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SPECIFICS OF NORMATIVE THEORIES AND LAW

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Abstract

The article analyzes the basic functions and criteria of knowledge being scientific in normative theories and shows the possibilities of their implementation in the theory of law. Natural scientific theory is considered as a model for scientific theory making. The model scientific theory consists of axioms, or principles, laws, and a set of notions. Unlike scientific theories any normative theory does not consist of laws. So the main function of normative theory is understanding, but not explanation. The article shows specific features of such scientific legal theory functions as description, explanation, foresight and understanding. New interpretations of such scientific criteria as subject-matter, objectivity, authenticity, validity, verifiability and falsifiability are being considered, specific character of normative science knowledge being taken into account. Humanities regard their knowledge subject matter as created by knowledge itself and by mind, and deny the point of view according to which subjective perception of the world owes to this world itself. Humanitarian sciences are mainly based on pragmatic truth concept. Knowledge and cognition are objective if they correspond to objective values, i.e. those which we can not abolish or revise. In humanitarian cognition the object includes a cognizing subject. So the presence of the subject in the cognized reality is expressed by the fact that knowledge fixes or expresses a subjective attitude to the object in objectified forms and in linguistic form, first of all. Specific nature of scientific legal theory and epistemological status of principles, presumptions, fictions, and theoretical concepts of legal science are mentioned.

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1. Introduction

The issue of scientific theory structure and functions in natural and mathematical sciences is studied well enough while it is not typical for social and humanitarian sciences. The article is aimed to eliminate this gap.

In modern natural science a scientific theory is the most developed form of systemic knowledge. A scientific theory has a certain structure that includes: 1) initial principles, or axioms, 2) general rules, 3) a set of idealized objects and relevant concepts, 4) a set of rules used to find and accept evidence 5) a set of theoretically grounded statements referring to real objects, 6) an empirical fact-represented basis (Jong & Betti, 2010). It is important to pay attention to the fact that the main structural elements that include *principles, laws, and concepts* perform specific functions inherent to theoretical knowledge. They comprise description, explanation, foresight, and understanding.

2. Problem Statement

The problem is to determine the structure of scientific theory and clarify its functions in legal science.

3. Research Questions

The description is an important function of scientific knowledge which is defined as reality representation in a certain iconic conceptual form. Each science uses its own language, so the same subject is characterized differently in various sciences. Description cannot be true or false, however, it can be relevant to the goals and objectives set by the researcher or not. If some action needs legal interpretation, legal language is used for this purpose.

The explanation is the second most essential function of scientific theory. The explanatory function is realized in various forms, in particular, as causal explanation; explanation through law (nomological explanation); structural-systemic, functional and genetic (or historical) explanation.

The explanation is the procedure of deducing some given phenomenon, a commonly-known fact with the help of some scientific law, rule, or norm. This definition refers to the most general type of explanation, i.e. nomological. The explanation is aimed at providing that the explained phenomenon, process, event or fact should be taken as an integral part of general connections and patterns. The explanation always refers to already known facts, events and phenomena. Through explanation, for us an isolated fact acquires the status of something general, at least meant general. Therefore, due to the explanation we treat some fact as something which under certain conditions and circumstances will come true to life anyway. And we can get prepared for this or that event coming. Thus, it is important for us to know which events are predictable and which are not.

In the humanities, typologies often serve as explanation basis, and explanatory procedures are inevitably supplemented by awareness and interpretation, in particular, assumptions and meanings, as well as implications of the texts and cultural phenomena.

Another important function of knowledge is foresight, or prediction. According to scientists'

opinion, it is the main function of science. In its logical structure, foresight is similar to explanation and has the form of reasoning. In terms of content, the difference lies in the fact that the latter should explain the facts already known, while foresight refers to some unfamiliar facts, phenomena, and objects. This function characterizes the heuristic potential of scientific knowledge and denotes deducing probability of new unaccustomed objects, properties, phenomena, processes from general scientific laws. This function also determines cognitive value of scientific theory.

Understanding is a specific function of humanities, and it denotes revealing the sense of some creations. Human creations include everything that we generally call culture: speech, texts, gestures, actions, machinery, buildings, channels, etc. Dilthey (1995) distinguished two understanding concepts. One of them can be referred to as psychological because it is based on empathy (ability to have insight into the inner world of another person). It proceeds from the fact that understanding is being inspired with ideas, motives and goals of that product's "author". At the same time, understanding requires an ability to put oneself in the place of other people, and, in some respects to become another person and to realize that creating the very work which gist we try to understand is possible and necessary. Such way of understanding is used in legal science as well. Thus, through an appeal to personal characteristics of a legislator who introduces bills, we seek to reveal the meaning of these or those laws.

The second understanding of concept is related to the idea of a literary work as a sign system, as a "text" in broad sense of that word, and is called semantic. Here the sense of a text is determined by its meaning within a certain context. Indeed, while interpreting the meaning of a sign, we resort to the sphere of some meanings set linguistically, that is, by means of some language and text. Here the text is made meaningful, and the sense depends on the context to be chosen and the goals of the interpreter. The procedure of understanding described above is also embodied in the work of lawyers who are always concerned with laws' appropriate interpretation. Interpretation of legal rules is a regulated procedure. Constitutional, Supreme and Arbitration Courts of the Russian Federation are entrusted with the function of interpreting legal norms that become officially recognized and binding both in theory and practice.

4. Purpose of the Study

The purpose of the research is to analyze the main functions and criteria of knowledge being scientific in normative theories as well as manifesting their possible implementation in the theory of law.

5. Research Methods

One of the research methods used is the method of analogy between natural sciences and humanities what concerns scientific theories applied. When discussing this issue, we should keep in mind that these standards have been developed in the field of mathematical and natural sciences. The set of basic requirements is used in humanitarian sciences as well. However, the specific nature of humanitarian subject makes us search for new meanings of subject-matter, objectivity, truthfulness, relevance, verifiability and falsifiability.

6. Findings

The important issue of legal science methodology is connected with the standards for some theory to be considered scientific. A set of basic requirements includes subject-matter, objectivity, truthfulness, relevance, systematic organization, verifiability, and falsifiability.

The subject-matter of scientific knowledge implies relevance to the reality existing independently of the fact of knowledge. The subject-matter entails distinction between a subject of knowledge and knowledge of a subject. Based on the foregoing, the subject-matter of knowledge means that the concepts expressing knowledge (knowledge of that specific subject) are not empty, i.e. there is a real subject of knowledge. This requirement allows distinguishing scientific knowledge from those types of knowledge, the subject of which depends on the knowledge itself, and therefore the subject of knowledge (meaning) and knowledge of the subject (its sense) appear indiscernible. Here the subject of knowledge is not an actual one which exists in reality as in the first case, but it is created and constructed by mind. It is typical not only for mythological thinking, religion, and ideology, but true for the humanities as well. Unlike these non-scientific cognition forms, scientific humanitarian thinking could differentiate hypothesis about some physical thing existing and its existence not depending on any assumptions. That is, humanities regard their knowledge subject matter as created by knowledge itself and by mind, and deny the point of view according to which subjective perception of the world owes to this world itself. The humanities study the world people create, live in and make use of.

Another important criterion of being scientific is truthfulness. The traditional Aristotle version says that the truth is the knowledge corresponding to objectively existing object. Truthfulness stipulates knowledge having an object. To ascertain truthfulness of knowledge there should be certain methods to provide conformity of knowledge to reality. These methods can be both logical and empirical. The criterion of truth being considered, the classical definition mentioned above is to be supplemented with other concepts of truth (e.g. coherent, pragmatic, semantic concepts, etc.). The classical concept of truth works well for natural sciences because of them always dealing well with reality, either existing or replicable with the help of experiments. The coherent concept of truth fits mostly those sciences that deal with text objects (e.g., historical sciences). Projective sciences, i.e. sciences concerning constructed objects, which include technical and socio-humanitarian sciences, are mainly based on pragmatic truth concept. In such a case, truth means correctness, or conformity to some rule.

Pragmatic understanding of truth means the possibility of creating certain things, processes and phenomena on the basis of knowledge. Humanitarian knowledge is aimed at constructing a lifestyle based on relations and actions, i.e. at creating a subject living according to certain rules. In this connection, valid is the hypothesis that humanitarian legal theory describes the conditions of the law subject arising. These conditions are realized and exist in legal communicative acts.

Further, according to the traditional understanding of the criterion of objectivity, knowledge content should not depend on cognizant. Thus, objectivity means that knowledge content shall not reflect the fact of man's existence in the world as a being cognizing and knowing this world. Such an interpretation of objectivity is unacceptable for humanitarian cognition, since the subject of the latter is human reality meaningfully determined by consciousness, will, interests, and needs of a human.

Nevertheless, the idea of "eliminating" subjective component in knowledge about the object can also make sense in humanitarian cognition.

Objectivity in natural sciences is an indicator of knowledge content being dependent on the object, but not on the cognizing subject. In other words, objectivity proves dependence of knowledge on some aspect the subject does not determine by himself or herself. Developing this idea, we would like to propose such an approach to objectivity which can be useful in humanistic normative sciences. They interpret objectivity as the dependence of normative knowledge content not on the subject's arbitrariness, but on the "nature" of the subject that determines his or her being and consciousness. In this case, the knowledge objectivity and its value orientation are quite compatible. Value system as well as focus on certain details does not depend on the individual himself; in case an individual rejects these values or denies his or her identity. Therefore, knowledge and cognition are objective if they correspond to objective values, i.e. those which we cannot abolish or revise. To sum up, for a human being, objective values are those that make him or her human.

The value-based understanding of objectivity is rather essential for humanitarian cognition. According to this approach, justice, equality and freedom are objective legal values are due to their implementation in legal cognition and knowledge.

According to another requirement of validity, all scientific knowledge should have its grounds that can be both empirical and logical. Validity criterion demands scientific knowledge to be systematic. In other words, scientific knowledge should represent a set of logically connected elements of knowledge (concepts and propositions). The connection type between elements within this system (for example, concepts) is either coordination or subordination.

Humanitarian theory is peculiar due to specific features of the language used in the humanities to describe special "humanitarian" subjects. Most humanitarian theories are substantive theories, but it does not mean that they cannot become axiom-based or even formal. Complex and amorphous language structure of humanitarian theories often makes it difficult to reveal their logical structure, although does not deny having such a structure, or even having a special humanitarian theorizing approach.

In humanitarian cognition the object includes a cognizing subject. In syntagma, the presence of the subject in the cognized reality is expressed by the fact that knowledge fixes or expresses a subjective attitude to the object in objectified forms and in linguistic form, first of all. The object cannot be described beyond these relations' context. In other words, humanitarian theory is a theory focusing on cognitive conditions, and subjective human attitude to the world (Nevvazhay, 2014a, 2014b). This relation changed, the reality described is changed as well. So, what forms of knowledge describe a person's attitude to the reality? They are well known in legal knowledge field. These are principles, presumptions and fictions. Presumptions and fictions show what happens in legal reality, i.e. a set of interpretations of human experience, deeds and actions. The theory offers a general basis for these interpretations, and ensures their uniformity. These presumptions and fictions make legal communication possible as well.

7. Conclusion

The criteria of being scientific developed within years of natural science formed, including object

of science, truthfulness, objectivity, and validity are applicable to the humanities and, in particular, legal science, provided that these criteria are re-interpreted taking into account specific subject and knowledge structure in legal science. What makes the subject of law theory specific is that it is firstly created, and then only reflected on. Similarly, there are theories in technical sciences which describe not existing technical devices, but the ways to construct them. A theory of law also describes ways of making law, classifying and enforcement of legal rules (Kelsen, 2007).

Besides the description implementation function mentioned, a theory of law should be able to perform the function of explaining why certain norms are better than others in order for a legislator and citizens to be convinced of appropriateness and fairness of the norms introduced. A theory of law must also explain the advantages of the systematized normative system being constructed and explain why introducing certain norms for social regulation purposes ensures the latter, implementing basic legal principles, such as those of justice, freedom and equality.

A theory of law should study the system of norms or normative system in terms of logic, consistency, and effectiveness in order to resolve legal conflicts. The theory of law should also study social or public existence of legal norms, which is provided by social institutions. The study of their expediency and efficiency is one of the most important tasks of the theory of law. In addition, as the theory of law describes the ways and methods of applying the rules of law and principles in practice, it should work out the necessary presumptions and fictions to apply these rules. It is also necessary to take into account the specific tasks solved by various branches of law. For instance, presumptions and fictions are created to ensure the possibility of making unambiguous judgements, information about all case circumstances being limited. Finally, the theory of law, implementing the function of understanding, develops methods of interpretation of legal phenomena, determines the limits of their applicability and their effectiveness. The theory functions determine its structural elements, such as 1) legal principles (axioms), 2) presumptions and fictions, and 3) legal notions.

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