LEGAL AXIOLOGY: GENERAL CHARACTERISTICS

Garnik Safaryan, Doctor of Law, Professor
Chief Researcher at the Institute of Philosophy,
Sociology and Law of NAS RA
(email: safaryangarnik51@mail.ru)

Arthur Ikilikyan, PhD in Law
Rector of the Erebuni Medical Academy Foundation

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Abstract

This scientific article explores the meaning of legal axiology as a doctrine about the values of law, the legal (value-legal) meaning of law (positive law), and the state. The author examines both legal (positivist) and natural law approaches to legal axiology, emphasizing the features of these concepts. Additionally, the article considers the concepts of equality, freedom, and justice, determined by the principle of formal equality of participants in this form of relations. The author also presents the viewpoints of famous philosophers and jurists on legal axiology, including G. Hegel, I. Kant, H. Kelsen, etc.

Keywords: values, positivist approach, externprotos approach, legal epistemology, legal ontology, axiology.

Axiology is the study of values. The use of the concept of "value" in the specific sense of a moral imperative goes back to Kant. In his interpretation, value is something that has the meaning of obligation and freedom. This a priori world of the ought is defined by Kant as isolated and opposed to the world of the real (actual phenomena, relationships, and empirical "being" in this sphere), where cause-and-effect relationships and necessity dominate. Thus, we are referring to the normative and regulative significance of values, which, according to Kant, are a priori imperatives of reason: the values of what should be, demands, formulas, and maxims.

The categorical imperatives formulated by Kant in the application of morality and law are also connected with this moral obligation. Kant's followers, such as R. H. Lotze, W. Windelband, etc.) expanded on his ideas about the normative and regulatory significance of values and the establishment of values not only in the sphere of morality but also in the sphere of science, art, and culture in general. For example, the neo-Kantian Windelband interprets values as norms of culture and, in addition to the values of truth, goodness, and beauty, recognizes such values as the benefits of human cultures, such as art, religion, science, and law (Nersesyants, 1998, pp. 104-105).

A different approach to the problem of values is characteristic of thinkers from Plato to Hegel and their modern followers, according to whom being is good (i.e. value). However, in this context, "being" does not refer to empirical being but rather to the objective rationality of being, encompassing ideas, wisdom, and existence in the mode of what ought to be, and therefore, in the mode of value (Hegel, 1990).

The subject area and main topic lead to axiology, which addresses the problems of perceiving and interpreting rights as values (e.g., as goals, positions, imperative requirements, etc.) and corresponding value judgments (and assessments), in fact about a given right (positive right) and public power, as well as about the legal definition of the rights of the subject (i.e. from the point of view of law in the value sense).

When identifying right and law, the objective essence of law and, at the same time, within the framework of legalism, which denies the criterion of separation of law from arbitrariness, it is impossible to substantively discuss a purely legal assessment of the law and the legal value of law. Due to the denial of the objective properties and characteristics of law, independent of the legislator and the law, legalism in axiological terms essentially denies purely legal values and recognizes only the value of law (positive law) as a compulsory-obligatory establishment of power. Moreover, the value of law recognized by legalists (positivists and neo positivists) is, in fact, devoid of a purely legal value meaning. The logistical value of a law (positive law) is its universal obligatory nature, imperious imperatives, and not its universal significance based on any objective (not power-command) legal basis.

In this regard, the radical approach of the positivist Kelsen is noteworthy. According to Kelsen, the value of law lies only in its nature as an order or norm. In this sense law is characterized as a form of coercion. “It is impossible, as is often done”, Kelsen argued, “that law not only represents a norm (or command) but also constitutes or repeats a special value (such a statement makes sense only on the assumption of an absolute divine value). After all, law is valuable precisely because it is a norm...” (Kelsen, 2019).

It is important to emphasize that Kelsen’s “norm” is purely production-order norm, and not a norm of equality, freedom, or justice. It does not contain a single objective legal (independent of the legislator) characteristic of law. The Kelsen norm (and along with it, the form of law) is a “pure” and empty form of coercion, suitable for imparting imperative-command status and character to any arbitrary positive legal content.

According to the axiology of natural law, natural law embodies the objective properties and values of “real” law and therefore acts for the value assessment of positive law and the corresponding law-making power (in relation to the legislator and the state as a whole). Moreover, natural law is perceived as a moral (religious, ethical, etc.) phenomenon, essentially endowed with the corresponding absolute value.

The concept of natural law, thus, includes various moral (religious, ethical) characteristics along with certain objective properties of law, such as equality of people and recognition of their freedoms. As a result of such a mixture of law and morality (religion, etc.), natural law acts as a mixture of various social norms, as a

kind of moral-legal (or moral-legal, religious-legal) complex, from the standpoint of which this or that (usually ~ negative) value judgment about positive law and positive legislator (state power) (Nersesyants, 2005, pp. 126-127)

With this approach to the emergence of laws, public power is consolidated (in terms of values) not so much from the points of view of the purity of legal criteria (technical objective legal properties found in modern fundamental conceptual law), but rather from essentially ethical positions. These positions reflect the author's views on the moral (moral, religious, etc.) nature and content of the law. Despite the moral and legal properties and practically substantive characteristics of natural law in a generalized form, it is interpreted as the expression of universal and absolute justice of natural law, which positive law and state activities should align with.

Justice, therefore, is interpreted not in a formal legal sense, but as a moral or mixed moral and legal phenomenon and concept, with specific moral (or mixed moral and legal) content for each moral and legal concept. Consequently, various natural-legal concepts of justice, despite their claims to moral (or mixed-moral-legal) community and absolute value, in fact, possess relative value and reflect relativistic ideas about morality and law in general, and the moral values of the state in particular.

Along the way, the confusion of rights and morality (religions, etc.) Moral and legal concepts are accompanied and deepened by the ridiculousness of formal and factual, mandatory, and essential, norms and factual content, ideal and material, principles, and empirical phenomena.

On the plane of legal axiology, this is reflected, in particular, in the fact that the problematic of the legal value of the law (positive law) and the state is replaced by their moral (religious) assessment and the corresponding requirement of one or another (inevitably relative, private, special) moral or mixed moral -legal content and government activities. Such ideas are presented in the most concentrated form in the structures of natural justice, as a reflection of moral (or moral-legal) principles, properties, and values of "real" law.

These shortcomings, naturally, do not belittle such indisputable merits and achievements of the natural law approach in the field of legal theory and experience, as the identification and development of issues related to legal axiology (in close connection with issues of legal ontology and epistemology), issues of freedom and equality of people, natural legal justice, innate and inalienable human rights, legal restrictions on power, the rule of law, and more.

As for the indicated shortcomings of the natural law approach, including the axiological aspects, they are characteristic not only of the concepts of traditional and modern legalism but also of various purely philosophical teachings of the past and present, which in their perception of the moral (religious, etc.) One way or another proceeds from ideas and structures of a natural nature. In this regard, one can name the interpretations of the moral teaching about law, law as a "moral minimum", moral order, natural (moral, religious) ideas by Kant, Hegel, and their followers V.S. Solovyov, R. Marich (Kant, 1995, pp. 284-285)

Thus, in Kat's moral teaching about law, which is still significantly influenced by moral and legal ideas, the focus is on positive law and state morals, rather than legal

values. The very idea of a republic (Kant's version of the rule of law) is substantiated by Kant as a maxim of moral consciousness, as a requirement of a categorical moral imperative (Kant, 1988).

A moral interpretation of law and the state is also found in Hegel's philosophy of law, which he conceived as a consistent philosophical interpretation of natural law. Moreover, it is noteworthy that Hegel interprets morality as a special kind of right, classifying positive law ("law as law") and the state within the sphere of morality. Thus, they are considered moral phenomena, forms of objectification of moral value. The three sections of Hegel's "Philosophy of Right" are dedicated to abstract law and morality. Moreover, Hegel characterizes his interpretation of law, including positive law and the state, as "a moral teaching about duties, that is, as it is objectively, and not as it is supposedly contained in the empty principle of moral subjectivation, which does not determine anything" (Hegel, 1990).

Considering the shortcomings of the natural law approach, we should acknowledge the legitimacy of several critical positions expressed by representatives of legal positivism regarding the natural law doctrine. These shortcomings include the rejection of formal and factual law and morality in the interpretation of natural law, and the absolutization of relative moral values to which positive law and the state must correspond, etc.

In this regard, Kelsen's criticism of natural law is the most consistent. The most important function of the "natural-legal doctrine as a doctrine of justice", according to Kelsen, is the "moral-legal function", i.e., value (natural-political) justification or accusation of positive law. Defending the purity of jurisprudence, Kelsen reasonably criticizes the confusion of law with morality and other social norms observed among supporters of natural law teachings, and their demands for the morality of law, the moral content of law, etc.

However, these in themselves correct provisions are combined in Kelsen with traditional positivist provisions that supposedly "justice is a requirement of morality" and therefore positive law cannot be demanded to be fair.

According to the liberal legal axiology, the integrity of the law and the state lies in the fact that they act as a universal, necessary, and generally binding normative and institutional form for the expressing fundamental values such as equality, freedom, and justice. Overcoming the shortcomings of the moral-legal approach (in the field of legal axiology, as well as in matters of legal ontology and epistemology) leads not to positivism and legalism, but to a legal understanding and the value-legal value of law (positive law) and a theoretically more developed form of the state.

Thus, we are talking about a liberal axiology ─ legal axiology ─ based on the liberal concept of legal understanding, within the framework of the general theory of differentiation and the relationship between law and law (positive law).

The internal unity of legal ontology, axiology, and epistemology is based on the same principle of formal equality. The principle is perceived and interpreted by us as a prerequisite for legal ontology (what is law?), axiology (what is the value of law?), and epistemology (how is law understood?).

Ontologically, answering the question of what law is, we argue that law, in its essence, is formal equality. This formal equality encompasses the formality of

freedom and justice. Law, as a form (legal form of social relations) is ontologically the totality of these formal properties and characteristics: equality, freedom, and justice.

On the other hand, the law as a form — the legal form of the real — namely, the formal components - equality, freedom, and justice, should not be confused with the actual relations themselves, which are mediated, justified forms, and regulated with the actual establishment of relations of stability. Thus, equality, freedom, and justice, according to each interpretation, are legal formalities, not facts. They are formal-substantive (not material-substantive, not empirical) components, properties, and characteristics of rights and laws of form.

Both in ontological and axiological and epistemological terms, it is sufficient that the same measure of regulation, freedom, and justice can only be expressed and explained formally (formally legal). These concepts are seen as separate forms of expression and the general manifestations of the meaning of formal legal equality. Together with the principle of formal equality (and without contradicting it), they form a consistent concept of law and, as components, regularity and chronic universal justice form social relations.

Such a consistent structure of law means that in law (and in legal form) there is only what is in the formal principle of equality and is derived from it (through official-authority normative concretization in given conditions of this principle of law and in its identification towards a system of universal and generally binding norms of equality, freedom, and justice).

This concept of law allows, in line with the legal perception, to consider rational aspects and achievements of both natural law and legal positivist thought, and at the same time overcome their inherent shortcomings. In contrast to the natural law approach (formal legal and factual, law and morality, legal and production-legal values, their mixture with relative absolute values and their equality, freedom, justice, and law in general, it is generally mixed factual and moral-legal interpretation), the concept of law we develop is purely formal (formal-legal in nature), which is equivalent to law as a form of social relations.

Ontologically, this means that the constituent parts of this concept (equality, freedom, law, and the forms and norms that specify them) are purely legal categories. By the nature of the universal legal form, they are formal components, properties, and characteristics. Axiologically, this concept of law allows us to reasonably assert that we are talking about the legal values themselves (and only) and not about moral, religious, and other non-legal values.

Moreover, legal values—due to the abstract universality of law and legal form — are, universal and have a general meaning (and in this sense, absolute and not relative in nature). Thus, the law in its axiological dimension, acts not only as a formal bearer of moral (mixed-moral-legal) values, characteristic of the natural law approach, but as a purely defined form of legal values themselves. It serves as a specific form of a legal obligation, different from all other forms of duties (moral, religious, etc.) and value forms.

This perception of the value meaning of the legal form diverges significantly from the positivist approach. Due to the identification of law and law (positive law)

and the exclusion of objective properties regardless of the legislator and the law, positivism essentially denies purely legal values and recognizes only the value of law (positive law). Moreover, the value of law (positive law), recognized by positivists, is devoid of purely axiological meaning. The positivist "value" of a law (positivist law) is its official universal bindings, imperious imperativeness, and not its universal significance according to any objective (non-authoritative-legal) justification.

Contrary to this positivistic devaluation of law as an order of power, in the socio-legal concept of law in any arbitrary content, the legal form as a form of equality, freedom, and justice is qualitatively defined and meaningful, but only in a strictly formal legal sense, and not in the sense of one or another actual content, which is typical for the natural law approach. Consequently, in a formal legal sense, this form of qualitatively defined law is a form of obligatoriness not only in terms of general obligatoriness, imperious imperativeness, etc. but also in terms of its objective value universal meaning of law, in the sense of axiological and legal obligatoriness.

This concept of legal (formal legal) interpretation of the fundamental human values (equality, freedom, justice) as the main points of the legal form of obligation clearly indicates and fixes the value status of law. The framework of law as values, content, potential, and its peculiarity as a value imperative in the system of values and norms of obligation is established. From these positions, legal values can and should be determined in connection with what is essential and obligatory for law (law - as a due, as a goal, as the basis of requirements, a source of legal meanings and values) in the relevant area.

This area of the essential, which in terms of value is established from the position of legal production, is constituted within the framework of legal axiology (taking into account the characteristics of its subject, profile, and tasks) by law (positive law) and the state - with all its actual manifestations and dimensions, in all their real existence, as well as legally significant behavior of all subjects (and addressees) of domestic and international law.

In legal axiology this means, therefore, that we are talking about the assessment of value and the state (value criterion and evaluation) in the legal sense and the law (positive law) from the position of law, about law as due in the value sense, about requirements, the imperatives of universal obligatory nature (or non-compliance). Law in this case acts as the goal of law (positive law), state, and human behavior. This means that the law (positive law), the state and, the legally significant behavior of people should be aimed at embodying and implementing the requirements of the law, since this is precisely their purpose, meaning, and significance.

Law (positive right), the state, and the behavior of people are valuable only because and to the extent that they communicate with the law, express, and realize the purpose of the law, are valuable in the legal sense, and are legal.

Thus, the value of the law (positive law) and the state, along with legally significant behavior of people, according to the concept of legal axiology we are developing, lies in their legal value and meaning. The value of law as a due in relation to the law can be defined in the form of the following value-legal imperative: law, public authority, and the behavior of legal subjects must be legal.

Legal law, legal state (legal public authority, etc.), and legal behavior are, therefore, the legal goals and values of any positive (empirically existing and operating) law, any legal public authority, and subjects of law.

On this axiological plane, the relationship between the mandatory and the essential reflects the idea of positive law, public power, and constant improvement of the behavior of legal subjects. These are historically developing phenomena, sharing both achievements and shortcomings and are always far from the ideal state (legal due). In addition, in the process of legal renewal, the very meaning of legal proceedings, the entire complex of legal values, requirements, and obligations that laws, public authority, and the behavior of subjects of law must comply with - are updated, enriched, and specified.

Conclusion

The absolute nature of the legal law and the goal and requirement of the rule of law does not mean, of course, that today this goal (and the legal law required by it, lawful behavior) in its semantic content and value volume is the same as it was a hundred years ago or will be in a hundred years. A clear illustration of such changes is, for example, ideas about human rights and freedoms, the hierarchy and significance of legal values over the last century, their role in the process of legal assessment of current legislation, etc.

It is also important, however, that with all such changes and specifications of the hierarchy, scope, and meaning of legal values, we are not talking about refusal or removal from the legal goal - value (legal law, requirements of the rule of law, etc.), but about their renewal, deepening, enriching, complicating and concretizing in the context of new state realities, new requirements, new problems and new opportunities for solving them.

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