

# Conceptual Analysis of Legal Awareness

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The analysis of the current level of legal awareness, which performs an important axiological and praxiological function, allows us to outline the main directions for its improvement.

The purpose of the article is to study problematic issues of legal awareness and determine ways to solve them.

**Material and methods.** The material for studying the topic was the legislative and doctrinal aspect of the problem research, including normative legal acts, concepts of Belarusian and Russian authors, conducted sociological surveys. The research methods are dialectical-materialistic method, comparative methods, interpretation of legal norms, and system analysis.

**Results and discussion.** Legal awareness is the most important condition for the implementation of the functions of the state and law, their development and improvement. To increase the level of legal awareness, it is necessary to increase the level of legality and legitimacy of the state and law, the quality of legislation, law enforcement practice, legal awareness and legal education.

**Conclusion.** Insufficient development of the problem requires the creation of a legal doctrine, a National (state) Concept of legal education students.

**Key words:** law, state, legality, legitimacy, legal awareness, legal culture, legal belief, justice, legal education.

# Концептуальный анализ правосознания

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Анализ современного уровня правосознания, выполняющего важную аксеологическую и праксиологическую функцию, позволяет наметить основные направления его совершенствования.

Цель статьи – изучение проблемных вопросов правосознания и определение путей их решения.

**Материал и методы.** Материалом для изучения темы послужили законодательный и доктринальный аспекты исследования проблемы, включающие нормативные правовые акты, концепции белорусских и российских авторов, проведенные социологические опросы. Методами исследования выступили диалектико-материалистический метод, методы компаративистики, толкования норм права, системного анализа.

**Результаты и их обсуждение.** Правосознание является важнейшим условием реализации функций государства и права, их развития и совершенствования. Для повышения уровня правосознания нужно повысить уровень легальности и легитимности государства и права, качество законодательства, правоприменительной практики, правовой информированности и правового воспитания.

**Заключение.** Недостаточная разработка проблемы требует создания правовой доктрины, Национальной (государственной) Концепции правового образования учащейся молодежи.

**Ключевые слова:** право, государство, легальность, легитимность, правосознание, правовая культура, правовое убеждение, справедливость, юридическое образование.

An important prerequisite for the implementation of the functions of the state and law is legal awareness. Before becoming a social regulator, law must pass through the individual's consciousness<sup>1</sup>. This is a subjective sphere of society,

<sup>1</sup>Consciousness is one of the fundamental concepts of philosophy, biology, psychology, sociology, and law. This is the highest level of mental activity of a person as a social being. Therefore, consciousness is a knowledge obtained jointly with other people. There are different approaches to understanding consciousness: cosmocentric, theocentric, anthropocentric, and sociocentric. This property of highly organized brain matter reflects the material world in its ideal images. Consciousness acts as an awareness of being, a subjective image of the objective world, the ideal in contrast to and together with

close to the law. Some authors believe that the idea of legal awareness is even broader than the idea

the material. Consciousness is associated with the reflection of the external world by the human brain in a sign form. Life, behavior, and practical activity of a person is possible only in consciousness (self-consciousness) and thanks to it. This is not only God's gift, but also God's curse, a heavy cross for a person who is aware of everything that is happening. Consciousness is thought, feeling, clear understanding, an ability to think, reason and determine one's attitude to reality, mental activity as a reflection of reality. This is a state of a person, who is in his right mind and sober memory, able to control himself and give an account of his actions and feelings. A social system can maintain stability only if it reproduces a level of consciousness that is adequate to its content. There are various forms of social consciousness: political, philosophical, legal, religious, scientific, ethical, aesthetic, environmental, etc.

of law and occupies a dominant position in their interaction [1, p. 12].

In relation to the concept of natural law, legal awareness includes a sense-rational understanding of truth, rightness, freedom, justice and goodness. For the positivist theory, legal awareness is, above all, a correct understanding of the content of the rule of law, the will of the legislator, the willingness to follow it, a sense of legality, expediency and legality.

Synonyms of legal awareness are legal understanding, legal perception, legal analysis, legal feeling, legal conviction, legal vision.

Since Ancient Rome, legal awareness has been a distinctive feature of public consciousness. The legal awareness of ancient Roman lawyers played an important role in the formation and development of Roman private and modern European law.

According to the Russian philosopher, writer and publicist I.A. Ilyin (1883–1954), legal consciousness occupies a leading place in the philosophy of law and the natural-legal concept. It includes not only knowledge and thinking, but also the human soul, instinct, will, feelings, imagination, inner beliefs, and a natural sense of right and rightness. This is the cornerstone of the universe, the entire world order and culture. As a creative source, it acts as a living organism of law and order and political life. A spiritually filled, natural, positive sense of justice (law consciousness) resists chaos and creates cosmos and harmony in the external world. For I.A. Ilyin, legal consciousness has religious foundations and is inextricably linked with the Kingdom of God. Therefore, the entire history of mankind is the history of legal consciousness, the spiritual crisis of which ultimately leads to the crisis of society, state and law.

The purpose of this work is to provide a conceptual analysis of legal awareness and identify ways to improve it.

**Material and methods.** Doctrinal and legislative material was analyzed on the basis of dialectical-materialistic, comparative, systemic methods, and the method of interpretation of legal norms.

**Results and discussion.** No matter how great the significance of the material factor might be, but without consciousness and spirituality, the existence of man and society is impossible. In order to behave lawfully in legally significant situations, each person must have a free, mature and healthy legal awareness, educate, protect and strengthen it in himself. To do this, he must be free within the law and be able to make his own choice.

Every person living in the state has a certain level of legal awareness, regardless of the degree of his subjective awareness.

I.A. Ilyin rightly noted that there is no person without a sense of justice, but there are many people with a neglected, ugly or even feral sense of justice. Even when a person commits a crime, oppresses his neighbors, betrays his homeland, etc., it permeates, in one way or another, all his life [2, p. 224].

P.I. Novgorodtsev (1866–1924), a Russian historian, philosopher, lawyer, public and political figure, in “Introduction to the philosophy of law. Critique of modern legal consciousness” (1909), deduced the crisis of legal consciousness in tsarist Russia from the crisis of the concept of a legal state based on the Western liberal values of individualism.

According to L.I. Petrazhitsky, law as an imperative-attributive experience is a part of legal consciousness [3, p. 67–99]. From the point of view of N. Nenovsky, law is a normative part of the legal consciousness of the ruling class [4, p. 72–73].

Prof. S.S. Alekseev regards law as a specific subjective-objective reality created by the mental-volitional and emotional activity of the brain [5, p. 1–2].

Relying on the communicative theory of legal understanding, prof. A.V. Polyakov believes that law does not exist outside of legal consciousness, but this does not mean that law and legal consciousness mean the same thing. Legal awareness is the awareness of legal reality in sensory and mental images [6, p. 254–326].

This is an internal, personal regulator, positive or negative, of legally significant behavior. A positive sense of justice promotes action and the realization of the right, while a negative one hinders it. The positive or negative state of legal awareness depends on the legitimacy of legislation, its material and organizational guarantees, and the spiritual, moral and religious basis of society. The more law and state correspond to social laws and trends, the needs and interests of the people, and express their will, the more positive impact state and legal institutions have on the mass legal consciousness.

The level of legal awareness shows the qualitative level of development of the state and law, the state of their legality and legitimacy. A democratic legal social state and law create objective conditions for the formation of a positive, progressive, scientific, and socially active legal consciousness. Knowledge of the law, positive attitude to it, and an inner conviction of its value are socially significant elements of legal awareness. The active role of legal awareness begins with the maturation and formulation of a legal idea, through its formalization in a normative legal act, implementation in the activities of legal entities and law enforcement decisions of state bodies, before implementation in practice.

The court and the criminal prosecution body assess evidence based on the law and internal belief (article 19 of the criminal procedure code of the Republic of Belarus, article 241 of the civil procedure code of the Republic of Belarus). If there is no analogy of the law, the court, when resolving the dispute, proceeds from the general principles (principles) and meaning of the legislation of the Republic of Belarus (analogy of law) (article 5 of the civil code of the Republic of Belarus, 21 of the civil code of the Republic of Belarus).

This is a special combination, fusion, synthesis of law and consciousness. Legal awareness reflects legal reality in the form of legal knowledge and evaluative relations to law and state. This is an awareness of the law, of the state, of what is lawful and unlawful, just and unjust, expedient and impractical.

Being ultimately a product of law and being secondary to it, the legal consciousness has relative independence, internal laws, trends and continuity in development. From the point of view of the natural-legal concept, it anticipates and precedes positive law, acting as a prototype and spiritual basis for its formalization. Legal awareness, in turn, permeates the entire life of law, actively influences and transforms it. Quantitative accumulation and qualitative change of legal awareness leads to a new quality of law.

Most Russian authors – Prof. V.V. Lazarev, V.D. Popkov, T.N. Radko, N.Ya. Sokolov, N.I. Matuzov, A.V. Malko, R.T. Mukhaev – define legal consciousness as a sensual and mental reflection of law, legal reality, which expresses the attitude to both the current and desired law, its place and role in society. A.F. Cherdantsev considers this relationship from the point of view of justice, expediency, effectiveness of law and legal values [7, p. 330].

A.A. Vorotnikov emphasizes its conditionality with material living conditions and its focus on establishing a certain legal regime in society in the categories of legal rights, obligations, requirements and regulations that come from the state power and are provided with specific state funds [8, p. 214].

N.L. Granat believes that legal awareness is a reflection of legal reality in the form of legal knowledge and evaluative relations to the law and the practice of its implementation, legal attitudes and value orientations that regulate the behavior (activity) of people in legally significant situations [9, p. 379].

According to Prof. V.V. Lazarev legal awareness includes understanding and feeling the need for law, its assessment aimed at creating a developed system of legislation, making changes in and additions to existing normative legal acts, perception of the process and results of the implementation

of law, correlation of legal values with the values of morality, politics and religion, etc. [10, p. 144].

D.A. Kerimov notes a special role in the legal consciousness of its conscious, reasonable, rational component. Feelings and emotions that color legal life are important only when they are realized, understood and clarified by consciousness. Therefore, the maturity of legal awareness depends primarily on its intellectual, scientific, ideological, and volitional levels. Legal consciousness is inextricably linked, permeated with morality, so it is largely simultaneously moral and ethical consciousness [11, p. 48–49, 54–58]. However, a high level of intelligence does not automatically provide a high level of legal awareness. This confirms the growth of crimes in the field of high technology. Here, a positive attitude to the law, legal conviction and motivation to act are of great importance.

Belarusian authors Prof. A.F. Vishnevsky, N.A. Gorbatok, V.A. Kuchinsky define legal awareness as the attitude of individuals, social groups, and the entire society to the current and desired law, legal phenomena, and behavior of people in the sphere of law [12, p. 274]. According to I.L. Vershok, legal awareness is a complex, volitional, legally significant process of correct perception, reflection, comprehension and expression of social and legal reality in individual human thinking [13, p. 260].

This is a systematic rational-emotional-evaluative institute of knowledge, feelings, reflecting the legal reality at the individual, group, and social levels [14, p. 453].

Obviously, legal awareness is based on law, caused by, connected with law and acts as a form of its awareness, reflection in sensory and mental images. We should agree with Prof. A.V. Polyakov that legal reality in the legal consciousness of the subject is most often reflected in an “undifferentiated” form [6, p. 264]. Often rational, irrational, sensuous, intuitive, and instinctive perceptions merge with each other.

There is no clear answer to the question, what determines the legal consciousness – emotional or rational perception of legal reality? Legal awareness can “revolve” around issues of personal, specific situation of the subject related to his rights, duties, legal responsibility, justice or injustice of a legal act, legality or illegality of a decision, guilt or innocence of an individual. It can also relate to problems of public, national, world level, the formation of the rule of law and civil society, the legality of “color revolutions”, “street democracy”, violation of privacy rights on the Internet, etc. It seems that the primary is emotional perception, which then receives rational awareness.

Depending on the recognition of the norm by the addressee, legal awareness can affect social

relations both together and against the norm. The higher the degree of public recognition of the state power and the current system of legislation, the greater is spiritual support for the norms by legal awareness. Legal awareness regulates social relations through their approving or negative legal assessment.

For the majority of the population, it is the legal consciousness that acts as the main legal regulator. There are several reasons for this – a large number of normative legal acts, their complexity for perception, a low level of legal culture on the one hand, “intimacy”, the harmony of legal consciousness with our beliefs and experiences, on the other. As a rule, we vote in elections and referendums relying on our own legal awareness.

Legal awareness is formed, mainly, by the attitude, concern of the state and the law for a person, aimed at the realization of his immediate needs and requirements, the functioning of law-making, law enforcement, judicial, law enforcement systems. The level of legal awareness is influenced by the degree of state and legal protection of a person, the level of well-being, and opportunities for development. It is determined by socio-economic, political, legal, national, historical and cultural factors. Spiritual prerequisites (ideals of freedom, equality, justice, democracy), historical traditions of behavior, the effectiveness of the mechanism of the legal system affect legal consciousness.

The legislator most often influences legal consciousness indirectly – through the decision of legal cases in courts, publications in the media, and the Internet.

However, there is no directly proportional relationship between the level of legal awareness and the level of socio-economic development of society. Even developed countries with high standards of living have not escaped an increase in crime. A combination of all factors affect legal consciousness – social, economic, political, spiritual, religious, national, and historical. Now it is affected by the threat of terrorism, mass migration, informatization and digitalization of society, social instability associated with crises, coronavirus, and global upheavals.

Research shows that law-abiding citizens and offenders have almost the same knowledge of law (the latter may be even more competent within certain norms). Positive attitude to law, skills of lawful behavior in law-abiding citizens, significantly exceed these data with regard to offenders. Therefore, an important task is the formation of legal conviction and skills of lawful, law-abiding behavior, which would turn into a legal habit (habit is second nature).

Special categories of socially active citizens (passionaries) live by the ideals of freedom, truth, independence, justice, equality, democracy, and a bright future. They are ready to suffer hardships, even to sacrifice their lives for that. Usually, we refer to them great public figures – followers of God, political leaders, revolutionaries, human rights defenders, famous poets, writers, artists, and independence fighters.

Legal awareness can precede and anticipate the appearance of law and legal norms. This is especially true during periods of revolutionary changes and rapid development of society.

However, legal consciousness can be reactionary, conservative, lag behind the needs of the time, the development of law, and slow it down. Most often, legal awareness exists together, in parallel, supporting and complementing law [15, p. 244].

Legislation is the primary objective foundation, generating awareness of law. Therefore, its compliance with human rights and freedoms, progressive trends in social development, and its feasibility give rise to a positive sense of justice.

The goal of legal awareness is an adequate reflection of legal reality, creating favorable conditions for lawful behavior. The content of legal awareness is legal knowledge, legal emotions, assessments, representations, stereotypes, traditions, habits, value orientations [16].

It is established that defects of legal awareness are one of the most important causes of crimes [17, p. 740].

Law and state need legal awareness in order to realize their functions and become a vital force, and for legal awareness, state and law create an objective, material embodiment, formal objectification, and the realization of its ideals and values.

The interests and needs of society in order, justice, compromise, harmony and humanism expressed in legal consciousness give rise to law. In order to be realized, the requirements of legal regulations must transform into internal motives, attitudes of the subject and lead to its behavioral activity. This is an internally significant, personal-intimate regulator of legally active behavior [9, p. 378].

Individual legal awareness manifests itself in various forms: social activity, passivity, indifference, adaptation, protest, law-abiding, legal nihilism, etc.

I.A. Ilyin in his work “on the essence of legal consciousness” deduced three axioms of individual legal consciousness:

- 1) self-esteem, awareness of responsibility, service to duty and social ideals;
- 2) autonomy or self-lawfulness of the spirit, when the external freedom of society created

by law should not contradict the internal freedom of the individual;

3) mutual spiritual recognition and respect of subjects for each other, voluntary observance of their rights and obligations [18].

Special responsibility falls on the legal consciousness of civil servants, employees of the judicial and law enforcement system, who exercise authority, as they act on behalf of the state and personify it.

Professionalism, profound legal knowledge, positive attitude to law, legal conviction, and moral qualities should be the basis for their service to the people and the Republic of Belarus.

At the same time research shows that the deformation of legal awareness of law enforcement officers is more significant than in other categories of the population (split personality, internal contradictions of consciousness; emphasis on punitive sanctions; accusatory bias; the possibility of replacing the rule of law with political and departmental expediency; underestimation of the role and significance of public opinion; a high level of punitive claims in the fight against specific crimes, aimed at restricting the rights and freedoms of the individual, violating the inviolability, secrecy of correspondence, telephone conversations and messages; overestimated self-esteem; a higher assessment of one's agency compared to others, etc.) [9, p. 392–394].

Special features of deformation exist in investigators, judges, prosecutors, prison system employees, lawyers, etc. Working under stress, increased psychological loads with a certain human “material”, undoubtedly, leaves its imprint on their legal consciousness, develops certain stereotypes of perception and behavior.

Economic crises, unemployment, falling living standards, social stratification, corruption, crime, lawlessness, abuse of office, failure of deputies to fulfill their promises to the electorate strengthen legal nihilism<sup>2</sup>. Permissiveness, disregard for law,

<sup>2</sup>It is impossible to absolutize the level of legal nihilism in the Russian Federation and the Republic of Belarus in comparison with Europe and North America, to engage in self-abasement, to repent of what has been done in our history. Russian people are characterized by self-recrimination, digging into their past and dissatisfaction with what has been done, wrote P.Ya. Chaadaev (1794–1856), a Russian philosopher and publicist in the “Philosophical letters”, who the government declared to be mad for his writings. He sharply criticized the reality of Russian life, hyperbolizing many of its negative aspects. We should agree with the authors, who believe that if we proceed from the predestination and regularity of legal nihilism, it is difficult, hardly possible to cultivate a positive attitude to law. The theory of innate associativity and legal nihilism of the Russian and Belarusian peoples is non-scientific and harmful. On the contrary, historical experience testifies to their constant struggle for political, national, religious, and legal ideals. Therefore, we can talk about the amazing fortitude, sacrifice,

double standards, formalism and bureaucracy of officials destroy the foundations of the legal system.

We need to move away from the existing stereotypes and traditions of understanding legal nihilism only as a negative phenomenon. This is a complex and multifaceted phenomenon, which has its disadvantages and advantages. Its positivity lies in the fact that it is a kind of “litmus test” for assessing the quality of state and law, their authority, which shows the degree of legitimacy and effectiveness of the state and legal system in serving the people. It forces us to study and improve the mechanism of functioning of these institutions, legal theory and practice, and aims at combatting dangerous phenomena for society.

We should not agree with the position of the authors who claim that the natural-legal concept that opposes law and law, if the latter is perceived as imperfect and unfair, encourages its non-implementation and legal nihilism. In fact, natural law theory, the concept of “moral law”, considers legislation through the prism of natural human rights and freedoms, spiritual and moral values. This approach is based on the dialectical interaction of the rule of law and civil society, and contributes to their progress [19].

**Conclusion.** The Republic of Belarus has a favorable socio-economic and political environment for implementing legal principles, building a democratic social state governed by the rule of law, and overcoming legal nihilism. This requires the activation of the role of state structures and civil society.

If at the mass level, the population is characterized by knowledge of the basic legal

patriotism, self-sufficiency of their legal consciousness. Obviously, we are talking about a deeper understanding of law, filling the norm with spiritual, national, religious and moral content. The legal consciousness of the Russian and Belarusian peoples is characterized by an acute perception of truth, justice, moral feelings, a feeling of compassion, mercy, and humanism. It seems that our legal consciousness has experienced less commercialization, so it is more collectivist, and less individualistic, egocentric. Capitalization of social relations has not yet been able to erase all spiritual components. Respect for their history, experience and achievements of their ancestors, the inadmissibility of evaluating the past from the political and ideological positions of today, from the West, contributes to the formation of a feeling of pride and patriotism, a verified civil and legal position. It is unacceptable and counterproductive to try to rewrite history, to belittle its significance, and to topple monuments of great historical figures (in Russia, Ukraine, Poland, and the United States) from their pedestals. Dangerous doctrinal nihilism associated with the political (non-scientific, biased) interpretation of many historical events: the Norman theory of the origin of the state in Russia, the Great October socialist revolution (the case of A.L. Parvus), the victory of the Soviet people in the Great Patriotic war and World War II, the conquest of socialism, etc. Only a balanced, objective approach based on facts can foster a positive attitude to history, its past, and form a civil position.

principles, the General direction of the legal policy of the state, then at the individual level-ignorance of basic rights, specific norms, legal institutions where you can apply for the resolution of problems and lack of basic practical skills.

Research of the legal culture of the youth of border areas of Russia and Belarus (by examples from Vitebsk and Smolensk) showed that for respondents the main directions of improvement of legal culture are: meetings and conversations with legal professionals, the introduction of specialized legal courses in school, legal information through mass media, improvement of teaching “Civics” in school, and even involvement in the protection of public order.

There is a need to adopt a National (state) Concept of legal education for students. The goal is to lay the foundations of a legal culture, raise the level of legal awareness and conviction, and develop skills of lawful behavior. Legal training includes pre-school, school, University levels, retraining and advanced training.

The Republic of Belarus has applied the Concept for the development of legal education for the period from 2018 to 2025 and has adopted an action plan for its implementation. Its main task is to optimize legal education, train highly qualified legal personnel, improve the level of multi-directional training, develop new educational technologies, and improve legal education.

Only high level of legal awareness and legal culture, developed innovative economy, and the principles of the rule of law implemented in practice create an objective basis for the well-being, progress and prosperity of society.

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