

NATURE OF LEGAL BEHAVIOR: THE CONCEPTS OF DEFINITION AND THEIR EVOLUTION¹

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Abstract

Purpose: The purpose of the study is determining nature of legal behavior: the concepts of definition and their evolution

Methodology: This is intellectual research and we used here historical methods for analyzing.

Result: The genesis of the concept of legal behavior implies a link between research and the praxeological dimension of the legal system in which the legal personality is a central element.

Applications: This research can be used for universities, teachers, and students.

Novelty/Originality: In this research, the model of nature of legal behavior: the concepts of definition and their evolution are presented in a comprehensive and complete manner.

Keywords: legal behavior, juridical behavior, offense, reward, punishment, legal information, legal culture.

INTRODUCTION

Any of person's action regulated by the law is perceived by society according to its social significance, by its consequences, useful or harmful, is monitored and evaluated by the criterion of legality, that is, according to the conformity of the act to legal values, principles, and norms of law. Substantial changes in the legal system of society, where a person, as a primary element of legal reality, form the legal meaning of social life. “Anthropologization” and “sociologization” of theoretical and applied jurisprudence, internationalization and humanization of the elements of legal life - legal consciousness, ideology, legislation, legal relations - motivate research to analyze the main causative substance of the legal system - man and his behavior. From the stability and dynamics of actions in which a person reveals physical, social and spiritual properties in legal realities, his behavior acquires socially significant legal properties. The assertion that in rather mobile cycles of legal development, the views, attitudes, and actions of people change, and this requires the allocation of a “behavioral component” in the mechanisms of law-making and the implementation of the law is rather convincing ([Tikhomirov 2011, p. 5](#)).

The analysis of research and publications shows that in the conceptual apparatus of jurisprudence there is certain ambiguity in the definition of “person's behavior in the legal sphere”: “behavior in the legal sphere”, “legal behavior” ([Kudryavtsev 1982](#); [Pyanov 2004](#); [Shestopal, et al. 2017](#); [Mordovtsev, et al. 2017](#); [Agamirov 2016](#)), “legal behavior”, “legally significant behavior” ([Rubinshteyn 1957](#); [Gorbashov et al. 2012](#); [Balashova 2005](#); [Bortnyak 2013](#); [Gruter, 1979](#)). The notion has been perceived as an extremely broad category that is related to corresponding categories - “legal activity”, “legal activity”, “legal form of activity”, “lawful behavior”, “illegal behavior”, “deviant behavior”, etc. Basing on the defining humanitarian and ideological position of recognizing a person as the sole subject of legal behavior, some researchers consider the phrase “juridically significant behavior” imperfect, because it does not cover all types of behavior provided by law in its broad sense ([Shuljgha 2012](#)). The author considers the term “legally-significant behavior” to be more general in meaning.

Differing opinions, polar judgments about the properties of behavior in the legal sphere are a symptom that encourages their analysis, generalization, comparison of the main social, legal and psychological characteristics that are united by the notion “legally-significant behavior” and joint acts of human behavior that are heterogeneous in form and content. The direction of the study is to search for homogeneity, similarities, and differences, which, according to universal indicators, have special manifestations in legally positive (legitimate) behavior and in various forms of its social and legal antipode - illegitimate acts.

First of all, the nature of legal behavior is revealed in its well-known properties, the content of which often changes depending on the direction of the society's development entirely with its legal system – particular normative and

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ideological, public-imperious manifestation of regularities in its dynamics. The development of the legal system is largely determined by the peculiarities of changes in the content of the state, political and legal regime in society, the dominant value foundations of legal consciousness and culture, the measure of perception and awareness of legal principles and limits of freedom of individual behavior in the legal sphere. Juridically significant behavior can be perceived as determined by the principles of law and socially significant and legally assessed behavior of persons regulated by its norms, which can entail its specific juridical consequences. Among the properties of behavior in the legal sphere, we point out the following.

METHODS

This is intellectual research and we used here historical methods for analyzing.

RESULTS AND ITS DISCUSSION

Social significance and multi-factorial influence of legal behavior. In the sphere of legal regulation (legal actions), the behavior of individual subjects, institutions, and groups (social communities) has social, economic, political, cultural, ideological, practical (organizational) and personal value. From the point of view of the requirements and the possibility of implementation of public (state, municipal, international) and private interests, such behavior is estimated as positive (its positive social significance), harmful or dangerous (its negative social significance, harm) or neutral (insignificant, indifferent, formally not offense or illegal acting). Among them, the legal activity of subjects (making contracts, participation of citizens in elections and other forms of political activity, various ways of attracting citizens to legal public control, training in educational institutions and professional growth, business career and others) is the leading one. They are not formally prohibited by law and comply with the principles of the legal system of society and its constitutional norms, they are constructive in terms of the realization of social and personal needs. On the contrary, the behavior that contradicts the meaning and purpose of legal principles, the foundations of constitutionalism, democratic values, the normal positive legal dynamics of the social system as a whole, the legal order (administrative misconduct in the field of governance, criminal offenses, corruption, failure to fulfill parental responsibilities and other) is socially harmful antipode.

Intellectual-volitional content of behavior, its conscious-volitional manifestations – psychological characteristics of intellectual and emotional-volitional features of mental manifestations of human activity. Legal norms are suitable for regulating only such behavior that is under the control of the mental components of consciousness — the intellect and the will of the person since it must be able to control its act and be aware of its significance and consequences. However, the legal consequences can occur in the absence of elements of consciousness or the will of the individual, when it is not aware of the value of its own act, or the act is not a manifestation of his will. For example, the commission of a socially dangerous act by an insane person is the basis for a court decision on the use of compulsory treatment, the behavior of an incapacitated person may be grounds for declaring his actions legally void. Therefore, the act of a person is legally significant if the person is in both the normal and the pathological state of his intellectual volitional and physiological characteristics. The state of mental activity of a person (intellectual, emotional, volitional) can be intermediate, and this affects the legal qualification of his behavior (alcoholic intoxication, strong emotion, and others). Such states of a person respectively aggravate or alleviate the legal consequences of his act. Presume that the behavior of such kind is an external expression of the characteristics of the qualitative state of consciousness and the will of the person - “normal”, “intermediate” and “pathological”.

Conscious interests, motives, rational and emotional evaluations, habits, level of legal awareness and others influence the psychological side of human behavior. The achievement by the subject of a certain level of awareness about the objective legal necessity forms his interests, motives of behavior, orientation, goal, purpose, decision and, as a result, action, legal activity, as a result of purposeful and consistent satisfaction of the need - public or private. Thus, the need to clarify the psychological orientation of human behavior is always real and obvious in varying degrees, since it is a characteristic of the intrinsic motivation of the act. S. Rubinstein confirmed the organic "inclusiveness" of mental phenomena in the whole life of a person since the main vital function of the psyche is to regulate the activities of people. Mental processes are caused by external influences, and determine, direct the behavior of the subject, which becomes dependent on objective conditions (Reshetov 2015, p. 311).

Juridical certainty of behavior in the legal sphere. Behavior is legally relevant if it is determined by the formal juridical means. This property gives an informational signal and a clear understanding of the public about what kind of legally significant behavior is currently useful, dangerous or harmful. Juridical certainty means - a clear and unambiguous consolidation of external (objective) and internal (subjective) indicators of legally significant behavior in the sources of law that govern it; the establishment of legal forms, methods, and means of its regulation in the norms of law. Only under condition of fixing in the sources of law, any behavior acquires legal significance. The society is given the opportunity to provide such behavior with a legal assessment with the help of legislative authorities, a person gets a chance to consciously orient himself in the dichotomy “legal” - “illegal”, choose the option of his behavior, accept the expected legal consequences, and the state gets the possibility to control the legality of actions and to adequately respond in case of offenses with the help of legally allowed means of protection and to use means to ensure (guarantee) the rights of the individual in the case of their implementation by subjects. A socially dangerous act is assessed as legally significant, which means it becomes legally controlled if the text of the law clearly defines its characteristics as crimes of a certain type (subject age, method of commission and other characteristics). The boundaries of behavior specified in the norms within

their legally significant range determine: indicators of the behavior itself (legal personality of the person; external manifestation - action or inaction, methods, means, time and place of commission); juridical means of influencing such behavior (the method of establishing and the scope of rights and obligations - legal permissions, prohibitions, obligations, methods of their implementation; the conditions, methods and measure of their restrictions); legal consequences (for example, rights and obligations that a contracting party acquires; a measure and type of responsibility that will occur for the commission of an offense, and others). Strict juridical certainty of behavior is the determination of its conformity or inconsistency with the principles and norms of law using formal juridical means - official texts of legal acts (laws).

The ability of a subject's behavior to produce legal consequences for him, to be their actual and legal reason. This property of the act is a potential condition for its estimation as a legal one and indicates the conditionality of consequences by legal means, the implementation of which is legally guaranteed (for example, the use of coercive measures against a suspect during the investigation, execution of a court decision). Any behavior regulated by law (harmful or useful) within the mechanism of legal regulation is a legal fact - a life circumstance affecting the emergence, change or termination of the legal content of legal relations - subjective rights and legal obligations of individuals (for example, the occurrence of rights and obligations of participants as a result of civil legal contract), or - measures of legal liability of the subject as a result of an offense committed by him.

Objectification (external manifestation) of behavior. Legal actions are characterized by indicators of their external manifestation since the act of human behavior is always expressed in a certain form. External manifestation of behavior is the embodiment, the projection of the conscious-volitional behavioral component of a personality (its motives, goals, intentions, emotional state) outside, that is, into an objectified, accessible to perception form of physical action, which is caused by the conditions of space, time, causality, circumstances, because beyond of them it does not exist. It is the form of the external manifestation of a person's behavior, the nature of the manifestation of its actions, the means used enable them to be searched for, tracked, detected, monitored, and investigated inside internal motives, evaluation, and legal qualifications.

The form of the manifestation of the act can be active action or passive inaction of the individual in the sphere that is regulated by law. Legally significant action - specified in the legal regulations and expressed outwardly active manifestation of human will. The action is carried out in various ways using certain means and, if there are legal grounds, can have legally significant consequences. Legal assessment and the nature of the consequences of legally significant actions always indicate their legality or illegality. Legally significant inaction - a passive manifestation of a person's behavior regulated by law, expressed in his refusal to use his rights, powers, or refusal to perform other actions that are legally binding for the subject, since they are expressly provided for in the law, contract or act of enforcement (court decision, administrative order and others).

Inaction acquires a legally significant character if its signs and forms of expression are legally defined, and its subject finds itself in a legally significant life situation (for example, legislative consolidation of legal responsibility for the refusal to provide assistance to a sick health worker without valid reasons; failure to fulfill official duties by an official or government official without valid reasons). Juridical significant action and inaction are dialectically related paired legal categories. The fact that the subject has only the desire to act somehow, which is not embodied in a consciously-volitional, legally significant act of a certain form - active or passive, does not cause any legal consequences: the person's intentions remain outside the regulation by legal means.

Structuring the behavior (internal structure). The act accumulates its inherent subjective and objective manifestations, regardless of social significance, legality or wrongfulness. In the construction of the legal composition of behavior, its obligatory objective, and subjective elements are always connected - a sphere (relationship) in which an act, a method, and means of its accomplishment, internal motives and goal-setting, a degree of awareness of one's own act and a volitional action are manifested ... Juridical significant behavior is a composite legal fact, a composition that always contains all these elements and only under such conditions entails legal consequences (positive or negative). Because of legitimate behavior, it is possible to acquire subjective rights and obligations, illegitimate - the application of juridical liability and other measures of state coercion, restriction of the subjective rights of a person. The constituent elements are manifested differently in legal and illegal acts. For example, the manifestation of the subjective psychological characteristics of the act of a noncompos mentis qualitatively differs from similar indicators of the actions of compos mentis.

Behavior controllability by authorized entities. Law-making bodies establish samples, boundaries and legal indicators of the legality or illegitimacy of behavior, ways, and means of its implementation and provision. At the same time, the bodies of state administration, control, supervision, monitoring, tax and other institutions of power carry out inspections, audits and other forms of control in order to establish the compliance of the activities of controlled entities with the requirements of legality, which are juridically formalized in the sources of law. Through the implementation of the protective function of the state, the prosecution authorities, the police, state control, and others, in cases of qualifying the act as illegitimate, are authorized to apply corrective measures, restoration of violated rights and state-legal coercion to the subject.

Connection of behavior with legal awareness and legal culture. Legally significant behavior is with them in a causal relationship (Zavaljnjuk 2013), since its content is determined by the level of legal consciousness of the individual. A measure of legal awareness is for it a source of rational awareness of the purpose of the act (legal or illegal) and a

prerequisite for the formation of its judgments about permissible legal ways of achieving it, orients its choice and allows to evaluate the potential effectiveness of selected legal ways and means. The behavior due to the legal attitudes of the subject is an element of legal consciousness that turns the subject's personal attitude to law into a program of his legally significant actions and transforms into a stable legal behavioral stereotype (Agamirov 2011). It is formed on the basis of internal ideals, values, interests, needs, motives, experience, forms the subject's inclination to implement a targeted impact on their own legal actions. Behavior depends on the level (active, ordinary or passive) and the direction of the person's legal consciousness (legal or illegal orientation of the goals of the act).

Connection of behaviors with legal information. The act is such a manifestation of being of the subject in a social organism that needs regulation (rationing), coordination, organization, control and is in the flow of information, affecting the qualification of behavior. Behavioral manifestations require regularization of the system of legal norms, which are expressed by the grammatical means of the language. In legal communication, a sign information system formalizes the parameters and boundaries of the subject of law as a kind of "active grammar". They affect human behavior based on regulatory parameters and the boundaries of legality and illegality.

Behavior in the information society is due to the timeliness of providing society with reliable legal information since the opposite leads to juridical mistakes, unrealized legal opportunities, or abuses of rights, legal instability in general, and violations of the rule of law. Legal information - the data contained in sources of law, acts of implementation and interpretation of legal acts. The subject of law takes into account and assesses directly: legal information (about the source of the norm and a specific rule of behavior), information on international legal standards (declarations and conventions in the field of human rights), information on judicial practice and legal precedents (for example, decisions of the European Court of Human Rights), information about life circumstances and specific facts that require a legal assessment and the correct legal qualification of a person's behavior. At the same time, the subject learns information from other social norms - religious, political, economic, moral (additional information flow), which formed a certain national stereotype of legal, moral, religious, ordinary behavior and type of legal mentality. Based on the perception of all regulatory information, he evaluates the juridical side, objectivity and moral component (justice) of legal acts - laws, acts of application and interpretation of legal norms. The latter is often a circumstance that determines the forms of legal activity, protests moods, and actions that formally contradict the written law under antidemocratic political regimes but comply with international principles and norms. The most active part of the population of countries with unsustainable regimes aims to the extension and adoption of such standards, their internationalization, and international protection. Therefore, the question of the legality of legally significant behavior in different periods is diametrically opposed: a change of regime legalizes previously illegal forms of behavior at the legislative level and eliminates their obstacles.

The content of the concept of the legal significance of behavior would be incomplete if in the legal system it was not related to the impact on society of basic legal principles that define the essence of legal requirements in private law and public law spheres of human life.

Conventionality and variability of content. They mean mobility, relativity, and ambiguity of the categories "legally significant", "legitimate" and "illegal", "not prohibited" due to the variability of their content in time and social space, due to the inclusion of new types of behavior into them and the exclusion of existing ones. "Lawful" and "unlawful" are evaluative concepts, the content of which is largely arbitrary, and the criteria and boundaries are mobile. As a result, perceptions of the norm of behavior and legal deviations — social deviations from it — change places.

Two kinds of behavior in the legal sphere are traditionally presented as legal and illegal. They are social and juridical antipodes. However, the border between legal and illegal behavior is mobile and depends on the situation in the public space, on the legal civilization of the state. In the legal system of society, there are no absolutely permanent norms and criteria for the legality of behavior. They are changing in conditions of different political regimes: prohibited behavior becomes permitted and useful, desirable (for example, types of private enterprise), or not prohibited (for example, cancellation of criminal responsibility for defamation). Hereof the historical variability and conditionality of the criteria that determine the limits of the legality of what is permitted and prohibited, harmful and dangerous, desired, permissible and necessary action originate. For the stability of civil society it is important that the behavior, defined by law as legally significant is accompanied by the preservation of the main humanitarian values - life, health, honor, dignity, and protection from the penetration of asocial, amoral stereotypes into the sphere of legally allowed acts (for example, prohibition and prosecution of illicit enrichment, any form of corruption). The scope of lawful behavior is also expanding significantly due to the decriminalization of acts that were previously considered crimes, the emergence of new forms of market relations, the introduction of a permissive type of legal regulation in the private sphere. The border between legitimate and illegal behavior is becoming more fluid. Ideally, the legal system of civil society and the institutions of power subordinate to it qualify the actions of subjects as legally significant and, therefore, those that have a number of common features, forms of expression, features, separate juridical acts from non-juridical ones.

These signs are characteristic of all manifestations of legally significant behavior. Signs of semantic antipodes - lawful and illegal behavior have: the opposite social orientation, significance, motivation of actions; the difference between the means of legal regulation (legal behavior is usually regulated by legal permits, binding rules, illegal - by juridical prohibitions); various control functions of authorized bodies in relation to behavioral acts and various juridical consequences. According

to the social content and legal assessment of actions, regardless of the forms of their external expression, legally significant behavior of individuals is divided into lawful - socially useful, corresponding to legal regulations, and forms of unlawful: offense - socially harmful acts committed contrary to the requirements of legal norms (prohibitions or duties); abuse of right - behavior committed by a person formally within the framework of legal regulations, but socially harmful, which violates the rights and legitimate interests of others; objectively unlawful (illegal) act - socially harmful behavior, which is committed contrary to the requirements of legal norms, but in the absence of guilt.

CONCLUSION

Cognition of the scope and regularities of implementation of rights and the genesis of legal concepts adequate to them, as logical forms of scientific knowledge, presuppose a focus on the praxeological dimension of the legal system, where the central unit is a legally active subject of law. The behavioral criterion cannot be fully investigated only by the efforts of theoretical science in the conditions of differentiation and integration of knowledge about law and motivates the cooperation of research efforts of the theory of law, sociology, psychology, anthropology, applied sciences - criminology, deontology, legal ethics, and others. An assessment of legal behavior is meaningless if it is studied without a factor analysis of the causes that guide legal deviations or stimulate and encourage legitimate behavior, without taking into account the psychological characteristics of legal entities, variable circumstances of legal policy, and the variability of legislation. Taking into account, at a minimum, these research areas, the support of the theoretical foundations of legal qualification of behavior in the legal sphere maintains its current state.

REFERENCES

1. Agamirov K. V. (2011). Metodologicheskie voprosy prognozirovaniya pravovogo povedeniya / Vestnik Vladimirskogo yuridicheskogo instituta. № 4 (21), 2011. С. 51-54.
2. Agamirov K.V. (2016). Forecasting of the legal behavior (Prognozirovaniye pravovogo povedeniya). Moscow, Russia – Biblio-Globus (In Russian). <https://doi.org/10.18334/9785990927827>
3. Balashova Ye. N. (2005). Vzaimodeystvie potokov informatsii, vliyayushchikh na kvalifikatsiyu yuridicheskoi znachimogo povedeniya. Dis... kand. yurid. nauk: 12.00.01 / Ye. N. Balashova. – Saratov, 2005. – 163 с.
4. Bortnyak A. F. (2013). Pravovoe povedenie kak deyatelnostnaya interpretatsiya znakovoy informatsii / Gosudarstvennyy sovetnik. 2013. № 4. S. 26 – 30.
5. Gorbashov V., Retunskaya T.P., Reuf V.M. (2012). Pravovoe soznanie i pravovoe povedenie: analiz prichinnoy vzaimosvyazi // Mir politiki i sotsiologii. – 2012. – № 1. – S. 116 –120.
6. Gruter, M. (1979). The origins of legal behavior. Journal of Social and Biological Structures, 2(1), 43-51. [https://doi.org/10.1016/0140-1750\(79\)90020-4](https://doi.org/10.1016/0140-1750(79)90020-4)
7. Kudryavtsev V. N. (1982). Pravovoe povedenie: norma i patologiya / V. N. Kudryavtsev. – M.: Nauka, 1982. – 287 s.
8. Mordovtsev, A., Zhinkin, S., Mamychev, A., Yakovyuk, I., Shestopal, S. (2017). Legal mentality in nationalcultural space: Characteristics of the ERAof change (Church Schismof the 17th Century) (2017) Man in India, 97 (23), pp. 295-309.
9. Pyanov N. A. (2004). Pravovoe povedenie: ponyatie i vidy. Sibirskiy yuridicheskii vestnik. – 2004. – № 4. S. 11-15.
10. Reshetov Yu. S. (2015). Yuridicheski znachimoe povedenie. Vestnik Volzhskogo un-ta im. V.N. Tatishcheva. 2015. № 4 (83), s. 5-10.
11. Rubinshteyn S. L. (1957). Bytie i soznanie: o meste psikhicheskogo vo vseobshchey vzaimosvyazi yavleniy materialnogo mira / S. L. Rubinshteyn. – Moskva: AN SSSR, 1957. – 330 s.
12. Shestopal, S., Oleynikov, S., Yakovyuk, I. (2017). Models of the relationship between church, state and political society: Neo-Thomists' arguments (2017) Man in India, 97 (23), pp. 499-508.
13. Shuljgha A. M. (2012). Jurydychno znachushha povedinka osobystosti: ponjattja, osnovni oznaky. / Forum prava. – 2012, #1, s. 1099 – 1101.
14. Tikhomirov Yu. A. (2011). Povedenie v obshchestve i pravo. Zhurnal rossiyskogo prava, 2011, №2. S. 5 – 11.
15. Zavaljnjuk V. V. (2013). Jurydychna antropologhija ta pravoznachushha povedinka /Mytna sprava. – № 6 (90). – 2013. S. 4 –15.
16. Krieger, L. S. (2007). Human nature as a new guiding philosophy for legal education and the profession. Washburn LJ, 47, 247.
17. Dickson, P. H., & Weaver, K. M. (2008). The role of the institutional environment in determining firm orientations towards entrepreneurial behavior. International Entrepreneurship and Management Journal, 4(4), 467-483. <https://doi.org/10.1007/s11365-008-0088-x>
18. Weisbrod, B. A. (1983). Nonprofit and proprietary sector behavior: Wage differentials among lawyers. Journal of Labor Economics, 1(3), 246-263.
19. Finley, L. M. (1989). Breaking women's silence in law: The dilemma of the gendered nature of legal reasoning. Notre Dame L. Rev., 64, 886. <https://doi.org/10.1086/298012>
20. Kritzer, H. M. (1978). Political correlates of the behavior of federal district judges: A" best case" analysis. The Journal of Politics, 40(1), 25-58. <https://doi.org/10.2307/2129975>