A Theory of Principles of Law: The Revival of a Forgotten Conception

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Aleksandr Gorovtsov (Alexandre Gorovtzeff)—formerly a professor at the University of Perm and then privat-dotsent at the University of Petrograd, while living in exile in France—published two volumes of a book *Etudes sur la principologie du droit* in 1928. This publication summarized ideas which Gorovtsov had already expressed in earlier publications.

Gorovtsov’s studies covered the following basic questions of legal theory:

— the notion of the object in law and its significance for legal theory;
— the problem of distinguishing between private and public law in the light of his new notion of the object in law;
— the classification of legal disciplines, based on this notion.

The basic elements of this theory have retained their interest until the present day. At the beginning of his work, Gorovtsov remarks that the notion of the subject of law has been studied since the times of the Roman jurisconsults and has occasioned a considerable number of academic works, while the notion of the object of law has been virtually ignored over the centuries, having been reduced to the well-known notion of *res* (a thing).

Taking over the notion of *res* from private law, some authors have used the term in public law, assimilating it with territory, the only seemingly plausible *res* in public law.

Of the various philosophical conceptions concerning the object of law the three most important ones may be summed up as follows:

— an object is everything outside the subject of law;


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— objects are all material things;
— objects are human actions.

Gorovtsov’s point of view is close to the third variety; he argues that the “natural liberty” of subjects of law is itself an authentic object of law. This concept, enigmatic at first glance, is developed in the further analysis of his work.

The roots of this theory are in the view, produced by the genius of Roman law, of law being divided into two branches: the law of persons and the law of things, the latter including the law of obligations. The interests of human beings, connected with natural liberty and its inherent limitations, are the objects of law. This also applies to public law (to be understood as constitutional and administrative law, following Lorenz von Stein) where the same natural liberty of the subject of law—in this case the state—is the object, as well as its limitations by virtue of administrative law.

The author then proceeds to the two main objectives of his work: to establish a clear distinction between the categories of private and public law, based on the notion of the object in law, and to offer a consistent and reasonable classification of legal disciplines, to replace the illogical system prevailing until then. The overarching objective is to determine a common, organic and intrinsic principle for the domains of private and public law, resulting in the construction of a kind of tree with branches representing the various legal disciplines.

Gorovtsov underlines the importance of comparative law, not only as a historical or geographical comparison of different legal systems, but also as a comparison of different legal disciplines within a unified system, in order to deduce certain common principles. Such a generalization of legal principles should lead to a renovation of legal philosophy by creating a kind of “principology” aimed at a more concrete synthesis of the philosophy of law, suffering until then of an abstract and metaphysical character.

The eminent role of the “founder of comparative law”, Immanuel Kant, is seen in the approximation of the notion of the object (usu-ally understood as a material thing previously) with the subjects (p.11). Gorovtsov recalls how Kant defined law as a set of rules of behavior of subjects, constituting the restrictions of their natural liberty. He was followed in this respect by authors like Austin, Ortolan and Ahrens. In the works of Kierulf, Gierke and Bierling this approximation became more pronounced (pp.13-25). At the same time, these authors envisaged such a partially transformed notion of the object mostly by its application to private law, leaving aside the spheres of public law and international law. Nonetheless, every logically satisfactory theory of the object should be applicable to all branches of law.