Legal Doctrine as a Means of Constructing Legal Reality

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ABSTRACT
The article deals with the problem of the law-making meaning of legal doctrine. According to the author, the doctrine is an internally coherent segment of juridical science, with the ability to not only provide the juridical community generally accepted interpretation of legal phenomena, but also to establish mandatory for members Society of behavior patterns. As the legal science in general, the doctrine is a collection of semiotic forms (texts), which construct the juridical reality. As a source of law doctrine creates legal rules on the basis of typification of subjective rights and responsibilities of individuals. Implementation of regulatory functions is carried out by doctrine, according to the author, in three ways, namely, through legislation, jurisprudence and law enforcement practitioners.
Keywords: juridical science, doctrine, post-classical rationality, post-industrial society, the juridical reality, law-making, subjective rights, law practice.

The new journal, the first issue of which has been submitted to the judgement of a wide legal community, is intended to satisfy the growing need for intensified legal research, as well as introduce its results to interested parties, including scholars, legal practitioners, university teachers and students. This task is particularly relevant in the context of the transition of the legal sciences (primarily, the sciences of the theoretical and legal cycle) to the postclassical ideal of rationality,[1] which in turn contributed to the formation of a new type of legal thinking.[2]

A necessary prerequisite for post-classical legal thinking is the qualitative transformation of the scientific and legal discourse, which implies a radical rejection of the conceptual framework and the very thinking style of both classical positivism and the "Marxist-Leninist general theory of law".[3] These are being replaced by a system of basic categories, having developed under the decisive influence of phenomenology, analytical philosophy, poststructuralism and social constructivism, which form, with all restraints,[4] the ideological and methodological mainstream of modern socio-humanitarian knowledge.

On this basis, it becomes possible to rethink the entire range of doctrinal ideas of law, the state, legal and socio-political phenomena at the level of not only general theory, but also sectoral legal disciplines. The scale and significance of this work, which can stimulate the development of legal research in our country, has been repeatedly noted in recent years.

Thus, according to V. A. Chetvernin, the consistency and coherence of interpretations of the main legal categories can impart to the legal science a systematicity that it lacks, bridging the gap between

[1] A detailed description of postclassical (postnonclassical) rationality is found in the scientific studies of M. K. Mamardashvili, V. S. Stepin, and others. See: Stepin V. S. Self-developing systems and post-non-classical rationality [Samorazvivayushchiesya sistemy i postneklassicheskaya ratsional'nost'] // Problems of Philosophy [Voprosy filosofii]. 2003. No. 8. PP. 5–18. (In rus) *the same author.* Classics, Non-Classics, Post-Non-Classics: Criteria for Distinguishing [Klassika, neklassika, postneklassika: kriterii razlicheniya] // Post-Non-Classics: Philosophy, Science, Culture. [Postneklassika: filosofiya, nauka, kul'tura] / ed.-in-chief L. P. Kiyaschenko, V. S. Stepin. SPb.: Mir Publ., 2009. PP. 249–295 (In rus); Mamardashvili M. K. Classical and non-classical ideals of rationality. [Klassicheskii i neklassicheskii idealy ratsional'nosti.]. SPb. : Azbuka, Azbuka-Attikus Publ., 2010. (In rus)

[2] See in particular: Polyakov A. V. Post-classical Jurisprudence and the Idea of Communication [Postklasicheskoye pravovedeniye i ideya kommunikatsii] // News of Higher Educational Institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. 2006. No. 2 (265). PP. 26–43 (In rus) Chestnov I. L. Post-classical theory of law [Postklassicheskaya teoriya prava]. SPb.: Alef-Press Publ., 2012. (In rus) Razuvaev N. V. The modern theory of law in search of the post-classical paradigm of knowledge [Sovremennaya teoriya prava v poiskakh postklassicheskoi paradigmy poznaniya] // News of Higher Educational Institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. 2014. No. 5 (316). PP. 136–153 (In rus); Post-classical ontology of law: Monograph [Postklassicheskaya ontologiya prava: Monografiya] / Ed. I. L. Chestnov. SPb. : Aletheia Publ., 2016. (In rus) and others.

[3] In particular, V. M. Syrykh, who declares in his fundamental works a return to authentic Marxism (see: Syrykh V. M. Materialist Theory of Law: Selected Writings [Materialisticheskaya teoriya prava: Izbrannoe]. M.: Publishing House of the Russian Academy of Justice, 2011), is in fact the creator of the non-classical version of the materialistic legal thinking, virtually free from the influence of the Marxist-Leninist ideology.

[4] See: Vakhshtayn V. S. Curiosities and Paradoxes of Phenomenological Intervention [Kur'ezy i paradoksy fenomenologicheskoi interventsii] // Sociology of Power [Sotsiologiya vlasti]. 2014. No. 1. PP. 5–9. (In rus)

the general theory of law and intermediate-level theories generated by sectoral legal disciplines.[5] The harmfulness of such gap clearly manifests itself in higher legal education, which is able to convince students that the "high" theory is invariably inconsistent with the urgent tasks of sectoral legal research, not to mention law enforcement and other practical activities.

However, speaking of sectoral theories, one cannot fail to note a serious lack of scientificity of the latter, due to the vagueness and sometimes fictitiousness of the subject of sectoral research, which is often understood as a totality of regulatory legal acts and the provisions contained in them, which, supposedly, should be covered by any branch science. It is easy to observe that with such understanding, sectoral research turns into the interpretation of and commenting on laws, essentially losing its scientific content.[6] As a result, there is a discrepancy not only between the general theory of law and branch legal theories, but also between the legal science as a whole and the needs of practice, such discrepancy being harmful to both sides. The science, while ignoring the demands of practical activity, runs the risk of degenerating into a scholasticism engaged in pointless discussions about abstract and unverifiable substances (such as, in particular, "legal spirituality", "ethno-national mentality", etc.).[7] At the same time, practice, not guided by scientific conclusions and methodology, often turns out unable to answer the questions that are posed to it by the vital necessity itself.

This is reflected with all the clarity in the conditions of a postmodern (post-industrial) society, which is characterized by an unprecedented acceleration of social dynamics that contributes to the emergence of the previously non-existing relationships and non-standard life situations.[8] The novelty and ingenuity of the facts that form the empirical basis of the legal reality in the postmodern epoch require a practicing lawyer to have an original creative way of thinking that helps to solve problems that are by no means routine. The non-standard and creative nature of legal regulation in a postmodern society (poorly consistent with the established understanding of the "legal regulation mechanism") sometimes creates the illusion of the essential uncertainty of the law itself.[9]

In particular, G. Agamben, speaking of the limited possibilities of normative regulation in a situation where stable, long-term and regularly reproducible social ties between members of a society are replaced by single and unique life circumstances that are not amenable to repeated reproduction, comes on that basis to the conclusion that a state of emergency is "normal" for such communities.[10] It is apparent, however, that a state of emergency, destroying the coherence of the social and legal space, will adversely affect, in the long run, the dynamics of the human community as a self-developing system. Anyway, it is hardly permissible for a lawyer to ignore the obviously unlawful nature of the state of emergency concept, built on the total denial of human freedom and of the subjective rights of individuals derived from it.

At the same time, there are grounds to assert that the nature of legal regulation inevitably undergoes qualitative transformations. The individual law enforcement activity has a growing role and places high demands on the qualifications of practicing lawyers. The latter cease to be merely handlers of regulatory prescriptions and, instead, become active creators of legal reality. Under such circumstances, legal science, which forms the basis of the law-making and law enforcement activity, becomes of particular regulatory significance. Therefore, it is by no means accidental that the discussions on legal science

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[5] See: Second philosophical and legal readings in the memory of V. S. Nersesyants (libertarian legal project) [Vtorye filosofsko-pravovye chteniya pamyati V. S. Nersesyantsa (libertarno-yuridicheskii proekt)] // Yearbook of libertarian legal theory [Ezhegodnik libertarno-yuridicheskoi teorii]. 2009. No. 2. PP. 6–8. (in rus)

[6] See: Belov V. A. Subject-methodological problems of civil science [Predmetno-metodologicheskie problemy tsivilisticheskoi nauki] // Civil Law: Actual Problems of Theory and Practice [Grazhdanskoe pravo: aktual'nye problemy teorii i praktiki] / Ed. V. A. Belov. M. : Yurayt Publ., 2007. PP. 134–135. (In rus)

[7] See in particular: Bayniyazov R. S. Spiritual and Cultural Approach to Legal Awareness and Law [Dukhovno-kul'turologicheskii podkhod k pravosoznaniyu i pravu] // New Legal Thought [Novaya pravovaya mysl']. 2003. No. 1. PP. 2–6 (In rus); Mordovtsev A. Yu. Features of legal thinking in modern Russia: the formation of a new discourse [Osobennosti pravoponimaniya v sovremennoi Rossii: formirovanie novogo diskursa] // Philosophy of Law [Filosofiya prava]. 2011. No. 3. PP. 13–17 (In rus); Gulyaikhin V. N. Legal mentality of Russian citizens [Pravovoi mentalitet rossiiskikh grazhdan] // NB. Law and Policy Issues [NB. Voprosy prava i politiki]. 2012. No. 4. PP. 108–133 and etc. (In rus)

[8] See in particular: Beck U. Risk Society: Towards a New Modernity. M. : Progress-Tradition Publ., 2000. P. 113 (trans. from germ.) Bell D. The coming of post-industrial society: A venture of social forecasting. M. : Academia Publ., 2004. PP. 159–162 (trans. from eng.)

[9] See: Chestnov I. L. Legal communication in the context of post-classical epistemology [Pravovaya kommunikatsiya v kontekste postklassicheskoi ehpistemologii] // News of Higher Educational Institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. 2014. No. 5 (316). PP. 31–41. (In rus)

[10] Agamben J. Homo sacer. State of emergency [Homo sacer. Chrezvychainoe polozhenie]. M. : Evropa Publ., 2011. P. 9 (In rus)

(doctrine) as a source of law in general and as a source of modern Russian law in particular apparently become more active.

At the same time, a number of researchers deny the semantic identity of the concepts of doctrine and legal science, believing that only a few scientific studies in the legal sphere are of doctrinal nature. Thus, according to I. S. Zelenkevich, "the greatest harm to the recognition of a legal doctrine as a source of law is caused exactly by the merging of the concepts "legal science" and "legal doctrine", their use as synonyms... It is necessary to clearly distinguish between these concepts that are undeniably related, but still are not identical".[11] Thus, unlike legal science in general, substantially including any research aimed at generating new knowledge in a relevant field, a doctrine is a collection of the most authoritative opinions on current issues of theory and practice that are of regulatory importance and are universally recognized.[12]

In other words, a doctrine is an internally coordinated (consolidated) segment of legal science, having the ability not only to give an interpretation of legal phenomena that is generally recognized in the legal community, but also to establish for members of a society behavioral patterns of varying degrees of bindingness, from recommended to unconditionally imperative. It is the final result of cognitive activity incorporating all discussions and contradictions (including such significant ones as the dispute on legal thinking) that are present at the doctrinal level already "as removed". Doctrine and legal science in general construct legal reality, which can be defined as an orderly set of legally relevant social phenomena and the relationships between them.

Like any other area of the existence of nature or society,[13] legal reality can be considered in synchronous and diachronic (historical) dimensions.[14] In the first aspect, it is the result of construction by various means of a predominantly semiotic character, in the second, it incorporates evolutionary processes leading to regular transformations of both semiotic systems themselves and methods of semiotic construction of reality phenomena. Specific semiotic means of constructing legal reality include legal values (freedom, justice, formal legal equality and other legal contexts), legal norms, subjective rights and obligations.[15] The most important feature of the listed semiotic means is their particular relevance, enabling to demarcate the phenomena of legal reality from other manifestations of the sociocultural semiosis. Substituting the acts of actual behavior of society members in communication processes,[16] the signs ensure mutual understanding and agreement of individuals in matters of law,[17] transmit infor-

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[11] Zelenkevich I. S. Legal doctrine and legal science: some aspects of correlation and use as sources of law. [Pravovaya doktrina i pravovaya nauka: nekotorye aspekty sootnosheniya i ispol'zovaniya v kachestve istochnikov prava] // North-Eastern Scientific Journal. [Severo-Vostochnyi nauchnyi zhurnal]. 2010. No. 2. P. 43. (In rus)

[12] See: Bosho S. Doctrine as a form and source of law [Doktrina kak forma i istochnik prava] // Russian Law Journal [Zhurnal rossiiskogo prava]. 2003. No. 12. P. 72 (In rus); Puzikov R. V. The Essence of Legal Doctrine as a Source of Law [Sushchnost' yuridicheskoi doktriny kak istochnika prava] // Legal Policy and Legal Life [Pravovaya politika i pravovaya zhizn']. 2003. No. 4. P. 137 (In rus); Zelenkevich I. S. Op. cit. PP. 34–36.

[13] See: Husserl E. Ideas Pertaining to a Pure Phenomenology and to a Phenomenological Philosophy. M.: Akademicheskii Proekt Publ., 2009. P. 45; Patkul A. B. The concept of a region in the phenomenology of E. Husserl and M. Heidegger [Ponyatie regiona v fenomenologii Eh. Gusserlya i M. Khaideggera] // Logos. Philosophical literary journal [Logos. Filosofsko-literaturnyi zhurnal]. 2010. No. 5 (78). P. 78. (In rus)

[14] See on this, in particular: Koseriu E. Synchrony, diachrony and history: the problem of language change [Sinkhroniya, diakhroniya i istoriya: problema yazykovogo izmeneniya]. Ed. 3rd. M.: Editorial URSS Publ., 2009. (In rus)

[15] See more details: Razuvaev N. V. Right: a social constructivist approach [Pravo: sotsial'no-konstruktivistskii podkhod] // News of Higher Educational Institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. 2015. No. 5 (322). PP. 97–98. (In rus)

[16] According to A. V. Polyakov, "the subject of communication always deals with a certain text, i. e., an orderly system of signs that refer to another reality. In this sense, any communication is always mediated by text. The text is a certain integral semiotic system that carries a certain meaning. Social is always mediated by texts, it is a way of social existence" (Polyakov A. V. Normativity of legal communication // Polyakov A. V. Communicative understanding of law: Selected Works [Kommunikativnoe pravoponimanie: Izbr. trudy]. SPb. : Alef-Press Publ., 2014. P. 146 (In rus))

[17] It should be noted that the communicative approach to understanding social reality is in line with the very old political and legal tradition founded by Aristotle and Cicero. Aristotle is known to have defined the polis as "a kind of communication" (Aristotle. Politics // Aristotle. Cit. in 4 vols. Vol. 4. M. : Mysl' Publ., 1983. P. 376 (In rus)). According to the well-known definition of Cicero, "the state is the property of the people, and the people are not any combination of people gathered together in any way, but the union of many people, connected by their consent in matters of law and common interests". (Cicero M. T. Dialogues. About the state. About the laws. M.: Nauka Publ., 1966. P. 20 (In rus))

Keeping to the same convention, modern scientists are increasingly inclined to consider the human community as a space of individuals and their communications, constructed by semiotic means. See in particular: Vakhshtayn

mation about possible, due and forbidden behavior and, ultimately, form legal reality as one of the dimensions of a socium.

Legal science, primarily in its doctrinal manifestations, performs a number of functions that ensure the organization of legal reality and its historical dynamics. Firstly, it is designed to identify and describe a multitude of legally relevant facts that form the empirical basis of the legal reality,[18] and separate them from facts that do not have such relevance (selective function). Secondly, legal science provides the semantic content of the phenomena of legal reality and, ultimately, forms the semantic structure of the latter (semantic function).[19]

Thirdly, under certain conditions, namely, in the absence or weak development of positive law, a doctrine that, as a rule, simultaneously interprets sacred texts, is found capable of replacing it by directly establishing rules of conduct legitimized in such case by the authority of the Holy Scripture on which it relies (prescriptive function). Religious legal frameworks are among examples of the performance by the doctrine of this function.

In particular, it is known that an important rule-making function in the Muslim law of the 8th-11th centuries was performed by the legal science in general (ijtihad), including, in particular, the coordinated opinion of reputable lawyers (ijma),[20] that functioned "as a unique tool, way to fill in the gaps in the Muslim law where neither the Quran nor the Sunnah could give a convincing answer on emerging issues".[21] And although the "closing of the gate of Ijtihad" in the 12th century and the secularization of the legal systems of the Islamic world of the New Age led to the loss of this function by the legal science, the doctrine, according to some scholars, still has a significant impact on the legislation and judicial practice of a number of Muslim countries.[22]

Fourthly, when describing legally relevant facts, the science simultaneously sets as its goal the identification of regular causal relationships between them, thereby organizing the legal reality in accordance with the theoretical model laid down in its foundation (constitutive function). It is noteworthy that this function is rooted in neurophysiological processes that occur in the human brain as it constructs the surrounding reality. Scientists have proven that in the course of cognition and stable practical interaction of an individual with objects of the external world, neural connections are formed in the human's brain that correlate to the relations that exist between facts of reality.[23]

Based on this, there is reason to believe that the knowledge that, following K. Popper, can be regarded as the "World 3",[24] forms both the brain structures of the cognizing subject and the cognitive world of objects, thereby constructing both objective and subjective reality. And, fifthly, the improvement of mechanisms and tools for acquiring new knowledge, leading to its quantitative and qualitative growth,[25] allows the science to influence legal reality, ensuring its transformation, including directional transformations in accordance with the doctrinally developed regulatory ideal (dynamic function).

V. S. Conceptualization of the community: once again on residency or work on errors [K kontseptualizatsii soobshchestva: eshche raz o rezidentnosti, ili rabota nad oshibkami] // Sociology of Power [Sotsiologiya vlasti]. 2013. No. 3. P. 24. (In rus); Anikin D. A. Topology of Social Space: from Geography to Social Philosophy [Topologiya sotsial'nogo prostranstva: ot geografii k sotsial'noi filosofii] // Izvestiya of Saratov University. New Series. Series: Philosophy. Psychology. Pedagogy [Izvestiya Saratovskogo un-ta. Novaya seriya: Filosofiya. Psikhologiya. Pedagogika]. 2014. Vol. 14. Issue 1. PP. 5–6. (In rus)

[18] In this sense, the well-known statement of L. Wittgenstein is quite applicable to legal reality, from an empirical point of view: "The world is a totality of facts, not of things. The world is determined by the facts, and by these being all the facts." (Wittgenstein L. The Logical and Philosophical Treatise // Wittgenstein L. Philosophical Works. part. I. M.: Gnosis Publ., 1994. P. 5. (trans. from germ.))

[19] Schütz A. The Meaning Structure of the Social World // Schütz A. Selected Writings: A World that Glows with Meaning. M.: Rossiyskaya politicheskaya entsiklopediya (ROSSPEN) Publ., 2004. P. 996 (trans. from germ. and eng.)

[20] See: Novikova G. R. Religious and legal doctrine of Islam in the context of the legal regulation of the financial relations of modern states [Religiozno-pravovaya doktrina islama v kontekste pravovoi reglamentatsii finansovykh otnoshenii sovremennykh gosudarstv] // Courier of the Kutafin Moscow State Law University (MSAL) [Vestnik MGYUA im. O. E. Kutafina]. 2016. No. 3. P. 169 (In rus)

[21] Marchenko M. N. The course of comparative law [Kurs sravnitel'nogo pravovedeniya]. M.: OOO Gorodets-izdat Publ., 2002. P. 1027 (In rus)

[22] Rayanov F. M. The Muslim legal doctrine and its modern dimension [Musul'mansko-pravovaya doktrina i ee sovremennoe izmerenie] // The Problems of Oriental Studies [Problemy vostokovedeniya]. 2013. No. 2 (60). P. 13. (In rus)

[23] See: Purves D. Neuroscience. 5th ed. Sunderland (Mass.): Sinauer, 2011. P. 507 ff.

[24] Popper K. Knowledge and psychophysical problem: In defense of interaction. M.: LKI Publ., 2008. P. 81 (trans. from eng)

[25] See: *Popper K.* Evolutionary Epistemology // Evolutionary Theory: Paths into the Future / Ed. by J. W. Pollard. New York : John Wiley&Sons, 1984. P. 240.

It is easy to see that at different stages of historical development, the proportion between these functions was not the same. Depending on the specific conditions that determine the needs of society, and on the level of development, as well as the historical features of scientific knowledge itself, some of its functions were of predominant importance, while others played an auxiliary (subsidiary) role. In the traditional legal systems of the Ancient World and the Middle Ages, when doctrine was an undeniably recognized source of law, primary for it were the selective and semantic functions. The foregoing is clearly illustrated by the example of Roman jurisprudence.

Having arisen at the turn of the 3rd and 2nd centuries, B. C.,[26] the Ancient Rome jurisprudence initially had no law-making significance. In the preclassical period of the history of the Roman law, lawyers solved purely applied problems, namely, drafted lawsuits and transactions (cavere), dealt with cases in court (agere) and advised citizens on legal issues (respondere).[27] Thus, the doctrine, in terms of its historical genesis, initially grew out of purely practical actions, inseparable from those relations and facts that formed the substantial basis of the legal order. Naturally, inseparable from these actions were reflective moments, implying a comprehension of the relevance of legally significant behavior. In other words, legal science at the time of its inception represented a meaningful practical work of lawyers having sufficient qualifications for that.

Only with the passage of time, as the legal order, and, in the context of the latter, the intellectual, creative activity of legal experts evolved, did the differentiation of scientific thinking and practice happen, the latter becoming the gnosiological object of the former. The Roman legal doctrine is known to have reached fullest flower in the 1st-3rd centuries, A. D., when the works of influential lawyers (Gaius, Ulpian, Papinianus, Modestinus and Julius Paulus) receive official recognition as sources of law. However, even at that time, the doctrine did not meet the strict criteria of scientificity in the modern sense.[28] The activities of classical Roman jurists were mainly reduced to the formulation of general principles of legal regulation (the combination of which was called ius naturale, natural law) and to the description on their basis of specific life circumstances (casus), as well as subjective rights and duties arising in such circumstances.

Noteworthy are the features of the presentation of the material in the works of Roman lawyers. According to V. A. Savelyev, "Roman lawyers most often began the description of a casus with the formulation "it is asked ..."(quasitum est), followed by an account of the circumstances of the casus. And then the actual "response" of the lawyer, beginning with the words "responded that..." (respondi) followed. Sometimes respondi was followed by another characteristic formulation: "such is the right" (quid iuris sit)".[29] At the same time, as far as one can judge, the concept of a norm as a rule of conduct, general valid, universally binding and multiply repeatable, was generally alien to the lawyers of the classical period. The casuistry of their thinking, among other things, is evidenced by the specifics of the method they used, in particular, the desire to give accurate definitions of concepts, the invariable commitment to the methods of generic-specific classification of the facts being studied, borrowed from Aristotle's works, and the use of other formal logical and linguistic interpretation methods to which sometimes the legal research itself was reduced.[30]

Thus, the lawyers of Ancient Rome did a tremendous job, designed to give, if possible, a comprehensive description, systematization and cataloging of jural facts, from which the legal reality was formed at the empirical level. This contributed to the typification of such jural facts, the formulation of exemplary casus, guided whereby the judges could make decisions on specific cases. As A. A. Malinovsky

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[26] Novitsky I. B. Foundations of Roman civil law [Osnovy rimskogo grazhdanskogo prava]. M.: Prospekt Publ., 2015. PP. 24–26 (In rus)

[27] The listed tasks of the early Roman jurisprudence turned out so firmly connected with it that even in the middle of the 1st century, B. C., Cicero (Cic. de. orat. 1. 48. 212), answering the question of who can be called a lawyer, remarked that the jurist is "the one who is learned in the law (and practice of its application), that is used by individuals in the civilian community, and in giving answers, and conducting business in court, and drawing up formulations (qui legem, et consuetudinis eius, quia private in civitate uterentur, et ad respondendum, et ad agendum, et ad cavendum, peritus esset)".

[28] See: Berman G. J. Western rights tradition: the era of the formation. M.: Publishing house of Moscow state University, Infra-M — Norma Publ., 1998. PP. 131–132 (trans. from eng.)

[29] Saveliev V. A. Legal technique of the Roman jurisprudence of the classical period [Yuridicheskaya tekhnika rimskoi yurisprudentsii klassicheskogo perioda] // Russian Law Journal [Zhurnal rossiiskogo prava]. 2008. No. 12. P. 108. (In rus)

[30] See on this, in particular: Peretersky I. S. Digesta Justiniana. Essays on the history of compilation and general characteristics [Digesty Yustiniana. Ocherki po istorii sostavleniya i obshchaya kharakteristika]. M.: Gosyurizdat Publ., 1956. P. 68 (In rus) Garcia Garrido M. H. Roman private law: incidents, lawsuits, institutions. M. : Statut Publ., 2005. P. 89 (trans. from spain)

writes, "an exemplary casus was a model for resolving a typical legal dispute arising under identical or similar factual circumstances... The appearance of exemplary disputes indicates a sufficiently high level of development of the Roman jurisprudence. Its representatives were able to identify the typical in legal reality, precisely determine the legal essence of the dispute, abstracting from a variety of factual nuances, tried to create a theoretical model for resolving similar disputes by applying the method of analogy".[31]

The typification of specific life situations, that was carried out by the Roman jurisprudence, sheds light on the particularities of doctrinal law-making and on the specifics of the legal system in traditional societies, including the society of Ancient Rome. A characteristic feature of such legal systems, in our opinion, was the underdevelopment of the normative component, in connection with which the function of the main means of constructing legal reality was performed by subjective rights and obligations inextricably linked with specific life situations from which they directly flowed. It was in subjective rights and obligations that the semantic structure of the corresponding actual situation was represented and formalized, which semantic structure allowed participants in legal communication to psychologically perceive subjective rights as legal claims, enabling to demand certain behavior from the obligated persons.

Formulating exemplary causus, lawyers were guided by the premise that, in situations of equal relevance, subjects would behave similarly, which enabled to create typical models of subjective rights and obligations applicable to many similar factual situations. In this sense, the typification by lawyers of legal reality broadened the horizons of such reality, enabling to move from singularity to an aggregation of facts, united by common relevance and characteristic features.[32] At the same time, the cognitive activity of Roman lawyers became a logical continuation and development of the processes of constructing reality, the origins of which are rooted in the pre-predicative structures of the life world[33] and in the ordinary legal awareness of subjects of legal communication.

Reception of the Roman law in medieval Western Europe starting from the 11th century entailed not only the assimilation by Western European jurists of the scientific achievements and results of ancient legal scholars, but also the revival of the law-making significance of the legal doctrine.[34] Moreover, under conditions of local particularism inherent in medieval law, it was the lawyers who created the common rule of law (jus commune).[35] In this regard, the European monarchs' desire to impart binding force to their writings does not seem profoundly accidental.[36]

This tendency manifested itself especially clearly in the period of the 13th–14th centuries, marked with the activities of post-glossators (commentators),[37] who, unlike glossators, were not only university

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[31] Malinovsky A. A. Rome Jurisprudence: Methodology and Didactics [Rimskaya yurisprudentsiya: metodologiya i didaktika] // Russian Law: Education, Practice, Researches [Rossiiskoe pravo: obrazovanie, praktika, nauka]. 2017. No. 4 (100). P. 31. (In rus.)

[32] See: Schütz A. Reflections on the problem of relevance // Schütz A. Selected Writings: A World that Glows with Meaning. P. 281. (trans. from germ. and eng.)

[33] About the life world see: Husserl E. Crisis of the European Sciences and Transcendental Phenomenology: An Introduction to Phenomenological Philosophy // Edmund Husserl. Philosophy as Rigorous Science. Novocherkassk: Saguna Publ., 1994. P. 87.

[34] See more details: Kotlyar I. A. "Jus commune" as a medieval model of the all-European law and order (XI–XIV centuries) ["Jus commune" kak srednevekovaya model' obshcheevropeiskogo pravoporyadka (XI–XIV veka)]. Abstract of dissertation of the candidate of Juridical sciences, M., 2011. (In rus); Mikhailov A. V. The Genesis of Continental Legal Dogma [Genezis kontinental'noi yuridicheskoi dogmatiki]. M.: Yurlitinform Publ., 2012. (In rus)

[35] See: Fedorov A. N. Fragmentation or interaction: on the particularism of the law of medieval Western Europe [Razdroblennost' ili vzaimodeistvie: o partikulyarizme prava srednevekovoi Zapadnoi Evropy] // Bulletin of Chelyabinsk State University [Vestnik Chelyabinskogo gosudarstvennogo universiteta]. 2015. No. 23 (378). Ser.: Right [Ser.: Pravo]. Issue 44. P. 20. (In rus)

[36] Under conditions of the emerging absolutist statehood of the early New Age, the monarch as the supreme sovereign of the nation becomes a key figure in jus commune, which made doctrinal provisions binding in terms of law enforcement practice (Kotlyar I. A. Sovereign as an institution of European medieval jus commune [Gosudar' kak institut evropeiskogo srednevekovogo jus commune] // Bulletin of Moscow State University. Ser. 11: Right [Vestnik MGU. Ser. 11: Pravo]. 2011. No. 4. P. 106 (In rus)). At the same time, the state itself, on whose authority the doctrine rested, at the time of its inception represented the result of the efforts of lawyers to generalize and conceptualize the phenomena of legal reality. See P. Bourdieu From the "royal house" to state interest: a model of the origin of the bureaucratic field // Bourdieu P. Sociology of social space. M .: Institute of Experimental Sociology. SPb .: Aletheia Publ., 2005. P. 279 (trans. from fr.)

[37] Poldnikov D. Yu. Stages of development of the jus commune scientific doctrine in Western Europe in the XII–XIV centuries [Ehtapy razvitiya nauchnoi doktriny jus commune v Zapadnoi Evrope v XII — XIV vv.] // Bulletin of Moscow State University. Ser. 11: Right [Vestnik MGU. Ser. 11: Pravo]. 2013. No. 1. P. 90 (In rus)

professors, but also active participants in political life. The recommendations formulated in the works of the most influential post-glossators, such as Baldus de Ubaldis, Franciscus Accursius, Bartolus de Saxoferrato and others, were subject to mandatory application in the courts, which enabled to curb, to a certain extent, the arbitrariness of judges and create conditions for harmonization of urban, municipal, community and other local customs.[38]

Legal constructs created in the writings of the representatives of the scientific doctrine of jus commune claim not only typification, but generalization of factual material and, therefore, general validity as components of legal reality. Thus, the selective function is no longer the main one for medieval legal doctrine, such function being replaced by the constitutive function associated with the constitution of the rule of law and its main segments. The results of a thorough doctrinal study are the categories of the state, public authority, legal entities, contract law, etc. practically unknown to the Roman law.[39]

It is thanks to the law-making activities of lawyers that the further theorization and conceptualization of legal reality takes place, laying the foundations for the formation of national legal systems in the New Age. The latter became a natural result of the normalization of legal orders, leading to the formation, on the basis of subjective rights and obligations typified by lawyers, of universally valid rules of conduct that extended their effect to all participants in legal communication. It is easy to see that the leading role in the normalization of legal orders culminating in the creation of codifications of the 19th century, was played by legal science, including its doctrinal aspect. The great lawyers of the early New Age (in particular, J. Althusius, H. Grotius, W. Blackstone, D. Coke, J. Bodin, J. Cujas, C. Beccaria and others), who can rightfully be called the creators modern scientific method,[40] formulated a theoretical idea of the norm of law as a rule of behavior, which has found application in the legislative regulation of public relations.

With the final formation of the normative dimension of legal reality, the doctrine loses its inherent significance as a source of law. This was assisted, among others, by mechanistic models of legal regulation that have become widespread in the law-making and law-enforcement practice of the New Age, which was indirectly, but very actively influenced by the classical natural science picture of the Universe and was subjected to the effect of natural laws, representing a universal causal relationship of facts established in experience. As a result, the main means of constructing the modern legal order come to be represented by legal norms, that are considered as official-authoritative prescriptions, having signs of general bindingness, formal certainty, repeated applicability, and extend their effect to an indefinite number of people and to an unlimited number of typical social relations.[41]

With all the clarity, such mechanistic ideas about the normativity of law manifested themselves in the concept of the "legal regulation mechanism" developed by a number of Soviet lawyers, which is a process of unilateral impact of the norms established by the state on the behavior of members of society by endowing the latter with subjective rights and obligations.[42] At the same time, legal

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[38] See in particular: Kotlyar I. A. The concept of "jus commune" in the European legal tradition [Ponyatie "jus commune" v evropeiskoi pravovoi traditsii] // Bulletin of Moscow State University. Ser. 11: Right [Vestnik MGU. Ser. 11: Pravo]. 2009. No. 5. PP. 89–100. (In rus) Marey A. V. To comprehending the reception of Roman law: the formation of jus commune in Western Europe in the XII–XIV centuries [K osmysleniyu retseptsii rimskogo prava: formirovanie jus commune v Zapadnoi Evrope XII–XIV vv.] // State and law [Gosudarstvo i pravo]. 2012. No. 5. PP. 96–102. (In rus)

[39] Speaking of the influence of the medieval legal doctrine on the development of contract law, D.Yu. Poldnikov highlights its fundamental importance. According to him: "Contrary to the existing stereotype... the Roman law was not familiar with the general theory of contract, based on the consensual model of the contract, a single terminological designation of the contract, its bindingness, contractual freedom... How did it turn out that such a fragmented Roman contract law formed the basis of the modern contractual theory? In our view, the key role here was played by the theoretical concepts of the representatives of the medieval jus commune" (D.Yu. Poldnikov Stages of formation of the civilistic contract theory *jus commune* [Ehtapy formirovaniya tsivilisticheskoi dogovornoi teorii jus commune] // State and law [Gosudarstvo i pravo]. 2012. No. 6. P. 108 (In rus)).

[40] See in particular: Chicherin B. N. Political thinkers of the Ancient and New World [Politicheskie mysliteli Drevnego i Novogo mira]. SPb.: Lan' Publ., 1999. P. 150 (In rus) Batiev L. V. Political and legal doctrines of the XVII century. [Politicheskie i pravovye ucheniya XVII veka] SPb. : Yuridicheskiy tsentr Press Publ., 2006. PP. 5–11 (In rus) Zanin S. V. Birth of the doctrine of natural law during the epoch of Modern Period: Johannes Althusius and Hugo Grotius [Rozhdenie uchenii o estestvennom prave v ehpokhu Novogo vremeni: Ioann Al'tuzii i Grotsii] // History of State and Law [Istoriya gosudarstva i prava]. 2013. No. 14. PP. 24–27. (In rus)

[41] See more details: Leist O. E. The essence of law. Problems of the theory and philosophy of law [Sushchnost' prava. Problemy teorii i filosofii prava]. M. : Zertsalo Publ., 2002. PP. 51–58. (In rus)

[42] Kazimirchuk V. P. The Social Mechanism of the Law [Sotsial'nyi mekhanizm deistviya prava] // Soviet State and Law [Sov. gosudarstvo i pravo]. 1970. No. 10. PP. 37–44. (In rus); Yavich L. S. General Theory of Law [Obshchaya teoriya prava]. L.: LGU Publ., 1976. P. 246 (In rus); Tikhomirov Yu. A. Legal System of the Developed Socialist Society

science, the main task of which began to be seen in identifying the general prerequisites and regularities of normative regulation, interpreting norms and developing recommendations for their application, is being squeezed out into the sphere of pure knowledge.[43] The law-making possibilities of the doctrine, whose provisions are becoming more abstract and theoretically loaded as the modern legal order becomes more complex, are generally assessed skeptically by researchers,[44] despite the reservations that the doctrine is an important way of law formation in any society, "a comprehensive form of law" , a secondary, non-traditional source of law, etc.[45] The only exception is the Anglo-Saxon (Anglo-American) law, where, for several historical, systemic and sociocultural reasons, the doctrine retained (although to a limited extent) the significance of the source of law.[46]

It appears that the considered trends in the historical dynamics of the science of law reflect the most important regularities of transformation of the semiotic means of constructing legal reality in the evolutionary dimension. This is due to the very nature of legal science, which is a collection of texts, i. e., semiotic complexes that organize, arrange, and represent the phenomena of legal reality based on the semantic structure inherent in the latter. We have observed that the basic law of the evolution of legal reality consists in the development of the latter towards the increasing general significance of the signs that form it, correlating with the formation of a single semantic structure that pervades this reality.

Namely, the relevances (which arose initially in the pre-predicative horizons of the life world), which form the semantic core of specific life situations,[47] are universalized during evolution, apply to many similar facts and homogeneous social relations, demanding similar behavior from their participants. In terms of the semiotic form, the evolution of legal reality is manifested in the formation, on the basis of subjective rights and obligations, of norms of general action, addressed to an unlimited scope of participants in legal communication.

Thus, legal norms, being an attribute of a developed legal order, are the result of the typification of subjective rights and obligations and the sedimentation of legally relevant experience of many specific individuals.[48] The result of the processes being considered is the formation of a legal reality space common for all individuals, representing a single field of intersubjective communications. The legal science in general and the doctrine in particular, due to their inherent high reflective potential, as well as the

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[Pravovaya sistema razvitogo sotsialisticheskogo obshchestva] // Soviet State and Law [Sov. gosudarstvo i pravo]. 1979. No. 7. P. 39. (In rus); Alekseev S. S. General Theory of Law. [Obshchaya teoriya prava] In 2 vols. Vol. II. M. : Yuridicheskaya literatura Publ., 1982. PP. 25–30 (In rus)

[43] Similar views on the purpose and designation of the science of law were already held by thinkers of the 17th-18th centuries, who believed that lawyers did not create legal reality, but only cognized the regularities that were objectively inherent in it and were compared with the laws of nature. See: Hobbes T. Basics of Philosophy // Hobbes T. Works in 2 vols. Vol. 1. M.: Mysl' Publ., 1989. PP. 237, 272 and etc.; Montesquieu Sh. L. On the Spirit of Laws // Montesquieu Sh. L. Selected works. M.: Gospolitizdat Publ., 1955. P. 163 and etc. (trans. from fr.)

[44] See for example: Grimm D. D. On the question of the concept and source of the binding legal norms [K voprosu o ponyatii i istochnike obyazatel'nosti yuridicheskikh norm] // Journal of the Ministry of Justice. [Zhurnal ministerstva yustitsii] 1896. No. 6. PP. 26–27. (In rus); Khvostov V. M. The general theory of law. Elementary essay [Obshchaya teoriya prava. Ehlementarnyi ocherk]. M.: Tip Vilde Publ., 1914. PP. 107–108 (In rus); Vinogradov P. G. Essays on the theory of law [Ocherki po teorii prava]. M. : Tip. t-va A. A. Levenson Publ., 1915. PP. 124–125 (In rus); Tebbit M. Philosophy of Law: An Introduction. London; New York : Routledge&Kegan Paul, 2005. PP. 36–52.

[45] See in particular: Rozhnov A. P. Unconventional sources of law in the legal system [Netraditsionnye istochniki prava v pravovoi sisteme] // Bulletin of Volgograd State University [Vestnik VoLGU]. 2001. Ser. 5. Issue 4. P. 29. (In rus); Voplenko N. N. Sources and forms of law [Istochniki i formy prava]. Volgograd: Volgograd State University Publ., 2004. P. 23 (In rus); Lyubitenko D. Yu. Legal doctrine in the system of sources of Russian law [Pravovaya doktrina v sisteme istochnikov rossiiskogo prava] // Bulletin of the Volgograd Academy of the Ministry of Internal Affairs of Russia [Vestnik Volgogradskoi akademii MVD Rossii]. 2010. No. 4 (In rus); Malko A. V., Khramov D. V. System of non-traditional sources of Russian private law [Sistema netraditsionnykh istochnikov rossiiskogo chastnogo prava] // Leningrad Legal Journal [Leningradskii yuridicheskii zhurnal]. 2010. No. 1. P. 38 and etc. (In rus)

[46] See: Romashov R. A. Legal doctrine in the Anglo-American, Muslim and Russian law: the problem of understanding and forms of expression [Pravovaya doktrina v anglo-amerikanskom, musul'manskom i rossiiskom prave: problema ponimaniya i formy vyrazheniya] // Problems of the methodology and philosophy of law. Collection of articles of participants of the II International Round Table [Problemy metodologii i filosofii prava. Sb. statei uchastnikov II Mezhdunarodnogo kruglogo stola] / Ed. S. N. Kasatkin. Samara: Samarskaya gumanitarnaya akademiya Publ., 2015. PP. 33–34. (In rus)

[47] See more details: Stovba A. V. Legal situation as the source of being law. [Pravovaya situatsiya kak istok bytiya prava]. Kharkov: LLS Publ., 2006. (In rus)

[48] See: Berger P., Luckmann T. The Social Construction of Reality: A treatise on sociology of knowledge. M. : Medium Publ., 1995. PP. 157–170 (trans. from eng.); Schütz A. Reflections on the problem of relevance. P. 295; Divisenko K. S. Social studies of the vital world [Sotsial'nye issledovaniya zhiznennogo mira] // Sociological Journal [Sotsiologicheskii zhurnal]. 2014. No. 1. P. 7. (In rus)

authority enjoyed by legal scholars, can significantly accelerate this process, becoming a powerful catalyst of evolutionary changes in legal reality.

The evolutionary dynamics of legal reality and the participation of scientific knowledge in it are not random and not arbitrary, but deeply regular, confirmed by the example of the evolution of other semiotic means of constructing reality (languages). This refers, in particular, to natural human languages,[49] which are initially composed of occasionally motivated individual signs that have a maximum degree of specificity and designate single objects. Hand gestures, which, according to some scholars, were the first way of semiotic communication, are the simplest (and earliest) example of such signs.[50] As the sound language evolved and developed, the elements of sign communication were preserved in its structures in the form of emphatic stresses, exclamatory intonation,[51] and, particularly, the so-called deictic words, playing, as K. Buhler showed, an important role in the construction of the speaker's spatial relations.[52]

The individual and, therefore, extremely concretized nature of the primary forms of sign communication, confined to individual communicative situations, is reflected in idiolects, making, according to some linguists, the language of any human community at the early stages of development.[53] As W. Humboldt asserted, "all people speak kind of one language, and, at the same time, each person has their own specific language. It is necessary to study live spoken language and the speech of a specific individual".[54] In the course of evolution, on the basis of many idiolects, a single language is formed, mandatory for all members of the linguistic community. At the same time, individual differences, reflected in idiolects, without losing their overall significance, become leveled to a degree. The normalization processes occurring in any language that has reached a certain stage of development play an active role here.

One of the most significant prerequisites for normalization is the loss by the semiotic means used by the language of direct figurative expressiveness, and their transformation into signs that can signify large classes of objects that have common signs.[55] The studies of A. M. Hokart demonstrated that the evolution from sign-picture to sign-symbol has a common cultural significance and affects any spheres of communication interwoven with the natural language, for example, political and legal rituals practiced in ancient societies.[56] An important role here is played by scientific knowledge that contributes to the

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[49] There have been multiple attempts in the literature to identify common regularities of evolution of law and language due to their close interaction and interweaving in the processes of semiotic communication. See for example: Kasatkin A. A. The history of language and the history of law (on the material of some Romance languages) [Istoriya yazyka i istoriya prava (na materiale nekotorykh romanskikh yazykov)] // News of the Academy of Sciences of the USSR. Ser. literature and language. [Izvestiya AN SSSR. Ser. literatury i yazyka]. 1964. Vol. XXIII. Issue 2. PP. 113–124. (In rus); Proskurin S. G. The evolution of law in the light of semiotics [Ehvolyutsiya prava v svete semiotiki] // Bulletin of the Novosibirsk State University. Series: Linguistics and Intercultural Communication [Vestnik NGU. Ser.: Lingvistika i mezhkul'turnaya kommunikatsiya]. 2008. Vol. 6. Issue 1. PP. 48–53. (In rus)

[50] Attempts to substantiate the theory of the emergence of language from signs were made as early as in the ancient era by philosophers like Epicurus, Lucretius and others (see: Verlinsky A. L. Ancient teachings on the emergence of language [Antichnye ucheniya o vozniknovenii yazyka]. SPb: St. Petersburg State University Publ., 2006. P. 333). One of the subsequently most active supporters of the theory of gesture communication was N.Ya. Marr, who saw in it the starting point of the evolution of not only language, but also a number of other social institutions (Marr N. Ya. Language [Yazyk] // Marr N. Ya. Main questions of linguistics [Osnovnye voprosy yazykoznaniya]. M.: Sotsekgiz Publ., 1935. P. 129. (In rus)). Currently, this concept is considered marginal and is somewhat rightly criticized. However, there is another view, pointing to the indisputable merits of the sign theory, which allows to explain the effect of the basic psychophysiological mechanisms that underlie all the more complex forms of semiotic communication. See: Ivanov V. V. Odd and even: Brain asymmetry and dynamics of sign systems [Nechet i chet: Asimmetriya mozga i dinamika znakovykh sistem] // Ivanov V. V. Selected works on semiotics and cultural history [Izbr. trudy po semiotike i istorii kul'tury]. Vol. I. M. : Yazyki russkoy kul'tury Publ., 1999. P. 487 and etc. (In rus)

[51] See: Bloomfield L. Language [Yazyk]. Ed. 2nd. M. : Editorial URSS Publ., 2002. P. 116 (In rus)

[52] See: Buhler K. Theory of language. The representational function of language. M., Progress Publ., 2002. P. 82 and etc.

[53] See: Bogdanova E. V. On some aspects of the study of the term idiolect in Russian and Western linguistics [O nekotorykh aspektakh izucheniya termina idiolekt v otechestvennoi i zapadnoi lingvistike] // Bulletin of the Leningrad State University named after A. S. Pushkin [Vestnik LGU im. A. S. Pushkina]. 2009. Vol. 1. No. 4. PP. 100–108. (In rus)

[54] Wilhelm Humboldt. On Language: The Diversity of Human Language-Structure and its Influence on the Mental Development of Mankind // Humboldt W. Selected works on linguistics. M.: Progress Publ., 1984. P. 45.

[55] See: Ivanov V. V. Linguistics and humanitarian problems of semiotics [Lingvistika i gumanitarnye problemy semiotiki] // News of the Academy of Sciences of the USSR. Ser. literature and language [Izvestiya AN SSSR. Ser. literatury i yazyka]. 1968. Vol. XXVII. Issue 3. P. 241. (In rus)

[56] Hocart A. M. Kings and Councillors. Cairo : Egyptian University Press, 1936. P. 151. It is worthwhile to note that among earliest were studies of H. S. Maine on the influence of the processes under consideration on the insti-

conceptualization of culture and the formation of terminology, with the help of which semantic uniformity of various spheres of cultural reality, including legal reality, is ensured.[57]

This circumstance, in relation to linguistic semantics, is described by V. V. Ivanov, according to whom: "The development from specific images to symbols in languages is in line with a similar shift of theoretical interests in relation to language. For the early stages of consciousness (in particular, reflected in myths), the main problem was the relationship between the sign and the object, reflected in the legends about the name of things... Modern linguistic semantics, the development of which began with the study of signs denoting concepts, is least concerned with this a range of issues".[58] The same is true of the legal science, the law-making significance of which is in forming a system of means for the semiotic construction of legal reality, creating conditions for normalizing the latter.

Even in modern conditions, wherein the legal science in general (and the doctrine in particular), as we have seen, is not normally classified as sources of law, their significance is still especially high where the norms of positive law are not an expression of the arbitrariness of the prevailing clique, but reflect the laws of social life, as well as the general will and public interest of all members of society. In such conditions, the doctrine inevitably comes to the fore among not only legal factors, but also among the sources of law in a strict (formal-legal) sense.[59] Indirectly, this circumstance is officially recognized in a number of regulatory legal acts, so far only in relation to the norms of foreign law on the territory of the Russian Federation (clause 1 of article 1191 of the Civil Code of the Russian Federation, clause 1 of article 14 of the Arbitration Procedure Code of the Russian Federation, clause 1 of Article 166 of the Family Code of the Russian Federation).[60]

Moreover, in the situation of the emergence of a qualitatively new legal order, due to its inherent features mentioned above, the importance of the doctrine as a source of law will apparently increase. Therein, taking into account the specifics of the legal science, including in its doctrinal manifestations, there are reasons to assume that the main function relevant to the post-modern legal order will be the dynamic function, the implementation of which will allow to actively impact the legal order, bringing it in line with general principles developed on doctrinal level. The constitutive impact of legal science on legal order may cover several directions at a time, namely through law-making, judicial practice and law enforcement activities of practicing lawyers.

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tutions of civil and criminal law of the societies of the Ancient World, deducing the pattern of evolution of the legal order — from specific prescriptions established by the will of the ruler, through the dominance of law of custom to codifications that embody the will of all members of society (Maine H. S. Ancient Law: Its Connection with the Early History of Society, and its Relation to Modern Ideas. Ed. 2nd. M.: KRASAND Publ., 2011. (trans. from eng.)). In this regard, it would be appropriate to assume that the evolutionary dynamics of legal orders on a world-historical scale testifies to the development of the deep structures of human thinking, contributing to the growth of personal self-awareness and, ultimately, the progress of freedom in both its individual and general social manifestations. See more about this in our article: Razuvaev N. V. The development of personal identity as a driving force for the evolution of the states of the Ancient World and the Middle Ages [Razvitie lichnostnogo samosoznaniya kak dvizhushchaya sila ehvolyutsii gosudarstv Drevnego mira i Srednikh vekov] // One Hundred Years to the Ural State Law Institute (1918–2018): in 2 vols. Vol. 1: The Evolution of the Russian and Foreign States and rights: historical and legal research [Sto let Ural'skomu gosudarstvennomu yuridicheskomu institutu (1918–2018 gg.): v 2 t. T. 1: Ehvolyutsiya rossiiskogo i zarubezhnogo gosudarstva i prava: istoriko-yuridicheskie issledovaniya] / Ed. A. S. Smykalin. Ekaterinburg: Ural State Law University Publ., 2019. PP. 134–150. (In rus)

[57] On various aspects of the conceptualization of cultural semantics, see in more detail: Problems of functional grammar: Categorization of semantics [Problemy funktsional'noi grammatiki: Kategorizatsiya semantiki] / ed.-in-chief A. V. Bondarko, S. A. Shubik. SPb.: Nauka Publ., 2008.

[58] Ivanov V. V. Linguistics and humanitarian problems of semiotics [Lingvistika i gumanitarnye problemy semiotiki] P. 241. (In rus)

[59] See in particular: Razumovich N. N. Sources and form of law [Istochniki i forma prava] // Soviet State and Law [Sov. gosudarstvo i pravo]. 1988. No. 3. P. 21 (In rus); Granat N. L. Sources of law [Istochniki prava] // Lawyer [Yurist]. 1998. No. 9. PP. 6–11 (In rus); Boshno S. V. Op. cit. PP. 70–79; Neshataeva T. N. On the question of sources of law — judicial precedent and doctrine [K voprosu ob istochnikakh prava — sudebnom pretsedente i doktrine] // Bulletin of the Supreme Arbitration Court of the Russian Federation [Vestnik VAS RF]. 2003. No. 5. PP. 91–97. (In rus); Vasilyev A. A. Legal doctrine as a source of law: historical and theoretical issues. [Pravovaya doktrina kak istochnik prava: istoriko-teoreticheskie voprosy]. Abstract of dissertation of the candidate of Juridical sciences, Krasnoyarsk, 2007. (In rus)

[60] See: Family Code of the Russian Federation. Appr. by The Federal Law No. 223-FZ of December 29, 1995 // Collection of Legislative Acts of the Russian Federation. 1996. No. 1 Article 16; 2018. No. 1 P. I. Article 22; Civil Code of the Russian Federation. Part three. Appr. by Federal Law No. 146-FZ of November 26, 2001 // Collection of Legislative Acts of the Russian Federation. 2001. No. 49. Article 4552; 2017. No. 14. Article 1998; Arbitration Procedure Code of the Russian Federation. Appr. by the Federal Law No. 95-FZ of July 24, 2002 // Collection of Legislative Acts of the Russian Federation. 2002. No. 30. Article 3012; 2018. No. 53. Part 1. Article 8411.

The mutual connection and influence of the doctrine on law-making was already present in the early stages of the evolution of legal reality, becoming especially close during codification works, which required comprehensive understanding of the structure of the legal order, the principles of its systemic organization, the ratio of specific elements, etc. Only legal science could form such understanding, which is why the leading role played by scientists in preparing codified legislative acts is not accidental. To verify this, it is enough to recall only a few of the most famous examples. Thus, according to historians, the ancient Babylonian Laws of Hammurabi (18th century, B. C.) were already the result of thorough doctrinal development, generalization and systematization of law of custom, court decisions, royal decrees and other sources.[61]

The influence of legal science on the codification of Roman law throughout the entire existence of the latter is well known. The commission of decemvirs for the compilation of the Twelve Tables included persons who stood out for their knowledge of law (first of all, Appius Claudius, the chair of the college). Further codification works were led by leading lawyers of the day too: in particular, Salvius Julianus (2nd century, A. D.), by order of the emperor Adrian, systematized the norms of praetorian law, preparing the so-called Eternal Edict (Edictum perpetuum). But the contribution of legal scholars was especially significant in the preparation of the Justinian Code of Civil Law, in which the largest scholars of their time were involved.[62] This tradition was continued in Byzantium, where lawyers (such as, for example, Constantine Harmenopoulos) were as actively involved in the creation of legislative acts as in the Roman Empire.[63]

It does not need special proof that all the most important codifications of the Modern and Contemporary Times (the French Civil Code, the Complete Code of the Laws of the Russian Empire, the German Civil Code, the Civil Code of Italy, etc.) were ultimately the product of doctrinal creativity, in relation to which the state authority performed only an auxiliary, authorizing role.[64] That is why one should agree with the statement of J. Schapp that "the doctrine in the broad sense is not something "attached to the law", on the contrary, the law is its content. However, this circumstance does not change anything in that access to law is possible only through the doctrine".[65] Doctrinal law-making can also be performed intra legem, through doctrinal interpretations of legislative norms, contextually becoming part of the interpreted norm itself and subject to judicial application along with it.

This is exactly the case with French law, where the works of F. Planiol, L. Michaux, R. Saleille, J. L. Ortolan and others enjoy official recognition. In the legal systems of the Netherlands and former Dutch colonies, primarily South Africa, the works of glossators, post-glossators, as well as lawyers of the 17th-18th centuries (H. Grotius, A. Vinius, I. Vet and others) are used to fill in the gaps in the acting legislation.[66] Finally, in Germany, where the doctrine is not used to directly regulate legal relations, the works of lawyers (in particular, F. C. Savigny, A. Tour, G. Puchta, B. Windscheid, H. Dernburg, J. Baron and others) constitute the theoretical basis of legislation, having a decisive influence on judicial practice.[67] The role of doctrinal interpretations in international law, namely in the practice of international courts, guided by the writings of leading lawyers (F. Vitoria, B. Ayala, F. Gentile, E. Vattel, V. F. Malinovsky and others) is significant.[68]

Nothing, we believe, prevents the direct application of doctrinal provisions in the law enforcement practice of lawyers. Moreover, right now, the significance of the doctrine is becoming especially important for law enforcers who have to deal with facts and relationships that were absent at the earlier stages of social development and require intense intellectual efforts for their understanding and legal

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[61] See: History of the Ancient East. The origin of the most ancient class societies and the first centers of slaveholding civilization. P. I. Mesopotamia [Istoriya Drevnego Vostoka. Zarozhdenie drevneishikh klassovykh obshchestv i pervye ochagi rabovladel'cheskoi tsivilizatsii. Ch. I. Mesopotamiya] / Ed. I. M. Dyakonov. M. : Nauka Publ., 1983. P. 372 (In rus)

[62] See more details: Lipshits E. E. Law and court in Byzantium in the 4–7th centuries [Pravo i sud v Vizantii v IV–VII vv]. L.: Nauka Publ., 1976. (In rus)

[63] See: Medvedev I. P. Legal culture of the Byzantine Empire [Pravovaya kul'tura Vizantiiskoi imperii]. SPb.: Aletheia Publ., 2001. P. 215 and etc. (In rus)

[64] See on this: Kabriyak R. Codification. [Kodifikatsii]. M. : Statut Publ., 2007. PP. 322–324 (In rus)

[65] Schapp J. System of German civil law. M.: Mezhdunarodnye otnosheniya Publ., 2006. P. 41. (trans. from germ.)

[66] See: Zweigert K., Kötz H. Comparative private law. Vol. 1–2. M.: Mezhdunarodnye otnosheniya Publ., 2011. PP. 236–239.

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[68] See: Vasilyev A. A. Legal doctrine as a source of law: pros and cons [Pravovaya doktrina kak istochnik prava: za i protiv] // Altai Messenger of State and Municipal Service [Altaiskii vestnik gosudarstvennoi i munitsipal'noi sluzhby]. 2010. No. 5. PP. 44–45. (In rus)

qualifications. An important sign of the post-industrial (informational) society, noted by many researchers,[69] is the expansion of scientific knowledge in all areas of social practice, including legal practice. Therefore, it is no coincidence that practicing lawyers strive to generalize their experience and draw scientifically significant conclusions and recommendations from such experience. Thus, the doctrine, closely interwoven with legislative, judicial and law enforcement activities, is increasingly involved in the construction of legal reality. In this regard, one should agree with the proposals in the legal literature to officially recognize the doctrine as a source of law.

However, such recognition implies an increased social responsibility of the legal science.[70] It is known, in particular, of the skeptical, not to say sharply negative, attitude of I. A. Pokrovsky to the idea of free judicial law-making, which, according to the scientist, discredited the idea of natural law, on whose behalf the judges took the liberty to speak. I. A. Pokrovsky treated the most important disadvantage of judicial law the possibility of arbitrariness that increases multiple times where the legal consciousness of judges is at a fairly low level. According to him: "If the theory of free judicial law-making contains an organic and unavoidable danger of judicial arbitrariness, if it raises the very uncertainty and ambiguity of law to a principle, it obviously goes against the interests of a developing human person".[71]

Although the legal science, which, by its very nature and social purpose, acts as a medium of exemplary legal awareness, should in principle avoid this danger, there is no reason to a priori consider scholars to be free from the shortcomings inherent in other representatives of the professional legal community. The substantive value and quality of research can, in particular, be markedly reduced by the political or ideological bias of legal thought, leading to the substitution of significant goals of scientific knowledge. In such case, the place of the search for scientific truth and the development of sound recommendations for law enforcement and judicial practice is occupied by the serving of the interests of those in power. The legitimate consequences of this trend are the justification of arbitrariness, the preaching of legal nihilism, the denial of the value of the human person, the basic inalienable rights and freedoms of the person, etc. One more ideological flaw in jurisprudence is the tendency toward abstract theorization rendering scientific works obviously useless for practicing lawyers.

It is submitted that overcoming the indicated systemic shortcomings of the legal science would be an important step towards its transformation into a source of law. Therein, the tasks of the legal science should include not only the formation of a consolidated doctrinal position on issues to be resolved, but also the creation of an all-encompassing theoretical model of legal reality. Such model, based on a system of general scientific, philosophical and legal views, should serve as a basis for legal regulation. In addition, the doctrine, acting as a source of law, cannot be limited only to the creation of a "general theory" that is left at the mercy of legislators, judges and law enforcers. No matter how good such theory may be, it will not replace specific regulatory prescriptions, which the doctrine is also called upon to develop in one form or another.

In other words, the legal science (primarily in its doctrinal aspect) should be present at all stages of legal regulation — from formulating the most fundamental general principles to offering specific solutions to any practically significant issues. Only in such case will legal science be able to successfully perform the law-making function, which is its most important social mission.

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