

The Law and Religion as the Basis of the Formation of European Medieval Legal Consciousness and Mentality

Elena Y. Kalinina

Herzen Russian State Pedagogic University, Saint Petersburg, Russia

Abstract: In this article the concept "legal consciousness" investigates in connection with the concepts of the "mentality", "identity" and "culture". The main problem is to retrace the basis of the medieval legal consciousness formation, to indicate the components forming its structure. The juridical consciousness, language, sign system of the Middle Ages, are the unified system reflecting integrity of a society. However borders with necessity exist and define society existence. The border represents a condition for existence of the society and also the concrete individual. The law of medieval Europe is symbolical and ritual. The Roman law and the Christian religion are the most important components of medieval legal consciousness and mentality in Europe in the context of this article.

Key words: Legal consciousness % Mentality % Identity % Culture % "border" %Middle Ages

RESULTS

Owing to what the legal consciousness is formed? What allows us to see, perceive and originate the law such what it is? Undoubtedly that different nations have various legal consciousness and it depends on their mentality, culture and identity. It means that there is very close connection between these components: legal consciousness (as a substructure of the mentality), culture and legal culture (as its substructure), identity. Identity may be perceived as a part of mentality in the sense that mentality is comprehension and perception of the image of the world in general, as such, it is a form of consciousness, which makes possible to establish the boundaries between objective reality and dissimilarity, between "ego" and "other". Thus, identity is the self-concept, which is formed on the basis of mentality.

Therefore, more than just the legal consciousness may be defined as a legal concept of surrounding reality, determination of one's place in the structure of the world, perceived through the standard as the space of due and eventual behavior, the aggregate of legal stereotypes and myths about the good, evil and justice as well as about the state, the law, through the "try-on" all of these standards, restrictions and rules and consent or non-agreement to exist in the appropriate boundaries. Thus, by determining these components for medieval legal consciousness, we can, in varying degrees, to delineate its boundaries for the certain nation.

Legal consciousness is not just a reflection and subjective perception of the legal components of reality but their appraisal and formation of one's own attitude to them, search of one's place among conscious and appraised components of legal reality. Therefore identification presents itself as a key component in the process of formation of as an individual and a collective legal consciousness. Legal consciousness is the subjective component of law. In whole it includes all

Corresponding Author: Elena Y. Kalinina, Department of Theory of Law and Civic-legal Education, Faculty of Law, Herzen Russian State Pedagogic University, 48 Embankment of Moika River, 191186, Saint Petersburg, Russia.

possible (in the framework of certain mentality) picture of the world, possibilities of perception, appraisal, ways of emotional relationship to law, as well as myths and stereotypes of legal behavior. As Jacques Le Goff mentioned, “the society of medieval west can only be understood if one shows how its material, social and political realities were penetrated by symbolism and the imaginary world” [1].

Certain social myth reflecting the dogma of law for the given group of persons in the given time period must inevitably act as the core of public legal consciousness. “A myth is an image in terms of which we try to make sense of the world” [2]. This social myth must possess such characteristic as stability. It is not necessarily that this myth must possess a truthfulness of high degree, but it should easily gain a foothold in the public consciousness and be perceived by the masses without further analysis, as an axiom. For example, in the medieval European society ethics were taught and preached with stereotyped anecdotes which illustrated a lesson and which were ceaselessly repeated by moralists and preachers” [1]. Such a myth becomes the centre of a system of legal consciousness and determines its content, i.e. the selection of those ideas which will become basic, as well as those that will be dislodged to the periphery. This fact largely makes it difficult to study the phenomenon of legal consciousness since the myth is hard to fit into the system of scientific knowledge. Meanwhile, it determines the emotional component of legal consciousness, its evaluative component, which undoubtedly influences directly on more stable components of legal consciousness. “Dogmatic thinking forms the mental matrix, which as an invariant code amalgamates different masses of people” [3] and on this basis legal models of behavior, ways of perception and attitude to law are formed. Along with this, undoubtedly, the sphere, in which there is a formation of complex of unintentional attributes, processes and states of individual, holds a significant place in formation of legal consciousness.

The myth, which is in the centre of legal consciousness, belongs simultaneously to both conscious and unconscious areas of the human psyche. Undoubtedly, subconsciousness (intuitive acceptance or non-acceptance of one or another standards, choice from conflicting motives) influences on legal consciousness and on the contrary: precepts and mechanistic ritual implementation of some legal acts (both actions and inactions) is formed in this boundary area on the basis of earlier conscious motives, the necessity to act so and not in a different way. In this case his core of legal consciousness is not subjected practically to logical analysis, because in many respects it is irrational. The key to many symbols and components of legal consciousness may be lost over time and forms which provide legal behavior and previously had some logical sense may be inexplicable from the point of view of the mind. However, just unconscious structural components of the core of the legal consciousness ensure reproducing the legal stereotypes and forms of legal (as lawful and unlawful) behavior. Legal values, concept of justice in law, image of *good+ and *evil+ are also formed.

On this basis it can be noted that the legal consciousness is a process and the accordingly formed legal picture of the world which is not an objective reflection of the legal reality, but rather its perception on the basis of the fundamental social myth, which lies in its basis. It seems impossible to change the legal policy of the state only by changing the law and all the more by adoption of a new law, borrowed from other states. That is why it would be naive to suppose that the importation of the law may be the core of reforms in the legal system of the state.

The problem of medieval legal consciousness is based primarily on comprehension of the ratio of the person and society. The dominant view of the middle ages consists in the fact that the individual could not imagine himself as an independent person, was “always integrated (...) into the larger social body” [4], for example, a class. His rights, obligations and life position entirely depended on the public group, the part of which he was. “It was a civilization that, for all its ethnic, social and political plurality, regarded itself as an organic whole. The medieval worldview regarded life as an essential unity—that is, it believed that there existed a super-arching unifying structure, divinely and naturally ordained, that held together and gave meaning to the obvious pluralism and diversity of everyday existence” [4].

In order to understand the foundations of the medieval legal consciousness, it is necessary to determine the place of one or another social structure, its mythology, that is comprehension of ourselves in the light of elementary moral-ethical ideas of good, evil and justice, as well as its relations with *others+. Largely the sources of the medieval legal consciousness and culture are located in the heritage of the Roman Empire. “Much of what is usually considered medieval actually has a far longer history than the Middle Ages” [5].

In any case, the two common aspects to all the medieval social groups, joining in European society, were religion and law, which came from the Roman Empire. “The end of Rome’s political control certainly did not mark the end of the Roman era: Roman roots had burrowed too deeply. In almost every other facet of European life – economic, social [5], intellectual, legal, religious, linguistic and artistic – much of the Roman imprint held firm, sometimes for centuries after the political bonds were loosed” [6].

The Roman law and the Roman Christianity have created the state and have cemented the society, formed the European civilization and culture. It was “the triumph of the Christian future over the pagan past and the reconfiguration of culture and institutions around newly hegemonic religious beliefs and practices” [7].

They were close in content and purpose and therefore closely related, did not contradict each other and could become the common foundation of those historical phenomenon, which we name Europe.

First of all their similarity lies in universality. Very likely this is the main quality both of the Christian religion and of the Roman law. Mutually supporting and enriching each other, they were able to link together the peoples inhabiting the vast space. The Christian religion has appeared in the Roman Empire in the period when this civilization has lost the most important basis, without which, in the end, has collapsed: ideological substantiation. The endless expansion and hegemony have already lost their meaning; all efforts were focused on survival in the borders that have been conquered, on confrontation with the people for which ideological substantiation of the war was much stronger than that of the Romans. Both the political and financial elite and all the categories of citizens of the once great Empire had conception about the future, apparently, quite vague. So a new ideology, the main qualities of which was versatility and purpose, has appeared “a universal vocation” [1], according to Jacques Le Goff. Versatility was that “There is neither Jew nor Greek, there is neither bond nor free, there is neither male nor female; for ye are all one in Christ Jesus” (Epistle to the Galatians of Paul the Apostle, Gal.: 3:28 [8]). This means that in case of recognition of Christ and His teachings, there would not be inequality between people and there is no difference for God between people because of their social status. And so it happened in reality. Researchers of the middle ages note that “Young and old, male and female, rich and poor, lord and slave, illiterate and learned, the laity constituted the vast majority of Christians” [9].

This naturally did not mean that society should not be divided into classes, however, but even in such understanding this contradicted to the Rome (ancient) comprehension of the social hierarchy. Christianity caused a new social inequality. “In the Christian world privileged the religious over the secular: in Fontaine’s words, all learned culture became ‘a means oriented towards a religious end which surpassed it’. This was progress, because it promised salvation” [7]. “Spain (...) retained a social structure inherited from Roman times. From what little we know, in Visigothic Spain the social hierarchy seems to have been even more conservative and oppressive, than in France” [7]. It played the “unique role in making Europe safe for Christianity” [10]. Availability of not free population was the contradiction for the European Christian world as for the Roman Empire. “Slaves, serfs, tenant farmers and wage-earners formed the backbone of agricultural labour. While it is impossible to ascertain what proportion of the rural population was genuinely enslaved, it is clear that the Reconquest added to the ranks of Moorish slaves in Christian Spain and of Christian slaves in Moslem territory” [10].

With regard to the purpose, “from lay people’s point of view, the rituals of the Christian church in which they were encouraged - or coerced - to participate were often only one of a number of possible ways of making sense of the world, placating its hostile forces and ensuring social harmony” [9].

Nevertheless “Christian culture (...) was shot through with pagan or pre-Christian influences and practices. In Rome itself, for instance, Christian festivals held in January of each year involved identifiably pagan elements” [7]. As Richard Gerberding mentioned “from our modern vantage point, the ultimate success of Christianity might seem an historical inevitability, but in fact the spread of the new faith was extraordinarily slow and uncertain. Its progress was continually hampered by persecution, internal division, intellectual skepticism, the resilient attraction of paganism, the rival appeal of Judaism and the proliferation of heresy” [6].

Roman law, in turn, possessed the same properties. According to I. A. Pokrovsky, it was *the right that was (...) free from any local and national peculiarities, which could equally satisfy Roman and Greek, Egyptian and Gaul+ [11]. It may be noted that description of the two concepts are identical. Perhaps this is connected with the fact that both ideological

concepts have appeared in the framework of the Roman Empire, which historically possessed a great cultural potential, on the basis of which not only the peculiar civilization was established, but fundamentals of European civilization, which became her heir, were laid. The reason of the legal reception “was the vacuum caused by the disintegration of Roman government” [7]. “Late Roman ideas of law and the ways that it regulates the ownership of property were also passed directly into the early Middle Ages in the West. Law, both in its intellectual conception and in its practical application, is often held up as Rome’s finest achievement. The early medieval kings issued compilations of law for the various tribes they ruled” [6]. Roman law was initially established as a management tool of peoples and the Romans “felt sure that they surpassed all previous societies in knowing how to rule people” [4].

The universality of Christianity and Roman law also lies in the fact that they covered all spheres of social life, starting from public, political and ending with a private, family. “As far as they could, the emperors tried to unify and regularize the administrative life of the empire while allowing local customs to continue” [4]. This fact caused the future inseparable development of religion and law in the framework of the European civilization. For example, the special section of the law appeared and existed until recently – canon law, regulating not just the sphere of social relations, which we now call the family law, but also the most private, intimate people’s attitudes. Public relationships – policy and legal proceedings were also covered by law and religion. “Canon law not only had direct application in the field of ecclesiastical administration but was also useful to those entering royal administration” [12]. So it turned out that in the society there is no such a sphere which would not be regulated by law and religion. All the culture, including artistic, had also religion and law as its basis. Religion and law were inseparable and the fact that they were practically identical, united them both in form and in content. Norms, clearly regulating all people’s behavior and built on one moral basis were its content. As a form there were symbols and rituals, which often were not understood even to initiates but were considered to be obligatory for execution under penalty of occurrence of the most negative consequences. The right was religious in nature, appealed to the Christian norms and standards and religion was originally normative and often used the secular judicial instruments. The right, which in essence would be rationally and refer to mind and facts, was often based on religious premises, addressed to religious rituals and methods of proof (for example, rituals of judgments of God). On the other hand, as it was noted by A. Ya. Gurevich, “some historians have call Christianity “judicial religion”, but in this case it is clear that the medieval Christian could not get rid of the feeling of personal responsibility+ [13]. This feeling is connected with necessity on the part of the Christian to follow a number of rules and norms and to bear responsibility for their infraction, but on a higher level, before God. In any case the violation of norms inevitably entailed the Court and the consciousness, including and first of all legal, was determined by the unavoidability of punishment. Violating the law, a man at the same time transgressed the will of God and consequently was doubly guilty. However, such a separate comprehension of guilt is typical for a modern man, but for the medieval individual such division was inaccessible so far as his consciousness remained integral. The individual usually did not divide the guilt before the society and guilt before God. Bearing responsibility, he at the same time repented before the people and higher forces.

Right (as a set of social values) and religion (as a set of individual values) were formed and determined the legal consciousness of the medieval individual. Through a set of rituals they led the human into values of social life, expressed in appropriate myths, formed personality, possessing the set of qualities necessary to be a part of society. At the same time the legal conscience influenced the development of public-legal institutions, changing the existing rules and principles in connection with social changes. So the legal consciousness in the middle ages was not a closed and static, but developed in accordance with alteration and adjustment of forms of social life.

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