rather than an active revealer of the regularities of development of legal reality. The law cannot act without intermediaries; the judge, lawyer or prosecutor must be individuals with prudence, wisdom and responsibility, otherwise the positive law will be thoughtless, vicious and indifferent to the consequences of application. Cognitive intensity is a necessary component of cognition of law, the source of its regulatory energy. Moreover, it is the subject of cognition that chooses the cognitive methodology within which the law is realized, that is, either cognition of law is associated with the logic of perception of the surrounding reality and represents the traditional theory of cognition which is epistemology, or cognition of law appears as a specific process subordinated to the value dynamics of implementation of the norm. If in the first case (the movement is from reality to thought) the starting point is the legal reality, and the task of the lawyer is to give it an adequate description, then in the second situation (the movement is from thought to reality), we do not deal with descriptive side of the research of legal reality, but with a prescriptive value and activity approach to it.

In the process of cognition it is difficult to take the position of a detached onlooker, always revealing oneself as a participant in relations with other people, and thinking of one's being-in-the law from the inside. The intersubjectivity of knowledge testifies to the fact that law is conceived through the experience of the subject of cognition, and the overall picture of the legal reality consists of the community of each subject's individual experience. The essence of law does not dissolve in the external world but is considered as a result of a meeting (communication) of the subjects, during which the law is exercised and reproduced.

Thus, the problem of legal cognition is solved by revealing its rootedness in human existence, and the ontological question of what the right is like is resolved through the epistemological solution to the problem of what we are like. The process of cognition is always determined by a particular research paradigm, methodological approaches, specific perspective of understanding the essential nature of reality. True understanding of the sense and purpose of law is possible, first of all, proceeding from the cognitive capacity of the subject who began the research work, as well as his methods of work with legal matter. In order to be adequate to modern realities, cognition must become reflexive, that is proceed from the irresistibility of the subjective (personal) factor in it. In cognition special attention should be directed to the subject himself – his ideological, worldview, value passions conditioned by historical and cultural context. The subject, due to the abovementioned properties, does not appear to be distant from the world of the process, but rather included in it. In addition, it is constantly changing, as is the world of the process, in particular, the types, goals and means of its cognition.

The process of cognition is the process of communication of the subjects, associated with the inclusion of the acts of assessment into such process (Kastels, 2016, p. 156). The assessment consists of an act of comparison and recommendations for the selection of what is recognized as value. The evaluator makes judgements about utility or harm, correctness or incorrectness, necessity or unnecessity, rationality or irrationality. The assessment organizes practical activity. The dualistic combination of value and cognitive can be seen in the situations, when evaluating the phenomena and events without having the necessary information (some-

times such information cannot be obtained). In such cases, the subject makes an assessment relying not only on the information, but also on the taken measures, principles and his experience of treating the similar situations. The involvement of personal factors of the existential plan makes the problem of the essential nature of cognition even more acute, since the latter reflects both the social values and the understanding of the purpose and essence of one's professional activity.

Anything given concerns only the surface of what it testifies to. And when cognition penetrates deep, its tendency is to discover the inner. The choice of the true cognitive directions of descriptive (normative) or perspective (value) is certainly important for any cognition. At the same time, for cognition in the field of law, the results of which lead to special social consequences, this choice becomes of particular importance, which is why it imposes special requirements on its subjects (their cognitive abilities). Only when the subject of the application of the norm gets into the situation where he avoids the "mechanical substitution" of a separate norm for particular case, without taking into account its peculiarities, one can hope for a real solution to the conflict. In such cases, it is a matter of special cognitive means used in the cognition of the empirical world, since they combine cognitive and evaluative moments. The conflict situation should be resolved first in the categories of deontology, that is freedom and responsibility (Stezhko, 2018, p. 71), and then in the categories of empirical ontology, that is, the social environment, without replacing the former with the latter.

Scientific Novelty

The authors substantiate the essential nature of legal cognition as a specific form of personal beliefs, experience, value orientations of the lawyer, his understanding of the purpose and sense of professional activity. The problem of legal cognition is solved by revealing its rootedness in human existence, and the ontological question of what the law is like is resolved through the epistemological solution to the problem of what we are like. The process of cognition is always determined by a particular research paradigm, methodological approaches, specific perspective of understanding the essential nature of reality. True understanding of the

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Conclusion

Criticizing the positivist basis of cognition that in its worldview plane is subordinated to dogmatic schemes and aimed at substantiating dry formalism, bureaucratic routines and techniques of external manipulation, the paradigmatic anthropological methodological plane which is nonlinear, non-positive, volumetric and complex, addresses the deep structures of human existence through metaphysical and transcendental spheres of analysis.

When focusing exclusively on the normative relevance of cognition, the role of cognitive intensity of the subject of cognition is neglected. At the same time, the problem of which sides, fragments and qualities of objective reality are involved in the cognitive relation, depends on him, and the separation from the objective reality of the part that acquires the cognitive quality of the object, depends on his cognitive activity. The unambiguous characterization of cognitive activity as arising out of purely formal considerations states its basis, first of all, a form, leaving aside value and sense internal layers of the content of such cognition. The cognitive intensity cannot but be transformed by the consciousness of the recipient. The understanding of law, which is already to some extent conditioned by the personal, value and professional qualities of a specialist, is realized in the professional activity of the lawyer.

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Öz: Makalenin amacı, yasal bilişi, değer-varoluşsal seviyesinin felsefi kanıtı ve normatif-teknik seviyenin eleştirisi, yani tanımlayıcı ve perspektif (değer) yönlerini seçme problemini anlamak yoluyla analiz etmektir. Belirtilen amaç, aşağıdaki görevleri tutarlı bir şekilde çözmektir: a) yasal bilişin antropolojik uygunluğunu araştırmak; b) bir avukatın bilişsel mesleki faaliyetinde değer yönelimlerinin ve tutumlarının atfedilmesini kanıtlamak; c) karar vermenin inisiyatif-bilişsel modelini karakterize etmek.

Anahtar Kelimeler: Bilinç, değer yönelimleri, duygusal düzenlemeler, sorumluluk, biliş, yasal biliş.