

Conceptual and Categorical Apparatus of the Concepts of “Right” and “Law” and Their Relationship

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Abstract. In today's context, the definitions of “right” and “law” are becoming increasingly important, because right is a normatively enshrined justice, and the law is the compiler of social relations. The aim of the article is to clarify the content and essence of the definitions of “right” and “law”, to determine their relationship and difference and to reflect on this basis their own vision in jurisprudence. The theoretical and methodological basis of the study is the historical and legal method, structural and functional method, comparative method. The content and essence of the definitions of “right” and “law” are considered. The essence and understanding of such legal phenomena as natural law that arose outside society and positive law created by the state are clarified. The current views of Ukrainian researchers on the characteristics of common and distinctive features of positive and natural law, which differ in certain norms of behavior created by people to determine what is allowed and what is not legally allowed and are expressed in the form of laws. Considering the common features, it is determined that natural law fills the gaps in positive law, because human behaviour is determined not by man himself, but by the law that dominates him with a combination of justice and legality. The main ways of development and existence of positive law are identified, among which are customary law, law of judges, law of the legislator. The main features of positive law, which include mandatory regulations; the expression of norms in laws and other sources determined by the state; formal certainty; state security. The norms and principles of natural law, which are absolute in nature, confirm the truth that man can not live in a world where everything is relative and rely only on contractual bases, which are formulated by the people themselves. It is proposed to conduct research on the relationship and distinction between the concepts of “right” and “law” used in the process of scientific knowledge of a particular problem with which the researcher substantiates his research phenomenon

Keywords: law, legal law, non-legal law, unconstitutional law, natural law, positive law

Introduction

In Ukraine, there have recently been a large number of scientific publications on the interpretation and disclosure of such definitions as “right” and “law”, some aspects of which have been actively considered and analysed by Ukrainian scholars. Thus, V. Selivanov [1] considered the relationship between right and law as one of the methodological problems of philosophy and theory of law. It is the philosophical understanding of law, sees fundamental values such as freedom, equality, justice. Adhering to these values and focusing on the legal framework for the organisation of any form of social interaction, you can avoid chaos and differences in yourself and in relationships with others. V. Savenko offered a deep understanding of the meaning of the terms “right” and “law” [2]. The author notes that judicial practice sees in right and law the unity of ideological content and normative consolidation. Right is perceived as an eternal and statistical phenomenon, law – as a constant and dynamic; the right acts as the organiser, and the law – the organiser of public relations; right as a timeless and supernatural heritage, and law as a historical and cultural specificity. It follows that the right reflects the internal content of phenomena and processes and is created by society, and the law – reflects the external resistance to certain crimes and is created by the state.

The question of the relationship between positive and natural law as an integral part of legal awareness and understanding of law was studied by R. Lutskyi [3]. The researcher researched and singled out two phenomena of legal understanding – natural law, which has an objective nature and is created by people in the process of life and positive law, which, in addition to objective nature, is subjective and created by the state and its bodies based on and considering natural law. Thus, the two existing opposing currents merge into one naturally positive theory of law. M. Kelman, O. Kotukha, and I. Koval [4], V. Navrotskyi [5], N. Konieva [6], S. Slyvka [7] and other researchers have devoted numerous scientific publications to the understanding of “right” and “law” in modern jurisprudence. The foreign scientific work of the scientist D. Dudek was not left out [8]. In his work, the author analyses the concept of public confidence in the state and the rule of law and notes that true trust in relations between people, including in relations with the government, follows not from the law, constitution and codes, but from freedom, responsibility and human desire good that follows from natural law.

The purpose of the article is to define the essence and content of the concepts of “right” and “law”, to clarify their relationship and differences and, accordingly, to reflect their own vision in jurisprudence.

Suggested Citation

Article's History: Received: 15.01.2022 Revised: 16.02.2022 Accepted: 18.03.2022

Melnyk, N.V. (2022). Conceptual and categorical apparatus of the concepts of “right” and “law” and their relationship. *Social and Legal Studies*, 5(1), 15-21.

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Theoretical and Legal Bases on the Essence of the Definitions of "Natural Law", "Positive Law" and "Law" in General

In the context of the study, we consider it appropriate to consider, first of all, the meaning of such definitions as "natural law" and "positive law", because, repeatedly in the publications of modern domestic and foreign researchers, relevance at the present stage of development of society, because the law is formed in a state-organised society as the main regulatory regulator of social relations. Analysis of the accumulated scientific knowledge identifies that the scientific interest in the uniqueness, social necessity and complexity of the phenomenon of law is not declining, but on the contrary, is constantly increasing.

First of all, it is worth paying attention to the distinction between the essence and content of law. As the researcher V. Andriiv notes [9, p. 47] "... if the essence reflects the internal nature of law, its basic and defining qualitative characteristics, without which law ceases to be law, then the content of law is the expression of its essence in many and varied manifestations, in the whole system of recurring social relations". Ukrainian researchers have pointed out that law derives its name from the word "justice", as justice is one of the main foundations of law, which is key in defining it as a regulator of social relations. M. Kelman is a supporter of a broad understanding of the phenomenon of law, who noted that "law is a social regulator of relations, built on the concept of justice" [4, p. 315].

As Professor M. Miroshnychenko notes [10, p. 132] "... law is an objectively defined, rationally justified system of proven in public practice principles, institutions, norms, rules of conduct, implemented in accordance with the laws of natural law and associated with government institutions that have a recognized right to coercion". We consider the opinion of M. Sambor to be correct [11, p. 60], who noted that... law is a normative (volitional) consolidation of the needs and interests of citizens, society and the state in ordering the proper regulation of private and public interests of legal entities; rules of conduct issued by the state and have a mandatory, official nature; a set of norms united by public authorities, which are a systemic set of regulations.

Realising the scientific need for analytical understanding of such legal phenomena as "natural law" and "positive law", we will try to summarise the current views on their nature, understanding, common and distinctive features of modern scholars. In his study, R. Lutskyi [3, p. 39] notes that the norms and principles of natural law are absolute. Among the vast number of variables and relative values, they point to inviolable prohibitions and unconditional ideals. By their existence, they confirm the truth that man cannot live in a world where everything is relative, and that he relies only on the contractual, ie formulated by the people themselves. Agreements can be different and can meet many criteria. Natural law borrows the principle of absoluteness from the sphere of religion and morality, with which it is closely connected and which have long nourished the sphere of spiritual and practical relations of man with absolute values and norms. If in traditional ancient and medieval societies religion directly influenced the legal system, today its influence on natural law is becoming mostly indirect, which is carried out through moral norms and theoretical and philosophical teachings.

Furthermore, N.I. Korchevna and O. Derhunova [12, p. 23] in their research note that "...one of the main means of implementing such universal values as freedom, justice, democracy, law in new political and socio-economic and socio-cultural conditions for Ukraine actualises the development of theoretical thought about the relationship between man and law. This interaction is manifested in natural law, which is considered to be derived from human nature, regardless of its fixation in law.

At the same time, foreign researcher D. Dudek is of the opinion that the state's respect for the natural human right to legal security is a stronger basis for real trust in relations between citizens and the state than the link between trust and the rule of rights, detached from social reality [8, p. 38].

Ukrainian scientists conduct a lot of research, which also applies to positive law, which is explained by the desire to find the foundations of law in everyday life. In particular, S. Slyvka explores positive law in terms of freedom of will. Positive law, in his opinion, means the national law of each state, the external form of regulation of which is enshrined in law. The process of adopting the legal norms of positive law is associated with certain elements of coercion, prohibitions, which can sometimes be subjective. The author considers the freedom of human will in positive law, which, in his opinion, can be achieved by violence or not by violence [7].

Ukrainian researcher R. Lutskyi shows a very clear tendency towards positive law, which states that "...it is obvious that it developed during the transition of mankind to civilisation, when there were objectified foundations for the freedom of the individual – the emergence of surplus product in the form of private property and the separation of individuals. As a result, positive law is formed as an institutional, externally objectified entity. The process of law development was associated with the development of writing, consolidation of norms and their implementation in written documents. Positive law, precisely in view of its written expression and relationship with the government, acquires the quality of an institutional, influential normative regulator. Certain requirements for people's behaviour are transformed into legal norms through specific forms and become public. "However, the analysis of accumulated scientific knowledge allows to distinguish the main ways of development and existence of positive law as a public phenomenon, among which is customary law (law, which is expressed mainly in customs); the right of judges (a right created mainly by the court); the right of the legislator (the right created by the legislative activity of the state). It is expedient to single out the key features of positive law, which include mandatory regulations; the expression of norms in laws and other sources determined by the state; formal certainty; state security" [3, p. 39-40].

The study of scientific literature revealed common and distinctive features of natural and positive law. We consider the opinion of R. Lutskyi to be correct, which singles out their common features, among which are:

- focusing on the regulation of human behaviour, supporting the idea of harmony of the universe;
- observance of many moral norms;
- reflection in positive law of natural legal principles and functions;
- the only logic of maintaining world and state law and order;
- natural law, like positive law, does not deny the needs

of public authorities;

- common duty for all people;
- the superiority of reason over will;
- natural law is a criterion for assessing positive law;
- natural law fills the gaps in positive law;
- human behaviour is ultimately determined not by the person himself, but by the law – natural or positive, which dominates him;
- a combination of justice and law;
- natural law in some cases is an intuitively positive law.

However, we emphasise that there are also distinctive features of natural and positive law:

- positive law, in contrast to natural, created by man;
- the theory of natural law is always ontological, and the theory of positive law tries to rely primarily on ontology;
- the law of nature is perfect and eternal, and the positive is imperfect and short-lived;
- some norms of natural law are unchanged, and norms of positive law are changeable, although much conservative;
- natural law regulates ontological and deontological processes, and positive law – only deontological;
- natural law is slowly changing and evolving, and positive law is changing rapidly and revolutionary;
- not all norms of positive law correspond to natural law, natural law is a standard of positive law;
- natural law is metaphysical, and positive law is rational;
- there is a supernatural right, but no superpositive law;
- natural law depends on the supernatural, positive – on international law;
- elementary morality is important for positive law, and higher – for natural law;
- positive law denies natural law, and natural, on the contrary, supports the positive;
- man is the basis of positive law, and for natural law the basis is not only man but also the real world as a whole;
- natural law is characterised by synergies that are unacceptable for the positive;
- positive law cannot prohibit euthanasia, and natural law has such force [3, p. 40].

The analysis of the existing scientific views of scientists reveals that there is a distinction between natural and positive law, which is that natural law has existed and will exist in nature, regardless of how people will perceive it; exists outside the time parameters; is the main basis for positive law; fills in the gaps in positive law. For its part, positive law differs from natural law in such basic properties as: mandatory regulations, state security, certain rules are variable and man is the basis of positive law.

Thus, having considered natural and positive law, we have our own vision of the formulation of the basic properties of the definition of “law”, by which we mean:

- a social phenomenon without which society cannot exist;
- reflection of the requirements of general justice;
- establishment and protection by the state of a measure of conduct;
- a set of legal norms;
- the norm of freedom.

Having clarified the essence and content of natural and positive law, we can say that it is not necessary to find out which of these concepts is more perfect or which of them occupies a dominant place in modern jurisprudence, as each of these theories complements each other. Therefore, the task of modern legal science will be to explore the non-existent

ideal system, which would stand above all available manifestations of law, embodying their advantages.

Theoretical Approaches to the Essence of the Concept of “Law”

In recent decades, in Ukrainian and foreign literature, and in legal practice, the essence and concept of legal and non-legal law remains the subject of research to this day.

Analysing Ukrainian jurisprudence, we consider it necessary, first of all, to consider the existence of legal law in its content and essence. A. Hryshchenko is a supporter of a broad understanding of this sphere [13, p. 6, 8], who noted in his work that “...legal law, as a formal consolidation of law, based on humanistic and progressive views, the maximum realisation of social ideas of a developed civil society, legal and democratic state; as a normative legal act aimed at the realisation of constitutional rights and freedoms of man and citizen, the source of which is the sovereign will of the people, the nature and content of humanistic ideas and universally recognised human values, and the purpose of regulation – the existence of civil society, social, democratic and the rule of law and the rule of law”.

As N. Koneva notes, “natural human rights are the main criteria for recognising the law as a legal and material criterion of the legal nature of legislation, which later determine the possibility of its application in the spirit of ensuring fundamental human and civil rights and freedoms” [6, p. 99]. At the same time we emphasise, as noted by V. Selivanov [1, p. 55-56]: “... legal law as an expression of the essence of law, ie truth and justice, the truth of life – is a system of subjective rights based on real social needs and interests, it plays in society, in particular, the role of a degree of freedom of human behaviour, whose (freedom) is not identical with permissiveness, in contrast to arbitrariness. Only by adhering to the idea of freedom and justice and focusing on the legal basis in the organisation of any form of social interaction, we can avoid chaos, differences in themselves and in relationships with other people.

Identifying the essence of law as the main regulatory tool of the rule of law, which should be based on law and act within the law, Ukrainian researchers V. Tatsii and Y. Todyka, noted that: “... its role – to unite, not divide to unite society to solve urgent problems. Laws that adequately express the public interest, combine the ideas of freedom, justice and equality in the regulation of social relations, can be an important factor in stabilising the social situation, streamlining stable structures of state and civil society, development of democratic political and legal processes” [14, p. 9-10].

Having clarified the theoretical foundations of legal law, it is worth paying attention to the special characteristics of non-legal law. Exploring this legal aspect, N. Koneva [6, p. 142] notes that “... in non-legal law the law is not embodied, but acts as a form of legal arbitrariness. Illegal are laws whose effect leads to results that contradict the expectations of the legislator, including those bylaws that in their content must comply with the provisions of the law and in fact contradict it. There are also illegal laws or their special norms that are not directly related to arbitrariness, but are significantly contrary to the principle of justice and do not meet the needs of social development, and therefore are not only ineffective but also harmful.

Researching the scientific work “Problems of defining

the concept of legal law”, V. Ryndiuk analysed the scientific views of many researchers, among which the prominent is M. Patey-Bratasyuk, who determines that “... illegal normative act, such as a document issued by a public authority significantly violates the principle of legal equality, thus, does not correspond to the ideas of law, but is mandatory and protected from violations by public authorities “[15, p. 24]. Considering the scientific and theoretical views of prominent researchers on legal and non-legal law, we consider it appropriate to interpret the term – “unconstitutional law”, i.e. a law that does not comply with the Constitution of Ukraine [16] as the basic law of the state. As noted by M. Kelman [4, p. 330]: “...The Constitution is a special legal act that is important for man, society and the state. The Basic Law establishes the foundations of social and state order, the legal status of man and citizen, the principles of public authority by the people, the structure and relations of the state, and the foundations of local government. The Constitution is the foundation, the basis of the country’s legal system and legislation; an outstanding factor in ensuring state sovereignty, consolidation of society, creates appropriate conditions for self-realisation of the individual.

Analysing the numerous works of researchers, these provisions show that in the scientific literature there is no unambiguous interpretation of the concept of legal and non-legal law. In a narrow sense, legal law means a law that adequately reflects the law, the “spirit” of law, legal principles. As for non-legal law, it is a law that does not reflect the essence, value, content of law and violates its principles. It is the Constitution, as the basic law of the state, embodies fundamental human values and is always legal in content, respectively, non-legal laws are unconstitutional.

Correlation and Difference Between the Concepts of “Right” and “Law”

Based on a number of fundamental foundations for the study of theoretical and legal aspects of positive and natural law and law, we consider it appropriate to dwell on the relationship between the concepts of right and law. Considering law as an objective socio-cultural phenomenon in time, in its essence and content precedes the law. Considering the scientific views of L. Korchevna, O. Derhunova [12] in “On the problem of determining the law” and V. Savenko [2] in the article “Comparative analysis of the concepts of “right” and “law” as elements of legal reality”, it should be noted that they emphasised that there is a difference between right and law, since right is the freedom to act or not to act, while the law defines and binds one or another member of this alternative. Thus, right and law are different, as are duties and freedoms, which are incompatible with the same.

V. Savenko identified a very clear trend in the relationship between the definition of “right” and “law”, noting that “...jurisprudence in right and law sees the unity of ideological content and normative consolidation, in which right is given the role of a holistic phenomenon and law – a micro-phenomenon in the structure of the first. He considers right to be an eternal and static phenomenon, law to be constant and dynamic; right – as an ideological heritage of a certain space-time continuum, law – as a source of objective law within a particular legal system; right – as an organiser, law – as a compiler of social relations; right – as a timeless and supernatural heritage, law – as a historical and cultural specificity” [12, p. 108].

According to criminal law researcher V. Navrotskyi, the recognition that “right” and “law” are not the same thing, and that the law must be legal, is a growing type of legal science. After all, it must not only explain, interpret the current law, but also find out how it meets the requirements of law, assess the quality of the law. At the same time, the requirements for the quality of the law itself are growing, which should not only express the will of the legislator, but also meet the requirements of law, which is a means of stabilising legislation, protects the law from unreasonable, current needs” [5, p. 350-351].

These provisions indicate that the relevance of the chosen research issues is influenced by the relationship between the concepts of law and law. As the researcher of this tradition V. Selivanov notes [1, p. 55] “... in the ontological aspect of the distinction between law and law, answering the question of what is law, identifies objectively essential features of law, the very presence of which in the law allows characterising it as a legal phenomenon or as a legal phenomenon as an external manifestation and the realisation of the legal essence”.

We consider the opinion of the Ukrainian researcher V. Navrotskyi to be correct [5, p. 349], who noted that the interaction of the concepts of “right” and “law” is characterised by the fact that right is the content of the provisions, and the law – the form in which they acquired legal force. In this case, the content cannot exist without the appropriate form, and the form cannot be insignificant. Since the form (law) is formed by people with their interests, preferences, mistakes – the form does not necessarily have to be fully consistent with the content at any time. Therefore, there is a dialectical contradiction between form and content, which is eliminated in the improvement of law and change the perception of good and evil in society, the seriousness of repression that can be applied to criminals. In an analysis of existing theoretical approaches to clarifying the nature and content of right and law, professor V. Navrotskyi identified the most important features that characterise their differences and relationships.

Table 1. Characteristic properties of “right” and “law”

Right	Law
It is an instrument of society	It is an instrument of the state
	Expresses the will and interests of the legislator at a certain stage of the state
More stable and not related to current needs	Dynamic – constantly changing, reflecting, in particular, the interests of politically dominant legislators or lobby groups to oppose certain encroachments
The introduction into law of principles and definitions is a means of implementing the provisions of law, proof that the legislator is not arbitrary in creating legislative requirements, but limited by law	

Table 1, Continued

Right	Law
It consists of norms	It consists of articles grouped into larger structural units – sections, parts
the higher the level of law enforcement, the greater the role of law than law	
The Supreme and Constitutional Courts of Ukraine and the International Court of Human Rights focus more on law than on individual articles of law	
The «spirit» that follows from the system of provisions is important in law	In the law – “letter” – of wording given by the legislator
There are no persons or groups of persons who would impose the provisions of law as obligatory	The law is at the same time the will of the people, including individuals
The law clarifies the provisions of the law, in certain cases preventing their application	

Source: developed by the author based on [5, pp. 349-351]

In foreign literature there is a widespread opinion of prominent researchers in the legal field R. Kabalskyi and O. Shevchyk [17], who noted that “...one of the manifestations of the rule of law is that law is not limited to law as one of its forms, but includes other social regulators, such as morals, traditions, customs, etc., which are legitimised by society and historically implemented in national culture. All these elements of law are interconnected by a set of norms that correspond to the ideology of justice, the idea of law, which is largely reflected in the Constitution of Ukraine [16]. Important is not only the law itself, but also the goals that pursue its norms, as stated in the doctrine, the law is defined as a manifestation of its value in the ability to regulate public relations, act as a means of regulating public relations, ensure adequate public good in law and order. In order for the law to be valuable, it is endowed with those qualities that identify it as an important social force of society and a carrier of social energy” [17, p. 161].

Conclusions

The analysis of the existing views of Ukrainian and foreign researchers and the accumulation of scientific knowledge to clarify the nature and content of definitions of right and law and their relationship allows concluding that right is a set of rules of conduct established or recognised by public authorities, universally binding and official, built on the principles of justice and equality in accordance with the interests of the population and the rule of law in the state.

In the course of the research certain distinctive and common features of natural and positive law are singled out. Differences in natural law: 1) exists from nature; 2) perfect, eternal; 3) there are no spatial restrictions on its existence and operation; 4) constant in time, there are no specifically

defined temporal and spatial parameters; 5) has always existed and will exist in nature, regardless of its perception by humans. Differences in positive law: 1) created by man; 2) imperfect, short-lived; 3) operates in clear spaces (time, space, circle of people); 4) the existing concept of validity, i.e. provides for the time of occurrence of a certain rule and its entry into force or termination; 5) man is the basis of positive law. Common features: 1) commonality of many moral norms; 2) reflection of legal principles and functions; 3) maintenance of world and state law and order; 4) does not deny the needs of public authorities; 5) a common duty for all people; 6) human behavior is determined by natural or positive law; 7) a combination of fair and legal.

Thus, the analysis of accumulated scientific knowledge allows emphasising that the circumstances (opportunities) contained in the law must be embodied in reality, ie in law. Accordingly, in the narrow sense, a law is a normative legal act that has the highest legal force, adopted by the legislature or by popular vote, must directly express the will of the people and the interests of civil society. Thus, the law is a realised opportunity, which is embodied in law. Opportunity alone cannot become a reality. Just as the right cannot be exercised by itself, the requirements need to take legal form.

The right itself covers the internal content of phenomena and processes, and the law reflects the external opposition to certain crimes; right is created by society and law by the state. Thus, in the process of this study, certain differences and correlations between the concepts of “right” and “law” were identified. The main differences are that the right exists independently of the law and existed when the law did not yet exist; law is a natural phenomenon and in law it acquires an official state form.

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Поняттєво-категоріальний апарат концептів «право» і «закон» та їх співвідношення

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Анотація. Дедалі більшої актуальності в умовах сьогодення набуває визначення понять «право» і «закон», оскільки право – це нормативно закріплена справедливість, а закон – це упорядник суспільних відносин. Метою статті є з'ясування змісту та сутності дефініцій «право» і «закон», визначення їх співвідношення та відмінності і відображення на цій основі власного бачення в юриспруденції. Теоретико-методологічну основу дослідження становить історико-правовий метод, структурно-функціональний метод, порівняльний метод. Розглянуто зміст та сутність визначень «право» і «закон». З'ясовано суть та розуміння таких правових явищ як природне право, яке виникло поза суспільством та позитивне право, що створюється державою. Визначено наявні на теперішній час погляди українських дослідників щодо характеристики спільних та відмінних рис позитивного і природного права, відмінністю яких є певні норм поведінки, які створюються людьми для визначення того, що дозволено, а що юридично не дозволено та отримують зовнішнє вираження у вигляді законів. Розглядаючи спільні риси, визначено, що природне право заповнює прогалини позитивного права, оскільки, поведінку людини визначає не сама людина, а закон, який домінує над нею з поєднанням справедливості та законності. Виявлено основні способи формування та існування позитивного права, серед яких є звичаєве право, право суддів, право законодавця. Зазначено основні ознаки позитивного права до яких відносимо загальнообов'язкову нормативність; вираженість норм у законах та інших джерелах, що визначаються державою; формальну визначеність; забезпеченість державою. Охарактеризовано норми і принципи природного права, які мають абсолютний характер, підтверджують саме ту істину, що людина не може жити в світі, де все відносно і спиратися тільки на договірні основи, які сформульовані самими людьми. Запропоновано здійснити наукове дослідження щодо співвідношення та розрізнення понять «право» і «закон», що застосовуються в процесі наукового пізнання визначеної проблеми за допомогою яких дослідник обґрунтовує досліджуване ним явище

Ключові слова: закон, правовий закон, неправовий закон, неконституційний закон, природне право, позитивне право