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Oleksii Tseliev
https://orcid.org/0009-0002-9108-3085
PhD, Associate Professor, National University of Kyiv-Mohyla Academy, Ukraine
Expert, Kyiv-Mohyla Rule of Law Research Centre, Ukraine

Iuliia Matvieieva
https://orcid.org/0000-0003-1129-3470
PhD, Senior Lecturer, National University of Kyiv-Mohyla Academy, Ukraine
Expert, Kyiv-Mohyla Rule of Law Research Centre, Ukraine

Ievgen Zvieriev
https://orcid.org/0000-0002-8589-4597
PhD, Assistant Professor, National University of Kyiv-Mohyla Academy, Ukraine
Expert, Kyiv-Mohyla Rule of Law Research Centre, Ukraine
Undergraduate Lecturer, University at Buffalo, The State University of New York, USA

LUCIDLY AND ATTRACTIVELY SIMPLY ABOUT COMPLEX ISSUES OF UNDERSTANDING LAW: GENERAL LEGAL THEORY INSTRUCTORS' REFLECTIONS ON THE MONOGRAPH MYKOLA KOZIUBRA "PRACTICAL PHILOSOPHY OF LAW"

The publication of the monograph in question which unfortunately happened to be the last one in Professor Koziubra's life has become an outstanding event in the legal life of Ukraine. Our reflections on it are motivated not only by our own scientific and pedagogical interests, but also by the fact that this work may be of great interest to lawyers in European and other countries. There has never been a similar work in Ukrainian legal scholarship before. This is due to a number of circumstances.

First of all, it is worth noting the rich professional experience of the author of the monograph. Thus, Mykola Koziubra was a well-known professor with significant academic and scientific experience in the field of general theory of law, philosophy of law, human rights, and constitutional law. As a well-known legal scholar, directly involved in the preparation of many fateful normative documents for Ukraine - the Declaration of State Sovereignty of Ukraine, the Constitution of Ukraine, etc., the author became a judge of the first composition of the Constitutional Court of Ukraine (1996 – 2003), which was created for the first time in the history of Ukraine. Professor Koziubra's knowledge and experience in the constitutional jurisdiction of Ukraine contributed to the realization of the importance of applying philosophical ideas and values in resolving complex constitutional and other legal issues. It was the professor's judicial work, on the one hand, that gave him the impetus for a deeper immersion in complex philosophical and legal issues, and on the other hand, confirmed the practical importance of philosophy of law.

The next circumstance we would like to mention is the partial inertia of legal consciousness of both ordinary citizens and practitioners in Ukrainian society that still prevails in Soviet times, based on a purely positivist approach to law and the state as its sole creator. These rudiments of legal thinking can, to a certain extent, be felt among first-year law students and, in some cases, among university professors. That is why this work is an event that will undoubtedly have an impact not only on Ukrainian legal doctrine, but will also help law professors, and through them, students, to touch and feel the modern approach to legal understanding. This approach is rooted in the best theories and practices of the Euro-Atlantic legal tradition.

It should be emphasized on the author's frankness and sincerity in presenting his thoughts. Starting with the extremely bold question asked by students at the beginning of the course in philosophy of law, which the author notes on the first page of the preface: "a rather pragmatic and even banal one: why is this course needed, what does it give to a practicing lawyer?" (p. 7). And what does it give to the students of the master's program who are "sharpened" and aimed at practice and many of whom are already practicing.

It should be recognized that this difficult question should be asked, first and foremost, by each and every teacher on a daily basis when conducting classes with future lawyers. The author answers this question throughout the monograph, using apt statements both from his own deep reflections and from well-known Western legal experts:

- René David, a famous french comparatist: "the essence of training a lawyer is not to memorize the rules currently in force in detail; it is unlikely that he will need it in ten years in his professional work, for which most of these rules will become unnecessary. But it is important for him to understand the essence of law as a universal, supranational phenomenon. The essence that cannot be arbitrarily changed by the stroke of a national legislator's pen" (pp. 13-14);

- One of the founders of the sociological theory of law, Eugen Ehrlich: "It is impossible ... to fix all law in laws and other regulations. The accumulated mass of normative material cannot be studied by any lawyer, even within one state and a separate industry, without losing his mind.

The content of life is always much richer. The desire to contain all of its richness in laws is as unreasonable as the desire to stop a stream in a puddle (Article 15);

- Ludwig Adamowicz, former President of the Austrian Constitutional Court: "legal science cannot be developed according to mathematical laws, and vice versa, it cannot be made into a pure evaluative philosophy" (p. 45).

Of course, such a vision of the essence of law also places special demands on the education of future lawyers. And the question "Why?" posed at the beginning is proved by the need for practical application of the philosophy of law.

The professor shares with the reader his own experience of cognition of complex legal matter, the stages of comprehension of which he experienced gradually during his long scientific, teaching and practical activities. This experience is very valuable for understanding the deep essence and complex process of cognition and comprehension of law.

It is worth noting the peculiarities of the content of the monograph, which has some unique subsections. In particular, as the author notes, the following question is not well studied in the national literature: how to explain that in the absence of a common understanding of law and even the word "law" in the lexicon of many nations, the same legal problems in different legal systems are solved mostly in the same way? The author refers to the so-called "presumption of identity" (presumption similitudinus) as a tool for making practical decisions,[1] which demonstrates the similarity of solving similar cases in different legal systems.

The author defines the style of the monograph as discursive and provocative, which encourages its readers (not only future lawyers, but primarily practicing lawyers and scholars) to think again about a number of complex issues. This feature is justified by the content, which throughout the text encourages the reader to reflect on the multifaceted nature of law, its essence and values. To this end, the author resorts to asking questions that are unusual even for legal professionals. In particular, this is reflected in the titles of the chapters: What is law: a real object or an unsolved social mystery? Why can law be attributed to socio-historical mysteries? Does law exist in reality? The author emphasizes that even today, law can be compared to those phenomena that remain a mystery, confirming this with both examples from history, in particular, Roman law, and modern ones - the uniqueness of legal science, the futility of striving for a comprehensive, "one true" definition of law, etc. These issues are of great importance for the training of future lawyers.

The emphasis in these reflections on legal education is due to the fact that traditionally in the continental legal system, the introduction to law in the first years of university begins, in particular, with such a discipline as general legal theory, or in the Anglo-American tradition, jurisprudence. In the beginning, students study different types of legal understanding, the relationship between law and human, law and state, the requirements of the rule of law, certain issues of "dogma of law" related to the legal system, updating of laws and other regulations, legal liability, etc. Philosophy of law as an academic discipline in domestic universities is mostly taught much later, at the level of master's programs. However, we are confident that the achievements of the philosophy of law, in particular, those set forth in the presented monograph, can and should be taken into account when students study general legal theory.

First of all, this concerns the existence of law: is it a real object or a mystery that has not yet been solved? The

[1] Zweigert K., Ketz H. Introduction to Comparative Jurisprudence in Private Law. VOL. 1. M., 2000. P. 58-59

very formulation of the question already encourages the reader to search for an answer. The answer is not given as something that already exists, it still needs to be found. Does law exist in reality?" - the author asks, what is its fundamental property, what characterizes its essence? Such and similar questions are generously scattered throughout the book, stimulate interest and encourage the reader's attention in the best possible way. And these are the questions that, on the one hand, are philosophical and require a certain humanitarian education to understand, but, on the other hand, can be considered already at the initial stages of legal education. The author himself reasonably distinguishes between philosophy of law and general theory of law, but gives it a place alongside. Somewhere between analytical theory and philosophical reflection (p. 70). This is evidenced by the overlap of topics and issues that are mostly considered in both philosophy of law and general legal theory. The first such unifying theme concerns the understanding of law. The author's work is crucial in this regard, as it concerns an attempt to explain the phenomenon of a predominantly uniform solution to similar legal problems in different legal systems. This path is overcome with the help of what is right in law - the values and ideals on which it grows and functions (p.132) Justice comes to the fore as a defining feature of law, which embodies its essence.

The author agrees with the view that "answers to specific legal problems cannot be strictly derived from state laws"; in their development, the understanding of justice plays an important role, which is especially necessary in the administration of justice, i.e. where the search for law is mainly completed (p. 117).

Justice is a special, not purely legal and not purely moral, but socio-ethical phenomenon that demonstrates not so much the differences between law and morality as their kinship, and even more so - their close intertwining" (p. 117).

"Law acquires its inherent and specific content only in the concept of justice" ... law cannot be unjust. "Without justice, it is a mockery, if not a complete negation of itself." (p. 117).

"Law is born of justice as a mother, since justice preceded law," as they said in ancient Rome (p. 118).

"It is hardly correct to consider equality and freedom as fundamental principles of law on a par with justice, as is often the case in legal literature. The category of justice is decisive for characterizing the essence of law as a social phenomenon... (p. 121).

"Justice is not a regional category, but a universal one, i.e., not limited in either the cultural or historical sense. Such universal justice is based on the fact that all of humanity can be spoken of as a certain just community, based on anthropological elements" (p. 122).

These and other statements by famous lawyers and philosophers, although presented in different contexts, allow the reader to be sure that the author's conclusions about the essential basis of law are based not only on his own reflections but also on his knowledge of the literature, in particular, the Western literature on these issues.

The next issue of the work, which is related to the subject of general legal theory studied in the first year, is the problem of the relationship between law and the state. In historical retrospect, until recent years, national legal theory sometimes maintained an approach whereby two subjects were studied within the same discipline - the theory of state and the theory of law. This is largely due to the still widespread approach to the simultaneous origin of law and the state, the determining role of the state in the creation of law and, accordingly, the "etatization" of all manifestations of law in public life. Of course, these rudiments of orthodox positivist thinking could not be ignored in the monograph. The author consistently demonstrates, using practical examples, the

possibility of law's emergence without any involvement of the State, without the influence of any laws common to the State. In particular, due to the significant role and ability of law to self-development and self-improvement, given its internal drivers - the desire for "correctness", impartiality and justice (p. 196). The author also criticizes the mono-factor linear-stage approach to social history, which has been inertially present since Soviet times and from which the new generation of lawyers should finally free themselves, paying attention to the interaction of various factors - politics and economics, religion and ideology, science and culture, law and morality, geographical and national characteristics, international environment, etc. - without dividing them into "causes" and "effects", "primary" and 'secondary' (p. 203).

Considerations of the distinction between the essence of the state and law are supported by reflections on the meaning of law, which is the phenomenon of human rights and freedoms, which form the basis of the most general property of the essential characteristic of law - justice. This is the basis of the ideal of the rule of law, which is now the most popular around the world (p. 205). Through the characterization of the initial provisions of this phenomenon, the author draws a reasonable conclusion that the legal source is not the state or even the socio-economic system, on which the materialistic worldview prevailing in Soviet times was based, but a person, his or her rights and freedoms. Their existence outside of law and without law is impossible, just as law is unthinkable without human rights and freedoms. These are phenomena of the same essence (p. 205).

These and other conclusions of the scientific work have found their logical development in the following subsections, which are related to the issues studied within the general theory of law.

Rulemaking is one of them. The author analyzes this issue from the perspective of the possibility and limits of scientific validity of rulemaking. Without questioning the connection between rulemaking and science, the author concludes that it is impossible to create high-quality legal norms which are relevant in the future solely with their help. Unlike in nature, where cognitive experience tends to transform into a scientific system of knowledge, in social life, most social relations are those whose development on the basis of experience remains dominant under any circumstances and cannot be verified by purely scientific methods (experiment or laboratory test) (p. 258). It is due to experience, not science, that law is enriched with numerous legal axioms, legal presumptions, legal fictions, precedents, etc. that resulted from long practical observations of recurring situations in various spheres of human life and the realization of their importance for finding fair legal solutions (p. 259).

Readers are interested in issues related to different social regulators, or rather the relationship between them. The work analyzes some of them in the chapter on law and values. In particular, the author asks the question: what is the relationship between law and religion in modern non-sacralized legal systems? And offers answers to this question, explaining the close intertwining of religion and law. This commonality of origin has both a historical basis for its formation and common heritage that has survived to the present day. First of all, we are talking about the elements of dogmatism and conservatism in law, such concepts as ritualism, traditionality, authority, universality, etc. (p. 320). Reflecting on the relationship between law and morality, a topic to which many philosophical treatises are devoted, the author emphasizes the moral and value-based conditionality of law and the existence of common axiological roots for law and morality. On the one hand, supporting and, on the other hand, criticizing certain provisions of Ronald Dworkin's concept of the relationship between law and morality, the author

concludes that there are no grounds not only for their opposition, but also for a sharp distinction between morality and law. Rather, we can only talk about their restrained, soft autonomy. The very need for axiological (value), moral and legal, rather than purely legal and dogmatic argumentation is particularly acute in complex cases, as evidenced by the practice of foreign courts. The quality of such argumentation is often decisive for a court decision (p. 344). As an example of moral argumentation, the decision of the Federal Communications Commission of Germany of February 15, 2006 on the compliance of the Aviation Safety Act with the Basic Law of Germany in terms of the state's authority to shoot down an aircraft used as an instrument of a crime against human life is cited.

The next topic that students begin to learn about in the first year of law school is the interpretation of legal norms. The author considers it, first of all, as an art. Before that, the author has considered in a wider range the direct links between law and art, the features of law as a science and law as an art. In particular, the art of rulemaking and the art of rule application.

Focus should be drawn to the author's conclusion regarding the challenges posed by artificial intelligence in the judicial process, namely, that no "smart robots" or automated systems can ensure the fairness of a court decision. After all, as noted earlier, justice is achieved not only, and sometimes not so much through logic and rationalization, but rather by taking into account individual, often unique circumstances of each case and its personalization to specific persons, in which sensory perception plays an important (sometimes decisive) role. It is also available only to people with relevant life and professional experience, developed intuition and other qualities united by the general name "judicial wisdom" (p. 372).

As for legal interpretation, the main explanation of its artistic component is through hermeneutical ideas and approaches, including to law itself. "True law", according to hermeneutical ideas, combines the complementary elements of the essence of law – justice as a natural human condition and existence, i.e., existence, including the developed normative world in which modern man lives (Article 383). Hence, it is quite logical to further elaborate on the issue by explaining the significance for legal interpretation of the hermeneutical triangle which is conditionally formed during interpretation between the author of the law, the text and the interpreter. The methodological significance for clarifying the nature of such legal interpretation is best formulated by Gustav Radbruch: "The interpreter," he wrote, "can understand the law better than its creators, the law can be wiser than its author, he, in fact, must be wiser than its author.[2]

Therefore, the author himself draws the following conclusion on this issue: "In the interpretation of normative legal texts, the creativity of interpreters is most clearly manifested - one of the main, as it is sometimes called, qualities of a person of the twenty-first century, that is, the ability to deviate from the accepted stereotypes of thinking, to see problems from an unconventional angle and solve them in an unconventional way" (p. 394).

The last subsection of the monograph, which concludes the section on law and values, is the principles of law. This topic is also present in educational programs on general legal theory. For the most part, it is considered from the angle of one of the most important sources of law. The author considers the principles of law to be one of the most important expressions of legal values and the most illustrative manifestations of the practicality of the philosophy of law. In particular, their

[2] Radbruch G. Philosophy of Law / translated from German. Kyiv: Tandem, 2006. P. 107

ontological and epistemological nature is investigated. Based on the existing approaches to the classification of legal principles, the author proposes his own classification:

a) universal (human) principles of law, i.e. fundamental, basic legal principles formulated in the course of centuries of history of progressive development of law, inherent in all legal systems;

b) civilizational principles of law, which are characteristic of certain legal cultures and traditions that embody their respective civilizations;

c) legal family principles of law, i.e. principles inherent in certain legal families (even within the same civilization)

d) national principles of law, i.e. principles formulated and operating within a particular national legal system, reflecting its specific features (p. 431).

Finally, the the linguistic features of the monograph's style need to also be assessed.

Just about the complicated: this is how you can briefly characterize this style. Although not all topics are easily perceived. Many issues require further personal perception and evaluation. However, Professor Mykola Koziubra does not change this unique author's style of presenting complex issues of a worldview nature in an accessible and understandable way in the monograph.

Vivid academic language, often with the use of various artistic means of literary language, adjectival and participial language forms, which enriches and gracefully emphasizes the author's opinion. For example: the multidimensional, contradictory and still secret nature of law, the multicolored legal reality, the complex world of law, the exquisite development of legal concepts, the depths of the mysterious nature of law, national limitations or even national egoism, intellectual beauty, aesthetic elegance, legal perfection, scientific nonsense, aesthetic clumsiness, elegant lapidarism, soulless executive diligence, the immeasurable nature of law.

Successful use of vivid images with quotations from various sources, which emphasizes the author's opinion in a particularly subtle way. This feature should be noted separately, since sometimes in various domestic scientific publications (or those that claim to be scientific, and there are many of them in “category B” journals, those domestic journals that were created with the status of Scopus, WoS for a one-time publication in order to meet modern requirements) there are references “for the sake of a reference”, for the sake of a “red word”. In the monograph, however, citations are used to accurately and vividly confirm the author's opinion.

In conclusion, we would like to emphasize how well-grounded and complete the author's explanation of the peculiarities of the value and ideological nature of the philosophy of law, its differences from science, and its comparison with related branches of knowledge, in particular, the general theory of law as a science, is. The author refers to the philosophy of law as “separate forms of mastering legal reality, different from legal science, within the framework of the category that unites them - metatheoretical jurisprudence”.

This view of the philosophy of law is innovative in the national legal thought. Therefore, Professor Mykola Koziubra's monograph “Practical Philosophy of Law” is an important achievement and ideological guideline for further development of legal science in Ukraine and abroad.

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Олексій Цельєв
кандидат юридичних наук, доцент
Національний університет «Києво-Могилянська академія»
експерт
Центр дослідження верховенства права

Юлія Матвєєва
кандидатка юридичних наук, старша викладачка
Національний університет «Києво-Могилянська академія»
експертка
Центр дослідження верховенства права

Євген Звєрєв
кандидат юридичних наук, доцент кафедри
Національний університет «Києво-Могилянська академія»
експерт
Центр дослідження верховенства права
викладач
Університет в Буффало, Державний університет штату Нью Йорк