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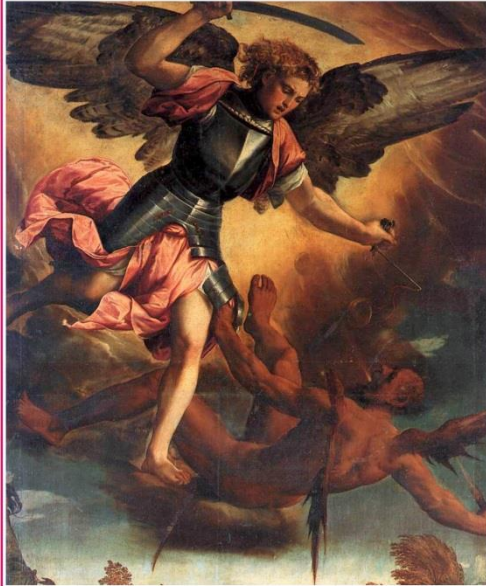
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# Negative and Dissolute-Negative Law in Russia

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## Abstract

The aim of the study is to investigate the broad spectrum of legal science that was developed by prominent Russian scientists via using the method of dialectical materialism as the main tool for conducting humanitarian studies. As a result, until researchers propose a lot of independent concepts that objectively and fully reveal specific facets of law, a single and common concept cannot be developed. In conclusion, philosophy of law is a science with a philosophical focus, which studies the fundamental problems of ontology, gnoseology, axiology, anthropology, logic, ethics and praxeology of law, legal consciousness, and legal culture.

**Keywords:** Philosophy; Law, Comprehensive, Facets; Negative.

## *Ley negativa y ley disoluta negativa*

## Resumen

El objetivo del estudio es investigar el amplio espectro de la ciencia jurídica que fue desarrollado por destacados científicos rusos mediante el uso del método del materialismo dialéctico como la principal herramienta para realizar estudios humanitarios. Como resultado, hasta que los investigadores propongan una gran cantidad de conceptos independientes que revelen objetivamente y completamente

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facetas específicas de la ley, no se puede desarrollar un concepto único y común. En conclusión, la filosofía del derecho es una ciencia con un enfoque filosófico, que estudia los problemas fundamentales de ontología, gnoseología, axiología, antropología, lógica, ética y praxeología del derecho, conciencia jurídica y cultura legal.

**Palabras clave:** filosofía; Derecho, integral, facetas; Negativo.

## 1. INTRODUCTION

Enormous power and the impact of the philosophy of law stem from the fact that it unites the provisions of two sciences: this field of scientific research is on the intersection of such sciences like philosophy and jurisprudence. This determines its two-dimensional and interdisciplinary nature. At the end of the 19th and the beginning of the 20th century, this scientific entwinement triggered the study of the modern life (Kerimov, 2000). Unfortunately, it is necessary to note that the concept proposed by the author, which defines the approach to exploring the subject of philosophy of law, was not supported by Russian lawyers. The representatives of legal science do not agree that the philosophy of law in the conventional hierarchy of knowledge should be placed above the general theory of law, and not inside this theory. Explaining their opinion, they claim that if the philosophy of law is singled out, this will entail the fragmentation and break the consistency of the system.

The scientists continue to defend their own vision since this problem is often raised. They still tend to believe that such an

approach will alienate philosophy of law from law in general. The author of the article firmly disagrees with such a view. Philosophy of law has already evolved and is developing as an interdisciplinary science. This science combines not only purely philosophical ideas but also legal ones necessary for achieving the scientific goal. Thus, at this stage of the research, it would be wrong to say that the philosophy of law should be considered as something prevailing over jurisprudence. Talking about the subject matter, philosophy of law should include the issues that are not typical of legal reality.

## **2. LITERATURE REVIEW**

One of the most significant and relevant books for this research is definitely the monograph by Gadzhiev *The ontology of law*. Alekseev pointed out that the author was right: the philosophical and legal, integrated level of scientific knowledge of law manifests itself through the formation and development of a special self-sufficient scientific discipline covering both philosophy and jurisprudence. Quite often Russian legal philosophers relied not on philosophy, but the law. As a result, their judgments focused on only one of the components of the subject. The papers of Alekseev and Nersesyants (2011) on the studied science reflect their worldview. In monographies *Criminal intelligence and investigative activities: Concepts and their correlation*, St. Petersburg, 2010; *Institute of rehabilitation in the Russian*

legislation, St. Petersburg, 2007; Operational and investigative activities in the 21st century, Moscow, 2015 (Zakhartsev et al., 2016).

### **3. METHODOLOGY**

The study is based on the following methodological principles: objectivity, determinism, historicism, integrity, consistency, structurality, functionality, hierarchy, and pluralism of interpreting and understanding law, the principle of comparativism. The research was carried out using the method of dialectical materialism as the main tool for conducting humanitarian studies. The study also involved using some science-specific methods: legal analytics, legislative techniques, legal comparativistics, and the method of expert assessments, legal statistics and the specific sociological method. The methods of the logical, dialectical, ontological, phenomenological, existentialist, system and comparative research included general philosophical and general scientific methods. Besides, the author applied a comparative legal method which embraced a set of methods and techniques for identifying, on the basis of the comparative study of general and specific laws, the emergence, development, and functioning of various theories in the legal studies.

This method was used only when the research objects enabled this. The comparative legal research was based on the principle of time sequence, i.e. in a diachronic manner. When the diachronic method is used, a researcher studies not the object of research itself, but the

process of its development, namely, a sequence of states is studied. This research also included interviewing one of the heads of the Amsterdam police. This policeman actually asked: Why do Russians, and not only Russian experts, consider the law to be a positive phenomenon? It is enough to say that in Amsterdam law regulates the sale of soft drugs in the area officially referred to as Red Light District. What is more, it is not only legal to take drugs in this area, but it is clearly indicated how many drugs you can buy at a certain age, at a particular time and under which circumstances. Summing up, the policeman wondered how many people have suffered due to this permission.

#### **4. RESULTS**

Philosophy of law explores the content of specific legal norms and reality if it is necessary to solve such global problems. In this regard, Tikhonravov (1997) speaks about the beginning of the twentieth century, i.e. the time when the philosophy of law had not yet become an interdisciplinary science, and it had just begun developing scientific foundations and was not properly equipped with legal knowledge. Some lawyers, writing a paper on philosophy of law, do not want to go beyond the framework of jurisprudence.

That is, genuine philosophical or philosophical and legal problems tend to be considered strictly within the limits of legal disciplines, without going deeper, and sometimes without the

application of philosophy. Such an approach impoverishes and cuts the study. Or sometimes the paper cannot be attributed to the philosophy of law, because it focuses on the theory of state and law, history of state and law, history of political and legal teachings, but not on the philosophy of law. In this case, philosophy becomes a kind of a grey area, under the cover of which one can write virtually anything. However, this is not the path of knowledge.

The conducted study made it possible to conclude that until researchers propose a lot of independent concepts that objectively and fully reveal specific facets of law, a single and common concept cannot be developed. However, as soon as the number of definitions of law reaches a critical mass, it will transform into quality, which will move the understanding of the law to a completely new level, and this can be something really surprising. It is ethical values that underlie all legal concepts. In this sense, legal ethics searches for ideas, principles, fundamentals that regulate people's behavior, determine their actions, and establish criteria for good. It also considers the main problems of applying such moral ideas, principles, and foundations in specific situations related to moral choice. Learning about the legal reality without ethics means impoverishing this process, losing goals and guidelines. Therefore, there is no doubt that the ethics of law is a subject of study for the philosophy of law (Zakhartsev & Ignaschenkov, 2006; Zakhartsev, 2014; Alkhateeb, 2019).

## **5. DISCUSSION**

Modern legal dictionaries reveal the state of philosophy of law fairly objectively. For instance, the dictionaries edited by Leist (2011) point out that the philosophy of law is a science that studies the most common theoretical and philosophical problems of jurisprudence and political science. It is also noted that for a long time it was an integral part of philosophical systems. In modern society, as it is written further, the philosophy of law is primarily an integral part of a widely developing legal science. The term philosophy of law is often used as a synonym for a general theory (general teaching) about the law. Thus, the basic concept of the philosophy of law is seen as the idea of law. Philosophy of law is a scientific discipline that connects philosophy and legal sciences.

However, contrary to popular opinion, the philosophy of law does not belong to the latter. In general, one can agree with the researchers that philosophy of law differs from the general theory of law not only because its philosophical concepts and categories are more abstract, but also as it goes beyond the legal issues. This does not mean that the philosophy of law should be a purely philosophic domain. In this regard, Gadzhiev rightfully said that one should not consider philosophical reflections to be the monopoly of professional philosophers or that lawyers, economists, and writers should not engage themselves in considering philosophical matters. However, in practice, we often see the opposite approach, when lawyers are reluctant to invite philosophers to comprehend the philosophical problems of law. They claim that philosophy of law is a legal



discipline and home territory of lawyers, rather than philosophers (Hayek, 1979).

This question was addressed to one of the Israeli law enforcement officers, who replied that, according to the law, it is, of course, illegal to commit murder. However, the state of Israel has the right to persecute terrorist acts, and the law is above legislative acts. Then, this official was asked another question: who gave Israel such a right, to which he replied that possessing such a right is, unfortunately, one of the indispensable conditions for the survival of this state in today's stormy world. It would be unethical to comment on his reasoning. In addition to this, it should be noted that law in a number of countries allows and regulates such ambiguous phenomena as abortions. In some countries, the law allows corporal punishment, which now, in the 21st century, seems wild and absurd. In some states, the law permits cruel attitude towards people (Stepin, 2008; Einollahi, 2016).

This list, unfortunately, can be continued. In this regard, it seems viable to mention the opinion of Nersesyants (2011), who understood the law as an essential form of freedom, equality and justice in the public life of people. This statement sounds beautiful, but still, if one looks at it objectively, it is somewhat naive. Law, as noted before, is a complex social phenomenon, of sophisticated nature, with its positive and negative manifestations. One of the facets of law, apparently, is regulation of negative and immoral actions of people and states. Let us return to Red Light District. Surprisingly, despite the abundance of so-called hot spots, the place itself is clean and quiet. Moreover, during

the walk, we noticed a lot of police in the area. The person we interviewed wondered what the police were guarding: the safety of ordinary people or drug dealers.

She was repeating this earnestly and with perfect self-assurance. The author of this paper witnessed this conversation and asked the mother if she really wanted her son to become a drug addict. The mother did not hesitate for a minute and replied that the use of soft drugs is not dangerous for health. Her son, she continued, like any free citizen has the right to take drugs, and the law that establishes the age of their sale unreasonably restricts this right. This is the answer that came from the boy's mother. It should be noted that the woman did not identify law and legislation, which suggests that people who do not deal with the law often think that law is good, but a certain legislative act is bad. If girls from their very young age know that they have right to work as a prostitute, then it is almost impossible to convince them of the immorality of such actions, no matter how much effort and means are spent on this. Other actions mentioned in the article were not discussed with the person interviewed.

Along with regulatory, the law has an educational function. Moreover, this function can be both positive and negative. If, for example, Finnish girls have the right to be prostitutes, then how can the state convince the residents of St. Petersburg just two hundred kilometers away that there is no such right in Russia? Again, if prostitution is officially legalized, then logically, it is not immoral to use the services of prostitutes. Moreover, it turns out that now in Europe every man has the right to be homosexual. At present, Russians

attentively observe the European way of life and European values. These negative phenomena are increasingly taking root in Russia. Russian morality and cultural traditions, no matter how sad it might be to say this, are rapidly deteriorating (Yang et al., 2019; L'Erario et al., 2017).

This occurs not without the help of law, but with its active role, as it performs a negative educational function. Let us remember that not long ago drug addiction was declared one of the main ills in Russia, with a campaign against drugs on all main TV channels and in other mass media. Legal science kept up with this trend: dozens of scientific conferences and seminars devoted to reducing the youth drug addiction were held annually. At present, there is only one journal – *Narkokontrol* (Drug Control) that legal science has, existing thanks to the enthusiasm of its editor-in-chief A. Fedorov. In the 1990s, girls engaged in prostitution stood along busy highways. There is no such thing now. It seems that prostitution has disappeared.

It is not so. According to official statistics from law enforcement agencies, prostitutes have moved into brothels, with over a hundred of these in Moscow alone. Actually, no official bodies are dealing with them, and legal science almost ceased to notice the problem of prostitution. However, again there is a reference to the natural human right, highlighted by the author, to sell one's love. Alas, the law has many facets, and one should study it without illusions, from a realistic perspective.

## **6. CONCLUSION**

Under such circumstances, philosophy should be used as the basis, and the subject of philosophy of law should be, respectively, the fundamental problems of the ontology of law, the gnoseology of law, axiology of law, anthropology of law, logic of law, ethics of law, praxeology of law, legal consciousness, and legal culture. The strength and power of the philosophy of law are immediately determined by its two intrinsic components – interdisciplinarity. Its field of knowledge takes place at the junction of two branches of knowledge: philosophy and law. Such scientific intersections in the 19th and 20th centuries presented a wide spectrum for learning about what is around us. For instance, taking the philosophy of law as the basis, the author developed and substantiated a comprehensive approach to understanding law. This approach, as well as the author's vision of philosophy of law, did not go unnoticed by specialists and was supported by them, including the founder of the Soviet-Russian philosophy of law (Kerimov, 2000).

Unfortunately, not all lawyers accept the proposed approach to the subject of philosophy of law. Legal experts do not agree that philosophy of law is seen not as a legal science, but is placed above it. This criticism is supported by the argument that such an approach may entail the separation of the philosophy of law from the law itself. The author absolutely disagrees with this remark. Philosophy of law has already evolved into an interdisciplinary science. It already embraces

both purely philosophical and legal knowledge required for the implementation of its scientific mission. Therefore, at the present stage one cannot claim that if the philosophy of law is placed above jurisprudence, it will consider problems that do not correspond to legal reality.

It is equally wrong to assume that in this case philosophy of law will not bother itself with consideration of specific legal norms and issues. On the contrary, the approach proposed by the author allows one not only to talk about high matters within the framework of the philosophy of law but also to sort out specific legal norms. The need to consider these is connected with solving certain tasks philosophy of law faces. When analyzing philosophical issues connected with, for instance, law and justice, law and truth, it is necessary to consider specific rules related to establishing the truth in procedural law. Anyway, the law has enough questions that require philosophical reflection: suffice it to name, for example, the discussion on permission or prohibition of abortions, brain transplantation, or biomedical experiments.

In conclusion, it should be said that philosophy of law is a science with a philosophical focus, which studies the fundamental problems of the ontology of law, gnoseology of law, axiology of law, anthropology of law, the logic of law, ethics of law, praxeology of law, legal consciousness, and legal culture. According to the results of the study, it is absolutely inevitable that such facets of law as negative or dissolute-negative evolve. Issues related to this facet of law are not taught in law schools. Scientists try to ignore it, but this aspect should

receive due to recognition as it exists in reality. In this regard, there is a serious moral problem, which implies that if young people know that law does not prohibit the use of narcotic drugs or psychotropic substances, then they can be consumed. Moreover, young people have the right to take drugs or psychotropic substances. That is, it is not even about trying a narcotic drug or psychotropic substance once, but about law, that one can do this any time. How many human lives have this right taken?

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