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Legal Consciousness in the Works of Thoughts of Ancient and Medieval Ages

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ABSTRACT: Legal consciousness has been and remains an integral part of the historical evolution of human society, and even more, it, in the context of the historical process of development of human society is identified as a phenomenon that drives, complements and defines social relations and reflects them in the norms of law, or consciousness is a superior form of reflection of the objective reality, proper only to human.

KEYWORDS: Legal conscience, ancient times, legal work, legal norms

Introduction

The emergence and formation of legal consciousness involves a rather complex and difficult process to analyze, especially given that the very beginnings of human society are quite uncertain. And yet, let us try to study as much as possible this socio-legal phenomenon, to highlight the tangent between the emergence and development of legal consciousness and law.

Thus, we can list a number of external factors that, during the historical evolution of society, have contributed in the most essential way to the emergence and development of legal consciousness. Thus, among the factors with the most essential contribution to the formation of law and legal consciousness are the geographical area in which a certain state was established and developed national particularities, economic conditions, religious beliefs present in a certain state.

The legal consciousness of the ancient period is closely interspersed with the religious consciousness, resulting from mythology and the forces of nature, with the unwritten norms of morality, deduced from the experience of human coexistence and is proof that society has realized the need to live in a society by following certain rules (which at first had a more moral and religious connotation) absolutely necessary for survival and development.

Based on the fact that different parts of the world, on the whole historical scale, have evolved and developed differently, it would be correct to analyze the emergence and development of legal consciousness on historical-geographical segments, in the context of law development, or legal consciousness and law they are two inseparable phenomena. What Professor Baltag (2010, 67) mentions: *"Law acquires prestige and authority through its historical dimension, it has an absolutely respectable age, evolving naturally in the conjuncture of humanity's aspirations. Law was born in the Ancient Orient"* it is also fully valid for the legal conscience, through which the right is formed and realized.

Legal consciousness in ancient times, as reflected by the thinkers of those times

Thus, the ancient period in Mesopotamia is dominated by the strong belief of individuals in deities, in customs and traditions, in sacred rituals. Law was considered to have a divine character (Craiovan 2001, 7). At the same time, Babylonian law was the custom and the law, and *"Among the most important laws is the code of Hammurabi, which provoked a rich jurisprudence in later times. This legislation has been applied for almost 1000 years in the Mesopotamian region"* (Smochină 2006, 35).

A work of undeniable importance from that period, Hammurabi's Code highlights as well as possible the legal norms of that period, with the provision of sanctions that followed in case of non-compliance with legal norms, with the codification of unwritten rules, existing until then in customs and traditions, with the provision of the right of persons to file complaints and the procedure for examining them, a situation after which, if we make an analogy with legal conscience, we can say that the legal conscience of individuals in that socio-political and historical area was determined and dominated by the multitude of unwritten customs and rules, developed by this people, which were based on myths and divinity.

Hammurabi's code presented relatively systematically, in the form of articles - which do not always agree with each other, as they reflect different phases of the evolution of Sumerian-Babylonian society, provisions and sanctions of criminal law and criminal procedure, property law, labor law, commercial law, etc. Emerging from the specifics of that period, it is clear that the law of that period expressed and defended the interests of persons who were part of the category of rich people, a fact characteristic of the legal conscience (which is the reflection of law) of that historical period (Bitoleanu 2006, 320).

The law of retaliation, with the principles applied to the trial of cases before the trial (commencement of trial on the basis of complaint, probation, witness statements, oath) specific to that historical period, characterizes the ancient legal consciousness as rudimentary, fragmentarily developed, based on religious factors habits and customs, one limited in perceptions and aspirations regarding future social relations.

Ancient Egypt does not know codifications of the customs and traditions that individuals strictly observed, right here justice was a distinct function. It is also known from history that the Egyptians in ancient times practiced the examination of crimes in courts, had established procedures for judging complaints. The appearance of the germ of the juridical is obvious, and therefore also that of the juridical conscience.

In ancient India, various traditions, beliefs in myths, divinity and holy things were well rooted. In ancient India, the notion of law and worship were confused. A religious norm also became a norm that legally regulated social relations. History has taught us that in ancient India there were several generally binding collections of norms that combined religion, morality and law (sanctions were provided for some impermissible deeds). The most common: The Code or "Laws of Manu", - The collection is written in verse and contains 12 books that bring together rules of public and private law, civil and criminal law, customs, religious prescriptions, various duties, the regime of castes etc. Laws of Manu, but also all attempts to legislate in the ancient period, are attempts to give a legal connotation to the religious and moral norms, which were in power in that historical period.

Ancient China is also characterized by the strong influence of well-rooted traditions and customs in the consciousness of individuals, and in addition to these, written laws apply that sometimes included amalgamated issues of law and religious matters. Among the most important codes we mention: The Criminal Code from sec. VI BC (). Also, in this context, Mr. Baltag mentions: *"The first codes of laws were drafted in the 5th-4th century BC, but customary law was superior to written law".* The King, in his capacity as "Son of Heaven", was the only one entitled to officiate in the sacrifices to heaven. He is, therefore, invested with supernatural powers. The social order is the reflection of the cosmic order. But based on the conditions of social, economic and political life, in ancient China there is another approach to the regulation of relations in society, promoted by the so-called "legalists" - statesmen, who demanded "that laws be published and enforced equal and absolutely to all, without distinction".

Ancient Greece is the most "successful case" of the ancient world, or here it was best realized the need to build a society based on legal norms, voluntarily respected by citizens, and which would regulate relations between citizens and between citizens and the state, which

also invokes the development of legal consciousness. The main purpose of the laws (nomoi) was to remove the relations between citizens from the incidence of violence and arbitrariness. To achieve this goal, the laws had to impose the domination of Understanding (Homonoia) and Justice (Dike), and citizens were to respect and consciously and voluntarily submit to the requirements of legal norms (Grama 2003, 66). This is proof of high legal conscience. The philosophy of law was that the enactment of laws in the interests of all was a condition of stability and harmony in society, and the essence of democracy was the right of the citizen to go to court for any decision of an authority (Bitoleanu 2006, 19).

Ancient Rome is another geographical and historical dimension where law has known a special development, and the well-known Latin maxim *"Dura lex, sed lex"* ("The law is hard, but it is law") whose meaning is plausible even today, perfectly characterizes the situation the law of ancient Roman society. The most eloquent development - in the slave order - was known to Roman law, which became the classic form of law based on private property, its regulations being found in all subsequent laws, without any substantial changes in this area. Roman law - systematized especially by the emperor Justinian in the Corpus Juris Civilis in the VI AC. - facilitated the development of commodity-money relations, playing a decisive role in consolidating property relations (Mazilu 1999, 31). Thus, it is obvious that the legal norms of the ancient period reflected and served the social relations characteristic of the ancient economic society. The right to Rome emanates directly from morality, having like it the ambition to ensure the stability of the city (Craiovan 2001, 17). Eloquently, in ancient times the legal conscience of Roman society had a pronounced moral tinge, legal norms were conceived as a factor of fairness and goodness, as a factor meant to establish and protect the truth, to ensure the stability of Roman cities.

Through the prism of the ancient legal conscience, the members of the society perceived the need to adopt some social norms, of general character, able to regulate the new social relations, appeared in the society and through which to ensure the order in the society. The practice of jurisconsults played an important role in promoting and developing legal ideas, in the assimilation by members of society of legal norms and therefore directly influenced the process of evolution of ancient legal consciousness. The edicts of the magistrates, the senate consultations, the imperial constitutions - consecrated by history as sources of Roman law, also contributed to the completion and improvement of legal norms, reflecting through its content the legal consciousness of that era and the social and legal reality.

A significant progress for the ancient Roman society was the immense work "Digests", the most important collection of Roman law that includes excerpts from 2,000 works belonging to classical jurists, systematized in 50 books and adopted in such a way that they can be used in order to solve the various cases that have arisen in practice. Under such conditions, the ancient legal conscience knew new legal values and aspirations, got rich and contributed to the adoption of new rules, legal norms, able to regulate the new social relations.

Relative to the geographical territory of our state, in ancient times, it was populated by the Geto-Dacian tribes, which later unified into a single state under the rule of Burebista. The society on the territory of our country presents, since the 4th century BC some original features in the period from the transition from the primitive commune to the division into classes. Of particular importance was the Thracian-Dacian state organization, which reached its climax during the reign of Burebista and Decebalus (Cernea and Molcuţ 2004, 7). As in an ancient society, customs served as rules of conduct and had a strong religious content.

Like all ancient peoples, the Geto-Dacians knew the 2 sources: custom (habit) and law. Some information left by Dio Chrisostom, a contemporary of events, and reproduced by Jordanes, shows us the religious character of legal norms and the close connection between political and religious power. Iordanes mentions that Deceneu gave the Geto-Dacians written laws, which they keep to this day (6th century AD) and are called bellagines. The intertwining

of political and religious power continued even after Burebista's death. The process of legislation has always been under the direct influence of the religious factor (Aramă 1995, 8).

With the transformation of Dacia into a Roman province, in addition to local law, Roman law began to be applied, a fact also mentioned by Dimitrie Cantemir: "*But when Dacia was changed to a Roman province and divided, Ulpiu Traian placed Romans here ... Dacia took the Roman laws from its new inhabitants"* (Cantemir 1992, 101). And here we cannot fail to mention the study carried out by the researcher Grama D., according to which: *"Romanian law was formed and evolved under the influence of the law of Ancient Rome. The problem of the formation and evolution of our national law represents one of the aspects of the process of formation of the Romanian people themselves, in the conditions of the fusion that took place on an ethnic and institutional level, after the occupation of Dacia by the Romans".*

Here are 3 main moments: the first is the epoch of the birth of the Romanian people and the formation of customary law, on a legal background of Romanian law (for example the triptychs in Transylvania, then the "Law of the Country"). The second era includes written feudal law in Wallachia and Moldavia, when the influence of Roman law was exercised through Byzantine influence (and especially through the Basilicas, which contain rules of Roman law, adapted to the feudal realities of Byzantine society). The third epoch is that of the elaboration of the legislative work from the time of Alexandru Ioan Cuza (Grama 2005, 69).

From the studied, we conclude that during the stay of the Romanians on the territory of the Dacian state, the local law borrowed many legal regulations from the Roman law, finally forming a new legal system - the Daco-Roman system. Daco-Roman laws had a predominantly unwritten character, based on the faith and conscience of legal subjects, and crimes against the person were the most severely punished, which could be described as a special quality of Daco-Romans to consider man as a superior of society.

These characteristics are derived from the "Law of the Country" - elementary normative system, which regulates the relations between community members and between communities regarding leadership, defense, work, property, family, ensuring public peace by defending the faith and dignity of community members. And here, we specify, the "Law of the Country" appeared in the 4th century, as a result of the fusion of the Roman law with the Dacian one. This Romanian legal creation was also applied in the feudal period, regulating the social relations regarding the will, private property, marriage, divorce, civil contracts, it included legal norms of criminal law.

Reflection of legal thought in the medieval era

In Europe, in medieval times, the basis of law was still made up of customs and habits, which were very diverse and differed from people to people. In the middle Ages the divine "nature" was in the course of considerations of law (Djuvara 1999, 388).

Canon law regulated the organization and functioning of the Catholic Church, but also contained a set of regulations that had a great influence on the evolution of civil law, especially on family law. Also, in this order of ideas, it was found that canon law occupied a distinct place in the system of law, comprising important rules both on movable and immovable property and on persons, rules which during the Inquisition were very extensive (Mazilu 1999, 35).

It is the period in which the church consolidates its positions. The legal and moral procedural motivations will be exposed and regulated by the papal decrees, which, in 1582, will be reunited in a *Corpus juris canonici,* remained for more than three centuries the only legal guide for Catholics, until 1917, when the Catholic Church drafted a new code.

In Germany, with the processing of Roman law, the elaboration of its own general law took place (Smochină 2006, 165). In Western Europe, in scholastic thought, the problem of

consciousness is influenced by aristocratic thinking. Toma d'Aquino derives consciousness from the act, that is, from the way a person reacts to a concrete situation. The influence of intention, affection, motivation, remain in the background in the dramatic leap of the abstract universal and the concrete individual. Therefore, Toma defines consciousness as a rational application of the law to a particular case (Popa 2009, 283). It is obvious that even in the medieval era consciousness was treated in direct connection with law and represented the reaction to the application of law.

Thus, the laws of that period reflected the legal conscience of the rulers and the concrete living conditions of the members of society, represented the emanation of the nature of social relations, bore the imprint of time and the particularities of the place and people on which they extended. The rulers drew up legal norms in accordance with the new social relations that appeared, and justice was done based on the generally human values approved in the respective society. About the need to respect the law, but also the norms of coexistence in society, in an elegant and subtle way, John Locke said: "However, we must appreciate ourselves enough to carry out without disturbance and disorder the actions we owe to ourselves and which are required of us, in front of everyone, taking into account the distance and respect due to the rank and qualities of each" (Locke 1971, 99).

For the Romanian state, the medieval period is characterized by the borrowing of the collections of Roman-Byzantine imperial laws and canons of the church synods and by the creation of the institutions of the feudal state: the Reign, the Royal Council, the Army and the Church. On the entire territory of Wallachia, during the feudal period, the "Law of the Country" is fully applied, the grammars regarding the granting of privileges, facilities to the boyars, some types of letters, court documents, international treaties, which elucidated the foreign policy of the state and neighborhood relations of it, legal norms borrowed from Roman-Byzantine law: Armenopol's Hexabibl, Matei Vlastares's Syntagma, Manuil Malaxox's Nomocanon etc.

Among the most remarkable personalities from the Romanian Principalities, who contributed, through their work, to the promotion of ideas, legal principles, European legal culture, to the elaboration of local legal norms, and therefore to the development of the legal consciousness of the natives Gr. Ureche (1590-1647), the jurist E. Logofătul (? -1646), M. Costin (1633-1691), I. Neculce (1672-1745), D. Cantemir (1673-1723) etc.

The first attempt to codify the legal norms is represented by the "Romanian Textbook" (1646), a vast work, inspired by Byzantine and Italian legislation, which was developed at the urging of Prince Vasile Lupu. Following the subjugation by the Ottoman Empire of the Romanian Principalities, it was inevitable to imprint in the conscience and legislation of the natives the way of regulating and perceiving the social relations of the invaders.

By establishing and promoting social and legal values, the attitude of the members of the society towards the legal norms and their execution is cultivated, which conditions the development of the legal consciousness. The elaboration of legal norms, therefore, and the formation of legal consciousness directly contributed to the consolidation of the stability of the medieval society, to the determination of the foreign policies between the states and to the regulation of the behavior of the subjects of law.

Under these conditions, the general picture of the medieval legal consciousness is uneven, with the predominance of moral and religious values, but also with successful attempts to organize the judiciary, consolidate nation states and legislative power.

However, medieval legal consciousness remains poorly developed, some social categories of the population of medieval states continue to be guided by the unwritten rules of customs and habits, and others, in the struggle for power and assertion, actively participate in the formation of medieval law, legal norms, when creating state power bodies. Medieval legal norms still retain the differentiated character of sanctions related to the status of the individual in society.

Conclusions

Legal consciousness as an integral phenomenon, complex and inherent in positive law (as a normative phenomenon) has known the same historical stages of development as the state and law. It has evolved from a rudimentary, ambiguous one, concretized with mythology, custom, religious dogmas to a contemporary one, appreciated as an element of legal reality and the legal sphere, examined as a social phenomenon, which is constantly developing and containing ideas, knowledge, representations about law, legal norms, and which play the role of premise in identifying and carrying out the socio-legal reforms necessary for society.

By virtue of the characteristic means of systematic knowledge of social life, and the expression that makes up all knowledge in law, experiences, representations on legal reality, legal awareness identifies the development needs of society, stimulates the implementation of society. Thus, throughout its evolution, the legal consciousness of individuals has impelled, triggered, marked (but also marked by) multiple reforms that have occurred in civil society.

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