

Legal Mindset as a Factor in the Study of National Law and the State in the XXI Century

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Abstract

The paper presents an analysis of a number of the essential aspects of national law as a major factor of mentality of studying law and the state of any particular nation. From the standpoint of the theory of the legal mentality, ethno-cultural study of the deep and the specific historical features of the legal world of Russia, the typological identification of the domestic legal culture and legal system. The author traces the evolution of scientific ideas about the nature of mentality in general and in particular the legal mentality. In this regard, the article deals with a wide source base: the works of Western and Russian researchers in different years, the ideas of which can and should be involved in the modern state legal and political discourse.

Keywords: mentality, human rights, legal identity, law, globalization.

1. Introduction

In the era of globalization the problem of understanding the nature, characteristics of national law and the state, perhaps as never before acquired a strong objective basis. If the second half of XIX - the first half of the twentieth century. is a search process in Western countries, partly in Russia up to 1917 (in the framework of an increasingly approved after the reforms of Alexander II the liberal political and legal discourse) certain general, or rather universal legal, political, economic and even religious grounds (in This plan, which arose the Soviet state, of course, causes a certain "irritated" by virtue of his special way of development, to recognize and P.A. Sorokin, and N.A. Berdyaev, N. Alekseev et al. originality of the Soviet legal and political institutions and the structures of their new ideological fullness), the obvious "disappointment" in the globalization of the European vector (and not only) public-legal space has stimulated an appeal to their own understanding, their "national identity" in law, politics, economics, history and other humanities Mordovtsev, A.Yu., Mordovceva T.V. and Mamychev A.Yu. (2015).

It is in this context is to reflect on the prospects of development of domestic law and the state, as well as Russian legal science in general and the theory of law and the state in particular. Remembering here A.D. Toynbee noted that "at large" Theory of Law and Theory of State in the XXI century. shall, within its subject field provide a solid foundation for the formation of a kind of legal "response" to the various "challenges" (globalization and others.) with respect to the Russian state, and the original pravokulturnogo institutional and legal framework.

The latter, in fact, at the present time, there are not only "strictly scientific" level, but even in some publicistic operating time. For example, T. Vojvodina believes that "... no rights from birth, by nature, by God, and there can not be. Rights he gets only in the state. No state - and there are no rights. A free and virtuous savage the "natural man" invented "a citizen of Geneva" Rousseau had no rights ... any right to anyone else - it is at the same time somebody's duty to provide what is required for the exercise of this right. And if so, any right to easily reformulated in terms of duties. And human rights - as well. A person has the right to life? So the army, the police, together with intellectuals hated secret services are required this life to protect and defend, and knit miss villain who encroach on the life " Vojvodina, T. (2015).

These are the arguments in terms of the problems indicated in the article is very revealing: the author, perhaps without knowing it, has made a typical "mentally usual" in Russia "tributary state" (written about it many Eurasians)

position "pravoobyazannostey", and in the context of the concept in the same way for the usual etaticheskogo positivism, with characteristic exaggeration of this type of law the place and role of the state in the national political and legal space. As the power of the head of the family traditionally associated with high responsibility he bears for the occupied status to the whole family, and the monarch had Russia not privileges, not rights (his vital activity proceeded in accordance with its specific purpose by birth), and especially the obligation service subjects, each and every one, which translated into concrete powers. However, such examples of human rights interpretation of the essence, pairing them with the institutions of the government, of course, not only in the modern jurisprudence are taking place and other treatments.

In general, we can distinguish, established by now and having the direction of the strategic nature of the state and legal knowledge:

1. liberal legal (which arose "in the wake of" criticism of Soviet law and jurisprudence, the Marxist-Leninist theory, and others. in the late 80 and early '90), is guided by the tenets of the Western "state of law", "civil society", "human rights" and the like, in their universalist "nationless" treatment;
2. materialist (in the spirit of the above Marxist-Leninist theory, however, have been subjected to some kind of "ideological revision", but kept its methodological basis - the dialectical materialist doctrine);
3. national-conservative (in its various versions: from the Renaissance, yet qualitatively different from classical Slavophilism, Eurasianism belonging to individual researchers Orthodox conservative ideas about the nature of Russian law and the state).

2. Methodological Aspects of Studying

Turning to the filiation of ideas mentality, we note that even the ancients (Herodotus, Thucydides, and others.), A historic descriptions, noted that every nation has specific features that distinguish it from other nations. In the middle of the XIX century. School of Psychology has developed nations, which have been the creator of the philosopher and linguist Steintal Lazarus. The basic idea of this school was the fact that, as the main force of history, "creator and preserver of civilization" are isolated people, or "spirit of the whole", expresses itself in religion, customs, rules, myths, languages, art, etc. Individual consciousness (legal, religious, aesthetic, and others) - A product of the whole, is in a certain socio-psychological connection.

Important role in the formation of the ideological and theoretical and methodological assumptions of the concept of mentality and attitudes played G. Le Bon. "Every race has a stable psychological organization. Moral and intellectual characteristics, the totality of which expresses the soul of the people, are a synthesis of all the past, the legacy of their ancestors" Psychology of the masses (1998). Moreover, Le Bon believes that "the fate of the people led by a much greater extent the dead generations than the living. They laid the foundation races races ... The soul is changing very slowly over centuries" Psychology of the masses (1998).

In the early twentieth century. the study of deep layers, the hidden, not always verbaliziruemyh elements of the spiritual life of the community was made the concept of "mentality" (although the appearance of the term, most modern writers associated with the work of R. Emerson, who introduced him to the scientific revolution back in 1856, considering the central metaphysical meaning of the soul as the source of values and truths).

Its design is very actively engaged representatives of historical and psychological and cultural-anthropological areas: L. Levy-Bruhl, Lucien Febvre, Marc Bloch et al. (Block, M., 1986; Levy-Bruhl, L. 1930 & Febvre, L., 1991). They drew the attention of his colleagues to the formation of consciousness, which because of its weak otrefektirovannosti not found direct reflection in the springs, and thus constantly slip out of sight of humanitarians.

At the level of civilization to solve this problem J. Le Goff, (Jacques, Le Goff, 1992) examined the elite of medieval society Jacques Duby. In general, theoretical terms "culture of the silent majority" considered Bakhtin, M.M. (1965) and Gurevich, A.Y. (1990).

So, on the basis of a common understanding of «mentalite» (mentality - Eng., Mentalitat - it.), A.J. Gurevich in numerous commentaries works founders of the French "New History" by M. Bloch, Febvre, and others. Writes about the mentality as a "Vision of the world." The concept of "mentality" means "something in common, underlying the conscious and the unconscious, the logic and emotional, that is, deep and difficult because latched source thinking, ideology and faith, feelings and emotions" Kondakov, I.V. (1994). Mentality bases themselves associated with social life and at the same time can not be reduced to them because always peculiar historically and socially, it has a history. Trying to find the global humanists synonymous corresponding number, we note that the concept of "mentality" is closest in meaning and value of the concept of "social character" from Erich Fromm, and the category of "archetype" - key concepts of analytical psychology of Fromm, E. (1987), The man himself (1992), Jung, C.G. (1991) and Problems and soul of our time (1994).

In the most general terms possible to propose the following understanding of the mentality: the mentality - a

historically constituted and stable matrix typifications behavior smyslopostroeny scheme that allows members of a particular society and / or the type of civilization are relatively similar, uniform experience their surroundings, assess it and to act in accordance with it certain prevailing in society and stereotypes, "knowing" each other, maintaining the stability and integrity of the national (civilizational) space.

In terms of methodology, we observe that it is the "mentality" as a specific and sustained phenomenal education, which takes place in any national culture is the foundation of the use of the method of "national dimension" (as a variant of the "human dimension") in the study of regulatory and typological, social and spiritual the nature of domestic law and, of course, the state. In this respect and it is important for the understanding of the formation of the necessary national legal and political identity categorical apparatus includes, among other things, the concept of "legal mentality".

Note also that in 40-70 years. Twentieth century. in the anglophone and francophone literature, actively developed the theory of national character Levinson, D. (1969). Sociologists, lawyers, political scientists, psychologists, specialists in other areas are actively exploring particular national identity Mandrou, R. (1961) and in the same context - personal reflection, analyzing as mass (group, corporate) behavioral acts and national (civilization) household and non-household stereotypes and individual deeds (misdeeds) of the subjects, the representatives of a particular society Blau, P. (1964) and Bouthoul, G. (1971).

So, in 1954, sociologist and psychologist A. Inkeles D. Levinson published an extensive review of the special (English-speaking) sources on the issue of national character. On the basis of thorough analysis of the work, they suggested that a number of problems, exactly the way their decisions affect the functioning of societies, small groups in these societies and individuals in these groups and can therefore be considered as key in determining national character (Inkeles, A. & Levinson D., 1954):

1. Attitude to authority (in the broadest sense - to the state apparatus of officials, law enforcement agencies, various power requirements, etc.);
2. developed especially foundations, traditions and relationships of the individual society (the concept of "I" and "Other");
3. established methods of conflict resolution, including the place, role and nature of justice, the availability of non-judicial forms (mediation and conciliation, so-called "restorative" justice, mediation, etc.), as well as accepted in a given society control of aggression and the expression of feelings Fuller, L. (1964).

3. Legal Mentality: Introduction to the Problem

In an effort to overcome various "scientific metaphors" generated, often corresponding to the quite-scientific "intuitions" of various researchers of the past and the present on the "incomprehensibility", etc. "Russian character", and pay attention to the definition of "legal mentality." The legal (political and legal) mentality is a set (by the system) and legal representations of archetypes, stable, familiar images, forms and style of legal thinking that in different societies, ethnic groups, types of civilizations, etc. have their own content, combined in various ways, but always form the basis of the perception of the components of the national state (the legal and political institutions, national and religious relations, etc.), determine the specificity of the legal behavior of the individual, of particular social and professional groups, governmental bodies and officials persons.

It defines a set of legal mentality of preparedness and predispositions of the individual to act, think, feel, perceive various phenomena, evaluating them as positive or negative, in the public law field; Connect involves cognitive and value motives lawful or unlawful behavior of the subjects.

The intrinsic aspects (not being confined to the psychic nature of the phenomenon) legal mentality should be studied (as already noted above) through the provision of its architectonic elements (political and legal paradigm style of legal thinking, the type of socio-legal and predpravovogo interaction of subjects) that, surely allow him to enter the comprehension of socio-cultural, ethnic nature. It is clear, however, that "the legal mentality as a complex phenomenon reflected in all elements of the structure of justice and disclosed the specifics of the right understanding, right feeling, law" Polyakov A.V. (2001) and Ovchinnikov A.I., Mamychev A.Yu., Mamycheva D.I. (2015).

Paramount importance for understanding the essence of the national legal mentality as a complex phenomenon, interacting with social, psychological and moral categories have legal theories that have emerged in Russia at the turn of the XIX and XX centuries. A broad understanding of justice (as noted in the concept of I.A. Ilyin), consideration of various socio-cultural, ethnic, historical and subjective factors undoubtedly contribute to the creation of the legal doctrine of national mentality.

"Our internal mental acts, such as anger, joy and desire are the cause of legal relations. (...) The feelings and consciousness of our connectedness with respect to the other, we express the right word, "- say representatives of the

psychological school, considering the right in its subjective dimension Petrazhitsky, L.I. (1990). The role of the state in the event of such legal relations, in their opinion, is not decisive, since to the fore its own state-legal view (feeling), a set of legally significant "dispositions" of a social group or an individual to act in a certain way. The recognition of this right by the State does not really matter, because it occurs in the depths of the human mind, especially as "intuitive right", built on the unique ethnic and mental foundation.

This theoretical and methodological position finds its justification in the work of Russian lawyer B. Kistyakovsky, who (along with S. Gambarov, R. Shtamlerom, S. Muromtsev et al.) Drew attention to the social aspect of the law. By developing a sociological theory of law, B. Kistyakovsky concludes that until scientists are no closer to understanding the nature of social rights, it is to be regarded as a set of rules or regulations in force in society. Really much more complex phenomenon than a simple set of rules. "The essence of the rule of law is not in their intrinsic value, which for the most part it can be argued on the norms of ethical and aesthetic. The right consists of the rules, constantly and regularly carried out in life, and therefore is the main feature of the implementation of law" Kistyakovsky, B.A. (1911).

4. National Legal Framework in the Mental Dimension

The effectiveness of the implementation (implementation) of legal norms has become one of the central problems of the domestic legal science in the late '80s and especially in the 90 years of the twentieth century, when a dangerous symptom of the Russian legal reality - stalling or inaction of the law - not only appeared, but also began more and more felt in the practice of law and in society in general. At this time it is evident that the consideration of the nature of the law in the light of real (national) processes of society's attitude to the law, the mechanism of the law, the legal effects, the traditional way of evaluating the effectiveness of the law. Consideration should be given attention to the problem of creation and the laws (in the broad sense of understanding of the latter) in the national mental space (the universe), which is hardly possible to realize the true nature and specifics of the many factors destructive actions of regulatory legal acts.

From the standpoint of the theory of the legal mentality, ethno-cultural study of the deep and the specific historical features of the legal world of Russia, the typological identification of the domestic legal culture, legal system can distinguish some of the most notable modern law implements of negative phenomena:

- conflict, a sharp discrepancy between the Act and the requirements adopted by the social expectations of society, based on well-established legal and social values, attitudes, legal feelings, perceptions and claims of individuals. It is worth to pay attention to a kind of "recognition" of one of the authors of the Constitution of the Russian Federation S.M. Shakhrai when, in an article on the 20th anniversary of the Basic Law, he (apparently without regret) noted that "... the main instrument for the promotion of ideas and principles of the Constitution became the Constitutional Court of the Russian Federation and the Head of State. These were two institutions that have played, as one would say our foreign colleagues, kontrmazhoritarnuyu role. "Rear majority" institution - an institution that can legally resist the will of the majority " Shahray, S.M. (2013);
- order to "master" of mass consciousness, the law has to overcome the "threshold" of resistance, which is often erected in the way of its realization is the domestic legal mentality, its special (it is believed that "crisis") state, the conflicting interests of various social strata and groups, what is important to the acquisition of both the legislator and enforcer clear idea about all the diversity of the mental characteristics of recipients of legal acts and their legal and political stereotypes;
- among the factors "the right mental order" that can have a negative impact on the process of implementation of the law (in its various forms) applies a very specific opinion. The Russian worldview historically a situation (confirmed by many events of national history, especially in the crucial moments of her) explicit predominance of the ordinary level of justice, on which public opinion is often shaped by the rumors, the special understanding of the processes, events, trends of social development. This "tradition" remains unchanged in the post-Soviet period - the ordinary level of mass justice in modern conditions contains a significant proportion of spontaneity and illusory. Therefore, the rapid development of social and legal realities, the more liberal model of reform of national statehood inevitably encountered by the end of the 90s of the twentieth century stereotypes and dogmas of national legal mentality.

5. Conclusion

1. Right Mental symptoms (installation, attitudes, ideas, images, etc.) used by members of a particular society (social and professional groups, classes, etc.) As the basis of understanding and appreciation of the Russian

state, the organization of power relations and institutions, legal policy, affect political activity and legal behavior of the population. This property of the legal mentality expressed in the presence of cognitive-converter, valuation, forecasting, and other of its functions, and allows you to talk about the possibility of mental-legal measure of domestic political and legal processes and structures as the one of the most important techniques and heuristic guidelines of contemporary political and legal knowledge.

2. Mentally-legal dimension of the Russian state - the product of domestic political and legal traditions and is characterized by complex legal and spiritual morphology, needs adequate data heuristic purposes of theoretical and methodological apparatus. Publicly-law relationship - just one of the organizing principles of society and, moreover, one way or another dependent on the occurring in the country and constitute the authority of the state of social practices. Institutional crystallization past embodied in national laws, political structures and institutions, legal regimes, law enforcement, etc.
3. Rejecting the political and legal identification of post-Soviet Russian statehood only through Western culture and civilizational space must be systematically and thoroughly address the problem of the modern legal system rootedness in local mental structures, values, symbols, units. In this connection, it should refer to the Eurasian project of the state and treat it as a national version of the required specification laid down in Article 1 of the Constitution of the Russian Federation norms of Russia as a democratic state.

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