

On Some Topical Problems of the General Theory of Legal Consciousness

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Abstract

This scientific article examines problematic issues about the subject of reflection of legal consciousness and its structure. The purpose of this study was those problems of legal consciousness that relate to the subject of its reflection and structure. The implementation of this goal involves the solution of the following tasks: 1) analysis of the subject of reflection of legal consciousness; 2) analysis of the structure of legal consciousness. As a result of the study, the author came to the following conclusions: 1) legal consciousness as a set of ideas and feelings expresses its attitude not only to the current and desirable law, but also to the law of the past; 2) taking into account the close connection between the state and law, their interaction in various forms, the subject of reflection of legal consciousness should be defined through the category "state-legal reality (reality, life)"; 3) focusing on the traditional and generally accepted separation in legal consciousness of two elements of legal psychology and legal ideology, it is noted that these elements are interconnected, they coexist, although their ratio can be very different, and the question of the dominance of one of these elements should be solved dialectically, leading arguments for both the first and the second.

Keywords

legal consciousness; legal ideology;
legal psychology; state-legal reality;
legal nihilism; deformation of legal
consciousness



I. Introduction

It seems that the relevance of this scientific article is due to the fact that legal consciousness is perhaps the most common phenomenon, which, being an element of the national legal system, manifests itself in various aspects both in lawmaking and law enforcement and law implementation in general, in the work of the legal regulation mechanism as a whole ... In the literature, it is noted that "the sense of justice permeates and unites into a single system the entire process and all means of legal regulation, from lawmaking to the implementation of law" [1].

II. Research Methods

When preparing a scientific article, the following methods were used:

General philosophical (dialectical-materialistic), which is used in all social sciences;

1. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
2. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
3. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

3.1 The Subject of the Reflection of Legal Consciousness Is the Past, the Current and Desired Law

It is interesting to note that at one time Sergei Ivanovich Ozhegov, defining legal consciousness, referred to “effective law”, existing legal norms as the subject of its reflection [2]. Nikolai Andreevich Pyanov believed that legal consciousness expresses the subjective attitude of people towards law and other legal phenomena of reality [3].

Referring to the concept of legal consciousness, Vladik Sumbatovich Nersesyants believed that “... this is a form of awareness of law as a specific phenomenon of social reality” [4], and, given that national law is not identical to the legal system of society, he significantly expanded the scope of the subject of reflection of legal consciousness, emphasizing that the latter is “a set of interrelated ideas, emotions, expressing the attitude of society, groups, individuals to law - this is an integral social institution, its system and structure, to individual laws, other characteristics of the legal system” [5]. Roman Anatolyevich Romashov, as a subject of reflection of legal consciousness, proposes to consider legally significant phenomena of public life - current legislation, legal practice, human and civil rights and freedoms, etc. [6].

Magomed Imranovich Abdulaev and Sergei Aleksandrovich Komarov believe that “legal awareness is the development of law, a set of ideas and feelings that express people's attitudes towards both the current law and the desired law” [7]. This point of view is shared by other authors [8].

Partly agreeing with this position of scientists, we believe that legal consciousness presupposes an attitude not only to the current and desired law, but also to the law of the past. In other words, we are talking about assessing the legal awareness of monuments of law, their effectiveness in the relevant historical conditions. For example, our contemporary, thanks to his sense of justice, can appreciate the Scottish marriage law described by Wilkie Collins in 1870 in the novel *Husband and Wife* [9].

By the way, other scientists also shared our idea of legal consciousness. For example, the group of authors - Valentin Yakovlevich Lyubashits, Andrey Yuryevich Mordovtsev and Alexey Yuryevich Mamychev, however, showing inconsistency in this issue, emphasize that “a person always somehow refers to the past law, to the existing law, and to the law that he wanted to see in the future” [8].

Nikolay Yakovlevich Sokolov, speaking about the legal consciousness of lawyers, also focuses only on the legal component of the subject of the reflection of legal consciousness, interpreting the former “as one of the collective forms of legal consciousness, acting as a system of legal views, knowledge, feelings, value orientations and other structural formations of the legal consciousness of the community people professionally engaged in legal activities, which require special educational and practical training” [10]. Equally, the position of Rudolf Konstantinovich Rusinov, defining legal consciousness, can be assessed as “a set of ideas and feelings that express people's attitude to law and legal phenomena in public life, awareness of legal reality, its perception in mental and sensory images” [11]. In a categorical form, Boris Konstantinovich Martynenko asserts that “only those phenomena are reflected in the legal consciousness that constitute the legal side of the life of society ... Awareness of the legal phenomena of the life of society is carried out through special legal concepts and categories”, which “include, for example, such concepts as legality, illegality, legal relationship, legal responsibility, legality” [12]. Critically assessing the author's position, it is difficult to understand him from the point of view of how he “divides” legal concepts and legal categories.

3.2 Legal Reality is a Subject of Reflection of Legal Consciousness

In our opinion, in order to present the subject of reflection of legal consciousness in a holistic manner, focusing only on its legal aspect, without resorting to listing certain legal elements included in it, in order to avoid indefinite unfinished lists of them, one should use the category of legal reality (legal reality, legal life).

Defining legal reality as a universal object of legal science, Afghan scholar Hashmatullah Behruz believes that if, from the point of view of philosophers, legal reality is a kind of unified whole, reflecting the integrity of the law itself, then for lawyers the legal reality is not monolithic, homogeneous, but rather multifaceted and diverse [13]. According to the Ukrainian legal theorist Olga Fedorovna Skakun, legal reality is all manifestations of the legal life of society of collective and individual subjects of law - legal activity and its results (law-making, law enforcement and other acts), offenses and legal responsibility, legal thinking, legal training, deformation legal consciousness (legal nihilism, legal demagoguery) and others, that is, all legal elements are ordered and still in the stage of ordering (chaotic) [14].

It seems that taking into account both positive and negative legal phenomena should be considered as the content of legal life in all its diversity, the category of which in the conceptual range of legal science has received an ambiguous assessment: some authors advocate its introduction into science [15, 16]; the latter agree with the need to study legal life itself, but do not approve of "giving" it the status of a scientific category [17].

From the standpoint of a synergetic approach, the problem of the legal life of society was considered by Konstantin Valentinovich Shundikov, who correctly noted that "one of the integrative legal abstractions relatively recently introduced into scientific circulation is the concept of the legal life of society," which, including both lawful and illegal components, "challenges the problem of the complexity of the object of legal science, in fact, being an attempt to develop a more adequate (in comparison with the previously used) methodological algorithm for its solution", "draws the attention of scientists to the problems of contradictions in the legal sphere, various kinds of defects in legal regulation, legal deviations, legal "negative" [18]. Alexander Vasilyevich Malko, characterizing the legal life of society, notes that "the introduced concept ... does not in any way act as a parallel concept, along with the legal system", "the concept of the legal system is not able to include all legal phenomena ...", the category "legal life" "Covers all legal phenomena, both positive and negative, expressing a kind of legal totality" [19]. Tatyana Veniaminovna Kukharuk draws attention to the fact that the legal system, of course, belongs to the legal reality, it exists as objectively as the legal system. But the attribution of the legal system to the legal reality does not mean their identity, since "... legal reality also includes the state of chaos, disorder, legal violations, legal conflicts, etc., which are not part of the legal system" [20].

3.3 State-Legal Reality - The Subject of Reflection of Legal Consciousness

We believe that, given the close connection between the state and law, their interaction in various forms, the subject of reflection of legal consciousness should be defined through the category of "state-legal reality (reality, life)". Indeed, legal consciousness is able to assess, for example, the campaign for elections to representative bodies of the state and local self-government bodies, appointment to certain positions in other bodies, the effectiveness of lawmaking, law enforcement and law enforcement agencies, etc.

In this regard, it can be argued that although the term "legal consciousness" has been established in legal science for a long time, it seems one-sided, because the legal phenomena include both legal and state, which is often and, as a rule, not taken into account by the majority of theoretical scientists. Elizaveta Aleksandrovna Frolova, understanding by legal

consciousness a set of views, beliefs, emotions, moods, assessments in the field of law and state, quite reasonably believes that “the USE system, the transition of universities to a new system of training in accordance with the Bologna Protocol and other measures (states-Vladimir Valentinovich Kozhevnikov) are perceived by the population very critically, since they can lead (and have already led - V.K.) To a decrease in the quality of education and its greater inaccessibility ”[21].

Yuri Efremovich Avrutin, referring specifically to the problem of interaction between state and law, wrote that the functioning of the state and its institutions is ensured by the norms of various branches of law. From the standpoint of a scientist, this means that in his research the methodological apparatus of branch legal sciences should be used according to the target orientation of a particular study (constitutional law and comparative constitutional law, administrative law, criminal and international law) [22]. In another place of work, the scientist noted that “within the framework of legal reality, that is, legal reality and legal activity, the state implements its law enforcement activity through law enforcement. It is the legislation that forms the legal field in which law enforcement activity unfolds: it determines the range of public relations subject to protection, regulates the forms and methods of law enforcement, outlines the range of subjects of its implementation and determines its competence ”[22].

3.4 Legal Psychology and Legal Ideology as Interrelated Elements of Legal Consciousness

As for the problem concerning the structure of legal consciousness, focusing on the traditional and generally accepted separation of two elements in it - legal psychology and legal ideology, we note that the main position, which has methodological significance, is that these elements are interrelated, they coexist, although their ratio can be very different. As Nina Lvovna Granat once argued, the ability to control her emotions and feelings, the ability to "rule oneself" depends on the level of ideological preparation of a person. The author believed that “this is evidence of the relationship and mutual service of legal ideology and legal psychology as structural elements of legal consciousness” [23]. Speaking from these positions, we categorically oppose the fact that ordinary legal consciousness is actually reduced only to legal psychology. For example, Svetlana Vladimirovna Boshno characterizes everyday legal consciousness as “mass perceptions of people, their emotions, moods about law and legality” that arise under the influence of the real living conditions of people, their practical experience [24]. Defining ordinary legal consciousness as the legal consciousness of non-lawyers, Evgeny Vladimirovich Bogatyrev believes that it develops spontaneously as a result of people's understanding of their everyday "experience", an assessment of facts related to legal reality from the point of view of common sense [25]. It seems that in this regard it is necessary to support the point of view of Sergei Sergeevich Alekseev, who, characterizing the ordinary sense of justice, which, in our opinion, was mistakenly called mass, emphasized, on the one hand, that it “is basically an ordinary understanding of law, in which ... the role of socio-psychological components - emotions, moods, etc. is very significant”. However, on the other hand, the author wrote that it would be erroneous to consider it as a phenomenon of a lower order, because elements of scientific and even professional legal consciousness are introduced into it, and it, having its own value, “... outwardly expresses the needs of social life, directly social rights (claims), is the bearer of the prevailing sense of law and legality in society” [26]. Criticizing those scholars who are inclined to believe that legal psychology characterizes only everyday ideas about law, Venir Kalimullovich Samigullin correctly noted that in fact legal psychology more clearly represents the legal consciousness of most people who are more inherent in ordinary legal consciousness. At the same time, attention is paid to the fact that it also extends its significance to a certain extent to those strata of the population

that are characterized by professional or scientific legal consciousness, because legal scholars, prominent political figures, recognized practicing lawyers are also not insensitive, experiencing joy, and grief, and annoyance, and disappointment caused by the ambiguous action of the legal factor in society. Reasonably disagreeing with the statement according to which legal psychology presents superficial, emotional assessments of subjects of law [27], the scientist emphasizes that "... as observations show, legal psychology, taken for the most part, is not devoid of elements of rationality, sufficiently deep value judgments and actions"[28]. We should agree with the provisions that "ordinary legal consciousness, despite the situational nature of its assessments, is still more stable and traditional in its ideals", "people see evil not in the existence of certain state bodies, committees, commissions, officials and etc., but in the declarativeness of solving urgent problems, the state's unwillingness to overcome difficulties, "the mood in society and social expectations at the level of mass (ordinary - Vladimir Valentinovich Kozhevnikov) legal consciousness should really (without declarations) be taken into account by state authorities and be a guideline for lawmaking activities of the state "[21]. It seems that the methodological basis of the question of the structural elements of legal consciousness is the provision according to which "... although legal psychology and legal ideology are different structural elements of legal consciousness, nevertheless they are interacting, partly interpenetrating phenomena" [28]. According to Valery Aleksandrovich Shchegortsev's position, "taking into account the specifics of the reflection by the legal form of consciousness of social existence, the degree of complexity and completeness of the reflection of material reality, the social role of this form in the structure of public consciousness, it is necessary to distinguish in the legal consciousness of its sides: legal ideology and socio-legal psychology ... Ideological and the socio-psychological aspects of legal consciousness form an emotional and intellectual unity that comprehensively reflects social being. The indicated aspects of legal consciousness are so closely interrelated that they can be separated from each other only abstractly. The basis of the relationship between the parties is their reflection of a single complex of objective processes and phenomena of social development" [29].

3.5 On the Dominance of Legal Ideology

Nevertheless, the existing connection between legal ideology and legal psychology does not at all exclude the formulation of the question of the dominance of this or that element, which is solved ambiguously in legal science. Here, at least, it is necessary to single out the following approaches, the proponents of which give appropriate arguments.

The first approach to solving this problem corresponds to the position of the primacy of legal ideology. So, Sergei Sergeevich Alekseev, speaking about the legal ideology of the world, wrote that this is the closest basis of legal policy, which has an objective character, due to the requirements of the economic basis, the entire social life, predetermining the legal policy of the ruling class. As the scientist argued, "the legal ideology of the world, which relates primarily to the socio-political content of law, is objectified in programmatic political documents, in the works and statements of the ideologists of the ruling class" [26]. Tatyana Vitalievna Sinyukova, in principle in solidarity with the above and comparing legal ideology and legal psychology, expressed a number of provisions arguing the priority of the first structural part of legal consciousness. For example, the author drew attention to the fact that ideology is characterized by purposeful, as a rule, scientific or philosophical understanding of law as an integral social institution, as an independent institution of society. Attention was also drawn to the fact that legal ideology significantly surpasses legal psychology in the degree and nature of knowledge of law: if legal psychology captures in many respects an external, often superficially sensory aspect, a cut of legal phenomena that fits well into

everyday human experience, then legal ideology tends to highlighting the essence, social meaning, nature of law, tries, as a rule, to present it in the form of a complete cultural-historical philosophy and dogma. Finally, arguing that "modern society is unthinkable without political and legal ideology," it is stated that "legal ideology is such a synthesis of legal knowledge, in general, legal culture, which is conceptually accessible not only to specialists, but also to broad layers of the population, specifically to everyone. Person, promoting the meaning of life, work. Orienting them in a complex and contradictory world" [30].

3.6 On the Dominance of Legal Psychology

A very significant group consists of authors who give priority to legal psychology. So, Svetlana Vladimirovna Boshno, speaking about the latter, claims that this is "the most profound, hidden from direct perception sphere of legal reflection, which ... gives such types of individual and mass reactions to law, legislation, which are able to radically determine the success or failure of certain legislative programs ... Ignoring legal psychology in the legal policy of the state more than once turned into a failure for certain state measures ... "[24]. Noting that "the ideological structure of legal consciousness is sometimes created artificially", and the psychological one plays a significant role in the formation and implementation of law, Anatoly Borisovich Vengerov believed that "this is either a powerful factor in legal development, progress in democratic transformations, or a brake, resistance to transformations, reforms" [five]. Focusing on the fact that psychology directly reflects the everyday needs and character of people [31, 32], the literature notes that this distinguishes it from legal ideology, which can be divorced from everyday ideas, indirectly reflects the needs of the development of society, law [33] ...

Vyacheslav Nikolayevich Zhukov substantiates the dominance of legal psychology in the structure of legal consciousness somewhat from a different standpoint, saying that "... legal psychology is a more significant part of legal consciousness than legal ideology." In substantiating this position, it is emphasized that "such a ratio is determined by the simple fact that the animal life of a person is primary in relation to his spirituality" [34]. One can also agree with the position according to which "legal psychology, arising under the direct beginning of the surrounding legal (state-legal-Vladimir Valentinovich Kozhevnikov) reality, is the first, the beginning of the empirical stage of legal consciousness", because "it is from this level that the awareness of legal reality, initial acquaintance with it "[35].

3.7 An Intermediate Approach to the Issue of the Primacy of One or another Structural Element of Legal Consciousness

It must be stated that there is a third, intermediate approach on the issue of the primacy of one or another structural element of legal consciousness, the authors of which declare, on the one hand, that "the role of the main and active element in legal consciousness belongs to legal ideology as a systematized, scientifically grounded, theorized reflection legal reality ", which" ... is closely related to the legal and political sciences, which give ideology a theoretical, systematized character, "however, on the other hand, it is argued that legal psychology in legal consciousness" ... has, as it were, a primary character, since most often legal feelings and emotions arise before legal ideas "[36].

It seems that when considering this problem, it must be approached dialectically. On the one hand, the following fundamental position should be borne in mind: before one way or another relate to law at the level of individual legal consciousness, to state legal reality (respectfully or not) (legal psychology), one should somehow know the law, its basic principles ... In any case, his time, Lev Ivanovich Spiridonov, analyzing the structure of legal

consciousness, first considered the rational sphere, within which a person accumulates a certain amount of knowledge about the objective world, skills, abilities that are necessary for everyone's daily activities and form its conscious basis, and then singled out the emotional area - a psychological attitude to the facts of legal reality, manifested in emotions, mental experiences, attitudes [37].

However, on the other hand, it should be borne in mind that there is no unambiguous correlation between the ideological component of legal consciousness and legal behavior (lawful or illegal), because in some cases it is legal psychology that comes to the fore. Attention has been repeatedly drawn to this circumstance in the legal and psychological literature.

So, Oleg Yemelyanovich Kutafin noted the following: "We have never been so far from the rule of law as now ... We still do not believe in laws and do not respect them" [38]. "Legislation," writes Elena Anatolyevna Lukyanova, "is not perceived by the population, it has become chaotic, gaping, flawed ..." [39]. Noting that awareness of the legislation in itself does not guarantee proper legal awareness of the population, Andrei Gennadievich Svetlanov emphasizes that, first, that the adopted legislation in terms of its content and quality should be of such a level that it is perceived by society in a positive way; secondly, it is necessary that law enforcement practice piously adheres to the principle of equality of citizens before the law; thirdly, both legislation, and especially the practice of its application, should become guarantors of the protection of rights, and not a tool for abuse. " Meanwhile, the scientist continues, "in domestic practice there are examples when neither the newly created legal mechanism, nor the established judicial practice have created an attitude among the population towards law as a source of goodness and justice" [40]. Believing that legal consciousness itself acts as a primary component of the formation, functioning and development of the legal life of society, Nadezhda Mikhailovna Yurashevich believes that, accordingly, the theoretical abstraction of the elements of legal life is such that all these phenomena (law, legal relations, legality, rule of law, etc.) require the mandatory inclusion of structural elements of legal consciousness. As the author writes, law, legality, the rule of law correspond to legal views not as to something external, these views function as the very activity of these legal phenomena [41]. Albert Semenovich Pigolkin correctly noted that the very ideas of legal consciousness "do not have their own value, if they are not aimed at translating into positive law or at denying those norms and institutions of the current legislation that contradict these ideas" [42]. We believe that Vladimir Nikolaevich Kudryavtsev paid great attention to psychological components as determinants of legal behavior (lawful and illegal), in one of his works he wrote that the choice of a behavior option ... is the result of the interaction of the external situation with the personality characteristics of the subject. The scientist noted that "this choice has a prerequisite in the system of the subject's personal properties, which include his worldview, experience, attitudes, stereotypes, value orientations, as well as features of moral and social control, including legal consciousness. In case of an offense in all these elements (or at least in some of them) there are deviations from the properties characteristic of the personality of a person who observes the norms of behavior "[43]. In another work, the author emphasizes that "the main factor determining, other things being equal, the choice of a decision related to the commission of an antisocial act, a crime, is, as criminological studies show, the antisocial orientation of the person himself" [44]. The author specifies that "the system of value orientations (dispositions, attitudes) of a person also includes an attitude to legal values", which "... can be considered both as an independent factor influencing behavior, and as an element of a person's legal consciousness" [45]. In the same work, Vladimir Nikolaevich Kudryavtsev noted that "any situation entails this or that action, only being refracted through

the psyche of the subject. No situation can cause behavior deviating from the norm without interaction with certain personality traits "[45]. Defining the personality of the criminal "as the personality of a person who committed a crime due to his inherent psychological characteristics, antisocial views, a negative attitude towards moral values and the choice of a socially dangerous path to satisfy his needs or failure to show the necessary activity in preventing a negative result", Yuri Miranovich Antonyan and Vladimir Evgenievich Eminov argue that "this definition is quite complete, not only in the sense that it covers both those who have committed a crime intentionally, and those who are guilty of a crime carelessly. Such an assessment of it is justified also because it contains a list of features that should be the subject of criminological knowledge "[46].

Specialists in the field of legal psychology, discussing the psychological premise of criminal behavior ", draw attention to the fact that" ... a significant part of criminals is at a certain socio-psychological distance from society and its moral and legal values "[47].

Indeed, in the legal literature of both the past and the present it is no longer asserted that the only or basic meaning of legal consciousness is the assimilation of the content of laws, but, on the contrary, it is emphasized that the main thing is not knowledge, but the attitude to laws, to legal values, for research have shown that offenders often know the laws as well as those who follow them. [48] Despite the existing point of view that "criminals, unlike non-criminals, have learned the requirements of legal and moral norms worse, they do not have a significant impact on them" and that "such people very often do not understand what society requires of them" [46], the results of sociological research suggest something different. So, in one of the studies of the legal consciousness of young people, unfortunately, without specifying the number of respondents and the methodology of the study itself, the following indicators are given in relation to law-abiding citizens and offenders: the awareness coefficient was distributed as follows: 0, 73 and 0, 74; solidarity coefficient - 0, 74 and 0.68; the coefficient of internalization is 0, 43 and 0, 29. At the same time, it was noted that public legal consciousness is characterized by a complex interweaving of two mutually exclusive tendencies - positive and negative attitudes towards law and law enforcement. And if law-abiding people are characterized by the recognition of the usefulness, the need for legal regulation of the high purpose of the law in ensuring order, protection of the rights, interests and safety of citizens, then for the criminal it is the diminution of the role and significance of law, lack of faith in the legal system and legal guarantees, ever-increasing legal nihilism, the ability to commit a crime, admitting impunity [49].

At one time, Vladimir Petrovich Kazimirchuk wrote that "respect for law ... means recognition of the social value of law, including sufficient awareness of the requirements of legal norms and solidarity with the principles of law" [50].

3.8 Discussion Issues

- 1) The subject of reflection of legal consciousness - legal or state-legal reality.
- 2) Dominance of its structural parts - legal psychology or legal ideology.

IV. Conclusion

In conclusion of this article, devoted to the problems of reflection of legal consciousness and its structure, it should be emphasized that it can be the subject of further discussion and research in this direction, which, no doubt, will enrich the theory of legal consciousness.

Recommendations:

1. State-legal reality should be considered as the subject of reflection of legal consciousness;
2. When deciding on the domination of legal psychology or legal ideology, one should approach dialectically, given that these are two interrelated and interacting structural components of legal consciousness.

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