SOCIO-ANTHROPOLOGICAL FEATURES OF LEGAL THOUGHT: A SOCIO-PHILOSOPHICAL ANALYSIS

Abdullayeva Surayyo
Navoi state university
surayyoafruza@gmail.com

Abstract

This article examines legal thought through the lens of social anthropology, shifting the focus from formal dogmas and institutions to the processes of creation, legitimation, and functioning of law within specific human communities. The aim of the work is to reveal law as a cultural phenomenon, embedded in social practices, belief systems, and structures of everyday life. The evolution of legal thought is analyzed, from the indivisible unity of myth, custom, and morality in archaic societies to the complex interaction of official law and folk normative orders in modern pluralistic systems. It is concluded that the socio-anthropological approach reveals the multiplicity and contextuality of legal systems, their deep connection with collective identity, and offers tools for analyzing problems of integration and justice in multicultural societies.

Keywords

legal anthropology, customary law, legal pluralism, normative system, legitimacy, social order, culture, symbolic capital.

Introduction.

Traditional legal science views law as a system of abstract, universal norms, established and sanctioned by the state. However, this model, dominant in Western legal thought since modern times, leaves aside the question of how law actually lives, is thought of, and experienced by people in their specific social worlds [1]. Social anthropology, with its focus on empirical research of local communities, offers a fundamentally different perspective: law as a social fact, inseparable from culture, economy, religion, and kinship relations.

The subject of study becomes not so much the text of the law, but "living law" (a concept introduced by E. Ehrlich) - the real practices of dispute resolution, notions of what is proper and just, mechanisms for maintaining social order. Thus, the socio-anthropological approach to legal thought involves analyzing how normative reality is constructed in the collective consciousness, which symbols and rituals support it, and how it changes under the influence of internal and external factors.

Historically, legal anthropology has gone through several stages, each forming its own view on the features of legal thought:

Evolutionism (19th – early 20th centuries, L.H. Morgan, H. Maine, E.B. Tylor): Legal thought was viewed as a product of progressive development from simple to complex forms. It contrasted "modern" law, based on contract and individual rights, with "archaic" or "customary" law, based on status and collective responsibility (H. Maine's formula "From Status to Contract"). This approach, though criticized today for ethnocentrism, first raised the question of the cultural and historical variability of legal systems.

Functionalism (B. Malinowski, A.R. Radcliffe-Brown): The emphasis shifted to the role of legal norms and institutions in maintaining social integrity and equilibrium. Malinowski, studying the Trobrianders, showed that "primitive law" is not blind adherence to custom, but a rational system of mutual obligations (e.g., kula), ensuring social exchange and stability. Legal thought here is part of the mechanism of social control.

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Materials and Methods.

Interpretive anthropology and ethnography of law (C. Geertz) [1]: The most influential contemporary direction. Geertz proposed viewing law not as a set of rules, but as "a distinct way of seeing the world," a system of meanings through which a society interprets itself. Law, according to Geertz, represents "legal sensibilities," unique to each culture. For example, Islamic fiqh, Hindu dharma, or African customary law are not just alternative codes, but different ways of conceptualizing order, justice, and truth. Legal thought becomes the subject of "thick description," revealing its symbolic and semantic layers.

In non-literate and early-state societies, legal thought possesses a number of key features distinguishing it from modern law:

Holism: Law is not выделен (distinguished) as an autonomous sphere. It is dissolved in religion, morality, etiquette, and economic practice. Normative regulation is carried out through custom, perceived as an eternal order given by ancestors or gods. Violation of custom is a threat not just to "law", but to cosmic harmony and the well-being of the entire collective.

Procedurality: Methods of dispute resolution (public discussions, ordeals, oaths, mediation by elders) are often more important than substantive norms. Ritual serves as a dramaturgy that restores the violated order and social ties. The process is not adversarial, but reconciliatory in nature; the goal is not to establish guilt, but to restore consensus [2].

Collective Responsibility: Legal thought is focused on the group (kin, clan, community), not the individual. Sanctions (e.g., blood feud, composition – wergild) are also addressed to and from the group. The individual exists only as part of the collective body.

Concreteness and Casuistry: Norms are formulated not abstractly, but in relation to specific life situations (e.g., "If a man knocks out the tooth of his equal, then one shall knock out his tooth"). The abstract concept of "human rights" is unthinkable here.

Results and Discussion

One of the main discoveries of legal anthropology is the understanding that the state's monopoly on law is more of an ideological myth than reality. Legal pluralism - the coexistence of multiple normative orders (state law, religious law, customary law, professional codes, etc.) within a single social field - is a universal phenomenon, especially in the era of globalization [3].

Individuals and groups become "consumers" of law, choosing the normative system that promises them the greatest benefit in a specific situation (e.g., turning to a state court or a council of elders, resolving an issue by Sharia or secular code). Legal thought acquires an instrumental and situational character.

Normative orders do not exist in a vacuum. They borrow concepts, procedures, and legitimizing narratives from each other. The state may incorporate customary law, while local communities reinterpret state laws within the framework of their cultural logic.

Different legal systems appeal to different sources of legitimacy: the will of the people, sacred scripture, the tradition of ancestors, rational expediency. Legal thought becomes a field of struggle for the symbolic power to define what constitutes "true" law.

An important aspect of the socio-anthropological approach is the analysis of informal practices, which often undermine or reformat formal legal provisions. The concept of symbolic capital (Rosen) [8] helps to understand how law works in reality. The legitimacy and effectiveness of law depend not only on coercion but also on the recognition of its authority by the community. This authority (symbolic capital) accumulates through history, rituals, language, and the figures of authoritative bearers (judges, elders, priests).

Corruption, nepotism, informal agreements - from an anthropological point of view, these are not simply "deviations", but alternative normative systems based on the logic of patron-client

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relations, kinship obligations, and exchange of services. They compete with official law for the regulation of social relations, possessing in some contexts greater legitimacy in the eyes of the population.

Conclusion.

Socio-anthropological research of legal thought demonstrates that law is not only and not so much a technique of social control, but a fundamental part of human culture, a way of comprehending and organizing the social world. Its features are determined by:

1. The cultural and historical context, which provides the basic categories (justice, guilt, responsibility, personhood).

2. The structure of sociality (individualistic or collectivist).

3. The mode of legitimation (sacred, traditional, rational-legal).

4. The conditions of legal pluralism, in which actors maneuver among a multitude of normative orders [4].

Understanding these features is critically important in the modern world, facing problems of migrant integration, protection of cultural rights of minorities, reform of justice systems in post-colonial countries, and the conceptualization of global law. Recognizing the plurality and cultural embeddedness of law allows for moving away from unificatory and often imperialistic legal models towards more dialogical and context-sensitive forms of legal regulation, where the law does not suppress but enters into dialogue with other forms of society's normative life.

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