

THE CONVENTIONAL NATURE OF LEGAL VALUES

Abstract

The article is devoted to the problem of the nature of legal values, the solution of which is of fundamental importance for the construction of legal theories, in one way or another based on the category of “value”. The purpose of this article is to present and substantiate a theoretical model of legal values in the context of a socio-axiological approach to law, involving consideration of the conventional nature of legal values, as well as to characterize the structural and functional relationship of legal values with the legal order and legal culture.

When analyzing modern law, the authors use a socio-axiological approach to law, combining sociological and axiological methodology. At the same time, the authors proceed from a materialistic understanding of values. The article also uses general scientific and private scientific research methods.

The authors come to the conclusion that law within the framework of modern philosophical and legal analysis from the standpoint of the socio-axiological approach appears as a system of conventional values formed and transformed within the framework of legal discourse. Theoretical understanding of the conventional nature of such values provides an opportunity to consider many aspects of modern legal theory from a new perspective.

Keywords: legal values, conventional values, socio-axiological approach to law, legal discourse, legal order, social classes.

Introduction

Currently, in a situation where the modern state is increasingly resorting to legal regulation of public relations, and “state regulation” and “legal regulation” are becoming almost synonymous concepts (in this sense, the legal character of the modern state should be stated), special requirements are imposed on the quality of legislation. Moreover, the quality of legislation is assessed both from the standpoint of juridical technique and from the standpoint of its compliance with the interests of people and their associations. And in this regard, the question arises about the legitimacy of the legislation. This issue unfolds in both legal and political contexts. Indeed, in the conditions of a modern rule-of-law state, the stability of the political order and the

effectiveness of the political system of society are closely related to the stability of the legal order and the effectiveness of the legal system. Accordingly, the quality of legislation, considered from the point of view of its legitimacy, is fundamentally important for the state.

These circumstances make it necessary to address our problem – the problem of legal values as the substantive basis of the legislation of the modern state.

The legitimacy of legislation in the conditions of a modern state-organized society (characterized, in particular, by such phenomena as the rule-of-law state and civil society) directly depends on how much it reflects the legal values of this society. Thus, juridical norms that do not meet the legal values existing in society give rise to the phenomenon of a legal form devoid of

proper legal content – the phenomenon of “non-legal law” (Nersesyants, 1997). And legal relations that develop outside of any value criteria lose their legal quality unless, of course, their very existence is considered the only criterion for determining their legal quality. The key here is primarily the category of “legal value”. That is, the study of legitimacy, which has a practical expression, inevitably leads us to a more general, fundamental theoretical problem – the problem of the nature of legal values. This problem in modern legal science is among the discussion and, at the same time, extremely relevant.

Research Methodology of Legal Values

Currently, the category of “value” is often filled with different content (Marchenko, 2011, pp. 301-326). We should agree with the idea that “although value issues are present in many works on the philosophy of law (domestic and foreign), there are no specialized works on legal axiology, a fundamental philosophy of values in relation to the state and law has yet to be created” (Marchenko, 2011, pp. 303-304). We suppose that it is the axiological methodology, considered as scientific rather than philosophical and legal, that is able today to compensate for the shortcomings associated with the analysis of legal values that are characteristic of sociological and positivist approaches to law.

Values understood in the context of a sociological approach give us a constructive perspective on the consideration of law as a system of values of a special kind, a system determined in a certain way by objective social ties and relationships. This understanding is also characteristic of the proposed socio-axiological approach to law, which is in demand due to the fact that modern politically organized society is based precisely on legal values.

At the same time, the analysis of the nature of legal values makes it necessary to turn to the axiological methodology, which, in turn, is seriously

discredited in modern legal science. This is due to the following points: association of axiological methodology with philosophical problems; attribution of all axiological issues in law to the discourse of natural law theory, which is not very popular in modern conditions (with the exception of the issue of quasi-religious idealization of natural human rights in constitutional law); conviction in the variability of values, the perception of them as something that can be arbitrarily invented, changed, etc.; inability to determine the specifics of legal values (the specifics of law at the level of legal values); difficulties associated with the description of the mechanism of influence of values on human behaviour. It is possible to overcome a kind of “inferiority” of axiological methodology by putting it “from head to foot”, that is, by embedding it in the materialistic paradigm of cognition.

It seems quite obvious that the modern study of social phenomena, which include both law and legal values, is possible only within the framework of the scientific paradigm of cognition, namely, within the framework of the materialist paradigm. Today, the most developed philosophical materialistic method, we believe, is dialectical materialism. It appears as a completely relevant, or rather the only suitable (of course, in the system of the presented cognitive model) method of cognition of law as a system of values - values formed in the context of a certain material environment of people's lives. At the same time, values do not arise arbitrarily and are not the fruit of any abstract theory of “reasonableness” or “naturalness” but appear to be really natural derivatives of social relations. These values are formed in certain material conditions of people's lives, are derived from them as their consequence (Marchenko, 2011, pp. 307-308).

Thus, dialectical materialism and the materialistic understanding of values (and, in particular, legal values) brings legal axiology to a new level, radically reconciling it with scientific knowledge and depriving instability of the arbitrariness of idealistic constructions.

The result of combining sociological and axiological methodology based on dialectical materialism is a socio-axiological approach to law, which is one of the most relevant for the analysis of legal values.

Socio-Axiological Approach to Law

Most modern studies tend to consider the law, one way or another, as a system of norms, both in a narrow (norms-rules – models of behaviour) and in a broad (norms – standards of behaviour) aspect. This is a functional and instrumental approach to law, the heuristic potential of which, as we believe, has already been developed in many ways (Bergel, 2000, pp. 78-96). In its most articulate form, this approach is presented in legal positivism (Kelsen, 2015). One way or another, we are talking about a norm model (legal positivism) or a norm viewed in the reproducibility of legal relations and behavioural models in legal practice (sociological, legal theories). R. Dworkin's (1977) concept should be recognized as a special direction, which shifts the emphasis from the norms themselves to standards such as principles and strategies. At the same time, first – the values, and second – the considerations of expediency and reasonableness.

The socio-axiological approach to the law does not exclude the recognition of the importance of the study of formal and normative aspects of the law. He recognizes the pluralism of the legal understanding and considers the law only in a certain perspective.

This approach implies a methodology that assumes a focus on certain cognitive paradigms based on meaning-forming ideas, and it is characterized by certain principles (requirements for cognition) and methods.

Model of socio-axiological methodology:

Cognitive paradigms: the paradigm of development (progress); the paradigm of conditionality of social values by the interests and needs of social actors; the paradigm of cognizability of legal values.

Meaning-forming ideas:

- a) the law can be represented not as a “system of norms”, but as a system of special values and ideas, the legal specificity of which is determined by their conventional nature, as well as the formation and possible revision within the framework of a special public legal discourse;
- b) the legal values are conventional values developed as a result of legal discourse, which is defined in a semantic sense by the antinomies of the idea of law, such as the antinomies of justice, order, freedom, responsibility;
- c) a conventional fact should be considered directly as an act of forming a legal value or its change (transformation). A conventional fact of a normative nature is the basis of law-making; a casual conventional fact is a basis for determining the value of value for a specific situation in the activities of a law enforcement officer, especially a judge. This fact creates a value (and/or meaning) on which a rule or a specific decision is subsequently based;
- d) the conventional fact forms the right at the ideological and value level. It acts as a natural result of legal discourse and is expressed in a compromise “combination” of various interests and needs of social actors (and above all class interests);
- e) the main social actors whose interests determine the formation of legal values in the process of legal discourse are social classes. In their understanding, we proceed from the classical definition formulated by V. I. Lenin (1970): “Classes are large groups of people who differ in their place in a historically defined system of social production, in their relation (mostly fixed and formalized in the law) to the means of production, in their role in the social organization of labour, and consequently, in the methods of obtaining and the size of the share of social wealth that they have. Classes are such groups of people from which one can appropriate the work of another, due to the difference in their place in a cer-

tain way of social economy” (p. 15);

- f) legal values, forming a kind of axiomatics of legal consciousness, find visual expression in constitutions, legislation, judicial decisions and juridical practice. Unwritten legal principles can also refer to these values, but they are nevertheless important for the legal system. In complex cases within the framework of juridical practice, legal values often need adjustment or additional interpretation, which has more juridical than political significance. Subsequently, in the case of general recognition, such adjustments and additions become significant in the context of the general system of legal values of the society.

Principles (requirements for cognition): the principle of science; the principle of historicism; the principle of objectivity; the principle of taking into account cultural differences; the principle of understanding values as having a social nature; the principle of priority of the sociological vision of law (the principle of priority of the sociological method is the most important principle within the socio-axiological approach).

Methods: dialectical-materialistic method, sociological method; axiological method; system method; logical method; method of cultural-axiological analysis; method of socio-axiological analysis; method of comparative axiological analysis; method of discourse analysis.

Thus, the socio-axiological approach, without claiming the status of “the only true one”, represents a certain angle of consideration of the law and legal phenomena, which, we believe, is very much in demand in legal theory today. The legal understanding based on the socio-axiological approach allows us to consider law as a valid and objectively existing (in the sociological sense of the word) phenomenon, depending on the logic of legal discourse and the balance of the actual needs of social actors. Within the framework of this approach, the law is presented as a system of values with significant specificity (unlike other social values).

The System of Legal Values in the Vision of the Socio-Axiological Approach to Law

The consideration of law as a result of a social agreement has a long history, dating back to the writings of ancient thinkers. So, Cicero considered law to be a system-forming element of the state (*res publica*); it was a civil-type right generated as a result of private relations of free residents of the Roman polis – citizens (Cicero, 1966, p. 20). The idea of the contractual nature of law will be further developed in the works of modern thinkers who have taken a course to use the scientific paradigm of cognition as an avant-garde model of thinking. The concept of natural law developed by the classics of Modern times (Grotius, Spinoza, Montesquieu, Rousseau et al.), moving away from religious scholasticism, allowed us to correctly grasp such a moment of law as conventionality. However, the main problem of this approach lies not in the fact that the nature of legal values is considered as an abstraction outside of legal relations, which can determine a conventional fact (we believe this approach has a right to exist), but in the idealistic methodological foundations of the approach itself. The theory of natural law, methodologically based, often, on the idealistic philosophical tradition of understanding legal values and law, due to this, can be articulated as a separate philosophy of law, capable of generating meanings, but not establishing objectively existing patterns and features of the development of the legal system (which does not correspond to the modern materialistic scientific paradigm and separates such a philosophy of law from the system of scientific knowledge).

Today, one can also find other clearly logically structured philosophical systems, including those that use or even rely on a certain understanding of the nature of legal principles, which at the same time are a kind of descriptive models that are not rooted in empiricism and do not cor-

relate with any scientific knowledge. There is an obvious “isolation” of such philosophical concepts from scientific ones. This “isolation” is compounded by the fact that such concepts often come from an idealistic philosophical tradition, whereas the modern scientific paradigm is materialistic.

In turn, if our intellectual search seeks not to reproduce a multitude of meanings (such as the world of “post-truth” or “post-truth”), but to the truth, then we must proceed from a scientific, and therefore materialistic understanding of the phenomena around us. Such an understanding should be systematic and consistent; therefore, seriously reduced materialism in its positivist presentation is also not considered relevant for understanding legal values. As already noted above, dialectical materialism, developed on the basis of Hegel’s idealistic dialectics within the framework of Marxist doctrine, should become the methodology of cognition of the nature of legal values (Lenin, 1973, p. 43).

At the same time, we cannot limit ourselves to analyzing the traditional set of Marxist views on the law. Thus, a number of philosophical and theoretical constructions of the Marxist kind have already been well understood and rethought. For example, the position of E. B. Pashukanis is quite interestingly considered in connection, in particular, with the libertarian concept of V. G. Grafskiy (2009). However, Marxism is developing, and the Marxist philosophical and legal tradition should not be regarded as a quasi-religious dogma. Marxism should be considered as a developing system of knowledge and a modern methodology. In this sense, the socio-axiological approach to law can give a new impetus to the Marxist philosophy of law. Marxism, with its materialistic approach, socializes legal axiology and, in fact, within its framework, the socio-axiological approach to law makes it possible to comprehend many important legal problems of a philosophical nature, among which is the problem of the nature of legal values.

So, the socio-axiological approach to law (which correlates very well with Marxism) presupposes the idea of law as a system of legal values with a certain specificity. What specifics of legal values are we talking about?

Firstly, the legal values of society are objective, valid and not accidental. They exist with necessity and correspond to the interests and needs of a particular politically organized society (social actors). These values are formed and changed in the process of legal discourse.

Secondly, it is possible to define legal values as a result of legal discourse defined by the “antinomies of the idea of law” (Radbruch, 2004, pp. 86-91), which form legal (always conventional) meanings and values in conditions of close interrelation and competition. It is necessary to distinguish the antinomies of order and justice, freedom and responsibility, as well as related antinomies of justice and responsibility, freedom and order, freedom and justice, order and responsibility. The whole system of legal antinomies of different levels forms a general structure of legal discourse, within which legal values are formed and revised.

Thirdly, the specificity of legal values is expressed in their conventionality, relativity, cultural indifference. Legal values are synthetic and conventional, they are, as it were, “superstructured” over absolute values, and it is precisely because of this that one can find an understanding of legal values as “inauthentic” and a return to “genuine” values is associated with religiosity (Malakhov, 2013, p. 104).

At the same time, the conventionality of legal values does not exclude inequality and class struggle. It can be assumed that in most modern bourgeois rule-of-law states, the class struggle is latent and is being pushed into the sphere of legal discourse. This discourse generates conventional values and meanings, but these values are the result of a temporary consensus - a temporary reconciliation of class contradictions.

Fourth, it is necessary to distinguish between legal values proper and values expressed through

law. One can agree that “in a modern state, the ideal of political and public life depends on constitutional or constitutional-legal values” (Baranov & Ovchinnikov, 2018, p. 82). However, the point of view according to which “...constitutional values are fundamental socially significant ideals, benefits, ideas and priorities enshrined in the Constitution of the Russian Federation or deduced in the process of interpreting its norms...” (Baranov & Ovchinnikov, 2018, p. 83) focuses not on the legal discourse itself, but on the Constitution as a political and legal document, a formal Constitution (Kelsen, 2015, p. 279). We suppose that the fact that these values are contained in the Constitution is not the basis for their legal quality, but rather a confirmation of the legal quality of the Constitution itself, its compliance with conventional legal values accepted in society, which can be called a “valid constitution”.

Fifthly, behind each norm-model of behaviour, there is a certain value content, principles and other standards (norms in the broad sense of the word or simply legal standards) that refer directly to value. For example, the principles of law orient a person’s behaviour to a certain value more mildly than the norms-models, but both the principle and the norm-model of behaviour have a value content. The difficulties associated with describing the influence of legal values on people’s behaviour are difficulties associated with their functional analysis. They constitute a separate subject of theoretical research.

One should be aware that the inability to understand and imagine law as a system of legal values entails a refusal to comprehend law in its essence. The most radical expression of the idea of the primacy of norm over value is the concept of Kelsen (2017), where he makes a value judgment dependent on the norm, and it acts as a judgment about what corresponds or does not correspond to the norm. Such a formalized approach does not allow us to analyze the value level of law. Rather, he, assuming that the norm is the source of value, reduces the value to the

level of a “superstructure” over the norm. On the contrary, the transfer of the perception of law from the normative to the value aspect suggests that the approach under consideration will contribute to a more meaningful perception of it in the context of social goals (goals and interests of social actors).

Law, as a system of values, does not lose its class nature, but it can no longer be considered solely as an instrument subordinate to the will of the ruling class or a legal form into which this will “flows” (although this aspect is important for scientific analysis). Here we are dealing, though not with an equal contract, but with a compromise.

Formation of Conventional Legal Values in the Context of Social Contradictions

We believe it is important to form an understanding that when we talk about the interests of social actors on the scale of a politically organized society, the most socially significant are the antagonistic interests of classes. That is, it is necessary to speak here first of all about class contradictions, about contradictions of class interests.

Today, among many approaches to the analysis of social phenomena, the class approach is distinguished by its solid materialistic theoretical basis, but at the same time, it is discredited by quite active criticism and alternative ideological and theoretical constructions that have long become the “mainstream” of modern liberal legal ideology. In the conditions of postmodern rejection of the systematic theoretical reflection of social processes and phenomena, the class approach is often ideologically presented as archaic (Baudrillard, 2006). However, we think that it is he who is able to become the basis for understanding the realities of modern law and order and the unique phenomenon of the bourgeois rule-of-law state.

The class approach to law cannot be reduced

to the content of most post-Soviet textbooks on the theory of state and law. And, being fundamentally Marxist (it is with the concept of Marx that class theory is associated in scientific discourse today), it should not at all proceed from a dogmatic perception of the works of Marx himself and authoritative Marxists and neo-Marxists. It should conform to modern realities and the modern level of humanitarian scientific knowledge. That is why being a supporter of the class approach to the law does not at all mean categorically sharing the well-known thesis of the Communist Party Manifesto that “law is the will of the ruling class raised to statute” (Marx & Engels, 1929, p. 498). This thesis contains some truth, but it forces us to distract from the important and even unique role of law in modern late capitalist society.

At present, as throughout our history, the main driver of the progress of society is the class struggle. It is definitely possible to speak about the class of owners who own the means of production and carry out exploitation – on the one hand, and the class earning their living by labour (workers) – on the other (we deliberately do not use the category “proletariat” due to the fact that today fierce disputes are being conducted around such a definition of the exploited class and this issue requires separate consideration). If the right is conceived from the point of view of content as a system of values, then it will be a system of conventional values reproduced as a result of legal discourse, which is conceived from the standpoint of class theory as a discursive form of class struggle.

Indeed, the modern capitalist rule-of-law state demonstrates its “vitality” precisely because it is legal. This is due to the fact that the legal ideology is the leading one in the “ideosphere” (Zinoviev, 2004, pp. 223-224) of the society. Legal ideology is characterized by a discursive ideological mechanism and assumes the reproduction of its content – the generation of values and meanings through legal discourse. It is into the space of this discourse that the modern state is displac-

ing the class struggle.

Modern politically organized society can be characterized as informational. In it, information becomes an important resource of power, as Toffler (1990) rightly noted.

Accordingly, the importance of the ideological sphere of society today is extremely high. And when the main social contradictions are pushed into the information sphere in modern society, this indicates the extreme importance of legal discourse. It is here who becomes the “arena” of the class struggle, which is temporary (precisely in discourse). It seems to lose its antagonistic character.

The class struggle, pushed into the sphere of legal discourse, allows the modern state (which acquires the quality of a legal one) to remove the problem of a real – forceful class struggle and offer an ideological struggle. At the same time, the state gets a unique opportunity that provides (potentially) an evolutionary transformation of capitalist society into a socialist society, bypassing the forceful forms of class struggle. Thus, despite the fact that conventional legal values represent a kind of result of a “social contract”, the subjects of which are classes – dominant and suppressed, and initially the “negotiating” positions of classes in public legal discourse are not equal, as the situation changes and the success of the class struggle against oppression, the system of legal values expressing the balance of interests of social actors changes, which gives rise to the assumption of the possibility of a smooth transformation of society in accordance with the change in the “alignment of class forces”. This is possible only on the condition that social actors and, in particular, the state itself are guided by the legal discourse and the legal values generated by this discourse. That is, here we are talking about the fact that the state should formalize these values in legislation, and in any case, ensure that the content of legislation does not contradict legal values. It should be noted that the situation described above allows the State to verify its legal policy and legislation with a system of con-

ventional legal values. Here lies the main criterion for distinguishing a legal law from a non-legal one: a legal law expresses the legal values of society, and a non-legal one contradicts them.

In case of refusal of any social actor in the conditions of the rule-of-law state and civil society from conventional legal values in their activities, such a social actor is at best marginalized. If the state refuses to orient its legal policy on legal values, it loses its legitimacy. The system of legislation also loses legitimacy due to the fact that laws lose their legal content.

Indeed, as Bourdieu (1993) noted, classes can exist as “classes on paper” – that is, as a set of people who relate to the means of production in a certain way, objectively having common needs (but not always aware of them), nevertheless they do not always act as a social actor (which Bourdieu emphasized). A sociologist, according to the French author, can “see” classes, and the “visible” classes themselves are not able to act as actors; they represent only an abstract possibility of the appearance of a class as a group (Bourdieu, 1993, p. 59). We believe that his position does not reflect the actual state of affairs, although it is a very dangerous “arrow” of criticism released into class theory. Of course, in order for classes as a set of people to act as a collective social actor, this set of people must form a class consciousness, awareness of their interests and needs in the context of the interests and needs of the antagonist class. Nevertheless, today ideological technologies and technologies of manipulation of consciousness complicate the process of realizing these needs, and the separation of “conscious” and “unaware” becomes an increasingly important issue, which seems to be “superimposed” on the differentiation of the “proletariat” and “capitalists”. The discursive class struggle thus involves those who are aware and act consciously in their own interests and in the interests of their class – social actors, as well as those who are not aware of the class nature of their actions and acting in the interests of representatives of another class or consciously acting in the inter-

ests of another class – agents. History knows examples when representatives of the ruling class (for example, Engels) acted from the position of workers, but much more often, workers act as agents of the ruling class. In the legal discourse, we see a kind of purity of the class struggle, where it is not even the subject of the struggle and his understanding of what is happening that is important, but a clash of ideas expressing objective class needs and interests that give rise to legal values and principles. At the same time, in the space of the discursive form of class struggle, in a certain sense, perhaps temporarily, but class antagonism is overcome (due to the fact that discourse presupposes mutual recognition, and legal discourse focuses on compromise and conventional results).

In addition to denying the very fact of the existence of classes, many modern researchers consider the thesis about the defining nature of the class struggle in the development of society to be absurd or unconvincing. This is because the class struggle today is increasingly acquiring a relatively latent form, but at the same time, it has not disappeared anywhere. It continues to be an important factor of social progress, and at the same time, a source of significant social risks and threats to social stability. In turn, when the State expresses conventional legal values through legislation, this contributes to solving the problem of erosion of legal and political systems. On the contrary, if the modern rule-of-law state is entirely an instrument for carrying out the “will of the ruling class” and the legislation expresses the pure will of this class, which does not coincide with the legal values of a politically organized society, then the erosion of the legitimacy of the state, its legislation, legal and political systems of society will inevitably occur. This will mark the return of forceful, “archaic” forms of class struggle, which can be very destructive in modern conditions.

Only legislation based on legal values can fulfil the task of consolidating society, as well as maintaining a “peaceful environment” (Leist,

2002, pp. 40, 122). That is, to fulfil an important task of the state.

Conventional Legal Values and the Law Order

The category of law order is one of the most important in legal research. Today, in a modern politically organized society with a continuing capitalist system, where the main regulatory regulator is law, the study of the law order becomes urgent not only from a legal but also from a political point of view. The law order in modern conditions becomes the basis – a kind of “core” of public order. Moreover, it should be noted that it is formed not only through juridical norms.

We can talk about the law order of the modern late capitalist society at three interrelated levels. One of the levels is a system of conventional legal values, and another is a system of norms-models, standards of behaviour, and the third is legal relations. These levels seem to be built on top of each other and ideally should correspond to each other in order to avoid various problems. Thus, legal norms that do not meet the conventional legal values existing in society give rise to the phenomenon of a legal form devoid of proper legal content – the phenomenon of “non-legal law” (Nersesyants, 1997). And legal relations that develop outside of any value criteria lose their legal quality unless, of course, their very existence is considered the only criterion for determining their legal quality. From the point of view of the socio-axiological approach to law, the basic level here is the level of conventional legal values, which form the ideological foundations of modern society. A number of researchers rightly raise the question of legal values as the “mental basis” of law order (Glukhareva, 2019, p. 67).

With the complication of social relations, the clash of different cultures, the law orders mediated by a particular system of values, there is a need for such social regulators that allow for safe and effective interaction of social actors in ac-

cordance with the newly established objective circumstances. The role of such a social regulator, with its inherent specific system of values, is performed by law. In this regard, the criticism of the understanding of morality as a kind of spiritual foundation that consolidates the whole society is absolutely fair. In his now-famous polemic with Lord Devlin, Hart objects to Devlin’s thesis that the right should protect morality while not going beyond the fundamental postulates of bourgeois ideology (Hart, 1962). Devlin’s position related to the fact that the law should protect morality, in our opinion, has a number of shortcomings that are fundamental.

One of the disadvantages is related to the perception of law as something that can potentially be a means of protecting moral values. Here we see a rather narrow version of the instrumental-positivist understanding of the law. Whereas, being considered from a different perspective – from the standpoint of a socio-axiological approach - law appears to be a different (in many respects fundamentally alternative, but partly meaningfully similar) system of values. Accordingly, both law and morality can be considered as systems of values of different quality, as well as different systems of norms and standards of a different kind. Accordingly, it is necessary to raise the question, not whether the right should protect morality but whether morality should be provided by means of state coercion (including juridical means). Of course, our statements are relevant only if the right recognizes its own value content (socio-axiological approach). C It should be noted that there are also more subtle approaches suggesting a meaningful connection between law, legal awareness and morality. Thus, V. P. Malakhov (2020) notes: “...law without legal consciousness is exclusively a power regulator, legal consciousness without connection with the current law is pure moralization, sometimes mistaken for natural-legal consciousness” (p. 20). Nevertheless, we believe that law and legal consciousness have their own value bases, and in this sense, legal consciousness,

even if it is presented in isolation from the legal “power regulator”, does not lose its proper legal quality.

The second drawback is related to ignoring the Marxist thesis about the class character of morality (Hart (1963) does not object to the understanding of morality as a kind of “invisible bonds” of social relations either). We believe that the perception of Devlin’s approach to morality, where morality is characterized by Hart (1963) as the “cement” (p. 48) of a politically organized society, is fundamentally erroneous. Morality, not a meta-cultural phenomenon, within a multi-cultural and poly-religious society, is no longer able to perform the role of “cement of society” or “invisible bonds”. Nevertheless, the most important thing is that morality, perceived as a system of values, always has a class character. Morality is imposed by the ruling class on society as a whole, as “recognized by all”, but implicitly it always expresses the interests of this class. During periods of aggravation of the class struggle, morality is all the more incapable of fulfilling the function of consolidating society; since its class character becomes obvious, the difference between the ruling and exploited classes and their moral standards becomes obvious and very contrasting. Accordingly, it is possible to raise the question that the morality of the ruling class needs not “protection of the law” but state protection, but at the same time ensuring this protection only exacerbates class contradictions and can even lead to a crisis and delegitimization of state power. It should be noted that many capitalist fascist-type states relied on protecting the morals of the ruling class; the last century shows a number of supporting examples of this (the regime of Nazi Germany, the Franco regime in Spain, the fascist regime in Italy, the Salazar regime in Portugal, etc.). It is not by chance that Chantal Delsol (1995) uses the characteristic “ethocratic state” (p. 102) in relation to states of the corporate-fascist type (for the sake of justice, it should be noted that she considers Nazi Germany separately outside this category, calling it a

“racist state” (pp. 54-101)). The French thinker notes that the ideology of ethocratic states has in common a negative attitude towards social rationalism and an appeal to religious and moral values, which, in her opinion, generates a political form preceding fascism “...which can be called an ethocratic dictatorship” (Delsol, 1995, p. 103). Law as a system of universal (within the framework of a certain politically organized society) conventional values that form a “peaceful environment” (Leist, 2002, pp. 40, 122), removing the severity of the class struggle, is precisely the “cementing” ideological foundation that this society needs and which it cannot find in the system of moral values and standards.

Within society as a whole, as well as the international community, the law is a universal and necessary means of consolidating and minimizing dangerous forms of class struggle since neither religion nor morality are able to reconcile class contradictions. It is here that the functions of law are most in-demand. At the level of a modern politically organized society, there are no other grounds for consolidation besides conventional legal values and other foundations of social order besides the legal order.

Conventional Legal Values and Legal Culture

The problem of understanding the relationship between law and culture is one of the most interesting. Within the framework of the socio-axiological approach, we depart from the assertion that moral, religious and other values are directly expressed in law. All these “organic” values are an element of society’s culture and undoubtedly play a role in the process of law formation. However, their role is mediated by legal discourse, in the “cauldron” of which conventional legal values are “smelted”. They are not “organic” to culture and act as a kind of “metacultural” or “transcultural”. Thus, the concept of “legal culture” itself, if it is considered within the framework of a socio-axiological ap-

proach to law, then the concept of “culture” is not understood here in the traditional sense, but rather, it means “metaculture”. In fact, metaculture is a synthetic culture of law, which, nevertheless, is associated with absolute non-legal values, but the latter are expressed to varying degrees indirectly through conventional legal values.

In a broad sense, legal culture presupposes the very existence of legal discourse in a politically organized society. In this sense, modern state-organized societies of the Western type are based on a “legal culture”, and their system of values is a system of legal values formed conventionally on the basis of legal discourse. Even if we talk about legal values in a monoethnic and monocultural state, they already acquire a potentially relative (disputed) character and, as it were, “break-away” from the culture in the traditional sense of the word.

The problem of legal education is also related to the problem discussed above. In the context of the socio-axiological approach to law, legal education is significantly different from moral, religious and other types of education. Legal education is a completely different kind of ideological activity since, unlike the above-mentioned types of education, it focuses not on absolute – “organic” – values of culture, but on the relative – “synthetic” – legal values of the supra-cultural plan.

If in slave-owning and feudal societies, the core of ideology was moral, religious and quasi-religious values, in early capitalist societies, religious, moral and patriotic quasi-religious values were also preferred, today this situation has changed. “Natural” values in the cultural sense of the word are organic for a certain people or nation (in bourgeois states); they are deeply rooted in culture and appear self-evident to those who are integrated into this culture. Nevertheless, they implicitly contain the interests of the ruling class, which are positioned as universal. Historically, the developed methods of ideological work consisted in the translation, direct or symbolic reproduction of the content of social relations

that actualize these values. These direct methods have always been the basis of ideological work. Nevertheless, “absolute” values, despite their “naturalness”, have a number of disadvantages, among which is the inability to change. These values are either shared by members of society, or they are disappointed in them (the latter is fraught with social upheavals and, as a rule, is associated with a change of ideological paradigms or an aggravation of class contradictions). It should also be noted such disadvantages – inherent, for example, in moral values as an uncompromising class character, when it becomes obvious, these values cease to be perceived as “common”.

Understanding the specifics of legal values is an important condition for understanding the content of the law, the “idea of law”, and its logic. Legal values are closely related to social compromise and to the interests of social actors; they are rational in nature. Accordingly, they can and should not only be known but also understood. As a consequence, legal education requires a greater ideological resource since the introduction of “inorganic” values into consciousness requires great efforts.

Thus, the problem of law as a transcultural phenomenon is closely related to the problem of “legal culture”. In fact, the only way to establish a politically organized society in conditions of a plurality of cultures without mutual suppression of these cultures is the formation of a politically organized society based on legal values, which requires the development of legal discourse as a basic mechanism of meaning formation.

Conclusion

Summing up, it should be noted that, in accordance with the socio-axiological approach, the law is considered as a system of conventional values formed in the context of a certain political environment on the basis of a legal discourse focused on the contract.

The legal value should be understood as a

conventional “synthetic” value, which is the product of the coordination of the materially determined interests of various social actors (primarily classes) in the process of public legal discourse. Being conventional (artificial, synthesized within the framework of legal discourse), relative in nature, legal values are able to unite the most diverse society into a single politically organized structure. Thus, legal values are able to create a “peaceful environment” (Leist, p. 40), to form a meta-culture. In turn, the law as a system of values is being “completed” and revised in public legal discourse, which is determined by changes in the material conditions of society, the development of social relations that determine a certain configuration of interests and needs of social actors and, above all, the dynamics of class interests. This “convention” is very dynamic.

Today, one of the important problems of state legal policy is the problem of conceptualization of the legal order. The modern legal order within the framework of the socio-axiological approach is considered as an order based on legal values that are conventional in nature. It is based on a kind of “social contract”, more precisely, public agreement on legal values. The system of legal values, which acts as the basic level of law and order, is formed in the process of legal discourse, but once formed, it can be changed in the same discursively conventional way. In the process of legal discourse, this “convention”, which forms a system of conventional values, is constantly being “renegotiated” (in terms of changing or deactualizing existing and the emergence of new legal values), remaining, in general, a fairly solid foundation for the stability of the legal order.

In modern society, in conditions of multi-confessional, multicultural communities (and the international community is no exception here), we need a “synthetic” meta-culture formed on the basis of conventional legal values, which are often “organically” not close to each individual culture in the space of meta-culture (and that is why they are perceived as unnatural, even almost

alien). Nevertheless, conventional values are really important due to the fact that only based on them can constructive social integration be ensured (often, on the contrary, absolute moral, religious and quasi-religious values in modern society are used as the basis for the integration of destructive groups and criminal communities on the principle of the sect). This is the case when conventional legal values in a modern politically organized society have (and should have) priority over all others (this also applies to values in the field of human rights). We see such a picture today at three levels: national, international-regional and international global.

The conventional nature of the legal values on which the modern legal order is based also makes it meta-cultural, although this does not mean the complete absence of the influence of culture (cultures) on the specific content of legal values and, accordingly, on the legal order itself.

The phenomenon of the rule-of-law state determines the stability of the modern capitalist way of life. Social actors and, in particular, the state itself are guided by legal discourse and legal values. The rule-of-law state should legalize - formalize the conventional legal values in the legislation and orient its legal policy on the conventional legal values of society. Otherwise, the legislation of such a State loses its legal quality, and it itself loses its legitimacy.

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