

Synthetic Concept of Law*

The article is devoted to the justification of the synthetic concept of legal understanding on the example of the conservative legal ideology of Russia. The study proves the peculiarity of the Russian traditionalist concept of law based on the works of domestic conservatives, analyzes approaches to legal understanding through the prism of traditional settings, assuming the unity of religion, morality, and law in the form of the concept of „truth”. The hypothesis that the legal understanding in Russian conservatism is a unique synthetic theory of law differs from combining natural law, positivist, and sociological concepts of legal understanding, which are alien to one another. Thus, the main postulates of the synthetic concept of law are put forward. First, the basic idea of the synthetic concept of law is to balance the formal law and the inner moral, religious, moral, and ethical attitudes of man. In other words, the action of law and other social regulators must be in inseparable unity. Secondly, the synthetic concept of law emphasizes the importance of considering people’s identity and traditional legal attitudes. The method of absorption of cultures prefers the synthesis of the best achievements of political and legal thought of different cultures. Third, the synthetic concept of law is of an applied nature. Our analysis revealed a correlation between the secularization of society and the decreasing role of traditional regulators, between the predominance of law and the growth of crime, and between the expansion of state coercion and the decline in the social order. Consequently, to increase the role of other social regulators, to increase the degree of social order and to reduce crime, law must incorporate spiritual principles to be an element of living, the organic connection of religion, morality (tradition), and formal law in a single regulator „Truth”.

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Modern competing approaches to legal understanding (natural law school, legal positivism, sociological jurisprudence, historical theory of law) virtually exclude the possibility of recognizing the synthetic legal understanding as a particular type of legal understanding.

At the same time, the desire to allocate a synthetic concept of law as an independent theory is explained by the crisis of legal understanding, predetermined by the complexity of adequate perception of the essence of law within the framework of the classical approaches to legal understanding¹.

1 N.V. Varlamova, „Russian theory of law in search of a paradigm” *Journal of Russian Law*, 12 (2009): 68.

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The first steps in this scientific direction were made in the scientific works of prerevolutionary authors; for example, V. S. Solovyov formulated the concept of revived natural law, B. A. Kistyakovskiy – pluralistic theory of law, A. S. Yashchenko – synthetic theory of law². Among modern authors, A.V. Polyakov considered an integral (synthetic) concept of law based on the Russian legal tradition.

The prerequisite for the formation of the synthetic concept of legal understanding in the Russian school of law was the development of the conservative legal ideology of Russia.

For all differences in the historical evolution and nuances of the conservative legal ideology in Russia (Slavophiles, National Loyalists (Essentialists), and Conservatives), it seems possible to highlight the features of the legal understanding common to conservatives³.

First, conservatives rightly pointed to the uniqueness of Russian spiritual culture. For example, I.V. Kireevskiy emphasized that law was perceived by the Russian people exclusively as an ideal of truth and justice⁴. Similarly, modern studies of Russian spiritual culture confirm the immanent feature of the Russian people to associate law with morality rather than formally defined rules of behavior⁵.

Second, the traditional Russian legal consciousness is characterized by a profound, synthetic, syncretic unity of religious, moral, and legal principles united by the idea of truth. The doctrine of conservatives proceeds from the postulate that a person chooses in favor of good or evil in his spiritual world. His behavior is the result of a moral choice. Therefore, conservatives look at the root – the human soul, its moral state, and not just at the external consequences of human behavior⁶.

Third, Russian culture prioritizes internal truth – moral ideals and gives the law (external truth) a subordinate position.

This feature predetermines the preference for the ideals of collegiality and social service and the prevalence of a customary, unwritten law, which expresses people's ideals of truth, conscience, and justice.

2 A.V. Polyakov, *General theory of law: problems of interpretation in the context of a communicative approach* (Moscow: Prospekt, 2016), 105.

3 A.V. Polyakov, *General Theory of Law: Phenomenological and Communicative Approach* (St. Petersburg: Legal Center Press, 2003), 10.

4 I.V. Kireevskiy, *In response to A.S. Khomyakov* (Moscow: Institute of Russian Civilization, 2007), 355.

5 V.V. Sorokin, *The concept and essence of law in the spiritual culture of Russia* (Moscow: Yurlitinform, 2006), 250.

6 K.S. Aksakov, *Collected Works* (Moscow: typ. P. Bakhmetev, 1889), 56.

The conservatives viewed the transformation of law into the prevailing social regulator as a sign of the deterioration of public morality and social anomie, in which the only means of restraining evil and crime is the force of state coercion.

It is important to emphasize that conservatives do not confuse moral ideals and formal state-established law. First, law (formal law) occupies a necessary but not dominant place in social regulation. Law must be applied when the other two regulators (religion, morality) fail and social conflicts arise. Second, it is not always the case that law can embody truth and be part of a single social regulator. When the law retreats in its content from morality (truth), it acquires skepticism in conservatism. Thus, in conservative writings, the law only lost its religious sanction when it acted as a conductor of anti-traditional values in Russian culture. Therefore, the pathos of conservatives' criticism of the law must be perceived as a call to align the law (law) with traditional values.

Thus, conservatives saw an alternative in the construction of law to reliance on religious and moral traditions freely accepted by man's conscience. With this approach, the way to improve society lies in the field of education, moral development of the individual, public, and state care about citizens' culture and moral health.

In this regard, Russia's conservative legal thought that managed to show the identity, worldview, and practical usefulness of the synthetic concept of law implies a conglomerate of ideas of morality and law.

To a certain extent, the concept of „truth” has similarities with the idea of „natural law” in its ancient variants. Any traditional society is characterized by a desire to develop a particular legal ideal through the archetype of legal consciousness, through which positive law is evaluated. In Chinese culture, such an archetype is Dao, in Japanese – Giri, in Hindu – Rita⁷. Legal understanding inherent in the Russian legal consciousness has much in common with the traditional legal understanding of other cultures and peoples.

Thus, the synthetic understanding of law as a whole is characteristic of all traditional societies and is intended to substantiate the inseparable unity of law and morality⁸.

The synthetic conception of law is based on the ideal of internal freedom over external freedom and the value of conciliar brotherhood and the

7 R.V. Nasyrov, „On the relationship between the ancient and modern European interpretations of natural law” *Russian Law Journal*, 4 (2008): 56.

8 D.I. Lukovskaya, N.V. Razuvaev, „Political and legal ideas of pre-Socratics: preconditions for the emergence and development” *Jurisprudence*, 6 (2014): 236.

collective beginning, which do not allow for the domination of individualism and the elevation of freedom over duty.

Justly I.A. Ilyin noted: „Thus, it is the legal consciousness, which contemplates the purpose of law and exercises in itself, the act of legal conscience, that is capable of individualizing discretion in applying the law, which must be based on genuine and objective, legal intuition and not allow the summum jus to turn into a summa injuria. Thus, this legal consciousness will find the right way out of the necessity to obey an unrighteous right and the impossibility of transforming its unrighteousness rightfully”⁹.

At the same time, the law plays an essential role in stabilizing social development and guarantees successive and evolutionary development when it embodies and protects the national tradition. The legal method makes it possible to achieve order and order in public life, to preserve the achieved socio-legal experience. In conservatism, the law is associated as a synonym of order and is opposed to anarchy. In this sense, anarchistic and nihilistic assessments of law are alien to conservatism.

In this regard, the law is not rejected but becomes part of a general, synthetic, moral, and legal organism. Law in Russian legal thought back in the 19th and 20th centuries, based on a long historical tradition, came to be regarded as one of the elements of the unified concept of „Law-Truth”. In the modern works of V.V. Sorokin’s contemporary work, positive law in the synthetic theory of law is considered part of the triune regulator of Right, which combines orthodoxy, traditional morality, and jurisprudence.

Thus, V. V. Sorokin presents a single, synthetic image of law in Russian spiritual culture: God’s source of Law. First, people adopt the Divine commandments to the needs of their lives, thereby taking part in the creation and development of morality. Then, the state creates legal laws. Thus, at the top of the law-making hierarchy is the Law of the Lord. Next are the religious canons. Then - the norms of traditional morality of the Russian people, and, finally, in the last place – the state’s laws, not contrary to all above levels of law¹⁰.

The synthetic concept is close to the integral theory of law, which in post-Soviet Russia is being actively developed by V.G. Graftsky, A.V. Polyakov, V.V. Lazarev, R.A. Romashov¹¹. In foreign jurisprudence, integrative jurisprudence is represented by the works of H. J. Berman and J. Hall¹².

9 I.A. Ilyin, *Collected works* (Moscow: Russian book, 1994), 234.

10 V.V. Sorokin, *The concept and essence of law in the spiritual culture of Russia* (Moscow: Yurlitinform, 2006), 250.

11 V.V. Lazarev, *Selected Works* (Moscow: New Justice, 2010), 198.

12 H. J. Berman, *Western Tradition of Law. The Era of Formation* (Moscow: Infra-M, 1998), 16.

A.V. Polyakov distinguishes between integrative and integral theories of legal understanding. According to him: „The view of law as integrity distinguishes integrative from integrative legal understanding. Not seeing the initial integrity of the law, an integrative approach seeks to find it through the union of different approaches developed in classical jurisprudence”¹³.

A.V. Polyakov offers the following definition of law in the context of the communicative approach: „Law is a communicative order of relations, arising from legitimized texts and based on generally meaningful (socially recognized) and generally binding norms, whose participants interact by exercising their rights and obligations”¹⁴.

A.V. Polyakov’s communicative concept of law is in many ways similar to the synthetic theory of law.

Firstly, A. V. Polyakov finds the roots of the communicative theory of law in the Russian political and legal ideas and traces their evolution in the works of representatives of Russian traditionalism (V. S. Solovyov, B. A. Kistyakovsky, L. I. Petrazhitzky, P. A. Sorokin, P. I. Novgorodtsev, N. N. Alekseyev, E. N. Trubetskoy).

Secondly, the author of the communicative concept is critical of using the Western tradition of legal understanding and considers it necessary to justify a legal understanding based on our Russian tradition and domestic spiritual values.

Thirdly, the communicative concept of law is developed by A. V. Polyakov in domestic conservative thought. The scientist notes: „Scientific analysis of liberalism and conservatism should not consist in agitating for one or another ideology, but in identifying which ideology is present in a particular culture and what the prospects for its social life are”. From this perspective, the priority of conservatism in Russian culture, which is historically based on the Orthodox worldview and the corresponding sacral culture, is evident. At the same time, Russian history testifies to serious liberal “injections” that could not help but leave their mark on Russian culture¹⁵.

Thus, A.V. Polyakov’s integral concept of law can be recognized as a kind of synthetic theory of law, which describes and interprets the Russian tradition of legal understanding based on phenomenological methodology. In comparison, integrative approaches to the concept of law are based on

13 A.V. Polyakov, „Russian theoretical and legal thought” *Our difficult path to law* (2006): 118.

14 A.V. Polyakov, „Communicative theory of law as a variant of integral legal thinking” *Legal ideas and institutions in historical and theoretical discourse*, (2008): 22.

15 A.V. Polyakov, *What ideology does Russia need?* (St. Petersburg: St. Petersburg University Publishing House, 2002).

a combination of European theories of law without considering the domestic legal tradition.

There are significant differences between the synthetic and integrative concepts. The integrative type of legal understanding pretends to combine the merits of three concepts of law in different variants: positivism, natural law school, and sociological jurisprudence (historical concept of law), i.e., law, moral principles of law, established legal practice, and discretion of law enforcement (historical traditions of law). At the same time, there are irremovable contradictions between these concepts, which do not allow them to be integrated.

Firstly, normativism, diluted by natural-legal and sociological theories, remains the central link in the integrative theory. Secondly, these types of legal understanding solve both general and private questions of jurisprudence in wholly different methodological ways. Thus, the law cannot have gaps for legal positivism, and all attempts to fill them by appealing to justice (the spirit of the law) or judicial discretion are inappropriate. Finally, the integrative theory generates the problem of a kind of „legal centaur” when incompatible eclectic approaches to the law are combined, or still, one version of the understanding of law proves to be dominant¹⁶.

The synthetic concept of law in the context of Russian conservatism combines morality (traditions, customs of the people), religion (higher spiritual absolutes), and law as a formal coercive mechanism into one regulator.

Thus, integrative jurisprudence remains within the framework of jurisprudence proper, creating an applied and pragmatic theory of law that considers the ethical and social conditions of law norms¹⁷. At the same time, the integrative concept of law seeks to combine European interpretations of law and proceeds from the European legal mentality, which was characterized initially by the idea of separation of law and law, rooted in the rationalist attitudes of positivism.

Thus, the synthetic theory goes back to the idea of the integrity of consciousness and being, reflecting the unified, synthetic nature of law.

The synthetic theory of law seeks to neutralize the shortcomings of normativism by supplementing the formal description of law with the idea of justice and incorporating an element of empirical legal experience into the definition of law.

Russian legal consciousness is still evaluated as weakly differentiating between morality, religion, and law and characterized by religious-moral

16 I. Yu. Kozlikhin, „Integral jurisprudence: debatable issues” *Philosophy of law in Russia: history and modernity*, (2009): 249.

17 V.G. Grafsky, „Integral (synthesized) jurisprudence: Actual and still unfinished project” *Jurisprudence*, 3 (2000): 49.

solid orientations and attitudes¹⁸. Therefore, the synthetic concept of law in domestic conservatism tries to take into account the fusion of all social norms in the Russian legal mentality and proposes to use the potential of such mononormative” regulation in Russian conditions.

In the synthetic concept of law, the positive law organically merges with religion and morality¹⁹. Accordingly, the legislator must infuse a positive law with moral content.

The shortcoming of the theories absolutizing the role of law is that their creators mistakenly believe that one law can ensure, order, and curb crime, and even more, bring brotherhood, equality, and justice into life. As the statistics of the number of crimes committed show, legal means prove ineffective in countering people’s criminal behavior.

Indeed, with the secularization of culture, legal regulators, although beginning to prevail, are still unable to provide stability, order, and justice in the life of society.

The synthetic conception of law suggests a reconsideration of the dominance of law to actualize the „sleeping” traditional regulators of human behavior – religion, morality, and traditions.

The synthetic concept of law reveals the fallacy of legal romanticism, the careless belief that the legal regulator can become the means of solving all social and cultural problems, thus becoming a fetish, an idol, and the supreme social regulator. The organization of social life with a belief in the legal beginning inevitably leads to a decline in morality in society and disappointment in the law. The law is far from being the only and effective means of ensuring the order and development of society. Many states that have relied on law have experienced increased crime, corruption, and bureaucratization of life. Societies that have remained committed to traditional regulators, on the contrary, illustrate a state of order, a low level of crime, as morality and religious rules work as a traditional means of resolving conflicts and maintaining peace in society.

Thus, the synthetic concept of law can be reduced to the following postulates.

First, the synthetic concept of law implies the consideration of law in inseparable unity with other social regulators – morality, morality, and religion. In this regard, the law should absorb spiritual principles. Second, the law is a variable component. Moral and moral guidelines are constant. Consequently, only their inseparable unity can provide the proper law and order in society.

18 A.P. Semitko, „Russian legal culture: mythological and socio-economic sources and preconditions” *State and Law*, 10 (1992): 109.

19 K.P. Pobedonostsev, *The Great Lie of Our Time* (Moscow: ANO Development of spirituality, culture and science, 2004).

Secondly, the synthetic concept of law in conservatives' interpretation allows us to overcome the destructive myth of the low legal culture of Russian society. Law in Russian spirituality cedes primacy to moral truth, which is the ideal of human behavior. Because the Russian people prefer higher moral precepts, we cannot blame them for their low legal culture. The more urgent task is to free the national consciousness from the ideals of alien cultures and legally educate public servants, the elite, and society in the spirit of traditional spiritual and legal traditions.

Third, the synthetic approach to law reveals the regularity of secularized society: the weaker the traditional regulators, the more significant the role of formal law, and the greater the role of law among other social regulators, the greater the degree of state coercion, while the more comprehensive the scope of the law, the less stable the social order and the more exposed to crises. Accordingly, the synthetic concept of law emphasizes the importance of maintaining a balance between formal prescriptions and the spiritual and moral content of normative texts.

Thus, the search for alternatives to the dominant positivist understanding of the law is relevant for contemporary society. It seems that the synthetic concept of law serves as a balanced compromise between individualism and collegiality, freedom and duty, inner truth, and external law.

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