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Social Legal Consciousness or Legal Culture?

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Abstract: In contemporary legal sociology research, legal culture and legal consciousness are often used as synonymous or closely related, overlapping concepts. The aim of this paper is to elucidate the possibility of separating the two concepts through a more in-depth analysis. The first part of the paper explores the ideological-historical connections between the two concepts and argues that the conceptual confusion between legal culture and legal consciousness that characterises contemporary legal sociology occurred in the 1970s in American legal scholarship. The concept of social legal consciousness is first discussed in the context of conceptual analysis. After a general definition of legal consciousness, the components of individual legal consciousness, the factors and mediating structures linking individual and social legal consciousness, and finally the theoretical issues of conceptualisation are discussed. The second part of the conceptual analysis focuses on the concept of legal culture. The difficulties of defining the concept are taken into account, starting from a review of the academic debate surrounding the work of Lawrence Friedman. The concept of legal culture is constructed on the basis of the criteria for conceptualisation derived from this. The core concept is culture, and the distinguishing feature is a sociological concept of law. Next, it introduces the distinction between lay and professional culture and examines the extent to which the concept of legal culture thus outlined meets the criteria set out above. The paper concludes by summarising the rationale and yields of the conceptual analysis, highlighting the dynamic relationship between legal culture and social legal consciousness.

Keywords: legal consciousness, individual legal consciousness, social legal consciousness, legal pluralism, culture, sociological concept of law, lay legal culture, professional legal culture

1. Introduction

Some of the concepts that appear in the following analysis – for example, the idea of social control, legal culture or legal pluralism – were formed during my legal anthropological research in the 1990s (Fekete, 2021, pp. 11–14). More closely related to my arguments are the insights that have emerged in the course of theoretical and empirical studies of the Hungarian population's legal consciousness over the past decade (H. Szilágyi, 2018). I am especially indebted to Balázs Fekete and György Gajduschek – members of the Research Group for Legal Sociology at the Faculty of Law and Political

Sciences of Pázmány Péter Catholic University – for their professional and collegial cooperation in subsequent interdependent research projects, and for the research fellowship of the Eötvös József Research Centre.[1] However, the earlier version, which is the immediate predecessor of this thought train, was the result of a project organised and led by László Kelemen (H. Szilágyi et al., 2022, pp. 6–36). Partly because this was presented at the international conference *Hungarian Experiences,*[2] and partly because Hungarian legal sociology has an unbroken tradition of legal research going back to the mid-1960s (Fekete & H. Szilágyi, 2017), I will make regular reference to the results of Hungarian research throughout the paper.

The starting point of the study is to establish the state of affairs that in contemporary empirical sociological research on law, legal culture and legal consciousness are often presented as synonymous or closely related, overlapping concepts. In my view, however, the phenomenon captured by the two concepts can be clearly separated through a more in-depth analysis. The root of this conceptual ambiguity can be brought to light by exploring the ideological-historical connections, and therefore in the first part of this paper I will briefly outline the history of the two concepts and argue that the conflation of the two concepts occurred in American legal scholarship in the 1970s.

The concept of social legal consciousness is then discussed first. In this context, I will first try to define the concept of legal consciousness, then I will discuss the components of individual legal consciousness, the fields of influence and mediating structures linking individual and social legal consciousness, and finally I will consider the conceptual issues of conceptualisation.

In the second part of the conceptual analysis, I will look at the concept of legal culture. The starting point for taking stock of the difficulties of defining the concept is a review of the academic debate that has developed in the wake of Lawrence Friedman's work, published almost half a century ago. Bearing in mind the conceptual criteria drawn from this, I will attempt to construct a concept of legal culture by outlining a concept of culture as a stem and a sociological concept of law as a distinguishing feature. I will then introduce the distinction between lay and professional culture and examine the extent to which the concept I have sketched meets the criteria I have previously set out.

The conclusion of the paper summarises the meaning and implications of the conceptual analysis, highlighting the dynamic relationship between legal culture and social legal consciousness.

[1] Theoretical and methodological issues of legal consciousness research in Hungary. Senior Research Fellowship, Eötvös József Research Centre, 2020.

[2] Hungarian Experiences. Theoretical and Methodological Issues of Sociological and Empirical Comparative Research of Legal Consciousness (12–13 May 2022). Research Group for Legal Sociology, Pázmány Péter Catholic University, Budapest.

2. The concept of legal culture and legal consciousness from a historical perspective

The conception of law as a cultural phenomenon dates back to the beginning of the 19th century, in the two strands of the historical school of law that emerged in the English and German traditions – as a reaction to the rationalism of the French Enlightenment – which emphasised the concept of culture over civilisation. The two were linked by an insistence on the historicity of law and the idea of the spontaneous, organic development of law, as well as an interest in the early stages of legal development. While Friedrich Carl von Savigny (Savigny, 2002) was the founding master of the German school, Henry Sumner Maine (Maine, 1861) can be considered the founder of the English school.

Both branches of the historical legal school had a significant influence on the cultural anthropology that developed in the second half of the 19th century, and within it, on legal anthropology. However, the English school of social anthropology – which, from Bronislaw Malinowski (Malinowski, 1926) through Isaac Schapera (Schapera, 1938) Max Gluckman (Gluckman, 1965), Philip Hugh Gulliver (Gulliver, 1963) and Simon Roberts (Roberts, 1979) had an unbroken line of legal anthropology until the 1980s – was early influenced by French sociology, especially the work of Émile Durkheim (Leach, 1982), and thus the concept of culture was relegated to the background. In the United States, however, the cultural anthropology school established by Franz Boas (Boas, 1911; 1940) continued to preserve the original German approach to the concept of culture. The study of legal phenomena also quickly attracted the interest of American cultural anthropology, as shown by the distinguished masters of legal anthropology in the period from the 1930s to the 1980s: Edgar Adamson Hoebel (Lewellyn & Hoebel, 1941; Hoebel, 1951), Paul Bohannan (Bohannan, 1957), Leopold Pospíšil (Pospíšil, 1958), Sally Falk Moore (Moore 1973; 1978) and Laura Nader (Nader, 1969; 1990), to name but a few.

The influence of the German historical legal school was decisive for the legal ethnology founded at the end of the 19th century by Albert Hermann Post (Post, 1886) and Josef Kohler (Kohler, 1885). However, ethnological jurisprudence should be mentioned primarily because of its significant influence on the legal ethnography that was developing in Central Europe, including Hungary (Fekete, 2021, pp. 2–10; Bognár, 2016), at the beginning of the 20th century. In the period between the two world wars, the movement lost momentum in the stifling atmosphere of nationalism and then Nazism, and the new generation of researchers emigrated to the United States and integrated into the scientific community there (Schott, 1986).

The Dutch *adat* law school, the third major school of legal anthropology (Griffiths, 1986a), pioneered by Cornelius van Vollenhoven and Barend ter Haar (Haar, 1949), was more successful during this period. After World War II, research, which had been interrupted in the 1940s, was resumed with the work of major authors such as Geert van den Steenhoven (Steenhoven, 1962), Fons Strijbosch (Strijbosch, 1985), Kebet and Franz von Benda-Beckman (Benda-Beckman & Benda-Beckman, 2007), John Griffiths (Griffiths,1986b) and Agnes T. M. Schreiner (Schreiner, 2003; 2019).

From the late 1940s onwards, academic interaction between the three main schools of legal anthropology – English, American and Dutch – was intensified. Over the next three decades, a series of new theoretical concepts – e.g. legal pluralism, social control, semi-autonomous social field theory – and methodological considerations emerged in legal anthropology.

The 1970s were a critical period in the history of anthropology: the disintegration of former colonial empires accelerated, and former colonies gained independence, which led anthropologists to "return home". As a result, in the 1980s, a succession of departments and research centres for "socio-legal studies" were set up, in which anthropologists worked together with sociologists, and the theoretical import of legal anthropology contributed greatly to the renewal of the sociology of law. Part of this was that anthropologists brought with them the concept of culture, as opposed to the structural-functional or systems-theoretical approach that dominated legal sociological thinking of the time. This effect was further enhanced by the fact that the "linguistic turn" in philosophy was also beginning to make itself felt in social research. It is this intellectual context that explains the interest in Lawrence M. Freedman's *The Legal System,* published in 1975, to which we generally associate the renaissance of the concept of legal culture up to the present day.

In European jurisprudence, the concept of legal consciousness also appeared at the turn of the 19th and 20th centuries. Kohler, arguing for the universality of law – its existence in all societies without historical or geographical limits – stressed that the universal psychological basis of law is the sense of law (Recthsgefühl) that operates in every human being. This psychological aspect was the basis of Leon Petražycki's sociological theory of law, who believed that law is the result of "legal experiences" built up from emotions and psychological impulses (Podgórecki, 1981). Adam Podgórecki, a disciple of Petražycki, operationalised this idea in the mid-1960s for the KOL research he initiated and organised, in which he separated the elements of legal knowledge and of opinions and attitudes towards law within the range of individual psychological factors determining legal compliance. In addition to German, Dutch and American researchers, this research project also involved Polish and Hungarian sociologists of law (Podgórecki et al., 1973). Although Podgórecki was later forced to leave Poland because of his "anti-communist academic activities" (Clark, 2007), the concept of legal consciousness nevertheless became accepted in European Marxist legal theory and sociology of law. At the same time, it quickly found its way to legal sociologists who joined the "critical legal studies" (CLS) movement, which was taking shape in American jurisprudence in the second half of the 1960s and was partly Marxist and neo-Marxist in inspiration.

The coexistence and conceptual confusion of legal culture and legal consciousness thus occurred in American jurisprudence, as functionalism and systems theory eclipsed the cultural approach to law in Western European sociology of law, and socialist jurisprudence, based on orthodox Marxism, rejected the concept of legal culture until the 1980s.

3. The concept of legal consciousness

Legal consciousness is an empirically analysable set of individual and group psychological factors directed towards legal culture. It is a specific configuration of psychological and social psychological phenomena – knowledge, opinions, attitudes, prejudices, impulses, skills and abilities – that form a mentality about law at the group level.

In the definition of a legal consciousness, we have combined individual and group psychological phenomena, which are discussed separately below.

3.1. Individual and social legal consciousness

The distinction between the individual and the social level of legal consciousness – with regard to the conceptual framework of the prevailing Marxist social science, and more specifically of Marxist legal theory – was developed in the 1970s by Hungarian legal sociology (Sajó, 1976),[3] which partly explains why the "social" as opposed to the individual remained to a certain extent undefined. The reason for this was that, although it was clear to researchers that social stratification was of great significance in the conditions of socialist society, the image of a "classless society" desired at the level of political ideology, as well as the actual political practice of destroying traditional communities and preventing the spontaneous formation of groups, both tended to equate the concept of the "social" level with the "overall social", i.e. state level. The separation of the individual and the social level thus implicitly implied that the individual was directly linked to the state, which represented society, without any further intermediary group. In fact, researchers were already aware at the time of the oversimplification of this conception of the individual's relationship to society as the most comprehensive group.

With regard to the social level of legal consciousness, we must see that legal consciousness at the social level is related to the institutional layer representing the (political) community as a whole – which we usually identify with the state or the government – in a different way than individual legal consciousness is related to the individual as a social and psycho-physical reality. In contrast to the individual's relation to his own legal consciousness, the state is by no means the exclusive bearer and shaper of social legal consciousness. While the individual's legal consciousness can in principle be reconstructed from the behaviour of the individual, the "activity" of state bodies cannot be used to infer the legal consciousness of society in all its aspects, since the latter encompasses a much broader phenomenon and is much more complex in relation to the institutional layer identified as the state.

[3] In fact, "socialist legal sociology" existed only in Hungary and Poland, because in the other socialist countries legal sociology could not become institutionalised at that time (see Fekete & H. Szilágyi, 2017).

3.2. The structure of individual legal consciousness

Historically, the separation of the categories of legal consciousness and legal knowledge in the study of individual legal consciousness was first developed in legal consciousness research in the 1960s and 1970s (Kulcsár, 1967; Podgóreczli et al., 1973). In further analysis, this distinction will be linked to traditional psychological concepts describing the structure of the individual psyche.

In the conceptual relation between legal consciousness and legal knowledge, the former is the more comprehensive category, and legal knowledge is thus a component of legal consciousness, which can be related to the cognitive (conscious, rational, intellectual) sphere of the individual psyche. It is also to a certain extent a residual category, because it includes all the other psychological aspects not covered by legal knowledge: in particular the emotional and volitional elements, which belong to the affective (subconscious, emotional) or reactive part of the psyche. In what follows, we will therefore review the intellectual (a), emotional (b) and volitional (c) aspects of legal knowledge, and finally we will examine the problems of the structure of legal consciousness (d).

Ad (a). The notion of knowledge of the law must certainly be interpreted more broadly here than knowledge of the rules of positive law, since "understanding the law" and "the ability to use the law as a tool" also presuppose some knowledge of the dogmatic layer. From the very beginning of the KOL research, the starting point was that knowledge of the law is neither a necessary nor a sufficient condition for compliance with the law, although knowledge of the law is clearly an indispensable element of legal competence. Empirical studies have revealed that lay people's knowledge of the law is generally low (Aubert, 1963; Black, 1973; Valverde, 2003) – certainly much lower than the principle of *ignorantia iuris non excusat* proclaimed by lawyers is not to be regarded as a mere fiction justifying legal responsibility – and varies from one area of law to another. The rules of criminal law are generally the best known, while those of administrative and civil law are much less so. Similarly, lay people are more familiar with substantive rules than with procedural rules. The social factors that most influence legal knowledge are literacy (education) and the amount of legal experience – while differences such as age, gender, income or "media consumption" do not or only to a small extent.[4]

However, legal knowledge does not cover all the elements of the cognitive sphere that can be associated with law, since it also includes, obviously, the patterns of prejudices and attitudes that are not rationally controlled on a case-by-case basis, but which can become the guiding principles of legal or legally relevant actions. Of course, their examination is also an integral part of the KOL research.

Finally, there is the very general question of the extent to which reason, conscious and rational deliberation can be regarded as a determinant of individual action. As we know, the modern legal doctrine's conception of man is based on this very premise, and sees the citizen as being able to know the legal rules, to adapt his actions to them and, in general, to rationally calculate the consequences of his actions. Perhaps the closest approach to this

[4] These findings have also been confirmed by Hungarian legal knowledge research (see Kulcsár, 1967; Gajduschek & Fekete, 2015; Hollán & Venczel, 2019).

conception is that of rational choice theory, while the social-psychological approach emphasises that people follow the law much more often than rational deliberation would indicate that it is "worth" for them to do so (Tyler, 1990).

Ad (b). In the problem of the emotional attitude towards law, the first question that arises is whether there exists in the human soul a sense of justice or a specific sense of right. The traditional conception of law answers the question in the affirmative, and for example, at the end of the 19th century it seemed to Joseph Kohler to be evident that the "sense of right" (Rechtsgefühl) was an absolutely essential element of the human mind (Kohler, 1885; Schott, 1982). This idea was, however, eclipsed in the second half of the last century by the concept of instinct reduction in psychology, which saw the human psychological character as being unspecialised and denied the existence of an instinctive impulse that could be identified with a sense of justice (Gehlen, 1987; Berger & Kellner, 1965). In the light of Konrad Lorenz's research in the 1970s, however, this problem can be reconsidered (Lorenz, 1974).

It is then worth examining how feelings such as "respect", "loyalty", "trust" or even "fear" and "anxiety" are expressed and interpreted in relation to law. In the last decade, theoretical and sociological research on this problem has increasingly drawn on recent findings in neuroscience. Indeed, a separate interdisciplinary field of research (law and emotions) is slowly taking shape in international research. The research of András Sajó, who has studied how legal (constitutional) "public sentiments" emerge from individual moral emotions in interaction with legal and political institutions, is very instructive in this respect (Sajó, 2010).

Ad (c). The traditional legal doctrine has tended to explain non-compliance or unlawful conduct by a "defect of the will". One important issue that arises when examining the psychological element of will is the problem of "force". The ability to use the law as a means to achieve individual goals – legal competence – includes, in addition to the element of knowledge of the law, the willingness to engage in conflict. This link seems to be supported by some of the results of Hungarian legal consciousness studies conducted in the 1970s. Researchers have used PFT (Personal Frustration Tolerance) tests to investigate how individual frustration tolerance is related to the degree of tolerance of deviant behaviour. The results showed that individuals with higher frustration tolerance were generally more intolerant (more likely to act against deviant behaviours) (Sajó et al., 1977). The everyday experience also highlights the problem that conflict tolerance and willpower also change with age: older people tend to avoid conflict and their willpower gradually softens. An interesting contribution to the study of the problem of "weakness of will" is a development in rational choice theory, which analyses how rational foresight can be used to overcome this psychological difficulty (the so-called "Odysseus problem") (Elster, 2015, pp. 99–113).

It should also be mentioned that in the course of empirical research on legal consciousness, researchers have developed a number of concepts based on some combination of the traditional concepts of individual psychology – distinguishing between cognitive, reactive and emotional aspects of personality – in an attempt to refine the exploration of the components of individual legal consciousness. When studying the process of legal education, the concept of "legal understanding" was used in connection

with the notion of legal knowledge, which mixes the conscious elements of explicit knowledge of the law with the emotional, instinctive impulses of a sense of justice. The ability to evaluate is highlighted as a psychological factor in its own right in the study of the role of values in the relationship to law. This evaluative moment refers to a specific combination of cognitive and emotional elements of consciousness. Very frequently used concepts are also "attitude" and "prejudice" (Vidmar, 1997; Fox, 1999; Riesman, 1999; Sapiro, 2001; Amand & Zamble, 2001), which are also defined in social psychology as a combination of cognitive, emotional and reactive elements (Allport, 1935). The "ability to use the law", which is highlighted as a separate component of legal consciousness, alongside legal knowledge and attitudes towards the law, implies evaluative and volitional components in addition to legal knowledge. In analysing the sense of entitlement, three components have been identified: "legal alertness", "ability to identify the law" and "legal mobilisation" (Fekete, 2019; Fekete et al. 2022). The first of these concepts is similar to "legal awareness", the second to "legal knowledge" and the third to the "ability to use the law".

Ad (d). Already after the first wave of KOL research, researchers concluded that a single, more or less coherent set of beliefs and motives about law does not emerge in individual consciousness (Berkics, 2015a; Berkics, 2015b; Gajduschek, 2018). Individual legal consciousness is thus fragmented, knowledge, evaluations and emotional attitudes towards law are full of internal contradictions and therefore do not form a single dimension of consciousness, so that attitudes towards law are strongly linked to the social context.

We should also be aware that the fragmentation of the structure of individual legal consciousness, aggregated at group or societal level, produces sociologically describable and measurable patterns. The study of these patterns opens up the horizon of analysis of individual legal consciousness to social legal consciousness, legal culture, and social history and legal history research.

3.3. The relationship between individual and social legal consciousness

In the system of relations linking the individual to society, we can distinguish three fields of influence from society to the individual: socialisation (a), communication (b) and the application of law (c). Among the effects from the individual to society, we should again distinguish the fields of communication (d) and the fields of legally relevant social actions (e) and explicitly legal actions (f). At the societal level, we must distinguish between the institutional layer (g) and the social legal consciousness (h).

Ad (a). The concept of socialisation as used in social psychology is applied here in a somewhat narrower sense. On the one hand, we disregard the essentially interactive nature of the learning process, i.e. the feedback of the behaviour of the educated on the educator during the process of education. On the other hand, although, as the concept of lifelong learning is being adopted in social psychology, researchers are paying increasing attention to the adult stage of social learning, and to the problems of re-socialisation and "re-education", the first stage of socialisation, which ends with the development of a solid individual identity at young adulthood, is relevant to legal socialisation. This latter

consideration is based on the fact that the adult stage of legal socialisation is essentially characterised by the accumulation and processing of knowledge and experience of the law in the cognitive sphere of the personality, which, however, is highlighted in our proposed model by the specific reference to the impact of social communication and the application of the law.

The process of legal socialisation in the phase of social education up to the acquisition of identity is not clearly distinct from other aspects of education. Especially in the early period from birth to puberty, during which the emotional and volitional elements of the personality are formed in relation to the various social manifestations of authority and rules. In the period following puberty, the cognitive sphere gradually becomes dominant in the course of personality development, and in parallel, knowledge of legal authorities and laws becomes increasingly differentiated and enriched, while emotional and moral attitudes towards them become more reflective and critical. Whilst the family is the most important agent in the early stages of socialisation, later on it is school, peer groups and, nowadays increasingly, the media that have a decisive influence.

In social psychology research, attempts have been made to interpret and empirically explore the phenomena of socialisation on the basis of two basic theoretical approaches. In the 1970s, the "cognitive development" movement, based on the work of Jean Piaget (Piaget, 1932; Piaget, 1936), was founded on the research of Lawrence Kohlberg and June L. Tapp (Tapp & Kohlberg, 1971). It was also around this time that the theory of "social learning", coined by Ronald L. Akers and Albert Bandura (Bandura, 1977; Akers, 1998) was formed. While the former emphasised the internal dynamics of cognitive development, the latter stressed the importance of external, social influences in the theoretical model of socialisation. The "integrated approach", developed in the 1980s in the mediation between the two approaches and the combination of their elements, was first elaborated in the works of Ellen S. Cohn and Susan O. White (Cohn & White, 1990).

Over the past half century, legal socialisation researchers have explored a number of concepts and theoretical frameworks aimed at theorising the phenomenon of legal socialisation, and have conducted a wide range of empirical research that has produced important results for legal policy and practice.

Among the former, we can refer to the conceptual separation of the cognitive aspects of legal knowledge and "legal reasoning" from emotional motivations and evaluative attitudes and the ability to use the law (legal competence). We can also mention theoretical constructs that explore the phases and the internal complexity of the development of legal knowledge and the nature of the interactions between agents and subjects of education (Kourilsky-Augeven, 1997; Kourilsky, 2000; Vari-Szilagyi, 2004; Fagan & Tyler, 2005; Trinker & Tyler, 2016).

Empirical research topics of practical relevance include, for example, the results of studies on the development of legal understanding and legal competence, which can provide ammunition for legal policy debates on setting the age of criminal responsibility and the inclusion of minors in legal proceedings (e.g. as witnesses) (Peterson-Badali & Abramovitch, 1992). The results of a study on the role of schools and the media in the development of legal knowledge and attitudes towards the law are also instructive and could be used to improve curricula and broadcasting policies to promote legal education.

Ad (b). As regards the dimension of communication from the social level towards the individual, we note that the other direction of interaction – from the governmental level: feedback – has been separated in the analysis (d). In the context we are now considering, we are thus thinking primarily of the flow of information on the law sent by state institutions to citizens through the various channels of mass media. In terms of content, this covers a very wide range of knowledge about the law, from the promulgation and publication of specific legal rules, to the accessibility of court decisions, to information on the organisation and functioning of the legislative and judicial bodies. From the point of view of the communication process, the well-known problems of indirect and one-way communication arise in ensuring access to legal information – as a condition of the rule of law and legal certainty, as a means of legal education and possible "legal propaganda" – in the selection of information and even in the examination of the possibility of disinformation and manipulation. Moreover, these issues take on an even more complex form in the context of the information structures and mechanisms of action of the various media: print, radio, cinema (Machura & Robson, 2001), television, social media, etc. Particular attention should be paid to the impact of the Internet social media (Facebook, Twitter, etc.) on legal communication, which have been developing at a rapid pace in recent decades. On the one hand, because of their interactive nature, unlike traditional media, and on the other, because they also function as an "alternative" public sphere to the "official" one (Burkell & Kerr, 2000; Black, 2002; O'Day, 2004).

However, the element of communication is present in some form in all the aspects we have highlighted. For example, in legal education, the media appears as an essential agent. Communication between parties is also an important element in the application of the law, as is the expression of individual opinions and individual legal actions or legally relevant other social actions. In view of this consideration, it becomes clear that the empirical research we are now highlighting is only a narrow field within the broad field of theoretical and empirical research exploring the role of communication in law.

In the 1960s and 1980s, the work of Jürgen Habermas (Habermas, 1984; Habermas, 1987), Niklas Luhmann (Luhmann, 1989; Luhmann, 1992), Günther Teubner (Teubner, 1993), Jacques Derrida (Derrida, 1978) and Jean Baudrillard (Baudrillard, 1970; 1994; 2000), among others, brought the phenomenon of communication to the forefront of European social theory. In the 1990s, David Nelken sought to synthesise this European social theoretical tradition with the new trends in Anglo-Saxon jurisprudence that had been emerging since the 1980s, in particular "law and language" (Goodrich, 1990; Gibbons, 1994; Tiersma & Solan, 2012), "law and semiotics" (Jackson, 1985; Kevelson, 1988; Jackson, 1994; Wagner & Bhatia, 2009) and "law and literature" (White, 1973; Aristodemou, 1993; Duxbury, 1995; Ward, 1995), in order to define the field of research on "law as communication" (Nelken, 1996). However, the impact of these social and legal theoretical developments on empirical sociological research on law was only felt after decades of delay, and often more through detours of methodological considerations. Thus, the empirical study of the social communication of law within the sociology of law was part of the theme of the KOL research, the theoretical background of which was the mid-level theories of contemporary political sociology, social psychology and communication theory.

Ad (c). The "counterpart" of the application of law is the field of individual legal actions (f), and the two together cover the field of law fulfilment in the traditional sense – the application and compliance of law. The scope of enforcement thus covers primarily ex officio actions initiated by public authorities, while individual, citizen-led enforcement is included in the scope of individual legal actions. In a very simplified way, the former includes administrative, law and order, law enforcement and criminal justice activities, while the latter includes private law actions and the operation of civil justice. On a closer look, it is clear that in modern legal systems there are a number of institutions and procedures in which ex officio official action is closely linked to individual acts of enforcement. This is evident, for example, in the case of administrative licensing procedures or the operation of various mediation and conciliation forums. Thus, the separation between the application of law and individual legal actions can only be relative.

In the last decades of the last century, KOL research has confirmed the assumptions of traditional doctrine by empirically demonstrating that legal experience in the application of the law has a significant impact on both the level of individual legal knowledge and the perceptions of the law (Sarat, 1990; Reifman, 1992; Savelsberg, 1994; Cooper, 1995; Sampson & Bartush, 1998). Two theoretical approaches to understanding the impact of the application of law on individual legal knowledge have emerged and continue to be influential today. One is the economic analysis of law, of which Richard Posner (Posner, 1983) is perhaps the best known representative. The more comprehensive theoretical background of this tendency is provided by the theory of rational decisions. The description and evaluation of the functioning of the application of law is based on the simple thesis that the application of law with sufficient predictability and efficiency makes it "cheaper" to follow the law and "more expensive" to break the law or to avoid it. The best known authority of the other approach, based on social psychology, is Tom R. Tyler (Tyler, 2006; Tyler, 2010). From this perspective, the role of the application of law in influencing the individual's sense of justice can be seen in the strengthening or weakening of the respect and trust in the law – legitimacy – that has been developed in earlier stages of socialisation. While the economic analysis of law focuses on the system of sanctions in the context of the application of law, which makes illegal or evasive behaviour costly and therefore undesirable from the point of view of rational consideration, the social psychological approach emphasises the justice of the application of law, but also the importance of procedural justice and fair play.

In addition to the research inspired by these two essentially macro-level theories, we must also remember the efforts that draw mainly on developments in legal anthropology, which developed in the United States in the 1960s and 1980s in the wake of the work of Sally Falk Moore and Laura Nader (Moore, 1973; Nader, 1990). The focus of this research is on understanding how legal experiences are created in the course of the application of law, and concentrates on a micro-sociological analysis of the functioning of legal forums as "semi-autonomous social fields".

Ad (d). In order to take into account the effects from the individual to the social level, we must first consider the phenomenon of individual communication. This requires distinguishing between what people think and say and how they act. Individual expressions about the law do not necessarily reflect what a person really thinks about the law,

and even less can be inferred from how he or she will act in a given situation. This insight leads to two important conclusions about individual expressions of rights.

One is that by communicating an opinion on law, which necessarily involves some proportion of the elements of substantive knowledge of law and of evaluation of law, the individual enters the sphere of social existence, i.e. individual legal communication has political implications. By formulating and expressing an opinion on law, the individual enters into the process of public opinion flowing, in the terms of Gabriel Almond and Sydney Verba, "upwards" from the citizen to the government, and becomes part of the shaping of political culture (Almond & Verba, 1963). The close link between legal consciousness and political culture is thus already clear at the level of individual communication.

On the other hand, the above considerations should also lead researchers to a kind of methodological caution: it is not necessarily reliable to ask the opinion of the person under study alone, without trying to observe his or her actual behaviour, in order to study individual legal consciousness.[5] Hence the particular importance of micro-sociological studies in this area. This conclusion is also supported by taking into account the interactive nature of communication at the individual level, since when examining discourse at the "ground floor" of social life, we cannot ignore the structural elements that provide the context – social stratification and group formation, organisational forms, social fields (O'Barr & Conley, 1988; Sarat & Kearns, 1993; Reisman, 1999; Ewick & Silbey, 2003).

Ad (e). Among the legally relevant social actions, it is worthwhile to distinguish at the outset between illegal conduct and actions aimed at avoiding the law. The forms of violations and, more importantly for the study of legal consciousness, the motivations behind them can be very diverse. At one extreme, there is the case of civic disobedience, a conscious, politically or morally motivated, open (but non-violent), demonstrative defiance of the law. At the other extreme, there may be cases where the cause of the infringement is simply a lack of knowledge of the law *(ignorantia iuris)*. These include the complex mass of infringements resulting from "alienation from the law", from rational deliberation, from emotional influence, from the "error of intention" or "error of will", or some combination of these, which the liability systems of the various branches of law seek to systematise at the dogmatic level.

Marc Hertogh attempted to create a mid-level theory to account for the cognitive factors behind violations (Hertogh, 2018, pp. 49–64), but apart from this, the KOL studies have been based on some derivatives of the previously presented theoretical directions of obedience to law – social psychological and rational choice theory – and adapted to the responsibility system of each branch of law. Criminology naturally plays the leading role in this research (Fickenauer, 1995; Anderson, 2000; Akers & Jensen, 2006; Vigh & Tauber, 1988; Kerezsi, 2006), given its moral and political weight, and the empirical exploration and analysis of the motives for offences receives much less attention in the fields of civil and administrative law.

[5] This problem is particularly acute in survey-type questionnaires: the respondent does not answer what he or she thinks about a particular question, but what he or she thinks is generally "expected", "politically correct", etc.

As far as law avoidance behaviour is concerned, it is essentially the individual's attempt to seek other means of conflict resolution rather than the law. Some of these are mediation and conciliation forums operating in the "shadow of the law" (Mnookin & Kornhauser, 1979), others are community or group-level institutions (Loss, 2001), largely or entirely independent of state law, with little formalisation, traditional procedures or specific patterns of social practice.

The study of conflict management mechanisms and procedures that are functionally equivalent to state law, and the motives of those who use them, has traditionally been of interest to legal anthropology. It was transferred to the sociology of law in the 1980s as the subject of "informal justice" (Faber & White, 1994; Morrill, 2017), which was then supplemented in the following decade by research on the development of conciliation or mediation procedures and institutions operating "in the shadow of the law" (restorative justice) (Edgar & Newell, 2006; Miller, 2008; Barabás, 2011).

Ad (f). The scope of legal actions can again be divided into two parts. On the one hand, there are cases of "passive" compliance with the law, and on the other hand, when the individual consciously uses the possibilities offered by the law as a means to assert his interests or other claims. The former is of more interest from the sociological point of view in the study of the enforcement and effectiveness of law in general, while the latter is of greater importance from the perspective of the study of legal consciousness.

In the case of "passive" compliance, the person's action objectively complies with the law, regardless of his or her motives. The focus here is therefore on the fulfilment of the individual's legal obligations, which may be obligations established by the law enforcement authority in the course of a legal procedure or civil obligations between individuals. Since the beginning of the last century, legal sociology has been aware, following the work of Eugen Ehrlich (Ehrlich, 1936), of the importance of legal transactions and legal actions without dispute – "trouble-less cases", to use John Griffiths's term (Griffiths, 2003) – for the legal life as a whole. This mass of legal actions constitutes "living law", even though we know that "passive", "indifferent" legal action is often in fact due to the influence of other social norms supporting the law – morality, custom, manners, etc.

In contrast, the other type of legal action, where the individual is able to use the law as a tool, presupposes not only a relatively high level of knowledge of the law, the "understanding of the law", but also a specific attitude towards the law, the "rights consciousness" (Sajó, 1988; Ewick & Silbey, 1988). The latter implies that the individual relies on a disposition of "claiming" rather than "bagging" vis-à-vis the authorities that administer the law. However, the use of law as an instrument is not only subject to the conditions inherent in the individual subject, but also requires certain external conditions which are factually given to the individual: specific social resources must be available for litigation – time, money, education, etc. – the lack of which may constitute an obstacle to the invoking of law. These social resources are, of course, unevenly distributed along social stratification, which is reflected in the critical approach that sociology of law has taken since the 1980s to the issue of "access to law" (Styles, 2001; Munger, 2006; Hernández, 2010).

The study of the former type of legal action – the "living law" – requires mainly micro-sociological, legal anthropological or qualitative (documentary) research (Nader, 1990; Griffiths, 2003), while the latter type requires the analysis of the "rights

consciousness", the litigation rate and the "litigation disposition" (Kulcsár, 1982, pp. 565–589; Blankenburg, 1994; Blankenburg, 1997; Murayama, 2013, Róbert & Fekete, 2018).

Ad (g). After reviewing the fields of influence from the individual to the level of society, "upwards", we have again reached the "social level", whose layer closer to the ground, directly related to the action of the members of society, can be identified as the level of the state or governmental organisation. However, two aspects of the traditional use of the term need to be nuanced here. On the one hand, the adjectives "state" or "government" evoke the dominance of the political element, while our analysis implies a predominance of legal connotations. Therefore, in the functioning of parliament or government, for example, it is not so much the function of political decision-making as that of legislation that will be of interest to us. It is from this particular legal perspective that Lawrence Friedman, for example, tries to define this institutional layer when he mentions the legal institutional system as an element of the legal system, alongside legal norms and legal culture (Friedman, 1975, pp. 1–24). Or Blankenburg when he speaks of the "legal infrastructure", which may also include non-state organisations operating in the shadow of the law and institutionally ensuring the avoidance of the law (Blankenburg, 1994).

On the other hand, the usual terminology leaves the fact of organisational complexity unreflected. And here it is not enough to think of the functional separation of the legislator, the law enforcer (concentrating on dispute resolution and the application of sanctions) and the "regulatory authorities", as accepted in the sociology of law, reflecting the political doctrine of the separation of powers. In fact, legal institutions show a very complex internal structure in terms of their organisational interests, their access to social resources, their power and communication relations.

The harmonised, transparent structure of legal institutions; their predictable, reliable and efficient functioning; their easy accessibility to the citizen; their organisational ethos (who serves whom? The state serves the citizen, or vice versa?); their subjection to publicity and other forms of democratic control (Krygier, 2009): these are all factors that influence both the ideological image of law formed by socialisation and social communication, the degree of trust in law and the range of individual legal experiences that reinforce or destroy it.

Ad (h). The concept of social legal consciousness raises a number of theoretical and methodological problems. Some of the theoretical problems stem from the fact that the concept, as we have seen above, is deeply embedded in the Marxist social science tradition. First of all, therefore, it must be stressed that social legal consciousness cannot be associated with a "collective personality" conceived as the bearer of Marx's "class consciousness", since in a psychologically precise sense it is only the individual who has it. Individual legal consciousness therefore contains both the individual characteristics of a given person and the conscious elements of the individual arising from his or her social embeddedness.

Hence the methodological difficulties. It is often hard to distinguish between the components of individual legal consciousness that fall within the scope of psychology and those that belong to social psychology. The changes described by developmental psychology, which show a different dominance of cognitive, emotional and reactive

aspects in the various stages of personality development, tend to belong to the former. On the other hand, the phenomena of identity, self-esteem and prejudice, which are linked to the psychological effects of social relationships, relate to the latter.

The difficulty also stems from the Marxist tradition, as mentioned above too, of an over-simplistic conception of the relationship between the individual and society, which ignores the structural elements that are inherent in the relationship between the individual and society as the most comprehensive (political) community. Following John Griffiths's admonitions in his critique of the instrumental approach to law-making, we must therefore take into account that the individual is never directly linked to the state, but always through a system of smaller or larger, partially overlapping groups and communities. Secondly, the legal message from the legislator to the addressee of the norm never passes through a normative vacuum. Thirdly, the state does not have an exclusive normative monopoly (Griffiths, 2003, pp. 13–17). In the light of these considerations, we can begin to take stock of the structural mediating elements between the individual and society, which can be grouped into three intersecting dimensions: social stratification (i), social groups (ii) and professional groups (iii).

Ad (i). The "hard facts" that determine an individual's social status include gender, age, wealth, income, education and place of residence. The impact of social stratification on legal knowledge and legal consciousness has already been investigated by researchers in the first wave of KOL studies (Podgórecki et al., 1973). The results showed that all the factors determining stratification had a varying degree of impact on the legal consciousness of the samples studied, but no general correlation could be found. The impact of these factors seemed to be organised into different patterns, but these showed a variable pattern across countries and legal cultures. Subsequent research has suggested two likely trends: first, that the most significant influence on the development of legal knowledge is the level of education. The second is that gender differences have decreased over time, both in terms of the level of legal knowledge and in terms of opinions about the law (Kulcsár, 1967; Gajduschek & Fekete, 2015).

Ad (ii). The more significant forms of social groups are those organised along family, kinship, ethnic, local, age, religious or ideological lines. Societal groups have a significant impact on the formation and development of an individual's identity, due to the strong affective effects of direct, face-to-face communication and interpersonal contact, and their specific internal psychological dynamics. Although from the outset researchers have assumed the influence of social groups on individual sense of entitlement, it was only from the mid-1970s onwards, following the adaptation of the "participant observation" method from anthropology, that research in this area gained momentum. In the following decades, researchers from kibbutzim in Israel (Schwartz, 1954) to Chiapas Indian communities in Central America (Collier, 1979) to suburban residential communities in the United States (Greenhouse et al., 1994) have investigated the impact of group internal structure, cohesion and culture on dispute resolution and the formation of individual conceptions of law in a wide variety of groups.

Ad (iii). Professional groups constitute actually the structure of society based on the division of labour, which includes all kinds of institutions and more or less formalised organisations in the economic, political, cultural and of course legal spheres. Belonging to

a professional group – one's "occupation" – is itself a status factor, but this has lost much of its importance in recent decades. Nevertheless, participation in certain professional groups – "professional orders", trade unions, political parties, companies in various sectors of the economy, etc. – has a differential impact on the legal knowledge and legal consciousness of the individuals involved, as they need particular legal skills and gain specific legal experience in their occupation.

In the early period of the KOL studies, we can already find research that examined the effect of occupational group membership on the attitude towards law (Podgórecki et al., 1973), and such attempts were also made in the Hungarian legal consciousness studies in the 1970s (Sajó, 1981a; Sajó, 1981b). However, from the 1980s onwards, both international (Morison et al., 1991; Katzman, 1995; Abel, 1997; Pue & Sugarman, 2003) and Hungarian research (Utasi, 1999; Utasi, 2016; H. Szilágyi & Jankó-Badó, 2018) has increasingly focused on the legal consciousness of a single professional group: the legal profession.

From the studies, it is clear that the legal profession is a highly prestigious intellectual career, with the majority of its members recruited from middle-class families. Entry to the profession is based on a theoretical qualification (law degree) obtained through specific education, usually followed by a longer or shorter period of practical training. The legal professions are divided into professional groups (judges, lawyers, prosecutors, administrators) with a structure that varies from country to country and from one legal culture to another. This internal division of the profession, the size and prestige of the groups in relation to each other, the typical trajectories of internal mobility between the groups, are all factors which influence the degree of cohesion between the members of the profession, the development of the self-image of the legal profession and its external, social perception (the image of the legal profession in society). Lawyers are characterised by a level of legal knowledge and understanding and legal competence that is higher than that of lay people, but not necessarily accompanied by a higher level of respect for the law. The social function – and in fact the monopoly – of the legal profession is the elaboration and "maintenance" of the normative layer of legal culture, and the care of the doctrinal-dogmatic layer connected to it. This function is linked to the distinction between lay and professional legal culture, which will be discussed below in connection with the concept of legal culture.

Two comments should be made on the above outline of the structures that mediate between the individual and society. One is that in our review we have focused only on corporative groups and structural elements with relatively clear boundaries to the social milieu, and have ignored the so-called "semi-autonomous social fields" (Moore, 1973). These are fields of social power in which not only individuals but also corporative groups may be present, and which are capable of generating and enforcing autonomous normative systems against participants independently of state law. These subtle elements of social structure can only be studied using micro-sociological methods.

The rapid expansion of forms of communication on the internet and the rapid transformation of communication opportunities in recent decades have raised further problems. These phenomena obviously need to be taken into account when discussing the two strands of communication mentioned above (social and individual communication),

but the processes of group formation in "virtual reality" are obviously also linked to the study of mediating structures. For instance, the question is whether the model of the "semi-autonomous social field" can be applied to the functioning of virtual communities on Internet social networking sites, or to what extent and in what way the communication taking place there influences the participants' legal consciousness.

Our second comment is that this diverse array of mediating structures is a kaleidoscope that dissects and multiplies the previously enumerated beams of legal socialisation, communication and action. It also means that the effects and contexts that can be researched are multiplied. No wonder, therefore, that citizens who are not familiar with law or the legal sciences sometimes find it insurmountably difficult to form a consistent picture of the law. However, this leads back to the problems of the structure of individual legal consciousness.

3.4. Conceptual issues in the study of social legal consciousness

Taking into account the Marxist and neo-Marxist ideological implications of the concept of social consciousness of rights, it is not sufficient to define the concept as a residual category linked to individual consciousness of rights, including all the socio-psychological aspects – attitudes, opinions, beliefs, mass feelings – which cannot be included in the former. In order to free the concept from the "obligatory" critical character of the Marxist tradition, we draw on two reflections by Marc Hertogh.

Hertogh distinguishes between two strategies for constructing the concept of a legal consciousness: the American and the European conception (Hertogh, 2004). The former, which goes back to the work of Roscoe Pound, is based on the distinction between Law in Books and Law in Action (Pound, 1910). The aim of sociological studies of law is to explore the difference between the two, i.e. how, why and to what extent the (official) law in practice differs from the official law. The central question for legal studies in this tradition is how people perceive formal law. In this view, law becomes an independent variable and legal consciousness an explanatory factor for deviation from the law.

In contrast, the European concept of legal consciousness is inspired primarily by the work of Eugen Ehrlich (Ehrlich, 1920), which focuses on the concept of "living law". Sociological research should focus not on formal law but on "living law", which is the centre of gravity of the life of law, since formal law is only applied by public authorities in the resolution of disputes, whereas living law is applied in transactions that are carried out without dispute and which constitute the predominant part of legal life. From this perspective, the main question for legal studies is therefore not how people perceive formal law, but what they perceive as law in the first place. Thus, law becomes a contingent variable when viewed from this perspective.

In another line of thought, Hertogh distinguishes between two approaches to legal consciousness studies, the "critical" and the "secular" (Hertogh, 2018, pp. 1–15). The former is closely linked to the tradition of Critical Legal Studies, which is largely neo-Marxist in inspiration, and to the American conception of legal consciousness described above. In the three decades between the 1970s and the turn of the millennium,

a number of major studies were carried out in this approach.[6] What they have in common is that they sought to answer the question of why people turn to the law, despite the fact that it actually works against their interests and that they are often disappointed by it. They tried to show the pervasive presence and hegemony of law in social life and, above all, to identify the motives for its acceptance and support.

The "secular" approach,[7] which Hertogh himself advocates, on the other hand, drawing on the European concept of legal consciousness, refuses to take the hegemony of law as given and focuses primarily on why people do not follow formal law and seek alternative solutions instead. Instead of accepting law, it thus focuses on forms of alienation from law, avoidance of law, defiance of law and alternative forms of social control in place of formal law.

What conclusions can we draw from the above considerations with regard to the conceptualisation of social legal consciousness? First, that we must conceive of social legal consciousness as a phenomenon that interacts with legal culture. From the point of view of social consciousness, law (legal culture) appears sometimes as an independent variable and sometimes as a dependent variable. Legal culture shapes legal consciousness, but it is also shaped by social legal consciousness. The American and European conceptions of legal consciousness as outlined by Hertogh are in fact "two sides of the same coin" illuminating two relations of interaction.

On the other hand, social legal consciousness should be understood as being internally structured according to the structural elements that link the individual to society – social stratification, societal and professional groups – as is the case with legal culture. It is also far from certain that formal law is able to fully dominate interactions in all segments of society, and therefore the study of negative attitudes and feelings towards law is as important as the study of acceptance and support for law.

4. The concept of legal culture

In defining the concept of legal culture, I will first take account of its difficulties, starting with a review of the academic debate that has developed in the wake of Lawrence Friedman's work, published almost half a century ago. In the light of the conceptual criteria drawn from this debate, I will attempt to build up the concept of culture as a core concept, with a sociological concept of law as a distinguishing feature. I will then introduce the distinction between lay and professional culture and examine the extent to which the concept I have sketched meets the criteria I have previously set out.

[6] See e.g. Galanter (1974); Galanter (1981); Merry (1990); Ewick & Silbey (1998); Engel (1998); Nielsen (2000).

[7] The irony of the term "secular" is hard to miss, given the Marxist commitment of the proponents of the "critical" approach.

4.1. Difficulties in conceptualisation

The difficulties in defining the concept of legal culture are reflected in the academic debate[8] that has emerged in the wake of Lawrence Friedman's work (Friedman, 1975). In his work on the legal system, Friedman gave several definitions of legal culture (a), highlighting different conceptual elements. For example, in the first chapter of the volume, which serves as a theoretical introduction, he considers legal culture to be part of culture in general: "Those parts of the general culture – habits, beliefs, ways of acting and thinking – that incline social forces towards or away from the law" (Friedman, 1975, p. 15). In the chapter on legal culture, the term legal culture refers to "knowledge of and attitudes and patterns of behavior towards the law" (Friedman, 1975, p. 19). In a later work, we find a similar, slightly expanded version of the conceptual elements: "Ideas, attitudes, expectations and opinions that people in a particular society hold about the law" (Friedman, 1990, p. 213). In other cases, it describes legal culture as a kind of "aggregate" of these elements (Friedman, 1990, pp. 212–213).

On the other hand, Friedman emphasises that the concept of legal culture can be interpreted at different levels (b). We can talk about the legal culture of a nation, but we can also interpret it in the case of a region, a social group (Friedman, 1975, p. 19). On the other end of the scale, it can be used to describe larger historical periods, such as "the legal culture of modernity" (Friedman, 1994), or larger geographical units, such as "Western legal culture" (Friedman, 1990, pp. 198–199).

Third, within the phenomenon of legal culture, Friedman distinguishes between "external" and "internal" legal culture (c) (Friedman, 1975, p. 223; Friedman, 1977, p. 76; Friedman, 1990, p. 4), the former denoting the legal culture of lay citizens and the latter the legal culture of "members of a society who perform some special legal function" (Friedman, 1975, p. 223), which he attributes a distinct importance to the functioning of the legal system (Friedman, 1975, p. 194).

The most thorough critic of Friedman's concept, Roger Cotterrell, points out that the conceptual vagueness of Friedman's definition of legal culture (ad a) allows it to be used as a broad, residual category – for example, in the field of legal comparison, in the grouping of legal systems – but that it has much less explanatory power in empirical research. In particular, the conceptual elements listed are rather heterogeneous in nature and do not facilitate the linking of legal culture with actual social processes (Cotterrell, 2006, pp. 81–88).

David Nelken, on the other hand, argues that European comparative legal research has already developed a multi-layered conception of legal culture,[9] which includes the study of legal norms, the distinctive forms and "infrastructure" of legal institutions, the attitudes that create, use or do not use the law, and the legal consciousness of lawyers and lay people. With this in mind, he believes that the concept of legal culture is a concept that can be retained and refined in the light of current research. At the same time, Nelken rejects Cotterrell's suggestion that the concept of legal culture, which is not conceptually

[8] For a summary of some aspects of the debate see Nelken (1995); Silbey (2001); Kurkchiyan (2009).

[9] Here Nelken refers primarily to the research of Erhardt Blankenburg (see Blankenburg, 1994; Blankenburg, 1997).

clear, should be replaced by the concept of "legal ideology", which better expresses the link between law and political discourse. Nelken stresses that such a conceptual exchange would hardly be fruitful, since the concept of ideology is as contested and ambiguous as that of culture, and is deeply embedded in (Marxist) critical theories whose outlook and objectives are not necessarily identical with those of sociological research (Nelken, 1995, pp. 438–439, 446).

Returning to Cotterrell's critical reflection, the author argues that Friedman overstretches the notion of legal culture in two directions (ad b). On the one hand, he sees it as a way of characterising entities of vast temporal and spatial extent – "modernity", "Western legal culture". On the other hand, however, Friedman seems to subscribe to a radical conception of legal pluralism, especially in his later works, when he stresses that the concept of legal culture can be interpreted to include all social units "under the state" – local, religious, ethnic, etc. groups – and thus legal culture appears as a "dizzying parade of cultures" (Friedman, 1990, p. 213). However, it provides little guidance as to how these diverse cultural "aggregates" can integrate into larger entities (Cotterrell, 2006, p. 84).

In fact, at this point Cotterrell points to the difficulty of radical legal pluralism, which Andrew Arno called "legal exclusivism" (Arno, 1985, p. 41). He describes legal exclusivism as the tendency to attribute to legal phenomena a prominent, central importance in relation to other social phenomena. In the case of radical legal pluralism, this takes the form of considering all forms of social control as law. This extension of the concept of law, however, leads to a doubling of the concept: an analytical concept of law on the one hand and a historical concept on the other. This not only threatens to lose the historical perspective of law, but also makes it difficult to explain the relationship between law and other forms of social control.

As for Friedman's separation of "external" and "internal" legal culture (ad c), Cotterrell explains that the above-mentioned vagueness of the concept makes this distinction lose most of its sociological explanatory potential. There is no clear answer to the question why we should consider the "internal" legal culture more important than the "external" one for the functioning of law, and what the relationship between the two aspects is. Furthermore, since Friedman emphasises the diversity and plurality of legal culture while ultimately treating it as a unity, the "internal" aspect appears as an aggregate representing the unity of legal culture, as opposed to the "external" aspect representing its diversity (Cotterrell, 2006, pp. 85–86).

From the analysis of the discussion points, it emerges that the following criteria should be borne in mind when defining the concept of legal culture: first (ad a), the concept of legal culture cannot be established without a prior clarification of either the culture or the sociological concept of law. Second (ad b), that the concept of legal culture must be constructed in such a way as to accommodate the diversity of legal culture resulting from its fragmentation according to the social structure, while avoiding the pitfalls of a radical pluralist approach. Thirdly (ad c), it must provide an answer to the relationship between the "external" and "internal" aspects of legal culture.

4.2. Definition of legal culture

In the light of the above criteria, legal culture can be defined as a fabric of values, norms, symbols, narratives and specific patterns of social practices related to law. Legal culture is directly linked to political culture through the concept of legitimacy (Krygier, 2009), and it is an integral part of the texture of culture as a whole, without sharp boundaries. Within legal culture we must also distinguish between the terrain of "lay" and "professional" legal culture. The latter is the social function – and the monopoly – of the legal profession, that is to say, the "maintenance" of the normative layer of legal culture and the development of the doctrinal-dogmatic layer related to it. The "professional" aspect is of crucial importance for the formation of legal culture as a whole. At the same time, the image of the law as it is perceived by the lay public may differ significantly from the image that lawyers wish to project "inwards" (towards the legal profession) and "outwards" (towards society as a whole).

4.3. The concept of culture

As indicated above, the conceptual formulation of legal culture requires an elaboration of the concept of "culture" as a core concept and of "law" as a concept applicable to empirical research.

The concept of man behind the concept of culture we propose[10] is based on the idea that man is a being with culture, living in culture, and that he fully exists – with his whole being – embedded in culture. His relationship to his natural and social environment is therefore not determined by his needs and biological endowments alone, but his behaviour is influenced just as importantly by his ideas about the world.

Before embarking on a further conceptual analysis of culture, we need to record the general attributes that we have included in the concept. First of all, the concept of culture always refers to a community. Culture is a communal creation into which one is born, ready for the individual. No one can create culture on his own. It follows from this – and we can add to the above concept of man – that man is by nature a social being. Secondly, that culture is not given to the individual in the same way as his biological dispositions. The individual maintains and shapes culture through his actions throughout his life. The individual is a participant in the shaping of culture, and not merely a passive subject or carrier of it. Finally, culture – like the people who bear and shape it – exists in time, and as long as it exists, it exists continuously. No matter how much a new generation may hope, it can never be a "clean sheet". Culture is therefore a historical phenomenon, a tradition that comes from the past, and which carries its weight throughout one's life, adding its own and passing it on to future generations.

[10] The following outline is based mainly on my research in cultural anthropology and the main literature used to develop it: Benedict (1961); Bibó (2015); Bohannan & Glazer (1973); Geertz (1973); Leach (1982); Lévi-Strauss (1963); Turner (1969); Wolf (2010).

The next step in our analysis is to reduce the concept of culture to the concept of "pattern". Although the notion of pattern is also used in a wide range of different senses, there are some common elements. One of these is the element of regularity: a pattern creates the idea of repetition, which can occur in a wide variety of dimensions in space and time. If the pattern is somehow related to time, it is associated with a sense of regularity, of permanence. At the same time, the notion of pattern also refers to "form", which can be separated from the thing patterned, the bearer of the pattern.

The concept of pattern can be further broken down into a wide variety of aspects – e.g. content, structure, nature of the thing patterned – and thus we can talk about a great variety of patterns. This is important for the concept of culture only in so far as we can also relate the notion of pattern to human behaviour, in so far as we assume that certain enduring regularities can be observed in it. This brings us to the concept of "cultural patterns", which refers to forms and regularities of human behaviour in a given community that are not derived from biological endowments (inherited traits).

It should be noted here that biological and cultural patterns of human behaviour are not independent of each other. In some circumstances, acquired (learned) patterns may become heritable, and it is debatable to what extent certain regularly occurring behaviours are due to biological endowments and to what extent to cultural patterns.

The general concept of pattern includes the distinction between descriptive and prescriptive patterns. A descriptive pattern refers to a pattern that can be discovered in something that already exists – a pattern of "something" (e.g. a fossil imprint left in limestone). A prescriptive pattern, on the other hand, is a pattern of something to be formed or shaped – a pattern made "for something" (e.g. a design for a house). This distinction can also be applied to cultural patterns, and is of no small relevance to sociological inquiry: it is one thing how people actually act in social practice – that is, what sociology describes (sociological patterns) – and another thing what people think they should do – the patterns of expected, prescribed action. These two kinds of cultural patterns are, of course, not independent of each other either, and it is not so easy to tell whether a pattern is descriptive or prescriptive. For example, if you prepare a technical drawing of an existing house, it becomes a descriptive pattern, but if you build a new house on the basis of it, it becomes a prescriptive pattern. The descriptive or prescriptive nature of cultural patterns therefore depends on their application and use in social practice.

The concept of culture can therefore be defined in general terms as the set of cultural patterns specific to a given community that shape the interactions between members of society, groups of society, or even between different societies, or indeed between the natural environment and society.

Culture, however, is not some amorphous mass of cultural patterns, but has an internal order, a structure. One aspect of this internal structure is the way in which the patterns relate to phenomena of social life. On this basis, we can talk about sexual culture, housing culture or just political or legal culture. On the other hand, culture is also adapted to social structure. In complex, modern societies, culture is thus adapted to social stratification and the structure of social groups (family, kinship, residential community, circle of friends) and professional groups (occupation, profession) following the functional division of labour.

This relative separation and interconnection of the layers of cultural patterns is not a mechanical aggregation, but the result of the internal dynamics of culture. The main driving force behind this internal self-movement of culture, which is partly independent of social reality but interacts with it, is the creativity inherent in language and symbols.

According to the traditional view, language is the "connective tissue" of culture, as it is the main vehicle of cultural patterns and the basic form of communication between members of society. However, language – as has become increasingly evident in philosophy following the linguistic turn and in sociolinguistics, which became institutionalised in the second half of the last century – not only carries and connects layers of cultural patterns, but also plays a role in their creation. Language is thus not only a passive, neutral means of communication, but also a constitutive element of culture.[11]

Linguistic signs themselves have multiple meanings, and language can be seen as a specific system of symbols. Symbols are signs with multiple meanings, which can also be grouped according to the nature of their bearer (linguistic, visual, material, etc.). Social actions – to borrow Max Weber's definition (Weber, 1978, pp. 22–24): human actions which, according to the intended meaning of the actor, refer to or are in the process of being adapted to the behaviour of others – are also generally symbolic and their meaning can be understood in the context of culture. In case of certain symbolic actions, such as rites, it is the very meaninglessness of the formalised action itself that allows the participants to be linked together, despite the fact that they are motivated by different values or conflicting interests and ideas. Symbols perform specific functions in communication. On the one hand, they substitute for certain things, as all symbols do, and on the other hand, they integrate the community, because only members of that community will know the rich meanings attached to the symbol. Another very important feature of symbols is that they do not only function in the cognitive sphere, but are also capable of evoking specific emotions, thus increasing community cohesion.

So cultural patterns do not just float indifferently side by side, but are bound together by intricate and multifaceted relationships that are extremely complex. The adjective "complex" is no exaggeration: every culture is a whole world. In cultural anthropology, the recognition that culture must be understood as an entity in its own right, with its own internal structure and image, has been of great importance. The relative independence of culture from social, physical reality is precisely based on this internal order and self-movement.

4.4. A sociological concept of law

The conceptualisation of legal culture requires, in addition to the core concept of "culture", a sociological definition of "law" that can be used in empirical cultural research. Of the three distinctive conceptualisation strategies in the sociology of law – "legal monism", "legal pluralism" and "mediating theories" – distinguished by Roger Cotterrell

[11] On the question of linguistic creativity see Austin (1975); Hymes (2005); Lucy (1993); Searl (1969); Wardhaugh (2006).

(Cotterrell, 1983), it is the "mediating theories" that have seemed to us to be the most fruitful. What these conceptions have in common is that they define law more broadly than "lawyers' law" or state law, and that they also consider lawyers' practical definitions of law to be sociologically inadequate, yet they limit the concept of law by giving a prominent role and clear primacy to state law in modern societies today. The solution we propose is to posit as the core concept of law the notion of "social control" derived from a functional analysis of social workings, while adding as its distinguishing feature a conceptual element based on the above conceptual analysis of culture: law is a specific form of social control, a set of cultural patterns whose assertion is ensured by the state.

The first half of the definition tells us two things. The first is that the concept of social control is broader than law, since law is only one – a historically given – form of social control (Black, 1976, p. 15). The second thing that the first part of the definition warns us about is that we cannot limit the scope of our research to law. We can only analyse the problems of the enforcement and effectiveness of law in relation to other forms of social control.

Given that we have already discussed the nature of "cultural patterns", two things need further clarification in the second round of our definition: the concept of "the state" and what it means that "the state ensures" that certain cultural patterns prevail.

We limit the concept of "state" here to the historical type of the "modern nation state", adding that from a sociological point of view it is very important to keep in mind that the state is an extremely complex and differentiated institutional structure.

As regards the relationship between state action and cultural patterns considered law, we must also assume a multifaceted system of relations. This ranges from very direct effects – where the state makes and directly enforces rules (e.g. collects taxes) – to cases where the relationship is, so to speak, "loose". For example, when the parties to a civil dispute reach a settlement in anticipation of a court decision, or when the state sets the compulsory curriculum for education or the requirements for graduation. In the latter cases, it is clear that the state neither creates nor imposes cultural patterns, but it does influence the course of events.

The assumption of an indirect link between state action and the prevalence of certain cultural patterns, and the identification of social control as the core concept of law, allows us to take into account considerations arising from the view of legal pluralism. In examining legal phenomena, it is therefore impossible to ignore the effects of the power fields and semi-autonomous social fields that are created in the various segments of the social structure.

4.5. Professional and lay legal culture

In order to shed more light on the separation of professional and lay legal culture and on the conceptual elements of legal culture, we present as an example a conceptual analysis of a specific facet of professional legal culture, the professional self-image of the Hungarian attorneys, drawn from a recent empirical study (H. Szilágyi & Jankó-Badó, 2018).

Our point of departure, therefore, is that the discussion on the self-image of the legal profession must be placed in the discourse on culture, and within it, on legal culture. In this context, the self-image of the attorneys is understood as an element of "professional legal culture", separated from or contrasted with the "lay" legal culture. The self-image of the profession, however, can itself be understood as a set of intellectual contents and elements: values, norms, descriptive cultural patterns, narratives, symbols and patterns of behaviour of the members of the profession.

The values that are characteristic of the attorneys' self-image – high level of legal knowledge, sense of justice, impartiality, unconditional respect for the client's interests, etc. – are also part of the more general values of the legal profession and are embedded in the even more universal values of political culture, such as freedom, equality or social solidarity.

The layer of self-image that is one notch closer to the level of social actions is the layer of rules of the profession, some of which are "written", legal or juridical rules, such as in our case the Law on Lawyers XI of 1998 or the ethical codes of the bar associations. In addition, of course, there are unwritten rules – such as collegial rules or rules of "courtesy" in dealing with lay people – which are also part of the profession's self-image.

Descriptive cultural patterns do not primarily tell us what the actors in a given situation should do, but rather they indicate the position and competence of the actors. They give us information about the place and scope of action of a given social group in society or, more specifically, in the world of law. In our case, for example, the rules of the Code of Civil Procedure on the conduct of proceedings, which are addressed primarily to judges, also define the position and possibilities of lawyers to influence the course of proceedings.

The values, the layers of prescriptive and descriptive cultural patterns, analytically separated above, are woven together by narratives – in our case, the stories known and told by lawyers – at the same time creating, in Robert Cover's terms, the "normative universe" in which they take on meaning (Cover, 1983, p. 4). Every profession has its "great stories", such as the history of the Hungarian legal profession, which is otherwise the subject of the history of law, and which is supposed to be elaborated and "told" to future lawyers during their university education. These grand narratives are woven around the major turning points and prominent figures in the history of the profession as a corporate group, which form the basis of the identity of the whole profession. Upon these grand narratives hang the web of local, "urban legends" and personal stories, which are linked by a thousand strands to other areas of culture (H. Szilágyi, 2015).

The symbols expressing self-image are not understood here in their physical reality – luxury car, expensive watch, rice-pod wig, robe, "very smart" phone, high-end laptop, etc. – but as symbols with multiple meanings. Symbols can both signal the fact of belonging to a profession and at the same time mobilise complex emotions and contents of consciousness in outsiders. In case of lawyers, for example, status symbols are of particular importance. Not only because they indicate middle-class status but also because they create a sense of success in the client (such as a luxury car or a branded watch), while other symbols (such as the yester-year attorneys' briefcase) explicitly indicate belonging to the profession. There are also certain rites and rituals associated with entering and

belonging to the profession, such as the doctoral oath or polite forms of interaction between colleagues.

We should also talk about the layers of patterns that can be read from the behaviour of practitioners of the profession, which belong to the tacit knowledge that those entering the profession learn by observing the activities of colleagues. These are the tricks of the trade, which can only be learned in practice and which often significantly differ from the idealised values and rules of the profession's manifest self-image.

The basic tendency of the formation of professional self-image is to strive for intellectual unity and internal coherence, since there are always contradictions and internal tensions between the above-mentioned elements and layers of self-image. Presumably, the more coherent and clearer the self-image, the better it can ensure cohesion between practitioners and contribute significantly to the capacity of the profession to advocate its interests. Conversely, the more contradictory, fragmented and unclear the self-image of the profession, the less able it is to integrate its members and the less vulnerable it is to external influences. However, the role of a solid and clear self-image of the profession for the development of its social position is always an empirical question: too strong a corporative spirit can also become an obstacle to an adequate response to social change.

Important conclusions from the above analysis for the separation of professional and lay legal culture are: first, that the structure of lay legal culture is similar to that of professional culture, only its normative-dogmatic layer is much thinner and more fragmented, fraught with logical contradictions (Berkics, 2015a). Secondly, that these differences, even if very substantial, are still gradational and do not affect the fundamental identity of these two aspects of legal culture in terms of the components, the structure and the fine web that connects the elements. Thirdly, that stories about law are also very important for describing and understanding lay legal culture. These narratives, which not only link and organise the elements of legal culture – the values, norms, symbols and patterns of action and thought that crystallise in social practice – but also weave legal culture into the culture as a whole (H. Szilágyi, 2021).

4.6. Compliance with the definition criteria

Before analysing the concept of legal culture, three criteria of conceptualisation were identified: firstly (a) that the concept of legal culture cannot be conceived without a prior clarification of either the culture or the sociological concept of law. Second (b) that the concept of legal culture must be constructed in such a way as to manage the diversity of legal culture resulting from its fragmentation according to the social structure, while avoiding the pitfalls of a radical pluralist approach. Thirdly (c), it must provide an answer to the relationship between the "external" and "internal" aspects of legal culture. The results of the analysis in this respect are summarised below.

Ad (a). The decision to limit the concept of culture to purely objectified intellectual contents – values, norms, symbols, narratives – has pushed the conceptualisation in the direction of using the concept thus given as a tool for the semiotic analysis of "meaningful

social actions" in the first place. What is more, our argument has precisely highlighted the autonomy of culture (legal culture), its relative independence from actual social conditions.

However, the question of how to relate the concept thus created to current social processes remains open. Is it sufficient to refer to the effect of values on moral emotions or to the integrative function of symbols? Can these conceptual elements of culture be placed without concern in the context of patterns of social practices, of individual opinions and attitudes towards law, which develop spontaneously at the social level? These questions can be answered by analysing the relationship between legal culture and legal consciousness.

Ad (b). Our sociological concept of law allows us to take into account the diversity of legal culture due to its fragmentation according to the social structure, yet it avoids the pitfall of a radical pluralist approach by linking the sociological concept of law to the historical phenomenon of the modern nation state.

Ad (c). The outlined concept of legal culture allows for an analysis of the dynamic interaction between "lay" and "professional" legal culture, by emphasising the relativity of their separation and the organic relationship between the two aspects.

5. Conclusions

The concepts of legal awareness and legal culture are closely related and, due to a lack of theoretical clarification, are often used as synonymous concepts. According to Susan S. Silbey, recent research trends are moving in the direction of using the concept of legal culture (as a semiotic analytical tool) in macro-level theoretical and comparative research. Whereas in micro-level research, especially when the object of study is how individuals interpret and mobilise legal meanings and signs, the concept of legal culture is used rather than legal consciousness (Silbey, 2001, p. 8624). However, this distinction is not so much based on conceptual analysis as on a supposed difference in the object of research and the different traditions of the various academic disciplines (legal anthropology, legal ethnography, comparative law, sociology of law).

Other theorising strategies resolve the relationship between the two concepts by subordinating one to the other. Marina Kurkchiyan, for example, uses the solution of subordinating the concept of legal consciousness to the concept of legal culture, defining it as one of its elements (Kurkchiyan, 2009, pp. 337–338). Kahei Rokumoto, on the other hand, in a 2004 study, considers legal culture a part of legal consciousness at the societal level, alongside legal knowledge and legal attitudes and legal sentiments. The core concept of legal culture is legal conception, which has a remarkable durability over time, in contrast to legal knowledge and attitudes and legal sentiments, which can change significantly over a short period of time. Rokumoto stresses the qualitative difference between the elements of legal consciousness, insofar as legal knowledge, attitudes towards law and legal emotions can be studied empirically, using sociological and social psychological methods, whereas legal culture is a phenomenon accessible to the tools of cultural studies (Murayama, 2014, p. 191).

In our view, as presented above, the concepts of individual legal consciousness, social legal consciousness and legal culture should be separated. The purpose of this separation is not only to make clear the different nature of the phenomena thus separated, to which the methods of analysis should be adapted. Hence, in the case of legal culture, the methods of linguistic analysis, textual analysis, logical and normative analysis and legal semiotics are all relevant to the method of documentary analysis. The conceptually defined phenomena of individual legal consciousness fall essentially within the domain of psychology, whereas social legal consciousness lies within the scope of social psychology.

Their separation highlights not only the methodological differences in their study, but also the fact that these phenomena are subject to different laws: the relative autonomy of culture is precisely based on the fact that it is not simply determined by social realities, but to a large extent by the laws of ethics, aesthetics and logic. Similarly, individual behaviour has components determined in the individual psyche, and components that are organised and operate according to laws that derive from social existence and are distinct from the laws that govern the individual psyche. At the same time, a clear separation of these three concepts allows a more in-depth analysis of the relationships linking the phenomena they cover, taking into account the different laws that determine them.

The conceptual analysis of legal consciousness and legal culture outlined above brings us first of all to the illumination of the fact that the formation of legal consciousness takes place in a multi-level, multi-layered structure, which are in constant interaction with each other. The individual's legal consciousness, which is a web of knowledge, volitional and emotional elements relating to the law, is organised according to the psychological laws of the individual. It is only relatively separable from the social legal consciousness, which is the sum of the manifestations of individual legal consciousness, but which operates according to the specific internal dynamics of social interaction. Social legal consciousness, on the other hand, is inextricably linked to legal culture, which enshrines intellectual content and forms that are more durable and objective than mass sentiment, public opinion and public mood, but which is itself subject to change. It is precisely changes in social consciousness that bring about these changes, in so far as they are capable of reaching a certain intensity and of modifying the social structure.

Another conclusion from the conceptual analysis is related to this. Both individual and social legal consciousness, as well as legal culture in its internal articulation, is adapted to the system of structural elements linking the individual to society as a whole, i.e. to the social structure. The study of legal consciousness is therefore inseparable from the study of the formal or informal social organisations and forces that operate the legal institutional system, the "legal infrastructure" and the competing forms of social control.

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