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IDEOLOGICAL FRAMEWORK OF LEGAL CONSCIOUSNESS

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Abstract: This article mainly serves to prove the thesis that the ideological framework of legal consciousness is the element that makes up the conceptual units, each of which represents an organic unity of various social and spiritual phenomena.

The subject of the research are ideas representing the essence of legal consciousness from the perspective of its organic connection to other forms of social awareness, therefore determining the multifunctional nature of right.

A direct consequence of the basic idea of the article, which claims that the basic conceptual units underlying the ideological framework of legal consciousness are not related to law in their essence (except for the idea of justice), is expressed in two methodologically significant thoughts: firstly, ideas make up the foundation for the critical evaluation of the technically axiological assumption that they embody the essence of legal awareness itself, and secondly, they declare the synthesising capacity of legal awareness which, in turn, manifests the comprehensive, and in modern society, genuinely universal nature of right in its reality.

The final result of the research is justification of the statement that the ideological framework of legal consciousness is made up of conceptual units which shape up and reproduce the organic connection of right and legal consciousness to other forms of social life and social consciousness.

Keywords: idea, concept, freedom, equality, rightfulness, law, justice, legal consciousness, conceptual unit, rights.

Introduction

The language of legal consciousness contains words that express the essence of everything that acquires legal meaning through them. This “essence of everything” comprises the basic conceptual units of legal consciousness.

The basis and condition for understanding the meaning of these notions is the concept of idea. Idea brings unity to the diversity of mean-

ings of the notions. This unity is not hidden in some special, general sense. The definite nature of the concept of idea manifests itself in the very thinking of the idea. Ideas, not concepts, make up the channels of contact between legal consciousness and reality. Notions make subjects “stand out” from reality, making them definite; conversely, ideas “embed” concepts into reality, making it possible to think of the latter as a single whole.

Philosophical complaints about the uncertainty of a special kind of such notions as culture, right, freedom, justice, etc., must have long ago disproved this way of formulating the cognitive task of understanding them; it is not worthwhile striving to bring each of these notions to an essential and, even more so, complete certainty. In relation to such notions, it is important, firstly, to establish the entire scope of meanings encompassed by them, secondly, to acknowledge these meanings as obvious, that is, developed to obviousness through continued description and “spiritual examination”, and thirdly, to think of these notions from the perspective of their instrumental usefulness within the broad scope of this capacity, that is, not only the capacity of explaining at least cultural elements, but also deriving both evident and prospective theoretical consequences.

Ideas are meaningless in the sense that they are not bound to any specific subjective or cultural sphere. They are valuable only as universal forms that open the space for endless individualisation of thought. The non-universality of their understanding unites society, and their importance lies not in them being an ideological repetend in the social consciousness, but in that they create the environment for the spiritual work of society. They are the condition for self-individualisation; as social legal consciousness discovers itself through individualisation and through finding one’s individual self as being part of these ideas. The idea of right differs from the notion of law in that its meaning is not in what constitutes the law, but an individual’s states. As long as it is captured by one’s consciousness, an idea continues to exist.

Ideas are most likely neither normative nor regulative, as they are found outside sensory experience. It is futile to operate with them as empirical quantities, as something that is reflected in reality. They are simply milestones, intentions, a conceptual background that may underlie many things that do not really correlate but on which one may see that essential something that once lost, the law would be unable to perform its function. Ideas are spiritual states that give rise to both the idea of the norm and the idea of regulation; they are the centers that pull together a variety of social life aspects.

The methodological basis for analysing the conceptual framework of legal consciousness is

critical approach. There is a strong tradition of thinking of right (and, therefore, legal consciousness) as based on the ideas of rightfulness, equality, law, freedom, justice, and other ideas of equal scope. By its nature, however, legal consciousness represents and accepts them in an exactly opposite manner (as if in a mirror image).

1. The Idea of Freedom

The concept of freedom embraces a variety of different meanings. Of the two most prominent ones, “the first interprets freedom as independence and the second as autonomy” (Descombes, 2011, p. 358). On its own, the notion of freedom is inoperable. It belongs to meanings that cannot be defined; it underlies contemplation but cannot serve as its subject.

G.W.F. Hegel (1990) relied upon the postulate that in its idea, right is the reality of freedom. Moreover, “right in general is something holy, because it is the embodiment of absolute conception and self-conscious freedom” (p. 90). As social freedom in its essence is a political concept (Malakhov, 2007, pp. 129-239), G.W.F. Hegel’s idea is specifically correct and productive as a political idea. It stands for a historical and cultural definiteness (particularity) of legal understanding, represents understanding subjective right (not in a legal sense), a subject’s rights, therefore settling the issue of legal understanding.

Since the bourgeois revolutions, people have been craving freedom, associating it with the most desirable way of functioning of all social institutions. However, having achieved that freedom, people began to realise that there are still many things it cannot explain. Freedom is idea that can be used to provide both independence and a whole world of opportunities, as well as to excuse permissiveness and libertinage, to justify or to excuse whatever one may do.

G.W.F. Hegel called a bourgeois “a slave without a master”. As a consequence of such understanding, the bourgeois idea of freedom materialises only as a negative type of freedom, liberation. At the same time, right is a coping mechanism. V.S. Nersesyants assumed that right was a universal and essential form of peo-

ple's freedom. At the same time the need for some form reduces its value, turning it into a conventional ideological "additive". Moreover, it remains unclear what the form should be: is it equality, or justice, something else, or all these together? They all form the foundation of right, but not its characteristics or properties; they are concepts that are external in relation to right. Freedom stands in the same line.

One man's freedom is another's dependence. Again, one man's freedom presupposes another's dependence, not freedom. Once everyone becomes an owner, ownership becomes fiction, and once everyone is free, all become equally dependent.

At the social level, freedom makes sense as an expression of something "supersocial". At the cultural level, freedom manifests itself not through the excessiveness of social relations, but through the reproduction of the symbolic nature of life. Here, freedom is associated not only with the social nature of relations and the dynamic development of situations; it only makes sense as a permanent and stable state. At the civilisation level, freedom does not exist as a given moment, but only reveals itself as an absolute, universal condition of that which is real.

Freedom is a consequence of the "supersocial" and of one's supernecessity to live as a human; it is one's ability to live in an environment of excessiveness and indefiniteness. These conditions obviously do not belong to the sphere of right. Supernecessity is randomness, voluntariness, but it is not freedom.

An axiom of bourgeois (and post-bourgeois) general theory of right states that one's freedom ends when the freedom of others begins, that is, the nature of right may be understood as a sphere of manifestation and materialisation of freedom. It is true that in the legal sense, freedom may only be achieved through a relation to the "other". The very thought of it emerges because this is freedom from the "other", for the "other", and regarding the "other". And such freedom becomes internally contradictory: it is intended to restrict the freedom of the "other" and is thus forced to limit itself. This poses the question of how well this approach expresses the true nature of right.

Right, however, is not in the freedom of the subject, even when it is restricted; it is in the

restrictions and borders, it is in the limits, etc., drawn by right. Right is related to freedom as to its object; it does not rely on freedom and is not a means of its materialisation.

If freedom is a choice, this is a universal property of every living creature. But if freedom is a human domain, then choice does not mean freedom, or choice is randomness. There is a colossal difference between choice and freedom of choice. The first is a collision of possibilities given the need to take only one of them, while the second is an unforced choice, that is, choice is a game, but it also means impossibility of choice when it is inevitable.

Lastly: The root of right and morals is not in freedom; if, as proposed by I. Kant, B.N. Chicherin, and many others, everything is explained through freedom, then freedom does not explain anything in right, but is a clear and absolute ideologeme. This is not what the primary logic of right is about; it is about preventing arbitrariness.

2. The Idea of Equality

Why is the problem of equality always considered not from the perspective of the individual, but from the perspective of someone (something) he stands before, such as the law, or... etc.? This "standing before something" makes an individual totally dependent, visually determined, even if this is dependence on some abstract position or condition. It is therefore necessary to attempt to see equality not as uniformity, impersonality, and especially not as identity, but as distinctiveness.

Equality is a sustainable existential state of an individual; it should not be confused with equality in a certain regard, property, function, etc. In the first case, equality is one of the underlying foundations of right, while in the second, it is nothing but a situational regulation tool.

Equality as such is meaningless; it exists as if by itself, as a sign in an equation that has the power of equalling any values and any states. It is not connected to any certain values, but especially to people.

When equality is seen in equivalence, it, in fact, stands for equal indifference, leading to spiritual disintegration. And if so, then equality

acquires an entirely independent existence, that is, there remains only equality in itself, that is, equality without any parties to it whatsoever.

In its conceptual core, equality is a political concept. Political consciousness has no individual state (form), while political relations, on the contrary, are always individualised. And just as in the legal perspective, everything is the other way around: legal consciousness is always also individual (otherwise, being only universal and communal, it makes no sense at all), and legal relations cannot be such due to their regulatory nature, such that the idea of equality does not always correlate with the concepts of legal consciousness.

Social life cannot be imagined as unstructured, socially, and functionally undifferentiated; similarly, actual relations that manifest their mechanisms of arranging such relations cannot be imagined as non-hierarchical.

Equality is more of an extremity, an ultimate state, and therefore its nature is rather conventional. Inequalities are the states and conditions that fill up the entire array of reality. Unlike equalities, inequalities have an extremely fractionary gradation of states, from normal and legal to illegal, unacceptable, and unfair. And only in its extreme condition may inequality coincide with injustice. In many other cases, it acts as one of the forms of the embodiment of justice.

Modern democratic society is one of mass existence. In the mass “neither the one nor the other exist any longer” (Baudrillard, 2023, p. 173). Therefore, achieving and maintaining legal (formal) equality typically does not entail any specific difficulty. However, by its nature, democracy is a mechanism of power in which not impersonal equality reigns, but the equality of citizens differentiated to singularity. A democratic society is essentially a way of personifying political relations, rather than formalising them, symbolising the obviousness (visibility) of the legal element. In other words, democratic elements of social organisation and legal elements of equality, including social equality, in modern society are related to each other in a sophisticated way.

Almost the entire philosophy of right is based on recognising formal equality and freedom as conditions for right. It is only legal right, however, that relies on formal equality; even

then, it stands on it as on a principle, an abstract condition. Formal equality is impersonal, and therefore it presumes the possibility of freedom, but only as possibility of individual legal existence that does not fit the formal foundations of right.

A. de Tocqueville (2000) wrote that freedom and equality are opposed to each other: any attempt to exercise equality will always mean a necessity for enforcement, and the reign of freedom always entails inequality. “Almost all the time, equality comes at the price of freedom”, said A. Bergson (2010, p.61), agreeing with Tocqueville. H. Kelsen (2023) came up with an interesting way of overcoming all doubts about applying the principle of equality to social life: he interpreted the principle of equality as a “postulate directed at the law-making body meaning equality under the law, not be confused with the principle of equality before the law, which is directed at the authorities applying the law to concrete cases” (p. 21). In other words, equality is not a characteristic of people’s relations and positions in society, but a principle of organising the activities of a certain part of authority bodies, which is more of an ideological rather than technical or organisational principle.

The idea of equality before the law should not be associated with the issues of democratisation of social life (including its legal form). In fact, it has quite animating roots in the religious sphere. In any case, it generally makes up the essence of, for example, canon law (Prodi, 2017, p. 170). This means that this principle transforms legal right into a canon, that is, into indisputable right, where competitiveness, agreement, etc., are nothing but illusions and games of the mind, but not manifestation of reason in right.

Becoming a legal principle for determining an individual’s position in society and in relations with other subjects, the idea of equality is complex and problematic in its practical implementation but, nevertheless, gets bound by the mechanisms and means that simplify it to its ultimate state. R. Caillois (2022), in particular, discusses this and notes, “Since they despair of winning in contests of agon, they resort to lotteries or any games of chance where even the least gifted, stupidest, and most handicapped, the unskilled and the indolent may be equal to

the most resourceful and perspicacious as a result of the miraculous blindness of this new type of justice” (p. 174).

3. The Idea of Fairness

Fairness replaces equality where the differentiation of individuals becomes significant. Fairness means the individualisation, situationalisation of the idea of equality, which is why it always conflicts with equality in legal right. When equality is primary, fairness is random; separated from justice, equality is voluntary and formal.

Fairness is not a mechanism or a problem-solving algorithm; neither is it a form of decision-making or action. It is a special spiritual state of an individual underlaid by internal moral experience and prescribing the individual certain personal traits.

Clearly expressing the definition, interpretation of fairness, without resorting to pure formalism is extremely difficult, if not impossible. It is much easier to speak of unfairness, as there is an abundance of examples, unlike examples (or references) of achieved, properly exercised fairness. Nevertheless, as an axiological milestone, fairness becomes ultimately clear. It is commitment to a certain horizon that has a universal meaning for the entire human life.

Conscience, *consciousness*, *context*, *commotion*, *commiseration*, etc., are attributive expressions of *collaborativity*, *compatibility*, and *coincidence* of people in each other. Fairness is the collaborativity of right and intercompatibility of rights. Being fair, achieving fairness, takes *contacts*, *coincidence*, and *correlation*. Fairness is what one does in relation to another, something that matters not only for one, but both parties, but primarily and principally important to the one exercising fairness.

Unfairness is always a fulfilled act. For this reason, it is the field of exercising right, and thinking of unfairness is immanent and adequate to legal consciousness. Unfairness is something all legal problems are associated with. It is easy to express unfairness in a legal form. On the contrary, fairness is always a presumptive act that is impossible to formulate in a legal way. The notion of fairness is immanent to moral consciousness, and is thus not truly adequate in legal consciousness.

Fairness appears in a variety of guises associated with the abundance of rules for achieving and maintaining it. A. Smith (2022) even assumed that “the rules of justice (as fairness) are accurate to the highest degree and admit no exceptions or modifications but such as may be ascertained as accurately as the rules themselves and that generally flow from the very same principles as them” (p. 250). However, all attempts to derive a definition of fairness by generalising these rules are doomed to failure. The sense of the rules themselves is not in their effectiveness, but only lies in the very fact of their existence and acknowledgement (which is often forced). Fairness in the legal sense is rather understood as acting in accordance with the rules of justice.

G. Husserl claimed that “moral norms, unlike legal norms, in their essence are not related to the idea of justice which makes up the central principle of law and order” (Stovba, 2017, p. 127). Here, everything is as always: first, the essence of the term is modified yet again, then, modified to distortion, this essence becomes an attribute of right. Thus, the problem of levelling up the universalism of right is solved. Perhaps, the thought expressed by G. Husserl may be accepted only in the following sense: moral norms and legal norms are not related to the idea of fairness, and that is only because fairness does not bear any normative nature. Ascribing any sort of measure to fairness contradicts the essence of the very idea of it; associating fairness with any measure is a legal modification of the idea of fairness in which, however, the “spirit” of fairness cannot exist anymore.

Aristotle posited that fairness is a middle ground between extremities, namely damage and benefit, which can be achieved due to a court’s equal attitude to both parties in a conflict. In other words, he understands fairness as a measure. Given the syncretism of public consciousness of that time, the idea sounded convincing enough, and such an approach to understanding fairness has been successfully reproduced for many centuries after. However, as the forms of social consciousness have grown more differentiated and separated from one another, such an understanding of fairness has become inadequate.

Measure as a manifestation of a legal principle of formal equality makes fairness impossi-

ble. Measure must be simple and robust to be operable, to be real. However, if there is any measure required from fairness, then it is different: sophisticated and delicate, individualised (personalised). Demanding such measure, which is common for right, therefore means denying it. Right and fairness are different aspects of human life. Right cannot exist without measure, and morality cannot be measured.

Legal right transforms fairness into a product that can be consumed, explored, and acknowledged by humans. But only man alone can act fairly, for example, in the form of consent; one cannot be forced to be fair, one can only consent to it. This is why fairness is unthinkable without humility. But humility is alien to West European legal culture.

The evaluativity of fairness is nothing but its external form, its appearance; fairness is not reactive and not post factum; on the contrary, it is active, preceding a fact; it is “predestined” for it. It is not action, but attitude that demands fairness. And fairness, in turn, demands action.

Fairness is not a rational but an irrational phenomenon and act. More precisely, its foundations are of a sacralised nature. For these reasons, fairness is not vulnerable to criticism and is not subject to it; criticising it or for it is pointless. If it is resented in a certain act, it is not for some reason; it is just resented as such. This resentment is subjective. Consent to fairness is an act of humility.

V.M. Rozin (2016, p. 175) identifies three main contexts for the idea of fairness: fairness guaranteed by authority and law, fairness as understood by an individual, and fairness declared by society. Based on this differentiation, we can assume that in the first sense, fairness is associated with equality, while in the second, with conscience, and in the third, with reasonability.

“Treating identical deeds alike is the fundamental principle of fairness. This principle of equality, or principle of non-discrimination, is unanimous in many constitutions” (van Hoecke, 2012, p. 207). M. van Hoecke refers to this as universal fairness. It is clear that in communication theory, the meaning of fairness is narrowed to such a degree that it becomes a manifestation of equality (and vice versa). But whatever legal theorists may say about fairness, the average person thinks about it differently: for him, the said “identity of deed” must first be adapted to a

given individual, such that concrete decisions are not the same; here, the principle of equality feels inappropriate. Or it is fairness itself that is inappropriate, as they do not represent one and the same principle, but are opposites. Whether it be universal or particular fairness, in the legal sense, fairness bears any meaning only in a simplified, restricted form.

In *Corpus Juris Civilis*, fairness is defined as a “permanent and unchangeable will to give everyone their just deserts”. Many who try to understand the essence of fairness based on this formulation focus on the word “give”. Quite a number of theories of fairness are based on different variations of this expression. However, the core of fairness is not where and what its objective is, but what fairness is as such. And Justinian was convinced that fairness as such is permanent and unchangeable will. In this regard, we may say that fairness is the permanence of retribution-centered will. Will is an attribute of personality; therefore, fairness is a willful state of a personality and a form of its wholeness and consistency. Fairness comes to life not in the mind, not in conviction, not in equality, but in will. It is truth that requires will. Fairness is always individual and subjective.

Rightfulness and lawfulness can exist without any feelings that actualise the personality, the self (singularity) of a person. What distinguishes fairness from all other decisions, evaluations, measures, acts, and so on, is that fairness is always accompanied by feeling. At that, on one hand, this sensitivity is involuntary, while on the other, it manifests itself against a certain effort. Satisfaction in the event of fairness and dissatisfaction, remorse in the event of an encounter with unfairness are doubtless indicators of fairness.

4. The Idea of Law

Law is one of the basic conceptual units of social consciousness, and as such, it must be comprehended, first, in the ultimately broad sense, abstracted from all the diverse contexts. The form of the abstract that is adequate to understanding the phenomenon of law is thinking of law as of “a subject without predicates” (such as I, fairness, right, good, etc.). Law is an object of thought and comprehension as an instantaneous

act. As a process, the thinking (cognition) of law is only possible by referring to its properties. Some properties of law are attributive, while others are contributive. In the attributive aspect, law is an insuperable force (essential characteristic), an indisputable will, invulnerability to changes or modifications (subjective characteristic), a mechanism of right (functional characteristic), form of reason immanent to right (subjective characteristic), an end in itself, a supreme and universal value (axiological characteristic), and the holy and sacred element in the legal field (spiritual characteristic). All these generally manifest the law in its very essence, the law as right (their equivalence). In the contributive aspect, law is an unconditional requirement (imperative), a legal act (text), a principle, a rule, an order, etc. All these together manifest the law in its being, right as law, as the foundation of law.

In early, pre-state communities, right was the element that set reliable guidelines for behavior and understanding of what constituted a community. “The seeming permanence (of law – *authors’ note*) has been adopted from traditional myths that aim to prove that the future should be built upon a model of the present” (Rouland, 2000, p. 247). It is hardly capable of providing something different. Right was an expression of global law, the laws of the surrounding world. Laws structured the community, setting up the entire set of practical relations under it. This matrix has essentially survived to this day. However, right does not help understand life in a community anymore.

B.N. Chicherin (2011), claiming that “legal and moral law have the same sources” (p. 91), expresses the classical West European point of view that has been there since the bourgeois revolutions. This is a mixture of the idea of liberation and the exclusivity of a personality the liberation of which is the only thing that may be the subject matter. The root of legal and moral laws is the necessity to taboo certain acts through the efforts of society itself, not through any sacral notions.

H. Arendt (2014, p. 46) supposed that in the Judeo-Christian tradition, the law is considered to be a command. If this is true, it inevitably leads to the following. A command, that is, expression of will, is a voluntary and subjective act. If so, the law becomes the same: it can be

anything, whatever may take the form of the command. If right is built on this understanding of law, then it reveals itself as nothing but a form, that is, a set and a body of imperatives where the essential and random elements can hardly be distinguished from one another. However, the law of nature does not command; it simply is, it is a certainty to be followed not under command, but by nature. And since the notion of law is applied to prescriptions of right, this is what legal law should be like. Legal law, not mixed with command, is something that does not allow any exceptions and does not require any choice; it operates by virtue of its obviousness and equal applicability to anyone it may technically apply to. Law is the supreme rationale of reality, as it ascribes to reality the nature of a goal without separating the goal from reality or transforming it into something ideal. And indeed, the process of transforming law into arbitrary will is irreversible, and right relied upon such law has moved to the domain of ideology. Today, however, faith in the original purpose of law has faded, leaving only fear and rationale. Law has become an imperative that is underlaid by new ideas.

There is a difference between the law of necessity and the law of will (Isaev, 2021). If this is true, then, firstly, in this relationship, the first element plays the role of content and the second – of the form; the overcoming of the second by the first is the transition to the dominance of form. Secondly, it is important to know what kind of necessity is presented through the form of law and what kind of will has the capacity to determine that. It is essential to acknowledge that in true law, both are unlikely to be trivial, mundane, or ignoble, to serve the needs of the day, asocial and spiritless, or even simply practical.

Omnipresence, omnipotence, atemporality, and simplicity are the predicates of the law of nature; ideally, these should be its attributes. The same predicates may as well be applied to right (if right is nothing else other than the laws that fill it), and their modifications in the context of right will take the form of universality, compulsorism (categoricalness), permanence, and rationality.

In the legal sense, law is expressed power. The implication of law is the exercise of power. The question of restrictions on such exercise is

secondary; it is only a reflection of law from the point of view of it as of external shape. The primary question must be about adequate (not for the sake of acknowledgement, but for effectiveness) coercive measure.

J.G. Fichte believed that laws were derived not from practice, but from our own Self. Echoing his point of view, M.K. Mamardashvili (2016) specified that “The most that any philosophy may teach is that laws can only exist for free creatures” (p. 754). Only the law inside a human can make him free. Separating law from oneself and moving it out into the world, the human loses freedom, alienates from it. The modern human has lost the ability to live by his inner legal law.

Right is that which allows one to express their claims, insist on them, express their demands; right is the rationale for such claims. It stands behind norms, laws, customs, making up their content. This understanding of right is not equivalent to distinguishing right from law. This distinction points out the content of laws. Right, however, is a rationale of any law; the question becomes what right it is and who it belongs to. Acknowledgement of only a legal right as a right pulls the question of right and law to the domain of metaphysics and ideologisation.

The impersonalisation of right through laws is inextricably linked with the illusion of the sacralisation of right, as right moves to the dimension where it manifests itself as an unconditional judge. Without proper formalisation, the vanity and groundedness of right is obvious. Being a mechanism that operates in a definite domain and within a restriction to a given practical task, laws are the elements that make up right as a form.

Fully-featured law is a right that is equally superior to everything, including the state as an apparatus of authority. In the perfect scenario, to make up a harmonic structure, law must be superior to authority as well. However, since law is a form of authority, it is, therefore, authority itself. The opposite lays an equally true claim. Through laws, authority reforms its actions to the ontologisation of idea and transforms its power into imperatives.

Law depersonalises rule. When law is impersonated (for example, when represented by a monarch), this “person” is the only one who bears positive liability, while all the others

(subordinate to the law, that is, the will of its subject) bear negative liability. Depersonalised law extends positive liability to everyone, as if getting them involved in the actions of the sovereign; it makes everyone a sovereign. Nevertheless, this illusory sovereignty cannot be materialised, except for perhaps in a crime. Depersonalised law makes total equality of everyone before the law possible and ensures total liability of everyone, that is, the abstract readiness to be liable.

Regardless of whether the subject does or does not know a given law, the legal meaning of the liability principle remains unchanged, firstly, only when the law is sacralised, equally alienated from everyone and for everyone, when it is not a law made up by someone against someone else; secondly, only when negligence of the law is compensated with live legal consciousness, which is only possible if everything the given law says (or is supposed to presume) is reasonable, clear, and comprehensible. The subject matter here is law that regulates such relations, obligations, or prohibitions that are reasonable, clear, and binding even without an explicit law. “Right as a regulatory system determining how people should live in a society is protected by the law and state authorities” (Zakomlistov, 2003, p. 116). If this is so, then what is a set of laws? Can we consider it to be the right “standing for the protection of the regulatory system of right”? Certainly not. This is the way laws separated from right become non-legal rationale for right, that is, right cannot be deployed or function on its own basis. And if we acknowledge state authority to be the guardian of right as a regulatory system, then understanding the intrinsic value and significance of right itself becomes absolutely impossible; it would still be reduced to its auxiliary role. Laws dictate that right be reproduced; law is one form of right. As far as state authorities are concerned, they are supposed to ensure its exercise in social practice, providing the subjects of legally relevant activities with a proper environment and opportunities.

All contemplations on laws that stand guard over right and are separate from right itself make right impossible as such and turn everything upside down: laws are the right of the state, right is freedom from the law; right of society is independence from the state, right of

state is the dependence of society, etc.

The law, and along with it, right as a whole, is understood by many as an expression of fairness, objectivity, reasonability, humanism, etc. This is possible only if the law is not separated from the lawmaker and if the law is a spiritual state of the lawmaker and a form of spirituality in general. Separating law from the lawmaker (ontologisation of law), its impersonalisation, is a universal property of contemporary public law.

J.-J. Rousseau supposed that it was law that preceded fairness, not fairness that preceded law. Establishing an unambiguous connection like this seems wrong. On one hand, law is comprehended as expressing fairness towards something; fairness is a certain ideological rationale for law, and such a law is then designated as legal. On the other hand, exercising fairness without a solid rationale is impossible. However, it is obviously unstable in the sentiment of fairness as an expression of subjectivity. Law is much more robust; adhering to it is what fairness means in the legal sense of the word. Behind every fair judge is always a law, something that makes fairness objective, impartial, and undistorted by one's personal preferences and attitudes.

R. Alexy (2011) quotes the rationale of the German Federal Constitutional Court, which states, in particular: "Right and fairness are beyond the sphere of the lawmaker's discretion. Thinking that a constitutional lawmaker may regulate everything at his own discretion would mean returning to value-free legal positivism that has long been overcome by legal science" (p. 6). Along with that, staying within the framework of positivist understanding, in its essence, though not in its form, law-making is impossible to distinguish from rulemaking, and in such a situation, a lawmaker would perceive himself as a maker of both rules and justice. A lawmaker may make laws, but laws are only made provided that right and fairness already exist. The law is just a formulation and an imperativisation of right and fairness. Moreover, only provided that the current right is understood as the right of citizens, the body of regulations, rules, and requirements becomes just a means for its existence, not the subject of the citizens' activity; and this is the compulsory condition for the lawmaker to become also a

rule-maker and for justice to be exercised in the court of law.

5. The Idea of Justice

Justice is the being of right. It means that all the forms of manifestation and operation of right may and should be understood as forms of justice. Justice is a universal, comprehensive, adequate characteristic of right from the perspective of its functioning. Understanding right in its reality is understanding it as justice. Unlike all the ideas considered above characterising the conceptual framework of legal consciousness, the idea of justice is the only one that expresses right in its specificity compared to all other forms of social life and consciousness. All other ideas express right in its organic connection with other forms of social life and consciousness.

Justice must be recognised as the only aspect attributive only to right, being the trait that differentiates right from all the other forms of organisation of social life. This means that only justice can manifest the nature of right fully and directly, and in that regard, it is, first and foremost, the very being of right.

Right and morals discover an actual bond between them not in ideology, but in justice alone. The absence of justice (not to be confused with the purely contemplative possibility of the absence of the court and judicial authority) breaks the bond between right and morals. This break creates the vague idea of right as a minimum of morality, as well as such notions as moral justice.

Justice is exercised based on legal consciousness, which, by the way, judges and other lawyers often lack. On the one hand, it presents itself as a substantive solution to the issue only on the merits and in a particular situation, while on the other hand, justice always reproduces right. Justice is a dominating form of legitimisation of right. This is true for both law-making and a law-enforcing court.

Law does not admit exceptions, while exceptions are what right breeds on. Justice is acknowledgement of right in exceptions. G. Vico claimed that "it is not the domination of infallible laws, but, on the contrary, a deviation from rational jurisprudence that can only serve

as the foundation of humane and merciful justice, which does not settle for the form alone, but considers the trueness of facts” (Isaev, 2021, p. 228). The ability to judge the particular without reducing it to a rule of thumb is the nature of justice as a specific manifestation of Kant’s ability of judgement.

F.M. Dostoevsky (2022) wrote, “Judge people not by what they are, but by what they strive to become” (p. 177). In fact, this phrase shows the essential difference between justice and court: the court is limited to what it judges, it judges the fact, it is the triumph of law; justice sanctifies the desired (as the dues), creates the future; it is the triumph of fairness.

The established image of justice showing a blindfolded woman holding scales in one hand and a sword in the other likely represents the concept of justice only as separate from right. This is a symbol of the triumph of law, that is, the triumph of its subject, meaning authority. There is no such thing as “blind” or “blindfolded” fairness, and it is futile to seek it in court. This image should be considered not as a symbol of justice, but as a symbol of the concept of court, which is not properly associated with justice. This image or symbol claims that man is nothing compared to the law; he is just a reason for it to triumph.

Right represents a multitude of collisions of rights pacified by justice. Justice is subjective right; order is objective right. Justice is dynamic and conceptually saturated, while legal order is static and formal.

6. Secondary Elements of the Conceptual Framework of Legal Consciousness

1. Conscience as an unconditioned state or act. Is there anything like conscience in the legal domain, in legal consciousness, or, unlike morals, right is just a part of the conditioned domain? It appears that external reasons alone, whether existing in social life or in the human psyche, are not enough to explain any form of social life or consciousness, because something needs to exist to be conditioned.

You may persuade yourself in anything but not when it comes to fairness. Fairness is bound to conscience; conscience is a universal and natural sense of the fair.

Today, conscience is unthinkable as the “first judicial instance”. Moreover, an act of conscience makes no significance for justice primarily because it makes no external manifestations except for words, the secret of which is replaced with informativeness.

Conscience and conscientiousness seem to be words derived from the same root and are therefore expected to be close in meaning. However, the verbal framework of these terms is misleading, as conscientiousness does not stand for scrupulousness or bona fide, but is rather closer to honesty and responsibility.

2. Mercy as one of the forms of expression of fairness. Apart from fairness, mercy has lots of other forms of expression, including commiseration, pity, indulgence, self-affirmation, certainly love, and many others.

Mercy is only possible in the presence of commiseration. Achieving mercy means being ready to suffer. Mercy is conceived and perceived as redemption, liberation from suffering, but not acquiring actual freedom, that is, it is not gaining the possibility to be right.

Mercy is a form of patronage, expression of superiority, secret belief in one’s exceptionalism. This is a universal way of administering justice, a superlegal state of the source of mercy, and an important form of one’s right.

Mercy is commiseration, while mercifulness is about forgiveness, indulgence, and generosity. Mercy brings it all into the form of an act and does not remain only a spiritual state or a mindset. Mercy is a quality, while mercifulness is an act. Mercifulness is not something that is deserved or substantiated by any other means; it is self-sufficient. Mercifulness without mercy is pure arbitrariness; mercy without mercifulness is hypocrisy and complacency.

According to some ethicists, mercy has no measure. Indeed, everything that is real does have a measure, and if mercy is more than an idea, but also a way of action for the subject of right, then it also has a measure, which is not externally established, but present in each given case. However, what is substantial for any act of mercy is that it stands for an intentional excession of this measure; otherwise, it would have been nothing but fairness, and it is intentionally made insignificant. Here, measure presents itself as something unmeasurable, as it is sudden, worshipful, and random.

3. In the ideas of honour and dignity, legal consciousness sees an underlying concept of treating the individual as a legal creature, a concept of treating his rights. In their context, rationality, reasonability, relevance, authenticity, etc., of legal relations entailing their acknowledgement (enshrined in the regulatory framework of right) are supplemented with respect to people as parties to legal relations in the totality of their legally-relevant properties and expressions, employing trust as an effective means of self-regulation of legal life.

4. Honesty is a condition for fairness, trust is a condition for freedom, compulsoriness is a condition for law, and moderateness is a condition for equality. All these are subjective conditions. Merit is a condition for fairness, selfness is a condition for freedom, power is a condition for law, and functionality is a condition for equality. All these are objective conditions.

Conclusions

1. Right, freedom, fairness, etc., are the ideas that make up the framework of social thinking in almost any culture. Although usually perceived as natural and obvious, they are empty shapes filled with meaning by every culture and every historical epoch. And even though this meaning may or may not be agreed with, it is impossible not to accept it.

2. Freedom, justice, equality, and right are not legal concepts. Being ideas of a synthetic nature, they only make up the general context of the legal discourse as well as its common intellectual and spiritual mindset. It may create a conceptual bond between the considered similar ideas with the basic legal notions. Their conceptual bond is the following: freedom is an intact state, equality is a relationship, fairness is a property, and law is a rationale. This peculiar bond is a foundation for admitting basic legal ideas to be the ideas of freedom, equality, liberty, and law.

3. Of all the conceptual units making up the conceptual framework of legal consciousness that have been considered, justice is the only one that is purely legal, that is, the idea that completely expresses the nature of right itself in its reality and particularity. All other basic units characterise both right and legal consciousness

in their connection with other forms of social and spiritual life.

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