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# THE CONCEPT OF LAW: HISTORICAL AND PHILOSOPHICAL ANALYSIS

In the Ukrainian society, there is a growing focus on legal issues. Particularly urgent these problems acquire for our state in the context of transformational transformations of globalization of the world. Increasingly, the growing interest of philosophers, lawyers and scholars of other branches of knowledge is precisely in the process of conceptualizing law, as the main factor in social transformation. The methodological basis of this study is based on philosophical and general scientific methods and principles, the most important of which is the very historical and philosophical principle. Consequently, law as a form of development of social relations occurs before the state, as objectively determined by the natural development of primitive society. It is noted that the emergence of law is a logical consequence of the complication of social interactions with the aggravation of social contradictions and conflicts. The law has a power-regulating character and is quite a powerful regulator social relations for the existence of order in society.

*Key words:* law; philosophy of law; concept of law; subjective right; objective law

**Introduction.**The current stage of development of Ukrainian society is characterized by increased attention to the legal issues. The diversity of the essence of the complex problems of economic, political and social plans focused on the need for their philosophical comprehension and proper legal solution. The legal and the whole system of legal relations is an ontological basis that affects all spheres of public life. People's desire to restore justice, equality and freedom is impossible without constant development and improvement of the rule of law. Therefore, the concept of law, which in its essence is a multifaceted complex phenomenon of social relations, is constantly in the sight of scientists of different specialties. Philosophical approach to the phenomenon of law, unlike all other approaches, is characterized by knowledge, understanding and argumentation of the basis of law with reflexive positions, which rely on general philosophical theory, and is a concretization of general relations between philosophy and special sciences. The prominent French philosopher Georges Gurvich is convinced that the definition of law should be given to the legal science (at different levels of its development) by philosophy (Bekker G., Boskov A. 1961, p. 486).

This problem becomes especially acute for our state in the context of transformational transformations of globalization of the world.

Recently, we are seeing an increase in the interest of philosophers, lawyers and scholars of other fields of knowledge precisely in the process of conceptualizing law as the main factor of social transformation as an objective measure of justice. It is worth noting the assertion, as F. Gegel noted, that all world history is interpreted under the philosophical and legal horizons - as progress in the consciousness of freedom and its objectification in political and legal forms and institutions. And in this context, the phenomenon of law unfolds through the discovery of the dialectical

movement of the concept of law from its abstract forms to specific - from abstract law to morality, and then to morality (family, civil society, state). Thus, according to Hegel, the concept of law in its position is interpreted outside the scientific law, and with the help of a dialectical method unfolds in the system of theoretical constructs, which help to justify certain political and legal views (Kerimov D.A., Nersesyanec V. S., 1990, p. 6 – 7). Significant contribution to the understanding of the phenomenon of law as a norm of conduct, which is established and protected by the state, was carried out by Maximov SI, VE Rubanik, LM M. Dobrobog, VP Marchuk, Ladychenko V. V., Makarchuk VS, Miroshnichenko MI, Zhovtobruch MM, Litvinov O. M., Mikhailenko P.P., Bilenchuk P.D., Bachinin VA, Baoeysterer A.O., Slyvka S.S. However, in spite of the considerable scientific work of research on the problem of law as the basis of normative formation and general behavior of citizens, the process of conceptualizing law as the main factor of transformation as an objective measure of justice has not yet found sufficient social historical and philosophical analysis.

**Purpose of the article.** The purpose of this work is the historical and philosophical analysis of the concept of law and the study of its influence on society in different epochs of human development.

**The object of research** is the concept of law. The subject of the study is the conceptualization of the phenomenon of law in the historical and philosophical context. The methodological basis of the research is based on philosophical and general scientific methods and principles, the most important of which for our study is the very historical and philosophical principle. Comparative analysis allowed to reveal the peculiarities of the phenomenon of law in different countries. Also in work the necessary tool for achieving the goal were the principles of systematic, unity of historical and logical approaches, and others.

**Statement of the main material.** Consequently, the law, being a complex system of mutually agreed elements, can not be reduced to only one element of the norm or to the totality of the existing legal relations in society (law and order). "Right," - noted A.V. Polyakov and E.V. Tymoshina - should be defined as a communicative order of relations, based on socially recognized obligatory norms, participants of which interact through the realization of their rights and responsibilities. " (Zolkin A., 2014, p. 129-130).

The law arises as a necessary condition for the life of any society to regulate relations between its members. Social regulation, as the norm of interaction and control, comes to human society from distant ancestors. At the dawn of human civilization, in conditions of tribal relations, the main regulators in society were the customs, which fixed the centuries-old, most useful for people variety of behavior. The customs were changing very slowly. Then there appeared closely related to the habits of the idea of good and evil, the norms of social morality and religious dogma. All these ideas gradually merging in a syncretic form into a single normative complex, which provides important regulation of social relations. The age-old customs, checked by many generations of people, were considered as given "from

above". The most important of them were authorized by the state and became important sources of customary law. If the customs were in the minds and behavior of people, then the legal rules began to be formed in writing for public use. The emergence of law as a result of the complication of social ties, the exacerbation of contradictions, the settlement of which the original rules were not enough. Therefore, the right to a more complicated regulator than customs became increasingly important in the foreground, because in addition to objections, it used such means of regulation as permission and commitment, which provided wider opportunities for multi-level regulation of social relations. According to most researchers, the legal rules consisted of three ways, namely: a.) Custom and customary law found support in the authorized state, that is, it gave permission to practice customary law that was beneficial to certain segments of the population who were in power. Thus, the historically formed general rule of human behavior repeatedly repeated and supported by the power of the state is a source of customary law; b.) In addition, for the fulfillment of other tasks, the state service issues special acts (orders, laws), binding for execution within the limits of the given state and supported by force of the states of its coercion, which is an important direction of law-making; .) the formation of case law, which is one of the ways of forming the legal rules that have emerged in resolving specific disputes, on which judicial or administrative authorities make decisions, based solely on their own ideas of justice. These decisions in the future prove to be the guideline when solving similar conflicts. Consequently, as a result of such a means of formation of law, we obtain such a source of law as a legal (judicial) precedent from which a case law forms. This source is characteristic of the Anglo-Saxon legal system, for which the court decision on a particular case is in the future binding on other courts in resolving similar cases.

The right arises as a necessary condition for the life of any society to regulate relations between its members. Social regulation, as the norm of interaction and control, comes to human society from distant ancestors. At the dawn of human civilization, in conditions of tribal relations, the main regulators in society were the customs, which fixed the centuries-old, most useful for people variety of behavior. The customs were changing very slowly. Then there appeared closely related to the habits of the idea of good and evil, the norms of social morality and religious dogma. All these ideas gradually merging in a syncretic form into a single normative complex, which provides important regulation of social relations. The age-old customs, checked by many generations of people, were considered as given "from above". The most important of them were authorized by the state and became important sources of customary law. If the customs were in the minds and behavior of people, then the legal rules began to be formed in writing for public use. The emergence of law as a result of the complication of social ties, the exacerbation of contradictions, the settlement of which the original rules were not enough. Therefore, the law to a more complicated regulator than customs became increasingly important in the foreground, because in addition to objections, it used

such means of regulation as permission and commitment, which provided wider opportunities for multi-level regulation of social relations. According to most researchers, the legal rules consisted of three ways, namely: a.) Custom and customary law found support in the authorized state, that is, it gave permission to practice customary law that was beneficial to certain segments of the population who were in power. Thus, the historically formed general rule of human behavior repeatedly repeated and supported by the power of the state is a source of customary law; b.) In addition, for the fulfillment of other tasks, the state service issues special acts (orders, laws), binding for execution within the limits of the given state and supported by force of the states of its coercion, which is an important direction of law-making; .) the formation of case law, which is one of the ways of forming the legal rules that have emerged in resolving specific disputes, on which judicial or administrative authorities make decisions, based solely on their own ideas of justice. These decisions in the future prove to be the guideline when solving similar conflicts. Consequently, as a result of such a means of formation of law, we obtain such a source of law as a legal (judicial) precedent from which a case law forms. This source is characteristic of the Anglo-Saxon legal system, for which the court decision on a particular case is in the future binding on other courts in resolving similar cases.

Unlike social norms and prohibitions of tribal organization, legal relations in the state system are determined by the following characteristics:

1.) the general obligation which applies to every member of society who is in the territory of this state;

2.) formal certainty, which is a very important feature of law, it is through it that the forms of external objectification of sources, determined by the official (laws, orders, etc.), are determined, and therefore these rules are woven as legal;

At the same time, the content of legal norms receives a clear logical structure, establishes certain limits of behavior of people, clearly defining their rights and responsibilities. Thus, law as a form of development of social relations occurs before the state, as a natural objective result of the natural development of primitive society. But the symbiosis of state and law gave development, which included a number of areas, primarily the improvement of the economy, the consolidation of organizational structures of society, as well as changes in regulatory regulation.

To summarize, we can say that the right is a collection of established mandatory rules of conduct, secured by the use of lawful coercion, regulating social relations. It is important to note that the concept of law and its characteristics can be transformed depending on the particular state.

The emergence of law is a logical consequence of the complication of social interactions, the deepening and aggravation of social contradictions and conflicts. The law is recognized to regulate social relations, to ensure that nobody has ever been able to interfere with human freedom. The same applies to the property of people. The law is driving us into a certain framework that is created to ensure that

we are protected and secured. The law should have a compulsory state-volitional character. His class and universal human nature is manifested precisely in this.

**Conclusions.** It is noted that the change of ideological paradigms has changed not only the church. And all the spheres of society - culture, education, economy, law, state power, etc. (Heremeti R., ta Romanenko O., 2017, p. 125). Considering the content and essence of law, it is worth saying that its character is normative. This is due to his manifestation in real life. It is represented by a set of different legal norms. Normative expression is very important, since the will is embodied in the law, will have no legal force. The state should be in a certain connection with the law. It is manifested in the fact that the state has the ability to perform only those coercive measures that do not contradict the law. In principle, this applies only to the rule of law, which really takes into account the existing laws. An important formal right definition. In this case, it is characterized by a specific structure of norms (hypothesis, disposition, sanctions), the relationship with the duties that must be performed in order to be the owner of the law, legal technology, which formalities are formalized. But for the first time on the connection between political and legal views VN Karazin with philosophy Y.G. Fichte pointed out the author of this monograph at the 3rd Congress of the "International Community named after Y.G. Fichte "in September 1997 (Schulproford, Germany) in his report" Influence of YB Shada in Ukraine in the first third of the 19th century" (Abashnik V.A., 2014, p.48).

The rules of the law of the state conclude in certain forms, which are ways of expressing his will. Normative-legal act - this is the main form of law. They can be different. Of course, the most significant and the main of them in our country, as well as in many others, is the Constitution itself. The law has a power-regulating character and is quite a powerful regulator of social relations for the existence of order in society.

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## КОНЦЕПТ ПРАВА: ИСТОРИКО-ФИЛОСОФСКИЙ АНАЛИЗ

В украинском обществе все больше внимания уделяется правовым вопросам. Особенно остро эти проблемы приобретают для нашего государства в контексте трансформационных преобразований и глобализации мира. Наиболее растущий интерес философов, юристов и ученых других отраслей знаний находится именно в процессе концептуализации права, как главного фактора социальной трансформации. Методологическая основа данного исследования базируется на философских и общенаучных методах и принципах, важнейшим из которых является именно историко-философский принцип. Следовательно, право как форма развития общественных отношений возникает перед государством, поскольку объективно определяется естественным развитием первобытного общества. Отмечается, что возникновение права является логическим следствием усложнения социальных взаимодействий с обострением социальных противоречий и конфликтов. Закон имеет силовой регулирующий характер и является достаточно мощным регулятором социальных отношений для существования порядка в обществе.

*Ключевые слова:* право; философия права; понятие права; субъективное право, объективное право

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## КОНЦЕПТ ПРАВА: ІСТОРИКО-ФІЛОСОФСЬКИЙ АНАЛІЗ

В українському суспільстві все більше уваги приділяється правовим питанням. Особливо гостро ці проблеми набувають для нашої держави в контексті трансформаційних перетворень та глобалізації світу. Все більше зростаючий інтерес філософів, юристів і вчених інших галузей знань знаходиться саме в процесі концептуалізації права, як головного чинника соціальної трансформації. Методологічна основа цього дослідження базується на філософських і загальнонаукових методах і принципах, найважливішим з яких є саме історико-філософський принцип. Отже, право як форма розвитку суспільних відносин виникає перед державою, оскільки об'єктивно визначається природним розвитком первісного суспільства. Відзначається, що виникнення права є логічним наслідком ускладнення соціальних взаємодій з загостренням соціальних протиріч і конфліктів. Закон має силовий регулюючий характер і є досить потужним регулятором соціальних відносин для існування порядку в суспільстві.

*Ключові слова:* право; філософія права; поняття права; суб'єктивне право; об'єктивне право

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