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"Our Knowledge of the Law : Objectivity and Practice in Legal Theory", George Pavlakos, Oregon 2007 : [recenzja]

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GEORGE PAVLAKOS: *OUR KNOWLEDGE OF THE LAW. OBJECTIVITY AND PRACTICE IN LEGAL THEORY.* Hart Publishing. Oxford and Portland, Oregon 2007, pages 267

The book of Pavlakos is an important investigation into ideas about foundations of legal knowledge and consequently about the objectivity of legal knowledge. The author takes up the issue which is not very popular firstly because of a holistic philosophical grasp of the problem, and secondly because he relate his philosophical perspective to a very practical approach.

He asks about the possibility of legal knowledge, in particular he wonders in which sense and under which conditions one can perceive legal knowledge and what will be its status.

In his book Pavlakos proposes The Practice Theory of Law which sheds new light on the concept of legal knowledge. He proposes his own philosophical approach, called practical rationalism, as adequate position to consider matters of legal knowledge, taking into account "practice of the judging which will be constrained by reason".

THE STRUCTURE OF THE BOOK

The book is divided into two main parts. In the first, the author tries to present a general framework of the grounds of knowledge. After presenting his position he sheds new light on the matters of legal knowledge which were developed in the second part of the book.

In the first, chapter Pavlakos starts by presenting the analysis of the relation between objectivity and knowledge. He defends legal knowledge and considers the assumption of its objective character as the precondition of knowledge.

When we talk about objectivity of legal knowledge we have to consider in which sense this knowledge could be objective, because every notion of knowledge has to fulfil at least some minimal conditions of objectivity. At the beginning, Pavlakos proposes the following explanation of objectivity with regard to knowledge: "facts exist independently of what we happen to think on any particular occasion".

Objectivity as a condition of knowledge, perceived as the distance between what we believe and what we know about the facts Pavlakos has called as objectivity as asymmetry. He is well aware of the danger of falling into the gap between words and reality and that is why he gives advis not to exaggerate with the weight of those concepts. What he tries to do is to undercut conceptualisation of objectivity as the precondition of knowledge. Instead, he proposes the idea of intelligibility as the best way of looking for the grounds of knowledge. Intelligibility, as he argues mainly in

the second and third chapter, is more basic to find – as a first criterion – which entities exist and can be known. The idea of intelligibility links, on the one hand, entities and thoughts, because without it, we are not even able to express the relation between these two worlds.

On the other hand, the idea of intelligibility is strongly connected (dependence relation) with the structure of the sentences, that is why the author turns into the language structure direction.

Pavlakos, builds on the claim that everything which could be known has to be worded and has to be consistent with the semantic structure of the language – according to "the semantics exhausts ontology thesis". Nothing can be thought and, what also is stressed by Pavlakos, **known** outside the grammar. What can be known is inside the scheme of grammar. Without grammar there is no possibility of intelligible, in the other words – grammar delivers our knowledge.

Not to reduce knowledge to the static state, what the author strongly criticizes, he proposes to supplement grammar by additional dynamic aspect. The grammar, as he claims "should be conceived as a practice of judgment investigation". The next step in this reading is to treat "practice as a condition of knowledge". Now it is clear why Pavlakos called his position as pragmatic rationalism: first's because practice does constitute knowledge and second's the idea of intelligibility is treated the main criterion of this knowledge.

The rest of the book is more or less an attempt to show how the above is possible and why it is important. In further chapters, in the second part of the book, the author devotes the discussion to conventionalism and essentialism as dominant theories in legal domain, which also deal with legal knowledge. Legal conventionalism accepts all the valid normative standards as a commitment of community. The consequences of such approach are relativism and lack of the distance between what is and what the community is taken to be. Objectivity is then what the community agreed.

Legal essentialism is presented as the theory treating the truth of legal proposition as independent from legal practice and as prior to the legal practice on the level of conceptualisations. Legal essentialism conceives as objective everything what is independent of our thoughts and practices.

Pavlakos presents research advocating a different approach, which goes beyond those two theories and proposes his own approach in the philosophical body of **pragmatic** rationalism. The theory of pragmatic rationalism could be generally characterized as one following the principle that "nothing can be known unless it can function as a reason or a constraint within practice" of judging.

The Author develops the idea of pragmatic rationalism with special attention to legal perspective. He draws our attention to the problem that in case of law we have to take into account the normative character of the discipline, it means that the main implication of it is obligatory character of the law – as motivating reasons for action.

Pavlakos advocates legal knowledge, called the Practice Theory of Law (PTL) and as the next step he argues that "legal facts can be known objectively if we conceive of legal practice as normative activity of making assertion (judging)." The Practice Theory of Law (PTL) conceive legal knowledge as combined of two levels, it means: thought and action, in other words: "nothing can be known unless it function as a reason or a constraint" inside the given domain.

Concluding, one can say Pavlakos's work is a proposal of a fresh view on law's world through the glasses of practice with keeping in mind the idea of intelligibility. There was no such an attempt before him.

It appears that it is impossible to underestimate the importance of thise book in the provinces of philosophy of law and jurisprudence, especially because of the holistic architecture of his theoretical proposition.

Generally speaking it is not an easy book, rather difficult to follow and addressed to specialists. We can be sure that lawyers, even academic lawyers will not read it everyday, nevertheless the author changed the majority of notions we took for granted and used in legal theory. The book is challenging and innovative and if not for more it should get credit for this.

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