



About Certain Philosophical-Legal And General-Theoretic Issues

(Based On The Base Of The Textbook's Analysis For Higher Educational Institutions By Viatasław Nikolayevich Zhukov "Philosophy Of Law." M.: Mirfilosophy, Algorithm, 2019.- 559)

Vladimir Valentinovich Kozhevnikov

Dept. of Theory and History of State and Law, Dostoevsky Omsk State University, Omsk, Russia
Email: kta6973@rambler.ru

Abstract:

The purpose of this review was an objective evaluation of the textbook "Philosophy of Law" by the Professor Zhukov Vyacheslav Nikolayevich. For the achievement of this purpose there are the following objectives: 1) to show the advantages of the presented work; 2) to draw the author's attention to the shortcomings, they are concerning: A) inconsistency in the determining of the status of the philosophy of law; B) position of the dominance of the legal psychology over the legal ideology within the legal consciousness; C) often unwarranted identification of such concepts as legality and legitimacy; D) other provisions of work. The result. The author of this article concluded that, despite the shortcomings which may be controversial and debatable, the work of the Professor Zhukov Vyacheslav Nikolayevich deserves attention of students, teachers and scientists, who takes an interest in studying of the difficult problems on the philosophy of law.

Keywords:

philosophy of law; its status; legal psychology; legality; legitimacy; state functions; state sovereignty

I. Introduction

This scientific article was prepared on the basis of the analysis of the textbook by Vyacheslav Nikolayevich Zhukov, who led to the possibility of the considering of a number of philosophical-legal and general-theoretic issues.

II. Review of Literature

2.1 Metaphysical (Dialectico-Materialist)

- a. general scientific (analysis, synthesis, abstraction, comparative, etc.),
- b. Private-scientific (dogmatic, methods of interpretation, etc.).

2.2 The Domestic Philosophy of Law in the Position of Formation

The studying of the scientific work "Philosophy of Law" [1] by Vyatcheslav Zhukov, Doctor of Law and Philosophical Science, Professor of Moscow State University n.a. Mikhail Vasilevich Lomonosov, in our opinion, proves that the modern philosophy of law is currently in a position of formation and development. Such statement is made because the authors of textbooks or teaching books on this discipline define their content differently, they often based on their scientific interests [2, 3, 4, 5]. If we compare such works on the theory of state and law, despite scientific pluralism, there is a monotony of the topics under consideration: the concept of the state and law, their characteristics, functions, forms, etc.

2.3 On the Structure and Content of the Textbook by Vyacheslav Nikolayevich Zhukov

As for reviewed work, it is structurally presented in the form of appropriately differentiated 4 sections: the philosophy of law as a branch of knowledge: axiology of the state and law; ontology of the state and law; legal awareness and legal culture. As the scientist notes, "the textbook covers the main problems of the theory and history of the philosophy of law. Great attention is paid to the issues of the methodology of the philosophical and legal researches, the status of the philosophy of law as a scientific and educational discipline." It should be noted that with the covering of a number of philosophical and legal issues, the author defends his independent and sometimes original positions, which is differ from those generally accepted. For example, the scientist argues that it is necessary to build a State based on the almost complete dependence of a citizen on the State. The life, property and safety of a citizen depend to a critical extent on the State. The citizens are primarily the building material for the state, and only then there is a question of their person. Contrary to the categorical imperative by Immanuel Kant, it is stressed that "the citizens are mainly means, they are the goal as the persons only in the second place... To be a citizen of the state means to accept its unlimited power over themselves, to serve the state unselfish and to be ready to sacrifice for it not only the well-being, but even the life "[1, p. 417].

III. Result and Discussion

3.1 Textbook or Monograph?

It should be noted that practically any work, including the reviewed work, is not devoid of any shortcomings, controversial provisions and allegations. First of all, we believe that the presented work (essay, study) cannot be considered in the form of a textbook not in terms of content, structure, language of presentation, but is a scientific monograph. With regard to private comments, their essence is the following:

3.2 On the Status of the Philosophy of Law

It seems that, unfortunately, the scientist has not finally established himself on the issue of the status of the philosophy of law, because there are clearly contradictory author's statements in the work. For example, Professor Vyacheslav Nikolayevich Zhukov believes that "philosophy (apparently, and philosophy of the law - Vladimir Valentinovich Kozhevnikov) cannot be identified with the science, because the philosophy always goes beyond the science, seeking to give a meaningful, value-based picture of the world"; "Philosophy is not the science, although it refers to rational forms of thinking"; "If to try to briefly articulate the distinction between philosophy and science, it can be said: the purpose of the science is to obtain knowledge, the purpose of the philosophy is to gain the meaning." [1, p. 13]. In principle, such line of the distinction between the philosophy and the science is made by the scientist in other places of work: "philosophy is a special type of knowledge and there is a searching of the ultimate meaning, value and logical bases of things within the framework of this knowledge" [1, p.27]; "Unlike the science, in the philosophy the ratio of absolute to relative truth looks somewhat different" [1, 31]; "In philosophy and philosophy of law, subjectivity in the understanding of the truth is enhanced many times. Unlike the social science, the philosophy does not so much examine the properties of things as it tries to understand their meaning "[1, 33].

On the other hand, the scientist, writing about the philosophy of law, notes that it is a "fundamental legal discipline" [1, p.104]; draws the attention to its scientific [1, p.129]; academic nature [1, p.117]; it has the status of the fundamental legal science [1, p.452].

By the way, when we prepared a manual on the philosophy of law [6] and later, turning to its scientific articles, such inconsistency of the scientist in the determining of the status of the philosophy of law also had place. Thus, at first Professor Vyacheslav Zhukov, stating that "philosophy is not science," but "is always a subjective idea about the world," believes that "recognizing the pluralism in the philosophical and legal concepts, it is necessary always to test them for the strength, critically assessing their heuristic capabilities," [7] however, then already he recognizes the philosophy of law as the science [8].

3.3 On the Structure of the Legal Consciousness

There is the highly debatable claim of the author that... "Legal psychology is a more significant part of legal consciousness than legal ideology." For the rationale provision it is noted that "such a relationship is determined by the simple fact that the animal life of human is primary to its spirituality" [1, p.497]. In any case, it should be pointed that the theory of legal consciousness draws attention to the fact that "in reality, legal ideology and legal psychology are not separated from each other, they are intertwined and interpenetrated into each other, closely interact with each other" [9]. It should be stressed that there is the analyse of the issue of the relationship between legal ideology and legal psychology in the theory of legal consciousness. So, in due time Leonid Ivanovich Spiridonov, speaking about the structure of legal consciousness, in the beginning he considers the rational sphere within which the person get some knowledge about the objective world collects, skills, abilities which are necessary for daily activity of everyone and form its conscious basis, and then allocates emotional area, it is the psychological relation to the facts of legal reality which is shown in emotions, mental experiences, installations [10]. Magomed Imranovich Abdulayev and Sergei Alexandrovitch Komarov believe that legal psychology on the content of knowledge about the law, as well as on the way of their formation, is significantly different from the legal ideology. It finds itself most fully in the formulation and detail of the legal norms and a lesser extent, in the definition of legal principles [11]. We also draw attention to the fact that some authors, when they are analysing these elements of legal consciousness, believe that "the role of the main and active element in legal consciousness belongs to legal ideology as a systematic, scientifically based, theorized reflection of legal validity" [12], others, on the contrary, argue that... "Legal psychology acts for the original sphere of legal consciousness, representing the organic unity of conscious and unconscious, emotional and rational, directly and directly reflecting the daily needs of people [13, 14, 15].

Without going into this discussion in detail, in particular on the validity of the including "rational" into the legal psychology, the following principle should be borne in mind: before treating the law at the level of individual legal awareness, the State legal reality (respectful or not) (legal psychology), it is necessary, in one way or another, to know the law, its basic principles (legal ideology).

3.4 Legality and Legitimacy

We note that Vyacheslav Nikolayevich Zhukov very often operates such concepts as "legality" and "legitimacy" in the analysis of certain philosophical and legal problems, often unduly identifying them. In order not to be unfounded in this regard, we can give some author's statements: "the perception by the people of their State as a phenomenon of beauty, sublime and perfect, speaks of the legitimacy of this power..." [1, p. 215]; "The legitimacy of the public authority means its actual acceptance by society or its majority" [1, p.356]; "Power is always violence, the State makes violence institutional and legitimate" [1, p.390]; "The State becomes the instrument, the channel through which aggression acquires legitimate and legitimate status" [1, p.396]; "Among the main properties (it is about law-Vladimir

Valentinovich Kozhevnikov) are called: regularity, formalism, coercion, common duty, legitimacy..." [1, p. 423-433].

It seems that these examples make necessity to define these concepts, which, in our view, should differ and be understood as follows. So, legitimate state power is the power, corresponding to the ideas of the people, society about its justice, correctness, validity. Legitimacy is based on the belief of people that their benefits (material and spiritual) depend on the preservation and maintenance of this order in society, the belief that the existing order expresses their interests, and this order is determined by the activities of the State power, ensuring the obedience, trust and political participation of the population. As for the legality of the State power, it means the legal justification of the power, the conformity of the actions of the State bodies according to the existing legislation in the country. Legal power is the legal power, and its origin, organization, powers, forms and methods of activity must be legal.

3.5 Other Comments

It seems, there are other shortcomings in the presented work. For example, it is difficult to understand the author, who first believes that "science can take place only where and when laws and patterns are concerned, any repeatability or dependence" [1, p.85], and later argues that "fundamental legal science does not examine the patterns of the emergence, development and functioning of the State and the law. (They are practically non-existent), but describes known political and legal forms, based on various criteria, including value ones" [1, p.191]. In this regard, it seems it is very appropriate to cite the view of Carl Marx, which remains relevant in the modern period of the development of the science: "If the form of the manifestation and the essence of things directly coincide, then any science would be unnecessary. Therefore, the task of science is to reduce the visible movement only to the actual internal movement" [16].

Moreover, there are also inaccuracies in the work, failed expressions: unjustified identification of comparative and comparative-legal methods in the analysis of legal systems [1, p.88]; The latter, being the main method in the system of the methodology of comparative-legal research is according to the afghan scientist Hashmatullah Bekhruz, "as a set of methods and techniques for the identifying, on the basis of comparative study of general and specific patterns, the emergence, development and functioning of various legal systems" [17]; "humankind develops progressively towards communism, the change of socio-economic formations entails the change of forms of the state..." [1, p.398], although reference should be made to the types of States; Unjustified identification of legal liability (civil law) and remedies (reparation) [1, p.274]; "The monopoly of coercion is one of the main features of the State" [1, p.359], although it is clear that it is one aspect of the expression of the State sovereignty; "The modern State has made law an integral function..." [1, p.434], although in the future the author rightly believes that "law is one of the instruments of the social management..." [1, p.434].

3.6. Discussion

A debating issue is the status of the philosophy of law: is it the science or the specific reflection of the legal validity. When the philosophy of law is recognized as a science, the question again arises: is it philosophical or legal science, or, as professor Vladimir Ivanovich Chervonyuk noted,... "this is a marginal branch of the sociohumanitarian development of the social and legal world, the development of which can equally be carried out in solidarity by philosophers and legal scholars" [18].

IV. Conclusion

In conclusion, It would like to be pointed out that, despite the shortcomings we have expressed, which may have a controversial and debatable nature, the work by professor Vyacheslav Nikolayevich Zhukov deserves the closest attention of students, teachers and scientists, who takes an interest in studying the difficult issues of the philosophy of law.

Recommendation

It seems that by studying this textbook on the philosophy of law should, first, take into account the provisions of not only general philosophy, which is the methodological basis of the first, but general theory of law, its conceptual-categorical apparatus. Secondly, to determine until the end the status of the philosophy of law, in its subject matter, methodology, functions.

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