

***GLOBALIZATION OF LEGAL IDEOLOGY
IN THE CONTEXT OF MODERN SOCIETY
TRANSFORMATIONS***

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Abstract

The legal ideology can be recognized as the most stable element of the legal system, which causes its fairly long period of formation. Nevertheless, the rapid pace of modern society development and the globalization of all spheres of public life lead to the fact that even legal ideology can waver under such an onslaught and begin to show signs of internationalization. The purpose of the article is formulated as identifying the features of the transformation of legal ideology, as well as determining the optimal model of convergent

processes of legal ideology. The paper supports and further substantiates the concept of global law, since “global law” (in contrast to the international legal system) provides for a movement towards a common legal ideology based on the convergence of basic values and methods of influence.

Keywords: globalization, legal awareness, legal consciousness, legal ideology, legal system, transformation processes.

INTRODUCTION

Legal ideology is of significant scientific interest, since it is also a well-researched phenomenon, as well as one that is undergoing changes in connection with the globalization processes of modern society. This can not be ignored by the fact that legal ideology is often considered as a set of methods of legal influence or methods of different types of influence on the legal situation, but very rarely as a synergistic phenomenon.

The legal ideology problematic is quite popular in the legal doctrine. So, in the most recent studies, where the analysis of the rule of law is of great importance, it is stated that “rule of law as an ideal is itself ideological, as it comprises contested concepts such as certainty, equality, stability, and legality”.¹ And thus legal ideology is transferred from the plane of reasoning about "fragile things" to a completely praxeological plane, since the whole democratic world is based on the idea of the rule of law.

Absolutely fair just a few years ago “legal ideology has, unlike other types of ideologies, a monistic character, since it is based on a system of legal norms that has no alternative for a particular state”,² it does not seem so clear today,

¹ Lees, & Shepherd, 2018.

² Lutskyi, 2015.

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when even the foundation of the legal system in the form of legal ideology does not stand up to globalization.

And for good reason T. Arvind and L. Stirton noticed that the sphere of jurisprudence, legal doctrine and ideology, despite the seeming study “has remained shrouded in what is almost an air of mystique”.¹ But it could be added that as a result of significant external influence, the legal ideology acquires even more vague features.

The above makes it clear, the legal ideology is undergoing such changes as a result of the globalization of all spheres of public life that recently the problems associated with it have not weakened, but have risen to a new level of scientific thought.

Purpose of the Study.

The purpose of the scientific article is formulated as identifying the features of the transformation of legal ideology, as well as determining the optimal model of convergent processes of national legal ideology and its borrowed elements.

Object and Subject of the Study.

The object of the research is the legal system of the society. While its subject can be called legal ideology as a structural component of the legal system.

Methodological Basis of the Study and Methods.

The main methodological principles of writing this scientific work are dialectical, value-based, human-centered, cross-social approaches, as well as the principle of determinism. They create a doctrinal basis for the analysis of legal ideology as an intersectoral complex phenomenon that is at least at the

¹ Arvind, & Stirton, 2016.

intersection of law, psychology, sociology, and political science. It is also impossible to ignore the axiological principle. Since the values initially embedded in the legal ideology will have a decisive impact on the formation of the legal consciousness of a particular society.

As for research methods, the most used general scientific methods are the system method (since the legal system, which is recognized as part of the legal ideology, is part of higher-order systems. This system can also be called global legal reality), as well as cybernetic and synergetic methods (since legal ideology within a single legal system can be subject to the laws of synergetics, and as part of a globalized legal continuum - cybernetics).

Of the special legal methods, the method of legal comparativism will definitely be used, since globalization provides for the mutual influence of legal systems.

The statistical method will become the basis for justifying the perception of legal ideology and legal awareness in their dynamics. In this regard, it is advisable to take into account data obtained approximately ten years ago and today. The formation of a stable legal ideology is a fairly long process (in comparison with other legal phenomena), so a decade is quite acceptable for obtaining data on changes.

RESULTS AND DISCUSSIONS

***THE FIRST TOPIC: LITERATURE REVIEW,
DEBATABLE TERMS AND MAIN CATEGORIES***

As mentioned above, legal ideology belongs to one of the most ambiguous categories of jurisprudence. It is analyzed in different contexts and in completely different meanings, which makes it necessary to agree on the terms used.

In some scientific works, ideology is considered exclusively as a part of the political system and its influence on the law and, consequently, the rights to it is investigated.^{1,2,3,4,5} This approach is indeed common, but the question of political ideology can be left out of the scope of our study. Some authors add related spheres of social life to this bunch (politics and law), such as Economics,⁶ culture or society.^{7,8}

Emma Lees and Edward Shepherd consider legal ideology, on the one hand, as a form of political thinking, but, on the other hand, as a structural component of the legal culture that affects the decision-making by judges.⁹ This makes it possible to separate political ideology from legal ideology, and to consider ideological aspects within various social subsystems. This seems to be quite true, since the political and legal system have their own characteristics and laws of development. In this regard, political ideology cannot be considered fully as a legal phenomenon, and Vice versa. “The

¹ Gordon, 2011.

² Novkov, 2008.

³ Marks, 2010.

⁴ Kennedy, 2012.

⁵ Norrie, 1991.

⁶ Sanjukta, 2019.

⁷ Mezey, & Niles, 2005.

⁸ Alidou, & Alidou, 2008.

⁹ Lees, & Shepherd, 2018.

potential illumination provided by ideology to understanding the practice of law is located in a 'prevalent' notion of ideology premised on enduring conflict between opposing political outlooks, rather than a 'pure' notion of ideology used to express the conceptual branch of political science".¹

UK's the legal doctrine completely naturally for the characteristics of its legal system deduces the legal ideology from the judicial power.² This seems to be true for the relevant legal tradition, but not for legal science as a whole set of knowledge.

Legal ideology is also considered as a system of legal ideas, theories, concepts, norms based on certain scientific knowledge and political views³, or as a system of views, ideas, and theories about the nature and social purpose of law, and the possibility of using it to solve social problems⁴. Both definitions are essentially similar, but a functional aspect has been added to the latter. This is certainly regarded as a plus, since it makes it possible to evaluate the legal ideology in action, and not as a "dead" set of theories and teachings.

Thus, legal ideology should be considered in the structure of the legal system.⁵ But this is not the end of the problem, since one group of researchers defines legal ideology as a structural element of the legal system as a whole (along with the legal system of law and legal practice). The second one considers it already in the structure of legal consciousness (highlighting legal ideology and legal psychology in legal awareness).

¹ Halpin, 2006.

² Arvind, & Stirton, 2016.

³ Shemshuchenko, 2009.

⁴ Voplenko, 2000.

⁵ Alekseev, 1981.

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So, according to some authors, legal ideology is the idea of an ideal legal system, which changes depending on the realities of public life.¹ In another sense it is part of legal awareness along with legal psychology and legal behavioral factors.²

In modern scientific works, legal ideology is considered as a whole, having internal unity, created on the basis of philosophical or religious teachings, a mechanism for influencing the system of ideas on public, group and individual legal consciousness in order to legitimize (delegitimize) the system of positive law, legal practice, ensuring the unity and reproduction of the legal system by translating legal ideas into the normative attitudes of the addressee's consciousness and forming appropriate models of legal behavior.³

Now there is a tendency even to form the legal ideology of certain branches of law and discuss its impact on the legal systems of states and even on the legal system of international law.⁴ This approach takes place, but as a more special case of the expression of ideology in law. We are more interested in analyzing legal ideology as a single functional complex of ideas, approaches, and theories that form the doctrinal basis for building a system of sources of law (the system of law) and their implementation in real legal actions (i.e., legal practice). In other words, in this scientific article legal ideology will be understood as a structural component of the legal system.

THE SECOND TOPIC: LEGAL IDEOLOGY AND ITS ROLE IN THE ABSTRACT MODEL OF THE LEGAL SYSTEM AND THE LEGAL SYSTEM OF CERTAIN STATES

¹ Lutskyi, 2014.

² *Ibid.*

³ Mihaylov, 2017.

⁴ Scott, 1994.

The legal system in the general theory of law is an existential personification of various legal phenomena, which, however, for systematization and ease of perception can be reproduced in the unity of its elements, which in the complex reflects not just a set of legal phenomena, but the place and role of each of them, functional relationships between individual elements, as well as within the entire legal system.

Legal reality is represented by a multi-factor, non-linear phenomenological picture, the change of vectors of which occurs in some places under the influence of even the slightest fluctuations in its components, most of which are mobile and relatively unstable, because the normative component and related legal practice are dynamic entities. Against this background, a certain stability of the legal system is determined by the legal ideology, which, although it goes a long way, but at the same time, is an objective constant of many legal phenomena that operate within individual states and supranational entities.

Paying tribute to all the fundamental research of legal ideology and the vast scientific heritage of specialists representing all social branches of knowledge without exception, and moving to the plane of interdisciplinary analysis, this component of legal reality remains almost immense for rational perception. In support of this, we can cite the apt expression of M. Kozyubra, who argues that

“law is such a complex, multi-colored, multi-faceted, multidimensional and multi-valued phenomenon, in which spiritual, cultural and ethical principles, domestic and international, civilizational and universal aspects, scientific truth and values of good and justice, achievements of legal theory and practical legal experience, legal ideals, institutional and normative education and legal relations are closely intertwined, it

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*is simply not possible to squeeze all this into the framework of some universal definition”.*¹

Guided by the above-mentioned, repeatedly tested thesis, the definition of law can only be approximate and corresponding to a certain social formation and historical stage of development, the aspect. This is compounded by the fact that, despite all the relativity of legal ideology, it is, nevertheless, the foundation of the entire legal system, consolidating at the doctrinal level, philosophical, historical, social, psychological and many other principles of law.²

Metaphysics and dialectics, rationalism and empiricism, naturalism and anthropology, historicism and realism, idealism and materialism found a response in legal doctrines, reproduced in the corresponding models of law.³ In other words, any legal system is nothing more than an external basic model for the concept of law. And, unlike other (basic or derivative), rather mobile components of legal reality, legal ideology is a very stable entity that permeates the legal system “from top to bottom”. It can be cultivated by the ruling elite, can be planted from the outside or go through a long difficult path of formation. But, what is most important, in a certain period of time it reflects the collective legal awareness of the population, their perception of the right and attitude to it. In the same plane are the conclusions of M. Tsymbalyuk, who, according to the definition of the concept of legal awareness, considers the dialectic of legal awareness and law, the dependence of its content on the concept of law, which is its basis.⁴ But, starting from the above, we can go

¹ Koziubra, 2010.

² Mikhailina, 2018.

³ Zaiets, 1997.

⁴ Tsymbaliuk, 2004.

further, recognizing that not only legal awareness depends on the basic concept of law. Embodying ideology, legal awareness extrapolates it to all elements of the legal system, receives from them a “feedback” that, accumulating over time or exponentially can change the direction of even paradigm institutions.

Thus, it was revealed that the legal ideology can be recognized as the most stable element of the legal system, which causes its fairly long period of formation. Nevertheless, the rapid pace of modern society development and the globalization of all spheres of public life lead to the fact that even legal ideology can waver under such an onslaught and begin to show signs of internationalization.

THE THIRD TOPIC: GLOBALIZATION AND ITS IMPACT ON THE LEGAL IDEOLOGY INTERNATIONALIZATION

At the present stage of society's development, it becomes quite obvious that legal ideology can function according to its own laws, determined by internal and external factors. Internal factors include the political regime of a particular country, the peculiarities of the state mechanism functioning, the type of legal awareness that dominates in the society, and the ratio of the state and scientific components of the social system. The main external factor in this case can be called globalization processes, which are steadily gaining momentum around the world. At the present stage, globalization affects even the legal and state systems of those countries that have remained relatively isolated for a long time. Accordingly, an acute practical and doctrinal problem is the identification of patterns of legal ideology transformation processes under the influence of globalization. It is also problematic to maintain a balance between preserving the identity of the national legal ideology and

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borrowing the characteristic features of the legal ideology of other legal systems.

In the light of the above, it would be worth paying close attention to the globalization processes in law. Although its scientific assessment is still extremely heterogeneous both in law and in other fields. “It was only a few decades ago that globalisation was held by many, even by some critics, to be an inevitable, unstoppable force”.¹ But some skeptics claim that “globalization has peaked, and there is a significant and underappreciated risk that the world will start to de-globalize in coming years”.² Of course, such risks always exist, but so far, reality, as well as statistics, proves that internationalization is only gaining momentum, despite the active and passive resistance of some states, communities and individuals. There are areas that are subject to globalization in the first place, but there are also more stable ones. Legal ideology can also be attributed to the latter, although even this phenomenon gradually lends itself to processes of interpenetration.

Sometimes internationalization is not evaluated correctly, so we can fully support the statement that “globalization also isn’t a static force. We associate globalization today with the shipping container, the 1950s invention that increased the efficiency and lowered the cost of the global trade in goods. Or with the outsourcing of jobs in advanced economies and the rebirth of great trading economies like China’s”.³ It is worth noting that this is not the case at all. In contrast to calculable categories, changes in the law can occur for a long time imperceptibly, and become apparent only at the stage of their inevitability.

¹ Saval, 2017.

² Shearing, 2019.

³ Donnan, & Leatherby, 2019.

“Globalization of law may be defined as the worldwide progression of transnational legal structures and discourses along the dimensions of extensity, intensity, velocity, and impact. We propose that a theory of the global penetration of law will require at least four elements – actors, mechanisms, power, and structures and arenas. ... We propose that the farther globalizing legal norms and practices are located from core local cultural institutions and beliefs, the less likely global norms will provoke explicit contestation and confrontation”.¹

This deep assessment of legal globalization is fully supported, but at the same time makes us think about the place of legal ideology in the four elements described. It is possible to find arguments in favor of at least two. Legal ideology can be considered as an arena in which all legal actions unfold, since it is initially the basis of all legal processes in society and the state. It creates the basis for understanding what the internal and external image of legal norms will be. However, it is worth noting that this approach will not be fully justified. The arena, as a rule, is faceless, while the legal ideology has a functional beginning. That is, it does not exist by itself, but as a description of the logical process of building all legal phenomena in a particular society. Thus, in order to fully understand the logic of the legislator, his goals, means, as well as the interests and motives of the recipients of legal norms, it is best to turn to the legal ideology. Legal ideology is a kind of matrix that fits all legal phenomena into the legal reality. It provides answers to the questions: why the content of legal norms is such; why a specific action is provided for a certain legal responsibility; how the Creator of legal norms perceives other participants in legal relations (whether they take into account their interests

¹ Halliday, & Osinsky, 2006.

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or are guided more by the interests of the state); finally, how the recipients of legal norms relate to the legislator, the state, and the law as a social institution (which ultimately affects the motivation of their behavior). In connection with the mentioned activity component, legal ideology can be associated with the mechanism rather than with the arena of the law. So, imagine that this mechanism, this matrix, fails, which is what happens in connection with globalization. Legal processes lose their predictability because the very basis of their existence is violated. Even if the influence is positive, which is not uncommon in modern societies, it will always be a stressful situation for legal ideology. And the faster and deeper the changes, the more stress there will be. It should be recognized that the legal system is quite conservative and always naturally lags behind society. Some of the gaps in legal regulation are explained by the emergence of new relations that have not yet been laid down in law. While legal ideology is not just conservative, it creates a basis for the existence and functioning of law for years, and points to the fundamental “rules of the game” in the legal field.

Law has traditionally been the province of the nation state, whose courts and police enforce legal rules. By contrast, international law has been comparatively weak, with little effective enforcement powers. But globalization is changing the contours of law and creating new global legal institutions and norms.¹ But at present, almost all States are losing this prerogative. The law is still aimed at recipients within the state, but there are many spheres of life where the international or even supranational element is

¹ Globalization of Law. *Global Policy Forum*. Retrieved from www.globalpolicy.org/globalization/globalization-of-law.html.

decisive. “During the past several decades globalisation has affected many if not all areas of law to a striking extent”.^{1,2}

International law, trade law, international trade law, criminal law and other branches of law are also affected by globalization. Moving away from nearby and approaching the far has made the law as a global phenomenon.³ And if this is more than obvious for commercial and contract law, the internationalization of public branches of law, including constitutional and criminal law, is truly surprising. Criminal law is directly related to state coercion, which means that it is most firmly tied to the system of values and capabilities of a particular state. But if criminal law is transformed under the influence of external factors, this is a consequence of changing the legal ideology itself. Ideology, in turn, is strongly influenced by globalization factors.

In particular, “criminal law is a system of the highest values and norms. In fact, when the criminal protection of legal values is raised in the form of criminal titles, the importance of these rules becomes increasingly apparent to everyone. The mission of criminal law becomes more important when linked with human values and global human rights because some of the values of the global human rights are also part of criminal law, and hence the protection of them, jointly in the age of globalization, has been assigned to both parts of the law.”⁴ But initially, these world values must penetrate into a specific system and at least gain a foothold there.

¹ Trubek, et al., 1994.

² Snyder, 2004.

³ Shirin, & Abbas, 2019.

⁴ *Ibid.*

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The scientific and practice-oriented literature notes that “globalization demands a new kind of legal practitioner. The new-age lawyer, whether they be a corporate lawyer or criminal defense attorney, should be an industry expert or an authority on the law as specialized domains such as project finance ... The legal professionals who work for global clients must be able to conduct themselves in a foreign language and be well-versed with international norms and usages as the interface lawyers that were found in foreign desks of international law firms have become a relic of the past”.¹ This means only one thing, that globalization completely changes the legal ideology, and through it not only legal norms, but also the order of their implementation (that is, the sphere of legal practice). Thus, lawyers are no longer fully “tied” to the national system of law, but are obliged to take into account at least the legislation of another legal system (or supranational rules of conduct), and as a maximum to understand the legal ideology of building another legal system and be ready to accept it.

This gives some researchers reason to talk about the international legal system. So, it is claimed “the ideology of international law does not deny that international politics may influence the international legal system”.² Although this approach raises some concerns, since the legal system (if we are not talking about its ideal model) is still a national phenomenon. In the “international legal system”, its three basic components (legal ideology, system of law, and legal practice) are lost and not fully visualized. Therefore, in our opinion, the term international legal reality or international legal landscape would be more appropriate.

¹ Globalization’s Effect on the Legal Industry, 2018.

² Scott, 1994.

Some researchers go even further and suggest the concept of global law, rather than international law, for discussion.

“By transforming borders and de-territorializing behavior, globalization raises a host of questions and concerns fundamental to law. Many commentators argue that international law and national law are no longer adequate categories for the totality of “law” today, and offer an array of new concepts such as transnational law, global law, global legal pluralism, etc., to help us understand law in the global space”.¹

And this position is recognized as fully justified, since “global law” (in contrast to the international legal system) provides for a movement towards a common legal ideology based on the convergence of basic values and methods of influence.

CONCLUSIONS

Legal ideology is the basis of the entire legal system, consolidating at the doctrinal level philosophical, historical, social, psychological, and many other principles of law. Any legal system is nothing more than an external basic model for the concept of law. And, unlike other (basic or derivative), rather mobile components of legal reality, legal ideology is a very stable entity that permeates the legal system “from top to bottom”. But, what is most important, in a certain period of time it reflects the collective legal awareness of the population, their perception of the right and attitude to it. Embodying legal ideology, legal awareness extrapolates it to all elements of the legal

¹ Garcia, 2016.

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system, receives from them a “feedback” that, accumulating over time or exponentially can change the direction of even paradigm institutions.

It can be concluded that the legal ideology is the most stable component of the legal system, the reverse side of which is the longest period of its formation. But, given the globalization processes, even this is not so clear. And even legal ideology undergoes changes under the influence of external legal, social or state factors.

Only integrative legal awareness, which forms an integrative legal understanding, can ensure the progress of modern society. Against the background of general humanization, the impulses of natural law somehow penetrate even into those systems of law and philosophical and legal teachings, for which this was previously completely unusual and, moreover, unacceptable. This logically fits into the thesis of accelerating convergent processes in law and modifying the legal consciousness in this regard. Thus, the processes of polarization of philosophical and legal trends at this stage can be considered complete and note the activation of integration processes, which is not just reflected in the legal consciousness, but occurs through it.

The existence of law, first of all, finds its manifestation in the legal consciousness in all its specificity, or, conversely, integrativity (which is typical for the modern period of development of society). Thus, the integrative (pluralistic) approach to legal ideology is determined by the actual transformations of legal consciousness and the correlation in its plane of all components of the national legal system, similar components of the legal systems of other states, the philosophical foundations of the ontology of society, law and the state, as well as a set of non-legal factors.

So, the legal ideology can be recognized as the most stable element of the legal system, which causes its fairly long period of formation. Nevertheless,

the rapid pace of modern society development and the globalization of all spheres of public life lead to the fact that even legal ideology can waver under such an onslaught and begin to show signs of internationalization.

The paper supports and further substantiates the concept of global law, since "global law" (in contrast to the international legal system) provides for a movement towards a common legal ideology based on the convergence of basic values and methods of influence.

The most acceptable model of global legal ideology can be recognized as borrowing positive legal phenomena, but not giving in to the violation of basic human rights in favor of globalization. At the present stage, it is possible to observe how societies based on humanistic legal ideology lose out to traditional societies and are sometimes powerless to migrate. This approach destroys the very idea of an open, multicultural society and causes skepticism about the possibility of developing a global legal ideology. While the observance of a simple basic principle: the freedom of one person ends where the freedom of another begins, – it may well create a foundation for legal ideology in a global sense.

All of the above makes it possible to draw a conclusion about legal ideology as a phenomenon subject to both cybernetic and synergistic laws. In particular, globalization affects the legal ideology from the outside, but it also transforms the system from the inside. Legal ideology gradually “absorbs” phenomena that were initially perceived as foreign. But the problem is that both positive and negative aspects are integrated into the legal ideology. Moreover, some negative phenomena tend to be perceived by society as positive or cause negative consequences later, if this is not taken into account in the future, and measures are not taken to minimize them. This will only

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lead to the fact that without a “positive balance”, the construction of a global legal reality will fail.

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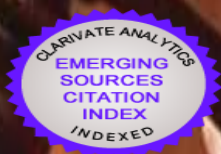
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