

## MYTHOLOGISATION OF LAW BY HISTORICAL CONSCIOUSNESS

### Abstract

The main objective of this article is to substantiate the fact that historical consciousness as a form of social consciousness is full of the mythologisation of law.

The main hypothesis is that only such forms of law as customary law and international law may be considered historical phenomena. Standalone in law, mainly subjective law is not actually a historical phenomenon; therefore, any historical interpretation of it leads to mythologisation.

The subject of this study is the mythologisation of law, found in the content of several legal concepts and being present in correlations with basic historical concepts.

The complexity of the problem posed is that the very phenomenon of history outside historical consciousness, especially in our time, is constantly subjected to serious mythologisation.

The result of the study is the statement that historical legal understanding is not connected with the understanding of the nature of law and does not reveal its essence. The methodological consequence of this for legal theory is the need for concentration on the understanding of the development of law not as a historical, but only as a social process, and for the law itself – as something that exists and makes sense only in the present.

*Keywords:* mythologisation, myth, historical consciousness, law, form of law, correlation, legal concept, history, legal understanding, legal consciousness.

### Introduction

Legal understanding in the context of forms of social consciousness has an important aspect: these are forms of a mythologisation of law and everything that is functionally connected with them in public life. Legal understanding is necessarily connected with mythologisation, with its individual characteristic features.

Since only legal consciousness is capable of expressing an understanding adequate to the nature of law by itself, the refraction of law not in the legal consciousness is already a process and a peculiar mechanism of mythologisation.

We proceed from the fact that mythological consciousness is the most ancient, original form of social consciousness, directly expressing its

syncretism. The thesis that all forms of social consciousness are, to one degree or another, forms of mythological consciousness is based on this. The mythologisation of law is immanent to all forms of social consciousness.

Forms of public consciousness may be distinguished by their degrees of significance, saturation with a mythological component. Historical consciousness is one of the earliest and most vivid incarnations of mythological consciousness. It is connected with answers to primordial questions on where and why everything comes from (original, prehistoric consciousness), whether they relate to society, humanity, space, the universe, spirit, law, or justice.

Historical mythologisation is organically woven into all moral, political, religious, philosoph-

ical, etc., myths. Moreover, myths do not form and do not exist outside their historical component.

### General Characteristics of Historical Consciousness

To tackle the problem under study, we will restrict ourselves to three characteristic features of historical consciousness:

- a) first, historical consciousness is a background for legal consciousness, similar to a planetary one (Malakhov, 2020). It is not functionally connected with legal consciousness. Nevertheless, where legal consciousness is devoid of a semantic historical background, rationalisation of law dominates in it. It comes down to the implementation of reflective and modelling functions, and its reflexive potential is nullified.

Elements of historical consciousness actualised in legal consciousness allow limiting (keeping within) its rationalism and practicality (functionalism);

- b) the concepts through which historical consciousness reveals itself (and there are not many of them) are abstract and universal since they express properties that are universal for all moments of social life. In this, historical concepts are similar to philosophical categories.

The key concepts that characterise historical consciousness and express its nature are time, the future, the past (concepts reflecting the temporal moments of history).

All historical mythologisations, including rights, are mainly associated with these concepts. The reason lies in the duality of these concepts: they have their own non-historical “doubles”, and it is far from always possible to reflect on their mutual substitution. And on the point of view of logic, the historical and the non-historical are not subsumptionally related but are opposites. These two fundamentally different semantic contexts are often

mixed up in scientific analysis. Therefore, an appeal to history often turns out to be, in fact, not a historical study at all.

Direct meaning in historical concepts is intertwined with allegory, interpretation, transfer to conventional reality, i.e., in this sense, they are also substantively dual. They are symbolic in that they have a well-defined and distinguishable symbolic expression, designated by means of the same semantic form, something that is not the content of these concepts. Historical consciousness is symbolic and associative. So are its concepts.

Historical concepts are interpretive. The main meaning of historical interpretations lies, on the one hand, in being in the presence of the historical past, and on the other, in the transformation of this historical past into the future. Historical interpretations are tendentious and therefore poorly scientific;

- c) history is neither positive nor negative, neither bad nor good. It is just the way things are, something that is accomplished. Therefore, historical consciousness cannot be characterised as value-based consciousness. There are no historical values, and history as a whole cannot be a value.

Allegorically speaking, historical consciousness is a “reservoir of social values”, but not their “creator”.

### Historical Consciousness in the Context of the Main Forms of Law

When raising the question of the correlation between the key concepts of historical consciousness and legal concepts, it is necessary to decide in what sense the latter can acquire a historical interpretation.

The answer lies in defining the connection between the historical and the legal, which determine the understanding, on the one hand, of history, and on the other, of law. As the entire concept list of legal consciousness is built from the concept of the legal (Malakhov, 2020), the entire

semantic apparatus of historical consciousness is built from the concept of the historical.

The sought correlation will be adequate in so far as the law itself is a historical phenomenon. And it is as much a historical phenomenon as within its framework a historical person is considerable, and within its framework, society is distinguishable as historical.

It is impossible to unambiguously resolve the issue of the expressiveness of legal concepts in the framework of historical concepts, historical consciousness without addressing the distinction between forms of law (Malakhov, 2018b, pp. 50-58; Lanovaya, 2014, pp. 69-121).

1. Subjective law is not a historical phenomenon and therefore has no historical development in the strict sense of the word. Within its framework and according to its logic, everything to which it refers appears as real (present or quasi present, existing, constructed) and functional.

The fact that subjective law constructs a reality still to take place does not yet make it an area of the future in the historical sense. By itself, the past and the future within the framework of subjective law do not yet speak to the existence of a historical reality dimension. It only reproduces itself, its existence, in the form of what should be, and this is far from being the same as the future. For subjective law, the past is everything that has ceased to function as unnecessary, and the future is fantasies, which are more or less scientific.

Subjective law overcomes the possibility of the historical through the absolutisation of the imperatives and formal foundations of legal life. Of course, both the content and the meaning of laws tend to change or disappear. However, their imperativeness is not related to the content. It is self-sufficient, and therefore these changes are safe for the system of subjective law, including the system of its action.

Only changes affecting law, in general, are historical. But such changes are fundamentally illegal, being of a general social nature. There are no conditions for historical change in subjective

law itself.

Since subjective law is unhistorical, its arbitrariness in its changes, reincarnations, etc., is understandable. The impulse to arbitrariness is that the base of the vectors (there is no single vector for subjective law) is in the law itself. Arbitrariness is only a starting point from which law can be directed anywhere. It actually got rid of its dependence on reality and returns to reality only in the form of its construct, stimulus, or compulsion.

Subjective law exists only in the present and in relation to the present. Arbitrariness makes it "condescending" to reality, or even "disappointed" by it.

Subjective law does not create history but more or less distant and expected consequences. Objectively, changes in law and legal life may, of course, be historically significant, but for legal understanding, this is not essential.

It is important to understand that law, understood and existing outside of historical time, is deprived of sociality. Sociality is redundant because it is not instantaneous, like reality, and not necessary, like the natural existence of a human being (Malakhov, 2021, pp. 161-169). As a consequence of the unhistorical nature of subjective law, the mechanisms of tradition and culture that organise social life derived from it are preserved only as components of legal ideology.

The domination of subjective law in giving the state a legal form makes the state itself impossible as a historical and cultural phenomenon. Society then also loses its historical vectors, compensating for them with hypertrophied rationalism, practicality, concreteness, etc.

If the state in its legal form is impossible to be as a historical and cultural phenomenon, but with this, it does not cease to be an immutable reality, then with a person, everything is much more complicated: a person can certainly be turned into a party, a function, etc., reduced to them, but only in an abstract way. Such a person is not just conventional but fictitious. Therefore, not being historical (indistinguishable as a historical be-

ing), a person is inevitably withdrawn from the sphere of subjective law and turns into a legal myth (Malakhov, 2013, pp. 84-90). It is impossible to divide a real person's characteristics the same way it is for the state or the law. It is impossible to make a real person one-dimensional (one-sided). A person is either a whole one or no one. Subjective right chooses the latter for a person.

But there is no history where there is no man either: history is the time of man, human time. Subjective law contradicts the historical being of a person.

The conclusion follows from the above that if the question of the correlation of historical and legal concepts is raised, then it will be far-fetched<sup>1</sup>.

2. Customary law is historical in nature. As a mechanism for transferring the past to the present, customary law is characterised by at least the following:

First, the only direct sources of customary law are customs and traditions, not patterns, standards, habits, which are only external forms of customs.

Second, arising "spontaneously, in a natural way" (Lanovaya, 2014, p. 106), customary law is devoid of a creative moment. Law-making mechanisms do not function in it. In legal life, the law does not grow. It only manifests itself, reproduces itself, for it exists by definition "from time immemorial".

Third, customary law and customary legal life are pithy identical. Violating customary law means leaving legal life, while, for example, violating subjective law allows and forces to stay in legal life, changing its nature for oneself and undergoing the consequences of this change.

3. International law is also historical in nature. Moreover, international legal thinking is the closest thing to historical thinking. The importance of elements of historical thinking in inter-

national legal thinking is inversely proportional to the degree of governmentalisation, juridicalisation of the international legal sphere (degree of transformation of international law into interstate law (Malakhov, 2018a, pp. 207-224).

International law is people's customary law but is fundamentally different from customary group law. First, it is a mechanism for transferring the present into the future (therefore, in its essence, it has always been and is now the right of force). Unlike subjective law in which a similar mechanism operates (but it is not historical), international law does not generate specific (although often large-scale) consequences but determines people's history. The operation of international law leads to the creation (paving) of peoples' history as their destiny.

Second, the past for international law is not customs, traditions, legal events, but values, sacralised and at the same time self-evident (which gives them universality and absoluteness). And these are not legal but general cultural values of people's lives.

4. Individual law, although not formal but organic, is still not a historical phenomenon and is not reflected by historical consciousness. It is replenished historically only through ties with customary law. Individual lawfully exists in the present. Paradoxically, those societies in which it is developed and significant are inevitably secularised and gradually lose their historical potential; they drop out of history<sup>2</sup>.

#### Correlations of Historical and Legal Concepts

Moving on to correlations between basic historical concepts (time, the future, the past, chronicle, historical fact, event, history, tradition) and legal concepts, it is important to take into account that only customary and international law are historical in their nature. Therefore, correlat-

<sup>1</sup> Therefore, in particular, the history of law and the state is far from being real history, but more often is just a sequence of processes, relations, states, etc. in their physical time.

<sup>2</sup> This statement is quite consistent, for example, with F. Fukuyama's (2015) conceptual idea regarding the end of history precisely in its western version.

ed legal concepts are included in the semantic apparatus of precisely these forms of law. And a completely different nature of the correlations of historical concepts with legal ones in the context of legal law.

It should also be borne in mind that the meanings of legal concepts in the modern era are losing their historical dimension. This is expressed, in particular, in the terminologisation of the language of legal thinking. G. Marcuse correctly noted: "Functional language is a "radically anti-historical" language" (Marcuse, as cited in Ben-said, 2016, p. 90). The accuracy of thought expression thins the cultural and semantic range of legal concepts to the limit. The latter is still trying to preserve the philosophy of law.

Finally, it is important to remember that the verbal designation of these concepts is not limited only to the historical context, which can create confusion in discussions to do with historical phenomena. Sufficient definiteness is introduced by the connection of these verbal designations with the basic historical concept of the "historical": historical time, historical event, historical personality, etc.

1. The concept of *time* forms the background meaning of all other concepts included in historical consciousness. Historical consciousness is temporal but not spatial. Connection to space (territory) is a non-historical act, even in connection with time.

Humans have a fundamental ability to live not only in physical or biological time but also in social time, i.e., in the duration of coexistence, filled with meanings (senses, signs), which makes a person a historical being. The same can be said about the time characteristic of society.

Social time is always historical. Historical time is the background for all the forms of social time. Being devoid of historicity (and the tendencies towards this in the modern world are quite obvious), social time becomes multi-vector, indefinite. Existing concepts of social time testify to its non-historical understanding. Only historical consciousness "straightens" and directs social

time, making it definite.

One can talk about history and culture when time is much slower than a person's life. Humans, being historical beings, are timeless (instantaneous), and therefore time does not bother them. When time coincides with a person's life or becomes less than it, the person ceases to be a historical being and turns out to be temporary, and time frightens him.

The concept of time correlates primarily with the concept of the *term* (in the legal aspect). Different points such as years passed, duration, tempo, saturation, direction, limit, etc., are expressed in this concept. Within subjective law, all these concepts acquire quantitative characteristics, devoid of sociality signs. In subjective law, there is only physical time and only as a subjective condition of its reality. Time, as a period, is empty. It is a pure duration, a receptacle for anything, a segment of the present, artificially cut out of the general flow of social time.

Having signs of normativity and templeteness, the period is a convention, a value abstracted from the person in his or her individuality (i.e., in his or her reality), and therefore its social message practically loses its meaning. The essence of mythologisation here, firstly, is in recognition of the attributiveness for the social period in its various forms (moral, political, economic, even religious). Secondly, the essence is in attributing to the period the significance and sufficiency of relative, conditional, arbitrary moments as a quantitative measure of responsibility. Thirdly, it is in the confidence that, in this case, the quantity necessarily goes over into the desired quality<sup>3</sup>.

The transfer of the properties of legal time from customary law to legal law is the mythologisation of law.

Lastly, in historical terms, the law is characterised not in its individual elements or processes but as one whole. Therefore, the influence of the historical factor on applicable law is difficult to

<sup>3</sup> For reasons other than the law of dialectical logic about the transition of quantitative changes to qualitative ones.



grasp. The scale of historical time and the scale of legal time, despite the fact that the latter may be quite significant, are still disproportionate.

2. *The past* is the past. It is also something saved, stored, and not just passed. However, it is not just and not only one of the characteristics of time. It is also timelessness, eternity, and a form of existence filled with meaning.

The past does not exist in legal time. Law is not a keeper of time; time for it is rather an inevitability than a necessity.

The line of reasoning, the opposite of historical consciousness, is best expressed by the actualism principle, the only possible way of knowing and understanding the past. It implies the imposition of the current state, the conceptual and semantic structure of theory, and mass consciousness on the past, no matter how distant it may be. Actualism is a means of finding oneself in the past (but not finding the past in oneself). And this is a form of mythologisation.

The past is correlated, at least, with the concepts of norm and experience. They are the most common forms of accepting and saving the past.

*The norm* in this connection is the multiplication (replication) of a single past, as the possibility of its revival in relationships, and not just in the imagination. In law, this singularity is discarded, and only the possibility of repetition is absolutised. Mythologisation begins at the moment when this possibility acquires categorical nature and primacy in relation to the reality of legal relations. Therefore, the legal concept of a norm does not coincide with the general concept of a norm as an expression of normal states.

In customary and international law, a norm has the meaning and functionality of a custom, not an imperative. It is a kind of middle line that marks normal as legal. It does not draw, as in subjective law, a clear boundary between compliance and non-compliance with the norm. Mythologisation of law here is precisely in this clarity of the boundary, which makes the responsibility fully certain and the arbitrariness of law enforcement.

*Experience* is the accumulation of not only normal (positive) forms and means of social life but also a negative past, which, in essence, is the defining vector of law.

Experience is not always successful. "Experience, if you take it in its pure form, is terrible," wrote A. F. Losev. – now (that is, in civilisation) – experience is well-ordered. But take experience in its pure form, and it will be hell" (Losev, 1991, p. 392). The primacy of the negative, which determines the absolutisation of relations within rules, mythologises law as a means of overcoming this negativity.

Experience is also a form of accepting the past but in two opposite senses: as a model and as a warning, instruction, edification, which is symbolic but not factual. The negative is not rejected but mutated. Countering negative experiences is itself negative. This explains the steady movement of law towards organised violence, the constant threat of the use of force.

In this case, the mythologisation of law goes through the recognition of the negative experience as being a positive one (for example, justification of violence, including being a form of persuasion) and the ability to reproduce the past in the present (the illusion of using experience). In fact, this is just one of the arguments for keeping the line on overcoming possible negativity in social relations.

3. *The future* in the most elementary sense is a time that will surely come, and in this sense, it already exists. It is neither due, nor obligatory, nor well-known, nor unpredictable, nor accidental. It is inevitable, but at the same time most likely a fantasy, imagination, determined by the present (being accepted or rejected). "We promise ourselves anything that is impossible in the present to come in the future. The future that we have promised ourselves cannot become the present. We dream of coming in the future to exactly what we are leaving now. Over time, we move away from the present and somehow hope to return to it. However, when the past no longer exists, the place for the early can only be in the

present” (Bibikhin, 2002, p. 397).

The future is determined only negatively in the context of historical consciousness. It is actualised only in a negative way. That is why it is most often frightening (the consequences of the past experience). It is for this reason that V. V. Nabokov called the future “a charlatan at the court of Chronos”.

When everything that exists is, in any case, better than what does not exist, but it may come unexpectedly, the future is discarded or remains only as a present that has not yet come, i.e., already indistinguishable from the present. This gives the idea of the end of the story.

From this, it is quite clear that the concept of the future is correlated with the concepts of responsibility and law.

*Responsibility* in this correlation appears as an uncertainty of the future regarding an individual or society.

In the historical dimension, positive responsibility (of a nation, country, individual) cannot be legal. It is only a moral (conscience) responsibility. As for negative responsibility, it appears as a dropout from historical time, namely, on the one hand, as a loss of the past, and on the other, as a real or illusory definiteness of the future. And all this is possible in the timelessness of the present, no matter how long it may be.

In this regard, there is an age-old problem of responsibility in the form of punishment. Punishment extremely simplifies, oversimplifies responsibility. Its results, therefore, never meet expectations.

When punishment touches an individual, its deep meaning is preserved only if that person remains in the historical dimension, i.e., must and can take up the preparation of his or her future. This work, in addition to simple consciousness and recognition of responsibility, consists of compassion (and not just physical and mental suffering), repentance, forgiveness, purification. Does the modern punishment system give a person such an opportunity to remain a historical being? That is a big question.

Mythologisation of law lies in the belief that punishment objectively solves the problem of responsibility, the degree of its severity being directly proportional to its effectiveness, that the drop out of legal time forced by punishment has a positive meaning for the individual.

When punishment touches a group of people, it drops out of history, loses its identity. Appealing to conscience or bringing a nation, people, country to justice is a purely political discourse, devoid of adequate meaning but ingrained in the mass consciousness. Law has absolutely nothing to do with this. And the punishment is no different from revenge, which only reproduces the ancient talion, throwing modern society into the archaic. Mythologisation of law here is of the most radical character, i.e., it comes to a complete distortion of its essence and nature.

*Law* in the historical dimension is thought to be a framework of the future (order, legislation), making its legal existence definite. In reality, the law eliminates the future. More precisely, it identifies the future with the present, gives the instantaneousness of the present an indefinite duration (this is the normative meaning of law). It turns out that law becomes temporal, which radically changes its essence. According to G. Pomerants (Pomerants & Kurochkina, 2000), the imperativeness of law, which, from the point of view of understanding the nature of legal law, in its unconditionality and obviousness, turns into the consecration of violence, the domination of will, convention, relativity, impermanence, development (unrestrained differentiation, carrying negativity).

Mythologisation of law here is in endowing the imperative force of law (its taboo nature) with convention in the admission of their compatibility. Law turns from a principle of activity into its instruction, a regulation. Combined with the desacralisation of laws, this flutter of meaning forces the ontologisation of laws, turning lawmaking into magic, breaking the law into taboo.

4. *The historical fact* is the result of cultural

selection. An empirical fact is only a skeleton on which a historical fact is built. Transformation of the former into the latter is a challenging and often fictitious process. Action, deed, process become historical facts, firstly, due to their connection with events (with the possibility of this binding), i.e., with what the consequences, significance, value, etc., are obvious, allowing facts to settle in the historical consciousness. In other words, their meaning lies in being included in a specific spiritual state of a person. Secondly, they give stability to events, giving them a measure (framework) of interpretation. Thirdly, it is a historical given, the value of which lies in its existence according to the laws of objectivity. Fourthly, they are the points of support for historical assessments and interpretations, but not the support itself (events are).

The concept of a historical fact is correlated primarily with the legal concepts of status and deed because they are essential for characterising law from the point of view of its givenness, manifestation.

In the context of this correlation, *status* reproduces all the essential features of a historical fact. It is important not only as an established, outwardly defined, and outwardly changeable fact but as a kind of social and spiritual state of a person, which is the result of his or her self-organisation and self-realisation. Rights, duties, or other elements of status are not determinative. Status in its entirety is determinative, as a legal “embodiment” of a person in his or her functionality, which is a condition for his or her activities within the framework of what is permissible (by law, state, etc.).

Mythologisation here is associated with the recognition of the status to be sufficiently conditional, its external certainty, and the lack of connection between rights as elements of legal relations to human rights. This leads to the existence of status only as a specific form of not only the legal but in general social dependence of a person, accidental for him or her, and not essential. Status is an absolutisation of the present. It is

purely instrumental.

A *deed* in the historical context is not instantaneous and not purely subjective (responsibility for a deed is therefore always relative), i.e., it is never occasional, as it is done consciously. A deed is a quintessence of a state, conditions, etc., inherent in a person, the fruit of work on oneself, or a developed attitude to life conditions, circumstances, etc. A person appears through it in integrity and not only in momentary connection with reality. The impact is the core of the deed. A deed is impossible without impact and exists only as an action, i.e., physical fact.

Mythologisation lies in the absence of a significant difference between deed and action. A deed cannot be separated from a person, but an action can. Therefore, in arguing that a deed, not a person, should be judged, it is, in fact, not the deed that is being judged but the act. First, such a modern court is not much different from the court of King Cyrus across the sea. Second, if it is a trial over a deed, then it is a trial over a person, and this can be perceived as a legal lynching.

5. *Events* are the key points of history. History grows in their interconnectedness. History is awareness (reflection) of the event that is happening. It would be well to “think of an event not as a miracle that arose out of nowhere, but as something that is historically conditioned, as an articulation of the necessary and the accidental, as a political singularity” (Bensaid, 2016, p. 39).

The correlation of the concept of an event with the concepts of human rights and crime is interesting.

A *human right* is an event of public law, legal life, in the sense that it, not the existing normative system, is what binds together a person’s actions, imparting to him or her legitimacy not in a formal-universal but content-individual sense. It transforms (or restores) a person into a historical subject, i.e., into personality (personality – a person’s historical scale). The reality of human rights gives eventfulness, a historical dimension to his or her activity, and all law.



Mythologisation, in this case, is associated with the recognition of the ability and duty of the law to ensure a person's rights (right). The inclusion of human rights in the system of rights provided and ensured by the regulatory system dissolves them and transforms them into a set of what is permitted. In essence, however, human rights are a knot of an individual legal life, not a life dissolved in general.

A human right is a positive event. In contrast, *crime* is a negative event. As an event, it acquires meaningfulness, non-randomness, becomes a synthesis of related facts. As an event, it is only capable of being the subject of a legal assessment. Crime eventivity returns temporality to responsibility (punishment), pulling a person out of the "embrace" of timelessness.

As an event, crime is socially significant. It is an expression, an outburst of something supra-individual, non-situational. It is a characteristic not so much of a deed and even a person, but of sociality, the state of society, or local education. From this point of view, one can understand the meaning of the tradition of mutual responsibility, collective responsibility, etc.

As an event, crime is fatal. And its consequences, as well as the legal reaction to it, are uncertain.

The attitude to crime exclusively as to a fact, while, as a rule, to a physical act, not as to an event, mythologises law in the sense that, first, it presents it as an institution with a completely unlimited field of action, extremely radicalising law, making it omnipresent. Second, it makes any deviation from existing obligations and prohibitions a crime in principle. Third, it deprives the crime of the social moment.

6. *Chronicle* is a stringing of facts on the physical time vector, latently transforming their often simple sequence into a causal (or some other kind of non-random) connection. Thus, on the one hand, facts (singularities) are given the meaning of events (symbolism, non-randomness, and repetitiveness) and, thus, a completely different significance; on the other hand, events ap-

pear as facts. This mechanism of mutual substitutions within the historical consciousness is the main source of the mythologisation of law, its internal inconsistency.

In light of the above, there is a correlation between the concept of a chronicle and the concepts of court and legal practice. In them, the dialectic of facts and events is manifested most clearly.

*The court* is a truly legal way of relating to reality. It reflects the nature of nothing else but the law.

Transformation of an event into a fact is the entity of the court in the chosen context. Mythologisation of law (and the loss of the legal nature by the court) appears when a fact is deprived of its historicity. This is especially true for the institution of the court in the countries of the Romano-Germanic legal family.

In the countries of the Anglo-American legal family, there is a possibility to preserve the historical background. Hence the possibility of endowing single facts with normative potential, which, to some extent, makes the idea clear that the law is happening in the courts. However, this opportunity is not always realised, not in an inevitable way. Precedents do not happen as often as they seem to happen, although a great amount of them have accumulated. There is no smooth, gap-free transition from singularity to normativity. The moment of arbitrariness in it, on the one hand, profanes the court to a certain extent, but on the other, it is the possibility of the emergence of law. This is another mythologisation that is the representation of arbitrariness as law.

*Legal practice*, as well as a chronicle, is such a coherence of facts that acquires eventfulness. It is difficult to pass from a complex of facts, even a large one, to generalisations, without an initial setting. Passing from a complex of events to generalisations is easy. Their sequence is already a tendency, even a pattern. Legal practice makes sense precisely as a logical line uniting many actions. In a historical context, legal practice is an area of the possible, within necessity and ob-

ligation.

In this case, the mythologisation of law is seen in support of its change in legal practice; it is an adaptation to reality. Practice, as reality, is contradictory; however, the law on this basis must not be the same. It must not follow the practice; otherwise, it turns into a control mechanism and then a manipulation mechanism.

7. From the point of view of historical consciousness, *tradition* is the basic mechanism of social life, including legal life. The method of reproducing the past in the present, contained in it, makes tradition familiar to myth.

Characterising the legal culture in a historical context, we can say that it is a synthesis of the traditions of legal life, the operation of law, law-making, etc.

The concept of tradition is correlated with the legal concepts of legislation and the legal system, which also reflect the methods of reproduction of law.

*Legislation* is the materialisation of legal (and political) traditions. The enlightenment of tradition in it is a sufficient and recognised basis and explanation of rationality, expediency, justice, etc., all its designs and changes. In this case, legislation is not only the scale of ordinary life, the Everest of imperatives but also an organic part of legal consciousness. A person (as a legal entity) thinks with laws (being a legislator on his or her own) and does not think only about how to fulfil it or not to fulfil it, obey it or resist.

Mythologisation of legislation lies in the attitude towards it only as a form of law. If law and legislation are actually identified, then it is not the form that is saturated with content, but the law itself turns into the form.

Legislation turns out to be a legal entity only in its form of expression, process, state, etc. But in essence, it is a political phenomenon. Legal consciousness is inevitably alienated from the legislation. All this is the result of the historical component being washed out. There is no one in legislation. That is why, of particular note, the legislation does not have in itself any restraints to

endless renewal, differentiation, obstacles to the bureaucratisation of law, etc.

*The legal system* is a vivid embodiment of legal tradition. It is a historical and cultural phenomenon, i.e., it does not exist outside its historical and cultural dimension. It is not an ideal construction, but the integrity of legal life, determined by legal traditions. The legal system comprises the past in the present, not being a conceivable background, but active, the present. This is the right existence.

The law is the core of the legal system in the social aspect, while legal consciousness is the core in the historical and cultural aspects. It is a reservoir of legal culture, the keeper of legal traditions.

Mythologisation of the legal system (and law) lies in the fact that, although it belongs to cultural phenomena in legal theory, it is nevertheless understood and taken into account and constitutes an object of interest precisely as a social phenomenon. As a result, the legal system is perceived as controlled, adjusted, subject to deliberate alignment, etc. In fact, it is the legal existence of people in the historical dimension. It develops objectively and fully corresponds to the nature of the legal. Therefore, the legal system always has a specific history.

8. *History* in a non-historical (metaphorical) sense is the past as something that happened, visible in the present (for example, the legal system). It is the awareness of the time in which we ceased to be but were ourselves or through our ancestors. And history is also the future, visible in the present. It is the consciousness of time when there are no us yet, but where we are not random (social strategies, foresight, utopias are built from it).

History allows us to explain the present with the past as something that happened not in vain. The future cannot be explained by the present. Historical consciousness is not modern.

Historical consciousness is inertial by nature, lagging behind, eternally appearing in the already non-existent time. "Consciousness limps

behind history, struggling to catch up with it” (Bibikhin, 2002, p. 278). Thinking, as fiction, serves as a counterbalance to this. History is a tale about a world other than reality, the unification of everything that came true and the imaginary. Relying on history as on the past is a mythologeme of historical consciousness.

Defined by history, people are free with respect to the present. The phenomenon of freedom becomes understandable only in the context of historical consciousness. Torn away from historical existence, people become slaves of the present and fall into a cycle of necessities that make freedom impossible, untenable, or destructive.

*Right* in the context of historical consciousness is an updated legal culture, the legal tradition in action.

The above does not apply to subjective law. This does not make it, of course, flawed, ineffective, etc. It is just not its dimension. Thus, for example, sociological, legal thinking, built on the description and explanation of the real legal life outlined by this law, is inadequate. Dogmatic legal thinking (described as positivistic) is adequate.

In the studied context, the mythologisation of subjective law is obvious since, as previously noted, it is non-historical; it is, therefore, impossible and inadequate to build an understanding of the law on analysis of continuity, tradition, etc. It is completely in the present, denial of both the past and the future. The reason is simple. It is the desire to be associated with the life of society and ideological means combined with natural law. The essence of mythologisation is in attributing the history of law in general to subjective law (in the concept), in identifying a simple sequence, coherence, and consistency of its structure as a whole and individual element.

*Legal consciousness* in the historical dimension is the spiritual history of law. Only referring to it, its content, allows one to catch the historical motive in the current law.

In subjective law, the concepts of law and le-

gal consciousness are not identical. Legal awareness is not attributable to law. In all other forms of law, the concepts of law and legal consciousness are identical, and only under this condition does law become a historical and cultural phenomenon and crystallises not in the legal system formally but in the legal system meaningfully. As such, attempts to introduce the problem of legal consciousness into the modern general legal theory are untenable.

Mythologisation of legal consciousness consists, firstly, in identifying it with the law as a whole (in the concept), secondly, in exaggerating and distorting the role of legal consciousness in subjective law, and thirdly, in identifying legal consciousness with reflection, and therefore on closing it in conceptual structure, making it, in particular, indistinguishable from scientific consciousness.

#### Meaning of Historical Legal Thinking

Historical legal thinking appears to be closest to the sociological one in the sense that it proceeds from an appeal not to essences but to reality. At that, such an interpretation of historical legal understanding is mythologised, and its key mythologeme is “the past is the genetic code of the present”. For comparison, the key political mythologeme in the context of historical consciousness is “the present is not an inevitable consequence of the past”. Adoption of the first makes law teleological. The adoption of the second is the consecration of the politicisation of law, leading to the distortion of its essence (this does not apply to subjective law). These ideas are incongruous.

Natural law has no history (Waldron, 2020), and therefore natural law understanding and historical legal thinking are also incompatible, although naturalness and historicity appear to be organically linked.

The following are rightly significant ideas that are considered as mythologemes that charac-

terise historical consciousness:

1. history is the consciousness of the present as fate;
2. history is the rationality of the random (unique), “possible within the necessary”;
3. history is the lives of the dead told by the living;
4. history is continuous and irreversible;
5. history is the coherence of the meanings of events;
6. the future grows out of the present but is determined not by it, but by the past;
7. reality is not historical; history is not valid.

With their appropriate interpretation, they quite clearly express the principles of legal life and the organisation of law.

### Conclusion

Mythologisations of law, developing within all forms of social consciousness, without exception, are refracting (and transforming) in legal consciousness, complicating its content. And this all makes it quite difficult to understand the problem.

By the very sense of legal consciousness, the mythologisation of law synthesises formations. However, “untwisting” these synthesised myths to see their components formed within various forms of social consciousness seems an impossible task. However, the impossibility of reflecting on the multicomponent nature of legal myths does not make them less significant. Their realness and effectiveness lie in their integrity, multidimensionality, and voluminosity. Legal consciousness is valuable and real as a flow of spirituality but not as a mechanism that divides it into components.

All that has been mentioned about historical consciousness in general and about the most distinct correlations of historical and legal concepts, as well as about ideas characteristic of historical consciousness, makes it obvious that historical consciousness is extremely saturated with a mythological component. History does not cease to

be mythology in a certain sense.

Myth, in general, is the transformation of reality into history and history into reality. This mostly happens when something starts to go wrong, not in accordance with the desired, assumed, etc., way.

History is the connection of symbols (presented as events), not facts. And this connectedness becomes historical meaning.

Symbols are the basic mythological component of historical consciousness. It can be rightfully called a symbolic consciousness. And as such, it is actually a way (art) to imagine reality.

Demythologisation of law is impossible without the loss of its historical being (consciousness), without replacing it with scientific thinking, and without disabling legal consciousness (which, willingly or unwillingly, the general legal theory seeks to do). But then, simultaneously with the elimination of the mythological component from the law, both law and legal consciousness are destroyed.

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