

SYMBOL AND LEGAL MYTH

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Summary

The aim of this paper is to prove the hypothesis: symbol plays a decisive role in the process of legal myth-making; it occupies a central place in the structure of the legal myth. Nowadays, the role of the symbol in the structure of legal myth has not been sufficiently studied in Ukrainian and foreign science, which explains the relevance of our research. Symbol and legal myth have much in common, for example: sociocultural characteristics; timelessness; the ability to combine opposites. Every legal myth is a combination of legal reality and the unreal. Legal myths and mythologemes are rooted in the collective consciousness, but they also manifest subconscious intentions. Based on the analysis of some legal myths common in modern Ukraine and the world (myths about the omnipotence of the state and law; myth about the inevitability of punishment; myth about the inviolability of legal norms), it is shown how the set of key symbols (symbolic field) forms the primary structure of the myth. Thanks to symbolic reduction in the process of myth-making, the main thing is separated from the secondary. The evolution of the legal myth in time and space consolidates and develops "eternal" mythologemes and "eternal" mythical plots. Methods used in the study: general scientific (analysis, synthesis, induction, deduction); methods of theoretical research (from abstract to concrete), historical method, philosophical methodology (phenomenological method, dialectical method, anthropological approach).

Key words: philosophy of law, legal myth, legal consciousness, symbol, symbolization, symbolic field, symbolic reduction.

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1. Introduction

The *object* of our research is the legal myth. The *subject* of the research is the symbol as a component of the structure of legal myth.

The *relevance of the problem* is explained by the fact that in modern philosophy of law and jurisprudence, far from all aspects of legal myth have been studied. In particular, the role of the symbol as a decisive factor in the formation of legal mythology and legal consciousness has been analyzed very insufficiently.

A large number of scientific works are devoted to the problems of myth (works by M. Müller, W. Wundt, O. Losev, C. Lévi-Strauss, M. Eliade, R. Barth, K. Hübner) and the search for the essence of the symbol (E. Cassirer, J. Baudrillard, A. De Suznel, K. Svasyan, Ukrainian philosophers A. Osypov, Ya. Bilyk, O. Kyryliuk and others). Various aspects of the legal myth are discussed in the works of A. Ceglarska, D. Coscun, R. Fitzpatrick, N. Rouland, V. Bachynin, O. Balynska, Y. Oborotov, Y. Tishchenko. We use some of the theoretical findings contained in their scientific works.

The *purpose of our research* is to show the role of the symbol in the process of myth-making, as well as the place of the symbol in the structure of legal myth. Achieving the research

goal should confirm our *hypothesis*: symbol plays a decisive role in the processes of legal myth-making; it occupies a central position in the structure of the legal myth.

We used several philosophical methods. Our work uses a *phenomenological method*, which makes it possible to reveal the essential features of the legal myth and symbol, the content of the legal myth as a component of human existence and culture, the essence of timelessness, eternity of the myth and symbol. The *anthropological approach* allows us to understand the existential need of man for myths and myth-making, for symbols, as well as the essence of symbolization and myth-making as anthropological phenomena. The *dialectical method*, as one of the main methods of philosophy, is used by us to compare the rational and the irrational, the real and the unreal, the objective and the subjective in the legal myth. This method makes it possible to characterize a symbol as a combination of opposites, a meeting of idea and image, immanent and transcendent.

2. Legal myth: a combination of the real and the unreal, the objective and the subjective

Legal myth is a type of myth whose content is legal reality, that is, the legal world of man, a part of human existence that is formed by man and in which man lives and acts. It is rooted in legal discourse, legal consciousness, mentality, and traditions; "in the myths themselves specific laws are described and established – many mythical events represent precisely the constitution of political norms and rules" (*Ceglarska*: 55). Time and space are the coordinate system that determines the vectors of the spread of legal myths. As N. Rouland notes, "rules regulating life in society are born from myths: moral, religious, legal"; that is why "a careful reading of myths allows one to create an idea of the content of legal norms and customs characteristic of a particular society" (*Rouland*: 56).

But what is *legal reality*? Does any myth fit into the framework of reality with its iron and unbreakable laws? Here we encounter the phenomenon of culture as a special form of reality – *cultural reality*. As Y. Tishchenko rightly believes, "a legal myth is a part of legal culture, a form of holistic mass experience and interpretation of legal reality with the help of sensory-visual images, which are considered independent phenomena of legal reality" (*Tishchenko* 2006: 33). The author proposes to study the legal myth in two aspects: "first, as a hypothesis, ideal beliefs regarding legal phenomena that appear to their bearer as undeniable, uniquely true and self-evident; second, to look at the myth from the inside <...>, to consider the myth from the point of view of the bearer of mythical beliefs, as a living reality" (*Tishchenko* 2006: 33).

In modern legal science and philosophy of law, the legal myth has not been studied fully. This is primarily explained by the fact that most scholars rely in their research on the canons of classical jurisprudence, which are based on the principles of rationality and logic. The presumption of logic and objectivity still dominates legal research today¹. The vast majority of scholars consider law to be a rigorous science. That is why they associate the concept of "legal myth" exclusively with something irrational, with something that has long been an element of folk art and is rooted in fantasies and subconscious images. This fundamentally contradicts the prevailing view of law as an objective reality, which is considered in the positivist paradigm. "In the infinite

¹ The question is topical and important in a methodological sense: "Is jurisprudence a science (according to the criteria of scientific rationality) or knowledge in the spirit of the hermeneutic tradition?" (*Tarasov*: 71). This is a fundamental question, the answer to which depends on "whether lawyers have the right to discuss their theories, research results, and legal knowledge in the category of truth, as is typical of positive science, or whether this should be done in the style of hermeneutic traditions in terms of goals and intentions, finalist ideas" (*Tarasov*: 71).

arrogance of modernity, myth is made to correspond with the static and closed in meaning and social ordering whilst modernity is equated with progress and a fecund openness. <...> Modernity, in short, is opposed to myth". But, nevertheless, "no matter what its relevance to so-called primitive and ancient worlds, myth is vibrantly operative in modernity" (*Fitzpatrick: ix*).

An important feature of legal myths is that they "are simultaneously in the context of the rational and the sensual, that is, simultaneously in two planes of perception of law, which, in turn, allows the myth to be reflected in various structural elements of legal consciousness" (*Tishchenko 2020: 19*). In general, any myth (not only legal) exists on the border between the sacred and the everyday, the real world and the imagination, rationality and feelings, the conscious and the subconscious. This transitional nature makes every myth (including legal myth) a *transcendental phenomenon*.

We can give some examples of the most common legal myths in modern Ukraine. These include, in particular:

- the myth that an increase in the number of laws and regulations inevitably leads to a decrease in cases of offenses;
- the myth of the power and absolute justice of the state;
- the myth that all international obligations from foreign states and partners regarding Ukraine will certainly be fulfilled;
- the myth about the influence of the number of deputies on the effectiveness of the parliament;
- the myth about democracy – a political regime that opens up unlimited political and social opportunities to every citizen;
- myth of the "eternal" nature of legally formalized property rights, such as land ownership rights².

3. Symbol and myth

Symbol plays a big role in the formation of any myth. What explains this? The fact is that a symbol is an important component of culture and all cultural processes: "the idea of a symbol lies at the heart of all cultural creativity, since the model of a new cultural cosmos is always born as a *"proto-symbol"* (*Shumka: 3*). Symbols are rooted in the human subconscious; they are, according to C. G. Jung, archetypes of the subconscious (*Jung 1971: 484*).

Jung believed that the symbol performs the functions of memory of a special kind. It contains the hidden secrets of things; it "does not encompass or explain, but recalls what our modern language cannot adequately express" (*Jung 2009: 360–361*).

Since mythology is a manifestation of subconscious intentions and an essential component of human culture, the symbol performs important myth-making functions. Jung includes mythology and sacredness in the symbolic sphere as the older structures of mental functioning (*Jung 1964: 62*).

At the same time, Jung's idiosyncratic definition excludes the possibility of considering symbols as simple signs (*Colman: 190*). We can say that a symbol is a *mythologeme embodied in an image*.

² Numerous political cataclysms of the last century demonstrate the fallacy of this belief. The problem is that any legal system is part of the existing political system, the demise of which destroys the existing legal order. Representatives of some African tribes (for example, the Agni tribe) have a more realistic attitude towards property rights. They know the rule: "It is not man who owns the land, but the land who owns the man." (*Olawale: 196*).

A significant number of researchers point to the social functions of a symbol. Due to its integrative nature, a symbol is not only a cultural but also a social phenomenon. As A. Whitehead notes, since ancient times, a symbol has always been a *socio-cultural phenomenon*, a factor in regulating various aspects of social life, it contributes to the consolidation and development of society, including, of course, the legal sphere (*Whitehead: 35*).

According to E. Cassirer, myth is the most unscientific method of cognition³. Developing this idea in volume 2 of "Philosophy of Symbolic Forms" and in some other works, the German philosopher argues that myth is a special symbolic form from which all other symbolic forms are born – such as science, art, language. That is why interpreting the essence of myth is the key to understanding the essence of all humanities, including law. According to Cassirer, the essence of myth is not in the simple reflection or reproduction of reality, but in "a special typical way of constructing an image, in which consciousness goes beyond the simple reproduction of sensory impressions, but begins to resist it" (*Cassirer 1955 Vol. 2: 27*). In other words, myth is one way of knowing reality as a *symbolic reality*.

S. Langer, a follower of E. Cassirer, draws attention to the fact that myths are born from subjective symbols rooted in our imagination (*Langer: 141*). "Because it presents, how ever metaphorically, a world-picture, an insight into life generally, not a personal imaginary biography, myth tends to become systematized" (*Langer: 143*). Such generalization, the desire to construct a holistic picture of the world, becomes possible thanks to the integrative function of myth, which brings myth closer to symbol. Myth is also similar to a symbol in that mythical characters are not specific individuals, they are the embodiment of the traits of many people, and mythical events are a reflection of many events of different times: "Perhaps this transition from subjectively oriented stories, separate and self-contained, to the organized and permanent envisagement of a world-drama could never be made if creative thought were not helped by the presence of permanent, obvious symbols, supplied by nature" (*Langer: 146*). A symbol, like a myth, has the ability to combine, overcome the disunity of natural phenomena and human destinies, and in doing so construct a new world, which is actually a counterpart of our real world. Symbolism is truly a world of rich eidos, which, in the spirit of Plato's philosophy, is opposed to the world of real things. And each symbol can be considered as *an image charged with an idea*⁴.

4. The role of the symbol in the formation of legal myth and legal consciousness

We showed in the previous section that symbol plays an important role in the process of myth-making, occupies an important place in the structure of each myth. In fact, symbol is one of the main factors in the process of myth-making. As noted above, the specificity of the legal myth is that it exists simultaneously in the realm of the real and the unreal, it is simultaneously shaped by real events and images of the subconscious. The symbolism of a legal myth (i.e., the set of symbols that underlie it) is also born as a reflection of real events and phenomena of reality and the sphere of the surreal/unreal. In this way, a *symbolic field* is formed – the entire set of symbols that form the core, the center of legal myth. Each myth has its own symbolic field; like a magnetic field, it powerfully acts on the electric charges of human imagination and fiction, combining them with images of reality in a single context of a mythical narrative. A symbol,

³ Symbol, as E. Cassirer wrote, is "the sensual embodiment of the ideal," "the meaning that resides in the sensual, the purest and freest fiction that is built by cognition in order to master the world of sensual experience" (*Cassirer 1955 Vol. 1: 87*).

⁴ "It is a characteristic of presentational symbolism that many concepts may be telescoped into one total expression, without being severally presented by its constituent parts. The psychoanalysts, who discovered this trait in dream-symbolism, call it "condensation." (*Langer: 155*).

without losing its depth and imagery, embodies the essence of complex phenomena in a simplified form. In the process of symbolization, *symbolic reduction* occurs. Its peculiarity lies in the fact that symbol cuts off the secondary, leaving the main thing – that which most successfully, most fully conveys the essence of a phenomenon, the essence of an event or relationship.

Let's consider the symbolism of some legal myths that are common in our time.

The ideological doctrine, which has been spread for a long time by the authorities and the media in Russia, is based on legal myths: the myth of the "artificial nature" of Ukrainian statehood; the myth of the "gifted Crimea"; the myth of the defining hostility of Ukrainians towards Russians, hatred of everything Russian. This set of myths stems from the ancient myth of Russia as the "older brother" and Ukraine as the "younger brother" who must be taught and punished in case of disobedience. At the heart of these myths lies symbolism, which is a complex symbiosis of historical, legal, and political realities⁵, as well as fantasies, images born of imagination, and outright lies and self-deception. Some symbols have their origins in folk tales – for example, "*older brother*" and "*younger brother*", which were commonly mocked; the symbol of "*gift*" as a pledge of eternal humility (the one who gives shows kindness and sincerity, and the one who receives the gift must be grateful and humble); the myth of the legal status of *language* (language is not only a cultural phenomenon, but to a greater extent a political one). The development of the myth of language led to the actual identification of language and territory, language and statehood by the authorities of modern Russia.

Numerous legal myths with their symbolism are widespread in modern Ukraine.

Thus, one of the most common myths is *myth of the state* as the guarantor of citizens' rights. Indeed, this is how it should be; it is enshrined in the Constitution and laws. But in a difficult period of statehood formation, transformations, and a deep political and economic crisis, is this really possible?

The Ukrainian word "state" comes from "to hold, to sustain", which has Sanskrit origin (dheregh– "to hold firmly"). Therefore, the basis of legal myths about the state is *symbol of power*. This symbol combines both realities (indeed, the state has real means to protect, punish, and exert pressure) and human dreams, hopes, and illusions. Any symbol cannot tolerate emptiness. Therefore, the deepening crisis of state institutions gives rise to huge dreams and hopes that are embodied in the symbol.

Myth about law. The Ukrainian word "law" comes from the Old Slavic "конъ" – tradition, custom. Often the word "law" is associated and synonymous with "*faith*". The legal myth that a rapid increase in the number of laws (this phenomenon was observed in Ukraine in the 1990s) will automatically lead to order and stability in the state grows out of the symbolism of "law" as a symbiosis of traditions, customs, and faith (not in the religious sense). Indeed, in post-Soviet Ukraine there was a certain cultural deficit – old folk customs were forgotten by that time, and new ones had not yet been born. Therefore, in the collective consciousness, this gap had to be filled by laws – rules and rituals of behavior, recorded in legal documents and mandatory for implementation.

The legal myth of the inevitability of punishment is full of interesting symbolism. It has been widespread throughout the world since ancient times. It embodies human desires and hopes, ideas about *good* and *evil*. Good and Evil are a binary opposition that is very common in world mythology. Good and Evil oppose each other, always face to face, and wage an eternal

⁵ We mean the long stay of Ukrainian lands as part of the Russian Empire, then in the USSR, the management of all processes from Moscow, the dominance of the Russian language in the eastern and southern territories of Ukraine, and so on.

fierce battle. *Справедливість/ Justice* (this Ukrainian word comes from the words “truth”, “to know”), which is legally enshrined in the structure of every legal norm, is also a symbol. Justice is a judge who resolves a dispute between two parties. But, like any impartial judge, Justice must establish the truth, the true picture. This judge must always be on the side of Good, and this is understandable. The question is: what is good and what is evil? Who is right – the prosecution or the defense? The investigator, “the one who follows the trail,” also seeks justice and truth. If any crime is a perversion, a departure from norms and morality, an injustice (a crooked, indirect path), then the investigation and the court symbolize a straight path, directness of actions. It is precisely such directness that should ensure the inevitability of punishment.

5. Conclusions

Legal myth is a unique cultural phenomenon; it is also an anthropological and legal phenomenon. Legal mythology is born and exists, on the one hand, as a rational product, and on the other hand, as an expression of irrational, subconscious images. The objective and subjective, the rational and the sensual, the sacred and the everyday find their expression in the legal myth. These features bring it closer to the symbol. Every legal myth (like every myth in general) is saturated with symbolism. The integrative nature of the symbol makes it the core of the mythical structure. Moreover, the set of symbols that make up the symbolic field form the structure of the legal myth; they are its "matrix." Thanks to the phenomenon that we have called symbolic reduction, secondary, superficial elements of the mythical narrative are cut off. At the same time, deeper images remain, which are saturated with the idea and become mythologemes – the constructive components of the myth.

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