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DOI <https://doi.org/10.32849/2663-5313/2021.11.10>**Yuliia Andrushchakevych,***PhD in Law, Assistant Professor at the Department of Intellectual Property and Private Law, National Technical University of Ukraine "Igor Sikorsky Kyiv Polytechnic Institute", 37, Peremohy avenue, Kyiv, Ukraine, postal code 03056, sciencef21@gmail.com***ORCID:** orcid.org/0000-0003-3539-6781Andrushchakevych, Yuliia (2021). Law and ideology: the essential unity. *Entrepreneurship, Economy and Law*, 11, 77–83, doi <https://doi.org/10.32849/2663-5313/2021.11.10>

LAW AND IDEOLOGY: THE ESSENTIAL UNITY

Abstract. The article is devoted to the study of legal ideology as a separate legal category and values of modern society through the understanding of the categories “law” and “ideology”, their interrelation in society. **The purpose** of the article is to determine the essential unity of these categories and issues related to the organization of the ideological and legal sphere of modern society.

Research methods. The research is based on general scientific and special methods of scientific cognition.

Results. It is substantiated that the ideology of the society of the XXI century is filled with the values reflected through the system of legal ideas, and law acquires growing ideological content. The mechanism for the implementation of modern ideology is closely connected with law, and such connection is caused by legal, democratic character of modern statehood the basis of which is the political and legal system grounded on compromise, the contract, and consensus. In addition, there is an increasing role of legal discourse in the ideological sphere of society, which solves the problems of legitimacy of state power and the existing socio-political order, and therefore, legal ideology becomes more important in the ideological sphere of modern society.

The article provides the division of types of ideology, as follows: metaphysical type, dialectical type, and modern type of ideology.

The author conducts the analysis of the functioning of law as a general measure of interconnection of all social phenomena, which regulates relations at all social levels: multinational, intergovernmental, local, and all spheres of social life: legal, economic, social-political, spiritual, family etc., and ideology, which is a product of the spiritual life of people and subjected to the influence of law. The impact of law on legal ideology, which contain objective and subjective conditions, is characterized.

Conclusions. It is proved that law functions as a general measure of the interaction of all social phenomena; it regulates relations at all levels of the social system (interstate, domestic, local), as well as in all spheres of public life (legal, economic, socio-political, spiritual, family, etc.). Ideology, as a product of people's spiritual life, cannot but feel the influence of law. The essential unity of law and ideology lies in the set of ideological ideas in a certain period of time, which are necessarily expressed in law and always take the form of law.

Key words: law, ideology, essential unity, legal system, political system.

1. Introduction

Society and the state, law and political institutions are evolving together with the ideological sphere of modern society. According to the author, it is essential to adhere to several theoretical dimensions while studying the category of “ideology” in the modern dimension:

– first, ideology has always accompanied the socialization of society and accompanies it as a necessary process of constructing ideas about reality. In this context, ideology is considered as a set of particular social influence aimed at its “conservation” and reproduction; such influence is possible only in the presence of a specific

type of consciousness and conscious action. In R.A. Yuryev's opinion, such consciousness can be considered either as a consciousness that has been subjected to a kind of “manipulation”, or as the consciousness of a “manipulator” (Yuryev, 2004, pp. 71–72). The scientist argues that the consciousness of the “manipulator” is also a product of social practices;

– second, ideology arises in a particular period of the development of society, depends on many factors, including the peculiarities of the historical evolution of society, the nature of the state-power dimension of society, the option of affecting the ideology of moral and traditional principles of society.

The complex nature of the content, structure and essence of ideology and law, the polistructural nature of their functional purpose and a special place in reforming modern society determine the diversity of doctrinal views on ideology and law that conditions the possibility of identifying certain areas (levels) of the study. Modern doctrinal studies of the phenomenon of ideology and law are carried out at the following levels:

- structural level (V.S. Lisovy, A.I. Klymenko, M.A. Reisner) specifies relations between ideology, consciousness and law;

- level of "reflection" (K. Mannheim, M.K. Mamardashvili) of ideology, as a philosophical problem, which studies it since the emergence of society; thus, the very historical and philosophical explication of the phenomenon of ideology is derived from the objective structures of social relations and historical process;

- practical level (L.A. Voitov, S.G. Kara-Murza) characterizes ideology as a means of solving practical problems which primarily concern not the negative interpretations of "ideology" associated with the mechanisms of power and coercion, but the integrative function of ideology which, in a pragmatic aspect, allows involving individuals in effective socio-practical interactions.

The purpose of the article is to identify the features of the doctrinal understanding of ideology and law, the possibilities and conditions of optimal ideological and legal support of the needs of modern society. Achieving this goal requires the solution of the following research tasks: a) determination of the main characteristics of law and ideology in terms of their modern doctrinal perception; b) clarification of the importance of ideology to various spheres of modern society; c) establishment of the unity between the categories "law" and "ideology" through the category "essence".

2. Transformation of the ideological and legal sphere of society

Modernity is characterized by a new qualitative component – the speed of data transfer, which is a much more important characteristic than the data themselves. Thought becomes short, superficial, unstable, but pervasive and fast. Human knowledge is not seen as a system but as a bright part of the mosaic, and the bearer of such knowledge does not feel discomfort, moving from one part to another with amazing speed, and does not even have time to comprehend his existence.

Z. Bauman substantiates the idea that the intensive movement of people, fund, information is an essential feature of modern

society (Bauman, 2008, p. 78), which affects both the political structures and thinking of each person, including in the legal and ideological dimensions. Consequently, the transformation of the ideological and legal sphere of society happens. The scientist emphasizes that many features of thinking customary for people are due to the past social environment, which considered the spatial characteristics as the most important. Such atavisms in the legal sphere include a total political and legal ideology that has a religious or quasi-religious character (Bauman, 2008, p. 79).

Modern researchers pay attention to the existence of spatio-temporal characteristics of law and legal reality. J.L. Bergel, studying the problem of the environment of law, one of the aspects of measuring this environment calls space and time (Bergel, 2000, p. 195). E. Toffler and Z. Bauman draw attention to the important characteristics of modern society associated with changes in the ratio of social space and social time (Bauman, 2008, p. 100).

The growing role of time and the decreasing importance of space lead to the fact that in the political and legal sphere, ideology as a complex, relatively static structure is substituted by the technology of situational manipulation of public consciousness and human needs, which does not seem to need an ideology.

A.I. Klymenko supports this theory as really true, assuming that modern man does not need to understand what is happening in the formed "worldview" (Klymenko, 2016, p. 35). The scientist stresses that the "death" of ideology and its replacement by the manipulation technique does not happen instantly (Klymenko, 2016, p. 36).

J. Baudrillard argues that society observed as metaphysical (systemic) static ideological images of reality, establishing a political and legal ideal by often resorting to religious suprarational argumentation, was gradually replaced in the human mind with increasing importance of temporarily – dynamic characteristics of reality by dialectical ideology, which takes into account the dynamics and assumes the ideal at some time distance, some "bright future" (Baudrillard, 2006, p. 74).

J. Habermas, contrasting the ideology of traditional myth, notes that ideology always comes from a scientific standpoint and we can not talk about pre-bourgeois ideologies (Habermas, 2007, p. 44). Habermas's theory contains a philosophical view of ideology, which is identified with a dialectical ideological system that opposes metaphysical ideological systems. The theory of ideology of traditional myth, proposed by the scientist, contains

the idea of progress, which is qualitatively new in relation to the traditional idea of “return of the lost paradise” and is a victory of time over space. The image of the “holy place” gives way to the image of the “Holy stream of time”, the understanding of life as a result is replaced by the attitude to life as a process (Baudrillard, 2006, p. 46).

The standpoint of A.I. Klymenko is scientifically sound: he argues that in modern society, there is a relatively new socio-political system that can undertake the whole ideological burden – a system of legal ideology. The scientist substantiates that the ideology of modern states can be characterized as legal. Legal ideology may contain quasi-legal (religious, moral, and others) elements – it depends on the method of substantiation (legitimacy) of the state (Klymenko, 2016, p. 31).

According to many experts, the perception of ideology as a universal idea or worldview that reflects a single system of views or a particular social order (“Russian idea”, “capitalism”, “communism”, etc.) is anachronistic and ineffective (Reisner, 2008, p. 65). M.A. Reisner proves that the postmodernist interpretation of ideology paints a picture of the disintegration of a unified order into many fragments (Reisner, 2008, p. 38). A. Toffler substantiates the concept of the crisis of ideology and determines that such terms as “communist ideology”, “capitalist ideology” no longer fit into modern scientific theories and definitions (Toffler, 2004, p. 48).

Taking into account the abovementioned, there are difficulties with the modern definition of ideology. Each historical period is characterized by a special understanding of this problem. Therefore, the theoretical and methodological analysis of the category of ideology, which is carried out in this section, must begin with the conceptualization of the concept of ideology.

The concept of “ideology” in legal, philosophical, sociological, political, and other areas is characterized by different approaches to its definition (Klymenko, 2016, p. 39).

In the modern reference literature, ideology (from the Greek – representation and logos – word, doctrine, knowledge) is defined as a system of views and ideas which interprets and assesses human attitudes towards reality and each other, social problems and conflicts, and contains goals (programs) of social and legal activities aimed at consolidating or changing (developing) these social relations (Marushchak, 2020, p. 100).

Any ideology by its nature and to a large extent is a political phenomenon designed to solve some problems in society, namely: the legitimacy of a certain order and justification of the unity of politically organized society,

because the existence of ideology loses meaning outside the politically organized society. The scientific literature contains two opposing views on the relations between ideology and law.

The first view is to study the relations between ideology and law as ideological, where ideology is a higher and basic way of thinking than law.

There is the second (opposite) view, which corresponds to the academic tradition and understands ideology as one of the types of possible relations of ideology and law, along with which other types of relations are formulated. In such relations, the law itself is recognized as an ideology and a system of higher spiritual values, which is more or less realized by current legislation and the state. Law, in this regard, is understood as a natural law that exists above the rules of law, which only give it a certain verbal legal form, which only expresses the idea of law. This view, according to M.M. Kazantseva, explores the relationship between ideology and law with the help of “metaideology” (Kazantsev, 2010, p. 48). This theory, according to the scientist, classifies ideology, distinguishing:

a) ideologies of truth, or substantive ideologies, which are divided into ideologies of transcendent truth, is religious ideologies and ideologies of corporate or party truth, which take the form of class ideologies;

b) ideologies of relations develop into law itself, passing through the stages of ideology of law, legal ideology and ideology of legality and legality;

c) ideologies of action through teleology find meaning in the ideology of pragmatism, implemented through various programs and plans for national development, doctrines and concepts of improving social practice, national economy, society, state. Ideologies of action are related to law, they follow from it, because they begin and end with lawful action, or, conversely, declare themselves as criminal ideologies of extremism. And when such an ideology becomes dominant, it abolishes the law and laws in force in the state. In this case, the ideology of action is aimed, ultimately, any of the ideologies, each seeks to become an ideology of action, and therefore the ideology of pragmatism expresses a certain stage of maturity of the nation and state;

d) ideologies of qualities are associated with the practice of accumulating exceptional subjective qualities and values, including the qualities of the individual, state institutions, legislative and law enforcement practice in courts and in the executive branch, where the quality of legality and law play an exclusive and primary role. This ideology,

based on the ideology of transcendent truth and the divine origin of law, for many centuries created from the original party or corporation of invaders – the national aristocracy, which created a nation-state and nation in parallel with the people's involvement in civilization, education of citizens. However, this process is accompanied by contempt for values, decline in morality and decline of personal moral and ethical qualities, defamation of freedom, rights and justice, their replacement by law and formal legality with contempt for human rights, freedom, equality and the establishment of a cult of power as the dominant spirituality.

All researchers-ideologists unanimously determine the historical stage of development of ideology and law through the dominance of one phenomenon over another and vice versa. Scholars identify periods when ideology exists at such levels of awareness as law, religion, ideology of pragmatism and targeted programming of national (state) development – in others (Kazantsev, 2010, p. 50).

In H.M. Markovich's opinion, ideology plays a fundamental role in shaping state legal policy. According to the researcher, the modern rule of law puts man, his rights and freedoms in the central place, which serve as a starting point for further legal transformations. The existence of a state legal ideology promotes consistent and effective reformism (Markovich, 2021, p. 54).

3. Types of ideology

Modern scientific sources contain a division of types of ideology in accordance with the method of research, among which there are metaphysical type, dialectical type and modern type of ideology (Klymenko, 2016, p. 47).

The metaphysical type of ideology is total and, in political terms, it is characterized by the emergence of ideocratic and theocratic states with a strong total ideology, usually of religious content.

The dialectical type of ideology is no longer total, but permeates all spheres of human life. It is still strongly connected with the worldview system. This type of ideology is characteristic of rationalized states (Reisner, 2008, p. 118), acting not as "oracles" of ideology, not as theocracy, but as a kind of "pedagogical institutions" that broadcast "scientific ideology".

The modern type of ideology observed in the developed countries of the West is a "minimal" legal ideology, i. e., such a rational ideology, which in general, the most important moments, in terms of the needs of modern politically organized society, offers a fairly simple system of values. Modern ideology is legal with almost "exhausted" content, the main place in which is occupied by legal dogma (what is formally defined and enshrined in

legal law) (Alekseev, 2006, p. 67), on the one hand, and the axiomatics of legal consciousness of society – on the other. This type of ideology is a kind of "minimum of ideology" and in principle meaningless. The content of the "minimal" legal ideology is the law or "legal beliefs" (Gurvich, 2004, p. 88), that is, legal ideas, by definition, are simplified and superficial, relating only to issues of socially significant behavior of the individual. But, as he emphasizes

According to S.S. Alekseev, the presence of a "minimal" legal ideology does not mean minimizing the ideological factor in modern life. The scientist argues that any, even minor changes in the minimum ideology entail very serious consequences for society (for example, if we draw an analogy with fresh water, the insufficient amount of which does not indicate a decrease in its significance, but rather vice versa) (Alekseev, 2006, p. 78).

The modern type of ideology – legal ideology, frees up space for manipulation of people's consciousness and increases the variability of such manipulation, while maintaining a minimum set of politically significant values and ideals on which man is focused. Under such conditions, the individual, breaking out of the slavery of total ideology, falls into the direct slavery of their material needs, emotions and passions (remaining alone with themselves) (Gurvich, 2004, p. 67).

G. Marcuse argues that a person can become a robot who does not think about anything but what he is directly dealing with and that allows him to meet their immediate needs and sublimated interests (Marcuse, 1994, p. 71).

Most modern scholars emphasize that the "current state" has no ideology other than the "minimal" legal, and this statement gives many scholars the opportunity to talk about the lack of ideology in such states, or even put forward the concept of deideologization (Alekseev, 2006, p. 113).

4. The influence of law on ideology

Modern scientific thought is based not only on the views of scientists and researchers, but also on the conclusions of legal practitioners who hold that the characteristics of a particular legal system is important legal ideology and this is due to the ideological component that exists in modern law and affects it.

Law functions as a general measure of interaction of all social phenomena, it regulates relations at all levels of the social system: interstate, domestic, local, as well as in all spheres of public life: legal, economic, socio-political, spiritual, family and others. And ideology, being a product of the spiritual life of people, can not help but feel the influence of law.

According to A.I. Klymenko, the process of the influence of law on legal ideology includes

both objective conditions and subjective factors. The objective side of this process, according to the researcher, is the impact on the legal ideology of existence, i. e. legal information is learned as a result of practical activities, communication with other people. From the subjective point of view – the law affects the legal ideology through legal training, education, propaganda (Klymenko, 2016, p. 36).

S.S. Alekseev notes that the law within the ideological orientation should play an educational role. The scientist emphasizes that with the help of law, the state can assert and strengthen the fundamental foundations of society, cultivating in people a sense of justice and goodness, which raises the problem of legal and moral education. S.S. Alekseev substantiates the creation in society of requirements for respect for the law, providing guarantees of compliance with the rule of law. The researcher concludes that the main task of the state in the process of forming the legal ideology of the individual is not only to replenish his legal knowledge, but also to increase the level of human consciousness, which should be guided not only by narrow personal interests but also the interests of society in general. The scientist justifies that the state, exercising ideological and legal influence on human consciousness, forms in it not only legal but also moral ideology (Alekseev, 2006, p. 90).

Thus, law can influence ideology both directly (purposefully) and indirectly (not purposefully). The direct influence of law is the assimilation by the individual of aggregate, theoretically generalized legal beliefs through legal education and training. The indirect influence of law is that a person's legal ideas are formed individually in the process of influencing the social environment.

5. The essential unity of the categories of “law” and “ideology”

The essential unity of the categories “law” and “ideology” expresses the basic and decisive commonality in these categories, which is due to the deep, necessary and internal connections and development trends in modern society. The category “essence” is inextricably linked with the categories of law and ideology as independent phenomena. However, the essence is always hidden behind the phenomena and acts as the inner meaning of the phenomena of law and ideology, which is hidden from direct perception. The philosophy of idealism endows the essential unity of law and ideology with a spiritual, ideal meaning, considering it primary in relation to the material world. Dialectical materialism, in contrast to idealism, considers the essence of law and ideology in dialectical unity as stages of the movement of knowledge of these categories, proving that both law and ideology are phenomena that express some side of the essence, and the essence is always manifested in specific objects or processes (Cassen, 2009, p. 111).

Philosophers argue that the essence can change, develop in accordance with the general laws of development of the material world. Thus, E. Coret states that the essence is an intrinsically constitutive principle of the finite, through the limitation and separation of it from other meanings of existence, constructing its certainty. The essence of the categories of law and ideology, according to the scientist, is the negative principle, the principle of restriction: through the relative denial of other meanings of these categories, which, on the one hand, negatively limits, distinguishes this finite being from others; and on the other hand, due to the certain nature of each negation, positively gives to this finite being certainty of content, the semantic form of this finite being. Due to the negativity of the restriction of these categories, their single essence realizes the positivity of the essential and semantic images of the end result, which is specifically defined. Due to the essential unity of these categories, the ultimate essence is the emergence of the relative from the absolute as the finite from the infinite being (Coret, 1998, p. 124).

Exploring this issue using logic, the category “essence” is an integral category of “quality”, without which the existence of these categories is impossible. The unity of the essence of law and ideology can be traced through the direct definition of these categories. V. Solovyov proved that law as a spiritual ideology, as a social phenomenon, contains ideological significance. Ideology as a philosophy of law that reveals the spiritual origins of the rule of law, organically linked to the categories of morality. Legal ideology evaluatively determines the content of normative-legal regulators, their expediency, cultivating human legal feelings, its legal psychology, substantiate the legal expediency of a certain vector of social development and guarantee the normal course of human life.

Thus, the essential unity of law and ideology is that the set of ideological ideas in a certain period of time is necessarily expressed in law and always takes the form of law.

6. Conclusions

Keeping in mind the above, the author concludes the following:

- modern conditions of the development of society pose a threat to the creation of global information space, the domination of which is based on the manipulation of consciousness;
- the law of modern society is increasingly becoming an ideology;
- normative feature of law gives way to ideology and an axiomatics of public legal consciousness emerges as a response to the formation of a “legal ideology”;
- the essential unity of law and ideology is to strive to legitimize the only correct understanding of some phenomena and processes through rational (law) and irrational (ideology) value-affective means.

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Юлія Андрущакевич,

кандидат юридичних наук, старший викладач кафедри інтелектуальної власності та приватного права, Національний технічний університет України «Київський політехнічний інститут імені Ігоря Сікорського», проспект Перемоги, 37, Київ, Україна, індекс 03056, scienceJ21@gmail.com

ORCID: orcid.org/0000-0003-3539-6781

ПРАВО ТА ІДЕОЛОГІЯ: СУТНІСНА ЄДНІСТЬ

Анотація. Статтю присвячено дослідженню проблеми правової ідеології як окремої правової категорії та цінностей сучасного суспільства через осмислення категорій «право» та «ідеологія», їх співвідношення в суспільстві. **Метою статті** є визначення сутнісної єдності цих категорій і питань, пов'язаних з організацією ідеологічно-правової сфери сучасного суспільства.

Методи дослідження. Дослідження ґрунтується на загальнонаукових і спеціальних методах наукового пізнання.

Результати. Обґрунтовано, що ідеологія суспільства XXI століття наповнюється цінностями, відображеними через систему правових ідей, а право набуває дедалі більшого ідеологічного змісту. Механізм реалізації сучасної ідеології тісно пов'язаний із правом, і такий зв'язок зумовлений правовим, демократичним характером сучасної державності, основою якої є політико-правова система, заснована на компромісі, договорі та консенсусі. Крім того, в ідеологічній сфері суспільства

зростає роль правового дискурсу, який вирішує проблеми легітимності державної влади та наявного суспільно-політичного ладу, а отже, в ідеологічній сфері сучасного суспільства правова ідеологія набуває дедалі більшого значення.

У статті здійснено поділ типів ідеології, серед яких – метафізичний тип, діалектичний тип та сучасний тип ідеології.

Здійснено аналіз функціонування права як загальної міри взаємодії всіх соціальних явищ, що регулює відносини на всіх рівнях соціальної системи (міждержавному, внутрішньодержавному, локальному) та у всіх сферах суспільного життя (правовій, економічній, соціально-політичній, духовній, сімейно-побутовій тощо), а також ідеології, яка є продуктом духовного життя людей та не може не відчувати на собі вплив права. Охарактеризовано процес впливу права на правову ідеологію, що містить як об'єктивні, так і суб'єктивні умови.

Висновки. Доведено, що право функціонує як загальна міра взаємодії всіх соціальних явищ; воно регулює відносини на всіх рівнях суспільної системи (міждержавному, побутовому, місцевому), а також у всіх сферах суспільного життя (правовій, економічній, соціально-політичній, духовній, сімейній тощо). Ідеологія, як продукт духовного життя людей, не може не відчувати вплив права. Істотна єдність права та ідеології полягає в сукупності ідеологічних уявлень у певний проміжок часу, які обов'язково виражаються у праві та завжди набувають форми права.

Ключові слова: право, ідеологія, сутнісна єдність, правова система, політична система.

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