

Theoretical-methodological foundations of the philosophical-legal doctrine of Bohdan Kistiakivskyi

The article analyses theoretical-methodological approaches in Bohdan Kistiakivskyi's philosophy of law. The problems and perspectives of such an analysis are examined.

Key words: law, state, Neo-Kantianism, methodology, marxism, Bohdan Kistiakivskyi, positivism, value.

Problems that Bohdan raises in his philosophical and legal doctrine determine the relevance of his research scientific achievements. First of all these problems include those associated with the formation of social and legal state fair - it concerns the human condition in the state of its freedom, rights, moral values and social guarantees. The main idea of B.Kistyakivsky is protection of individual rights and freedoms. This idea is opposed to the ruling autocracy that prevailed for a long time in Ukraine and Russia. The scientist believed that only enrich their understanding of the right can help to change the attitude to the individual citizen's rights, freedoms and dignity.

Analysis the sources of B.Kistyakivsky life and work let us to distinguish philosophical and methodological, culture-axiological and ideological aspects of the scientist. This was a good basis to study the theoretical and methodological foundations of his philosophical and legal doctrine.

B. Kistyakivsky believed that neo is the most effective methodology of study of social processes and phenomena. On the basis of this philosophical direction were formed the ideological principles of scientist. The starting point of his research is to be considered a transcendental theory of value of Badensky Neo-Kantianism school. Based on its foundations Kistyakivsky creates an understanding of the nature of law, in which people come together in the political community, as to the meaning and content of collective experience acquired [17 p.31-40].

B. Kistyakivsky tried to use Neo-Kantianism methodology for recognition of the role of social science, which has become a precise tool for the study of social and political life. This methodology he calls "scientific idealism" [15, p.221]. The concept of "scientific" in this case is used in the context of positivism, which was very popular in the scientific intelligentsia circles.

In his works, B. Kistyakivsky considered provided the rule of law and human rights priority in public life in the context of democratic and liberal values. For him the main was the problem of national identity, which it considered in the light of understanding the values of national culture. B. Kistyakivsky approach to the problem of preservation of Ukrainian national identity is compared with a number of concepts in the Ukrainian national idea philosophical and socio-political thought [14 p.237-243].

Turn to the detailed description of Baden school of Neo-Kantian, the main representatives of which were V.Vindelband and H.Rikkert and let us analyze their impact on the methodology of B.Kistyakivsky social cognition. Marburg and Baden school of Neo-Kantian represented different aspects of Immanuel Kant philosophical heritage research, where the latter gravitated to social research, development on this basis of the methodology of social knowledge of the role and purpose of philosophy. Based in their social studies in the philosophy of Kant, representatives of the Baden school did not recognize the existence of objective laws of the world, the possibility of predicting the course of events. Meanwhile, this plant was rising for them to conduct the demarcation line between the natural sciences (natural sciences) and sciences of history and culture (social studies), with recognition that differentiation of these sciences is not based on

distinguishing between the subject and the level of methodology. The conceptual justification provision was made in a speech V. Vindelband which was entitled "History and science," he declared May 1, 1894 when taking office, Professor University of Strasbourg. It Vindelband generally opposed differentiation of scientific disciplines in the natural sciences and human sciences, pointing to the need to distinguish between objects of historical and natural knowledge of certain formal-logical features of historical knowledge.

Justifying these provisions V.Vindelband came from the fact that empirical science seek knowledge in the real world or general, in the form of a law of nature, or individual, in its historical conditioning. Some of them - the essence of science of the laws, others - the science of the event, first taught that always the case, because the past - that once was. [5, p.22]. Hence his assertion that the difference between the two methods of scientific knowledge, captures only means of knowledge, not their content. The same object can simultaneously be the subject of a "ideographic" and "nomotetic" analysis. The fact that the difference between the total and the opposite, is very relative.

B.Kistyakivskyy appreciates systematization Sciences Windelband. In his view, the German thinker able to find a difference between the two methods of scientific knowledge, and hence the two different directions of thinking. However, the question of the importance of differentiation. Based on the value considerations, both directions of thought are equally legitimate. But Vindelband notes that from the standpoint of cultural values "ideographic" method was long time in the shade. In his view, such a disregard for the knowledge that there is no evidence of a general or generic - is the result of the Greek tradition of thought that can be traced in philosophy from Plato to eleats. In the Greek philosophical tradition dominated the idea that true life and true knowledge can only be in common. Therefore it is from this tradition of rational understand why Schopenhauer are not considered full history of science that would give truth research results, since realized that the story deals with the individual and individual, and therefore can never rise to general. Vindelband considered a false understanding of history stressing that "any interest and any assessment, all that matters for the person applies to a single unit and" [5 s.22], and if it is true of the individual human life, it is "the more you can apply to the whole historical process: it has value only when one-time" [5, p.22].

B.Kistyakivskyy and Vindelband agreed with the fact that holistic knowledge that integrates all types of research activities should include not only the "nomotetic" but and "ideographic" methods. However, this does not mean that B.Kistyakivskyy completely follows Vindelband. The fact that speaking on holistic knowledge Vindelband reached the conclusion that a holistic knowledge cannot be reduced to a common source, as no general law is not able to reveal the basis of a single phenomenon that occurs over time. Perceiving this as a rather obvious fact, he argued that throughout the "historical" and "individual" to the researcher always share uncertain and unclear. The latter often justify a prosecution German scientist in agnosticism, although this position should not be considered agnosticism when it comes to the theory of historical knowledge. It is based on the recognition that historical knowledge is not limited to finding causal connections. "Freedom - stressed Vindelband - defies rational analysis using general categories so this elusive element of our" I "arises in our minds as individual freedom" [5, p.33]. B.Kistyakivskyy came from the fact that the analysis of social knowledge must include a value-based approach and the search for causal relationships than his position differed from that of V.Vindelbanda as discussed below.

The proposed V.Vindelbandom new view of historical knowledge, still has not gained a holistic view, but his ideas were systemic design in the works of a representative of the Baden school of Heinrich Rickert Neo-Kantian, which believed that an understanding of individual and historical and cultural lies in revealing the concept of "value". H believes that in this form of diversity events gets a generality. However, the value - this is not a rating.

Because the evaluation is subjective, that the truth cannot go beyond the established facts. Values do not belong to the sphere of existence, and thus they act as meanings that are beyond being. Therefore, a scientist not interested in the fact of their existence, but their value.

B.Kistyakivskyy uses the theory of transcendental values as a basis for the development of a new scientific method of cognition in social science, using the concept of value as a means of generalization of the concept of the rule of law. In the theory of transcendental values it attracted conclusion that human unity lies in shared meanings and values that these people provide ideal material things and phenomena. These meanings and values and form values that are the basis for scientific analysis in social science. Of course, such a generalization is kind of idealization, simplification of reality, where there is a difference simplify reality in the natural and social sciences. It is a procedure that generalization does not take into account the individual uniqueness of objects, phenomena and processes of reality, while generalizations based on the value it places an emphasis on individuality and unique cultural and historical sites. In general synthesis procedure in the methodology of scientific knowledge can be used to study general, where the researcher has to deal with natural knowledge, or consider an individual, unique, which refers to historical knowledge. Accordingly, the method of natural science called "general", and history - "individual" [11, p.87].

B.Kistyakivskyy as representatives of the Baden school of Neo-Kantian, believed that one reality can simultaneously use both methods of learning, while also defining what they are diametrically opposed from a logical point of view, and even mutually exclusive. If history can deal with the concepts of general and science to investigate individual cases - this does not mean that leveled primordial differentiation between natural and historic-cultural knowledge. Logical contrast between these methods will always exist. Cultural, historical or natural science are not confined to one another.

In general, to avoid delays in excessive detail the general provisions of the Baden school of Neo-Kantian note that in terms of its representatives, science explores common, repeated and natural phenomena in using general method, while the science of social life, culture use individual, ideographic that is descriptive method. In a direct study of the creative heritage B.Kistyakivskoho found that developing the theory of so-called "philosophical idealism", he always spoke to representatives of the Baden school developments, including Rickert. His colleague Kistyakovsky considerable attention to that part of his achievements, which was associated with the discovery of the specific methodology of natural and social cognition. For him it was very important that the theory of transcendental values made it possible to distinguish between the methods of natural and social sciences, but also offered their own understanding of the methodology of social cognition, the principles of which he was guided in his research. For the completion of the sources of forming its own methodology of social cognition of B.Kistyakivsky. Let us briefly discuss the interpretation of the essential aspects of the theoretical constructs of these thinkers and their impact on the work of Ukrainian scientist.

At the beginning of the XX century. in line with the Kantian tradition has developed the concept of "Verstehen" M.Veberom, which is considered the foundation of the theory of transcendental values. This concept also had a significant impact on the Kistyakivsky views. Continuing the ideas of Windelband and H. Rickert, M.Veber distinguish methodology and principles of knowledge in the sciences of nature and sciences. He believed that science deals with constant, fixed and stable objects of reality, while the human sciences explore the changing cultural and historical reality. The problem is that every new society has its own attitude and brings its own assessment of their cultural past. As an example, we can consider the views of the history of Ukraine during the period of existence of the USSR, and in modern times. A new stage in the development of society necessarily requires a new rethinking the past and it creates new value.

M. Weber came from the fact that it is impossible to fully understand social reality by taking into account only a single factor, no matter whether it is economic or religious factor. In his opinion, the real analysis of social reality must include in their study of a set of factors that affect the integral development of society. Scientist examines not reality itself. Based on the provisions of "Verstehen" every point in the research scientist is only rational construct of reality, not reality itself.

"Social Action" - the main category of Weber social science. It is based on the individual's value attitude to reality as it includes a goal in action means action and sense of action. Accordingly, the behavior of any individual who belongs to a particular community, is regulated by means adopted in this community law or sample and pattern perception of the world as boundary foundations of meaning and purpose of social action. This understanding of social action Bohdan Kistiyakivsky borrows to build his own philosophical and legal concepts.

M. Weber notes that the global human history distinguishes three paradigms of man's relationship to the world. These paradigms include Hindu, Buddhist and Confucian-Christian ways of relating to the world [2, p.614]. Underlying all these ways are human values such as goodness, beauty and intelligence. The mind is considered to be a core value, because it is the logic of history. This is what Max Weber called rationality. In order to examine the logic of it is the scientific scheme, known as "the ideal type of social action." Weber identifies four types of social action in the historical process of human development. This affective, traditional, instrumentally rational and value - rational.

Analyzing affective and traditional types of social action, Weber notes that "strictly traditional behavior, as well as purely reactive imitation fully stands on the brink, and often beyond what can be called action oriented to content. Because it is often only an automatic response to familiar stimulus, which is usual for the installation "[2, p.628]. Thus only value-rational action and purpose-rational action Weber called social action.

Trying to show the trend of the historical development of society M. Weber places these four types of social action in order of increasing rationality. This process has strict character and has some obstacles and rejection. But Weber sees a trend that European history of recent centuries impact on non-European civilizations past and draws the path of industrialization. This shows that rationalization is a world-historical process that can be used to analyze patterns in the development of society. The process of rationalization occurs at the level of farming, as well as in management. That process is characteristic of economics, politics, science, religion, culture and more. Also, Weber notes that rationalization is exposed and a way of thinking and perception of the world and humanity, "life-world" in general. This process occurs in religious life, although it has its specific features. In particular, the rationalization in religion is based on the way to the world.

Expressions of rationalization of religious ethics M. Weber traces in the example of the religious divide, because eternal salvation is available to all. This privilege is only selected. However, the most striking example of the manifestation of religion to rationalize Weber is the difference between religious and scientific and cognitive thinking. For religious thinking characteristic faith in that purely empirical research can be used for proof of religious dogmas. This opinion is evident in Protestantism. Where rational empirical studies consistently deprived the world of enchantment and turned it to understand the mechanism, it is with all severity contrary to ethical postulate according to which the world is ordered by God and thus ethically oriented meaningful, because empirically, and the more mathematically oriented vision of the world is fundamentally reject any view that goes in their understanding of the world on the "meaning". With the increasing rationalization of empirical science, religion are increasingly being forced out of the realm of rational antyratsionalnoyi to the realm of personal strength [2, p.335]. According to Weber, the distinction between the religious and intellectual knowledge will always exist.

In general, M. Veber believed that human moral responsibility of the person enters into pragmatic relations with others. These relationships do not provide their own position of the individual and not based on the values of "life world". At the same time, "moral conviction" does not have enough strength to express to life and requires the individual to act in accordance with their conscience. Duality of human existence in the real world is manifested both in moral beliefs and moral responsibility. However, moral responsibility cannot be guided by beliefs and moral convictions must be accompanied by a responsible attitude to the individual case, which he performs. Therefore, the concept of Max Weber moral beliefs and moral responsibility act as ideal types. Man is hard to harmoniously combine the earthly world of otherworldly, the value of life and the value of national positions.

Since consideration of M. Veber views and his "Verstehen" indicated the significant impact on them of B. Kistyakivsky. But the most common features in concepts of M. Veber and B. Kistyakivsky are follows.

Firstly, they are in recognition of the fact that no scientific scheme cannot play operation and development of the social body in its entirety. It can only give a rough idea of it from the economic, political, moral, religious or other values.

Secondly, M. Veber and B. Kistyakivsky think that formal rationalization gradually moving from the scope of the administrative and economic spheres in the "life", which is the basis of national culture, morality, education and language. Kistyakivsky notes that Russian imperial policy was aimed at the destruction of the original Ukrainian culture. It uses all available means to deprive citizens of Ukraine its identity. M. Veber had a great impact on the developed B. Kistyakovsky socio-legal concept. Its main goal proclaimed popular sovereignty and the rule of human rights and freedoms flowing from the institutions of a democratic state and social institutions.

Thirdly, in the belief that social life requires comprehensive analysis, as it covers a variety of action rules from industrial - socio - technical state - legal and ending ethical and aesthetic norms, that is the scope of the doctrine of necessity as well as the principle of independence.

Fourthly, in the interpretation of their "life world" each person as a complex spiritual and cultural phenomenon, recognizing that no scientific scheme is unable to identify and adequately describe it. Kistyakoisky believed that historical study of the spiritual life requires a plurality of methodologies. Such a set of methodologies should be the basis for the formation of legal civil democratic society.

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