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“Legal Consciousness” in Adam Podgórecki’s Sociological Theory of Law

„Świadomość prawna”
w socjologicznej teorii prawa
Adama Podgóreckiego

Abstract

The issue of legal consciousness occupies a central place in the sociology of law and is of particular relevance for socio-legal knowledge. Prof. Adam Podgórecki has great merit not only in determining the subject of the sociology of law, and the structure of the socio-legal knowledge, but also in delineating the importance of the legal consciousness as a research problem. The article addresses the problem of legal consciousness in the works of A. Podgórecki. In his view, in order to answer a question that is fundamentally important for jurisprudence, and to understand the ramifications of the operation of law in society, it is necessary to study not only the external manifestations of law (the behaviour of its actors and agents) but also the internal (or internalised) dimension of legal phenomena. The structure of legal consciousness includes three main elements, to which the empirical socio-legal analysis is most often directed; the knowledge of legal regulations in force, the evaluation of obligatory laws, and postulates related to what may be defined as good or desirable law. A. Podgórecki examines legal consciousness in the context of several important problems of law in the sociological sense of the word, which is also the core of his sociological theory of law. These include the relationship between intuitive law (“legal sense”) and official law; the relationship between law and morality; effective operation of the law; identification of pathologies of the law; attitudes to the law and to the actual behaviour regulated by law. The most important pieces of empirical research carried out by A. Podgórecki are presented in the article.

Keywords: legal consciousness, legal policy, prestige of law, legitimisation, social deviation, legal conformity, rigorism, tolerance

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Abstrakt

Problematyka świadomości prawnej zajmuje centralne miejsce w socjologii prawa i ma szczególne znaczenie dla wiedzy socjologiczno-prawnej. Profesor Adam Podgórecki ma wielkie zasługi nie tylko w określeniu przedmiotu socjologii prawa, struktury wiedzy socjologiczno-prawnej, ale także w określeniu znaczenia świadomości prawnej jako problemu badawczego. Artykuł jest poświęcony problemowi świadomości prawnej w twórczości A. Podgóreckiego. Według niego, aby odpowiedzieć na pytanie fundamentalnie ważne dla jurysprudencej, a także, aby zrozumieć rozgałęzienia funkcjonowania prawa w społeczeństwie, konieczne jest badanie nie tylko zewnętrznych przejawów prawa (zachowań jego aktorów i agentów), ale także wewnętrznego (lub zinternalizowanego) wymiaru zjawisk prawnych. Struktura świadomości prawnej obejmuje trzy główne elementy, do których najczęściej kierowana jest empiryczna analiza socjologiczno-prawna – poznawczy, psychologiczny, behawioralny. A. Podgórecki bada świadomość prawną w kontekście kilku ważnych problemów prawa w socjologicznym sensie tego słowa, co stanowi również rdzeń jego socjologicznej teorii prawa. Są to: relacje między prawem intuicyjnym („poczuciem prawnym”) a prawem oficjalnym, relacje między prawem a moralnością, skuteczne działanie prawa, identyfikacja patologii prawa, stosunek do prawa i do faktycznego zachowania regulowanego przez prawo. W artykule przedstawiono najważniejsze badania empiryczne przeprowadzone przez A. Podgóreckiego.

Słowa kluczowe: świadomość prawna, polityka prawna, prestiż prawa, legitymizacja, patologia społeczna, tolerancja, rygoryzm

Personal Memories of Professor Adam Podgórecki

My first meeting with Prof. Adam Podgórecki was at the Institute for Social Prevention and Resocialisation of the Warsaw University, of which he was the director. I arrived in Poland as a PhD student and I had to defend my doctoral thesis in 3 years. Professor Adam Podgórecki was my supervisor. When I arrived in Poland in 1974 and met him, he was already known as the founder of the Research Committee of Sociology of Law. The first time we discussed the problem of legal consciousness with him was when he asked me and my colleagues to write a report for the participation in the Congress of Sociology of Law in Hungary. The topic of the report was “Legal Consciousness in the Polish Society”.¹

We discussed the problems of legal consciousness many times when I was beginning to write my dissertation. He, together with Jacek Kurczewski, helped me to formulate the topic of the dissertation, namely “The Impact of modernisation on the moral and legal attitudes of Bulgarian rural residents”.² Even then, it was clear to me that in his concept of legal consciousness, Leon Petrażycki's

¹ M. Dobrowolska et al., *Legal Consciousness of Polish Society*, in: *Sociology of Law and Legal Sciences. Proceedings of a Conference on the Sociology of Law, Balatonszéplak, Hungary September 21-25, 1976.*, ed. K. Kulcsar, Institute of Sociology, Hungarian Academy of Sciences, Budapest 1977, p. 209–211.

² Part of the empirical data from my dissertation, concerning the influence of the modernisation of the Bulgarian village on the legal consciousness of its inhabitants, has been published in Poland; see: S. Naoumowa, *Modernizacja wsi bułgarskiej a świadomość prawną. Wstępne wyniki badań*, “Studia

understanding of intuitive law, as well as of the relationship between morality and law, occupied a significant place. In this sense, at the beginning of my academic career, I was aware of A. Podgórecki's views on legal consciousness. Under his guidance, I successfully defended my doctoral dissertation. He was a warm-hearted man with a big heart! Thanks to this professional relationship with him, I was able to develop the sociology of law in Bulgaria. In 1980, the discipline of "Sociology of Law" was included in the study programme of the Law Faculty at Sofia University "St. Kliment Ochridski". Later, this discipline was introduced in most law faculties in Bulgaria. In the work *Sociology of Law*, which was published by me,³ Prof. Podgórecki is presented not only as the founder of the RCSL, but also as a scientist who has made an enormous contribution to the development of the sociology of law in Poland and in the world. After 1980, as well as during the great changes in our country and in Poland (after 1989), cooperation in the field of sociology continued. In the joint research on legal consciousness, which I carried out together with Prof. Kurczewski, Prof. M. Fuszara, Prof. G. Skąpska, Prof. Iwona Jakubowska, etc., Prof. Podgórecki occupied a leading place, and this continues to this day.

Thank you, Master!

Introduction

The issue of legal consciousness occupies a central place in the sociology of law and is of particular relevance for socio-legal knowledge. Prof. Adam Podgórecki has great merit not only in determining the subject of the sociology of law and the structure of the socio-legal knowledge, but also in delineating the importance of legal consciousness as a research problem. To a greater or lesser extent, he developed the question about the social action of law, which is different from legal dogmatism, creating a new and modern approach to the investigation of the legal consciousness, which performs a major role in this mechanism.

By raising the problem of legal consciousness research, A. Podgórecki sets a new beginning in the development of empirical research on law. For him, legal awareness is of key importance for preserving the stability of the legal system or for the emergence of deviance risk and hence – of social pathology.⁴

socjologiczne" 1977, no. 2, p. 185–207; see also: S. Naoumowa, *Wpływ modernizacji wsi bułgarskiej na świadomość prawną jej mieszkańców*, "Państwo i prawo" 1977, no. 6, p. 88–99.

³ S. Naoumowa, *Sociologia na pravoto. Istoricheski cheski tradicii i perspectivi na razvitie*, ILS, BAS, Sofia 2005 (the last edition – 2024).

⁴ A. Podgórecki, *Legal Consciousness as a Research Problem*, "European Yearbook in Law and Sociology" 1977, p. 85–96; see also: A. Podgórecki, *Law and Morals in Theory of Operation*, "The Polish Sociological Bulletin" 1969, no. 1, p. 26–38.

The starting point of Podgórecki's attempts at defining his conception of the legal consciousness was Petrażycki's theory of law. Podgórecki adopted and adapted Petrażycki's broad understanding of law, which comprises both official and unofficial imperative-attributive norms and the reflection of these norms in people's legal consciousness. As some Polish authors point out, the influence of Petrażycki on Podgórecki is not always one-sided and independent of the influence of other authors, such as Sorokin and Gurwicz.⁵

Legal consciousness is nowadays the subject of many theoretical and empirical studies.⁶ This raises the question of when the term "legal consciousness" first appeared, when this term became a major problem of the sociology of law, and what the contribution of prof. Adam Podgórecki to its clarification and development was.

In general, it can be said that there are two different conceptions of legal consciousness: European and American. These different conceptions of legal consciousness were included in the very wide-ranging research of Susan S. Silbey and Chantal-AugevenKourilsky.⁷ A summary of this difference can be found in the analysis of A. Hertogh. According to him,

(...) the use of the term 'legal consciousness' in these European discussions is, however, remarkably different from its use in the US literature. It is argued that the most commonly used American' conception of legal consciousness reflects important ideas of Roscoe Pound and asks: how do people experience (official) law? By contrast, a European conception of legal consciousness, which was first introduced by the Austrian legal theorist Eugen Ehrlich, focuses on the question: what do people experience as "law".⁸

The term "legal consciousness" appeared in the legal literature as a special category relatively recently. The representatives of jurisprudence in the 19th century tended to use the term "legal sense". They used this term in parallel with

⁵ K. Motyka, for example, points out that Podgórecki, unlike Petrażycki, but similar to Sorokin and Gurwicz, defined those norms in psycho-sociological rather than purely psychological terms; K. Motyka, *Leon Petrażycki and Adam Podgórecki: On the Reception of the Psychological Theory of Law in Poland under Communism*, in: *Leon Petrażycki: Law, Emotions Society*, eds. E. Fittipaldi, A. Javier Treviño, Routledge, New York–London 2023, p. 54; see also: J. Kurczewski, *Adam Podgórecki's Empirical Theory of Law*, "Societas/Communitas" 2013, vol. 15, no. 1, p. 79–97.

⁶ Special attention can be paid to a successful attempt by three authors to collect and summarise all existing theoretical and empirical research on legal consciousness; F. Horák, D. Lacko, A. Kloczek, *Legal Consciousness: A Systematic Review of Its Conceptualization and Measurement Method*, "Anuario de Psicología Jurídica" 2021, vol. 31, no. 1, p. 9–34, DOI: 10.5093/apj2021a2.

⁷ C. Kourilsky-Augeven, *Socialisation juridique et conscience du droit*, "Droit et Cultures" 1991, no. 2, p. 33–56; S.S. Silbey, *After Legal Consciousness*, "Annual Review of Law and Social Science" 2005, no. 1, p. 335.

⁸ M. Hertogh, 'European' Conception of Legal Consciousness, "Journal of Law and Society" 2004, vol. 31, no. 4, p. 457–481.

the notion of "legal consciousness". The term "legal sense", popularised mainly by the representatives of the German legal school, was widespread at that time.

Podgórecki formally belongs to the European socio-legal school, but at the same time he thoroughly analysed (both theoretically and empirically) the achievements of various representatives of Anglo-Saxon legal thought in order to reach conclusions that still provide the basis for the analysis of this complex phenomenon.

Leon Petrażycki was a scientist who was close to Podgórecki's heart. It was L. Petrażycki who created the concept of "intuitive law", the theory of which consists in emphasising the socio-psychological conditioning of assessments of law. Based on the concept of intuitive law, Petrażycki clarifies the problem of justice inherent in law and in the natural law.⁹ He tries to lift the veil of the "mystical-authoritative character" of the constantly operating mechanisms inciting permanence and behaviour in the legal sphere and to reveal the social genesis of the evaluations and attitudes towards the law ("legal experiences") that constitute an integral part of legal consciousness. Petrażycki divides legal experiences into two categories: a) experiences of positive law (official law); and b) experiences of the intuitive law, which are the basis for the construction of a relatively clear model of legal consciousness, in which legal feelings, experiences and emotions (the psychological element) occupy a special place. It is not by chance that almost all Polish authors, trying to create such a model or to specifically define the structure of legal consciousness, mainly refer to Petrażycki's conceptual reasoning. The review of the literature shows that, despite the existing differences in the indicated definitions, almost all authors (including A. Podgórecki) are united on the issue of the main elements entering into the structure of legal consciousness: the informative, the psychological, and the behavioural.¹⁰

A. Podgórecki analyses legal consciousness and its structure as one of the most important problems of his sociological theory of law. What is particularly original about Podgórecki is that he examines legal consciousness in the context of several important problems of law, which is also the core of his sociological theory of law. These are: (1) relations between intuitive law ("legal sense") and official law; (2) relations between law and morality; (3) effective operation of

⁹ L. Petrażycki, *Wstęp do nauki prawa i moralności. Podstawy psychologii emocjonalnej*, Państwowe Wydawnictwo Naukowe, Warsaw 1959, s. 12. Petrażycki has been called by Podgórecki "unrecognized father of sociology of law"; see also: A. Podgórecki, *Unrecognized Father of Sociology of Law: Leon Petrażycki*, "Law and Society Review" 1980–1981, no. 15, p. 183–202.

¹⁰ A. Podgórecki, *Świadomość prawna w świetle badań empirycznych*, "Państwo i Prawo" 1971, no. 12, p. 943–954, where the author describes the legal consciousness as a unit of 3 elements: the informative, the psychological, and the behavioural.

the law; (4) identification of pathologies of the law; (5) attitudes to the law and the actual behaviour regulated by law.¹¹

Legal Consciousness as a Research Problem in the Sociology of Law

There is an almost unified understanding in the socio-legal theory of the essence of legal consciousness and of its basic elements. Usually, legal consciousness is seen as that sphere of public, group and individual consciousness that reflects legal reality in the form of legal knowledge, evaluative attitudes towards law and the practice of its application, legal attitudes and value orientations regulating behaviour in legally significant situations.¹² The structure of legal consciousness includes three main elements, to which the empirical socio-legal analysis is most often directed. The first main element is the cognitive (informative-cognitive) element, which covers the totality of legal knowledge. The second element is the psychological element. It contains the evaluations, opinions, value orientations, and psychological attitudes towards the law and the practice of its application. The third element is behavioural and is expressed in the readiness for behaviour in the legal sphere as well as the possible postulates *de lege ferenda*. In other words, an empirical study of legal awareness is understood to be a study that covers the three main components mentioned.¹³

According to A. Podgórecki

(...) the term “legal consciousness” appears to be of practical use but it is theoretically eclectic and optional from a conceptual point of view. This is because the term is properly understood as combining three elements: (1) the knowledge of legal regulations in force, (2) the evaluation of obligatory laws, and (3) postulates related to what may be defined as good or desirable law.¹⁴

The main point regarding the theoretical and empirical studies of legal consciousness was formulated by A. Podgórecki in a rather precise and persuasive way. He believed that:

In order to answer a question fundamentally important for the jurisprudence, and in order to understand the ramifications of the operation of law in society, it is necessary

¹¹ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 85; A. Podgórecki, *Świadomość prawna...*, p. 943–944.

¹² S. Naumova, *Sociologia na prawo...*, p. 253–254.

¹³ S.S. Silbey, *After Legal Consciousness...*, p. 335.

¹⁴ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 85.

to study not only the external manifestations of the law (the behaviour of its actors and agents), but also the internal (or internalised) dimension of legal phenomena.¹⁵

At the same time, he argues that "(...) It seems plausible that this internal dimension might be penetrated relatively easily through elucidating "legal consciousness" or legal awareness. In that event both empirical research findings and more general reflections on legal consciousness are relevant."¹⁶ The overall review of the works, published by A. Podgórecki, dedicated to legal consciousness, shows that he does not provide his own definition of the concept. Rather, he emphasises that it is theoretically eclectic and optional from a conceptual point of view, because the term is properly understood as combining three elements: informative, psychological and behavioural. In other words, A. Podgórecki does not contradict the generally accepted understanding of the three main elements that make up the structure of legal consciousness.¹⁷

Relations between Intuitive Law and Official Law

Adam Podgórecki examines the problem of legal consciousness primarily in the context of the relationship between intuitive law and official law. He accepted Petrażycki's thesis that

(...) at least four kinds of law may be distinguished: positive and official (e.g. court decisions based on a given code of regulations); (2) positive and unofficial (decisions of arbitrators chosen by the parties involved in a dispute); (3) intuitive and official (when courts make decisions not on the basis of provisions of the legal code, but on the general norms of the "principles of social co-operation"); (4) intuitive and unofficial (this is the case in lynching situations when some people decide to condemn and punish another on the basis of their convictions and in violation of known stipulations of official law).¹⁸

According to Podgórecki, particularly interesting and fruitful for the purposes of research seem to be the differences between positive-official law on the one hand and intuitive-unofficial law on the other. In his opinion, in fact, these dimensions of law are usually considered in empirical research. At the same time, the author observes that "(...) in passing that the social functioning of positive-unofficial, as well as intuitive-official law, while endorsed by the basic principles of the legal system, may be understood as being in some senses incor-

¹⁵ Ibidem, p. 86.

¹⁶ Ibidem.

¹⁷ Ibidem, p. 85–86.

¹⁸ Ibidem, p. 86.

porated in the mechanisms and procedures of corrective law.¹⁹ Podgórecki looks for support and evidence for possible differences between official and intuitive law in several large-scale studies by such authors as N. Timasheff, J. Tapp, and L. Kohlberg, which he analyses²⁰ in detail to reach the following conclusion:

(...) There always remains the doubt whether it is possible to compare the functioning of similar legal institutions in different social systems. Clearly, legal institutions in any society may have been subject to unique or discrete historical developments or may operate under the influence of other institutions within the same legal system.²¹

To address these challenges, he has developed a three-tier hypothesis regarding the functioning of the law. The process begins with the first independent variable: the content and meaning of the law itself, as it exists within a specific social and economic context, forming part of the recognised legal structure. Next comes the second independent variable, which is the subculture operating within that broader context. This subculture serves as the intermediary, connecting the intentions of lawmakers with the behaviour of the individuals subject to the law. Finally, the third independent variable plays a role in shaping how the abstract legal principle is applied in real-life situations, influenced by both the social and economic environment and the legal subculture in which it operates.²²

Relations between Law and Morality

According to Podgórecki, the second issue of legal consciousness is the problem of the relationship between morality and law.²³ Podgórecki pays attention to the relationship between law and morality in most of his works, looking for the specifics of these two main normative systems in the implementation of social control. But as far as legal consciousness is concerned, this connection has a special meaning. Rather, he proposes the thesis that one should not draw

¹⁹ Ibidem.

²⁰ Podgórecki cites N.S. Timasheff, *Introduction*, in: L. Petrzycki, *Law and Morality*, ed. H.W. Babb, Harvard University Press, Cambridge, MA 1955, p. xxviii–xxix, and J. Cohen, R. Robson, A. Bates, *Parental Authority: The Community and the Law*, Rutgers University Press, New Brunswick, N.J. 1958, as well as the research conducted in Poland by the Public Opinion Poll Centre, parallel with American research, presented in: A. Podgórecki et al., *Knowledge and Opinion about Law*, ed. C.M. Campbell, W.G. Carson, P.N.P. Wilesm, Martin Robertson, London 1973, loc. cit.; A. Podgórecki, *Law and Society*, Routledge & Kegan Paul, London 1974, p. 93–103.

²¹ Ibidem, p. 86.

²² Ibidem, p. 90.

²³ Ibidem, p. 89.

a sharp line between law and morality. He substantiates this view with the following reasoning:

(...) If it is accepted that condemnation may be expressed in two qualitatively different forms – (1) punishment intended as an element of deterrence and (2) penal sanctions intended to dissuade the punished individual from going astray again – and if it is also accepted that re-education as a form of reproach is less condemnatory and more of a social inducement to improved activity, then it becomes evident that the distinction between law and morality is to a considerable degree rather arbitrary and conventional.²⁴

Podgórecki distils his argument into a thesis suggesting that law can be adopted in three different ways. The first is through voluntary adoption, where ruling groups in a society decide to integrate legal provisions from another system because they find them beneficial. The second is through forced adoption, which happens under coercion, such as during times of occupation. The third type is repeated adoption, where laws from different systems are layered over time. A prime example is post-World War II Japan, where elements of American law were added to the existing mix of traditional Japanese law and earlier German and French legal influences.

And again, he presents us with his categorical opinion that

(...) application of the conception of 'official and intuitive law' enables us to explain – according to general rules – the effects of transplantations of particular legal provisions into other systems. It is again fitting to turn to Petrażycki for the general rules explaining that mechanism.²⁵

Podgórecki further develops Petrażycki's idea of intuitive law in the context of the question of ethical development on an ever-broadening scale, as a result of human activity. According to him ethical development on an ever-broadening scale, as a result of human activity, is of essential significance to the continuing transformation of the content of intuitive law.²⁶

²⁴ A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 90–91.

²⁵ Ibidem, p. 92.

²⁶ Ibidem.

Relation between Legal Consciousness and the Social Pathology and Effectiveness of the Legal Rules

The relationship between legal consciousness and social pathology takes a special place in A. Podgórecki's sociological theory of law. This relationship is an integral part of the problem of the effectiveness of legal actions.²⁷

He argues that a legal system works effectively when it reflects the collective emotions, opinions, beliefs, and values of society, as well as the core norms of social cooperation. This understanding led to research on law acceptance, which naturally extended to studying society's perception of deviant behaviour. Simply put, obeying the law represents true legal conformity, whereas breaking the law constitutes deviance.

However, he makes a distinction between negative and positive deviance, which allows him to delineate the boundaries between legal conformity and deviant behaviour. Based on Durkheim's theory of social anomie, as well as the brilliant analysis by R. Merton and T. Parsons, Podgórecki outlines his own definition of social pathology, looking for the place of legal consciousness in the formation of behaviour in the legal sphere. He argues that social pathology is "(...) this type of behaviour, this type of institution, this type of functioning of some social system that is in fundamental, irreconcilable contradiction with the worldviews and values that are accepted in a given society".²⁸

However, he does not equate behaviour that violates a just and legitimate legal system with what he calls "positive deviance".²⁹

Analysing the legal consciousness in the context of social pathology, Podgórecki points out that

(...) it appears that social institutions or organizations may contain elements of social pathology, i.e. they may be socially dysfunctional or (by investing given social roles or social positions with power) may generate negative social effects. Further, it is suggested that entire social systems – such as the Nazi legal system – may be of a socially pathological character (...). The research emphasizes the need to distinguish between negative and positive deviance (the latter being understood as behaviour that departs from accepted norms, as an internal revolt against standards obligatory in a given environment, but as non-egoistic motivation and as objectively positive social disintegration).³⁰

²⁷ A. Podgórecki, *Patologia życia społecznego*, Państwowe Wydawnictwo Naukowe, Warsaw 1969, p. 24.

²⁸ Ibidem, p. 24–25.

²⁹ Ibidem.

³⁰ A. Podgórecki, *Świadomość prawna...*, p. 91.

Empirical Research on Legal Consciousness

According to A. Podgórecki, both empirical research findings and more general reflections on legal consciousness are relevant. Very correctly he refers to the subject matter of the KOL.³¹

Podgórecki's empirical studies on legal consciousness can be defined as epochal for the development of the sociological theory of law. They are too numerous to analyse in one article like this. Therefore, in the following analysis, attention is focused on several main problems that are at the heart of his research on legal consciousness: the first element – knowledge of the law; the second element – prestige of the law; the third element – behaviour in a legally significant situation.

Podgórecki's research, both during his time in Poland and abroad, is innumerable and cannot be summarised in one article. That is why only a few of them are analysed in the article, which have a crucial importance for the development of the issues concerning legal awareness.

The Knowledge of the Law

Knowledge of the law is the first element of legal consciousness. Usually, professional lawyers attach great importance to the popularisation of legal knowledge. This is because they believe that the dissemination of information regarding the contents of legal regulations results in behaviour that is consonant with the law. The law plays an educational role and many complicated factors must come into play for a legal norm to gain recognition, and then to be internalised. The educative and motivational impact of the law can be helpful on this question.

In Podgórecki's empirical research, three questions are essential. The first question is about the application of the maxim *ignorantia juris not exusat*. Podgórecki is the first to pose the question that legal dogmatism is not interested in whether citizens have the necessary legal knowledge. That is why in legal-sociological studies this question is put forward as a basis for how legal consciousness is formed. A lack of knowledge of the law does not exempt you from legal responsibility.³² The second group of questions is related to the division

³¹ Podgórecki noted that "(...) considerations on legal consciousness coincide to a fair extent with the subject matter of the KOL Research Group"; A. Podgórecki et al., *Knowledge and Opinion...*

³² According to Berl Kutchinski, quoted by Podgórecki, "the term KOL stands for knowledge about law. It applies to the whole area of knowledge and attitudes regarding legal phenomena (the law, crime, punishment, legal institutions, and authorities, etc.)"; A. Podgórecki, *Legal Consciousness as a Research Problem...*, p. 87.

between legal principles and legal norms. The third question is about the sources of legal knowledge. The most empirical research shows that the mass media play an essential role in the receiving of information about the passing of laws.

Podgórecki researches the degree of knowledge of the law (legal awareness) not in separation from the other elements, but in relation to the problems of the importance of legal awareness for the formation of the attitude to the law and behaviour in the legal sphere. When he formed his initial hypotheses concerning the second and third elements of legal consciousness, Podgórecki created a new model for their study. He examined them in relation to the problems of the prestige of the law.

Prestige of the Law

It is widely recognised that the notion of the “prestige of the law” was introduced to empirical sociology by Adam Podgórecki³³ in the research he conducted in Poland between 1964 and 1977.

The first empirical research on the prestige of law in Poland was carried out by A. Podgórecki in 1964. This research has been professionally conducted by the Public Opinion Research Centre at the Polish Radio and Television on a nation-wide representative sample, using the survey and interview methods. It was also one of the first such studies internationally.³⁴

Setting the start of the prestige of law has been part of a cycle of public opinion research on the general assessment of law and its functioning.³⁵ Personality variables occupy a central place in the study of the prestige of law.

As many authors point out “in more than the sixty years that have passed since A. Podgórecki’s research, similar studies, even using the same questions, and the same methods have been repeated many times in both nation-wide and local studies.”³⁶

³³ A. Podgórecki, *The Prestige of the Law (Preliminary Research Results)*, “Acta Sociologica” 1966, vol. 10, no. 1/2, p. 81–96.

³⁴ It should be noted that the Public Opinion Research Centre at the Polish Radio and Television was in the 1960s the only one such institution in the Communist bloc. See: J. Kurczewski, *Prestiż prawa i sprawiedliwości*, “Rzeczpospolita” 14.02.2016, www.rp.pl/Publicystyka/302079953-Jacek-Kurczewski-Prestiz-prawa-i-sprawiedliwosci.html (accessed: 30.11.2019).

³⁵ The methodology of the sample, as well as the methods used to gather information, are described in detail in: A. Podgórecki, *Świadomość prawna...*, p. 165; see also: A. Podgórecki, *Zjawiska prawne w opinii publicznej*, Warsaw 1964.

³⁶ Many Polish authors pay attention to the fact that Podgórecki thoroughly researches and analyses the prestige of law. In this context, A. Przylepa-Lewak asks the rhetorical question: “Did it happen that the changes taking place in Poland and in the consciousness of its citizens during that time, such as the change of the system, increasing civil rights and freedoms, Poland’s accession to

Several important problems, which formed the subject of research on the prestige of the law, take place in the study of the prestige of law. The first main problem was to discover the general opinion about the present functioning of the law. The second main problem was to find out what the Polish population in 1964 thought about the law in general and the sanctions applied by the law. The third main problem was to diagnose how the law and some of its institutions are regarded by the public opinion at present. The fourth problem was to examine which connections exist between opinions about the law and attitudes to it, and various psychosocial determinants of those opinions and attitudes.

A very essential element of the research was to discover whether, and to what extent, both types of factors (objective and subjective) affected people's opinions and attitudes towards the law. Diverse variables, such as respect for the law and the public's assessment of certain aspects of the law as too severe or too mild (e.g. the public's attitude to the death penalty), were introduced in testing the principal research hypotheses.

People were asked about their views as to which factors determined a successful intervention with an official body. They were also asked for their attitude to punishments which are not applied by the law in its present state, whether people should evade or break a law they disapprove of, and whether people should obey their superiors even when the latter issue orders they think wrong.

Tolerance or Rigorism

Several questions remain regarding the attitude toward the death penalty. It is apparent that the attitude depends on gender, age, social status, and education. Two questions are of particular importance in research on the prestige of law and the tolerance or rigorism relationship.

The first question concerned the opinion on the capital penalty. People were asked to express their opinion about the death sentence: "Do you think the death sentence should be used?". 14.8 % answered that the death sentence should be definitely used, 33.6 % answered "Rather yes", and 21.7 % answered "Rather no".

international organisations, etc., might be reflected in the increasing level of the prestige of law?" He answers: "Unfortunately not". See: A. Przyłępa-Lewak, *Legal-Sociological Research of the Prestige of Law*, "Studia Iuridica Lublinensia" 2021, vol. 30, no. 1, p. 219–235; A. Przyłępa-Lewak, *Wkład Adama Podgóreckiego w powstanie i rozwój socjologii prawa*, Wydawnictwo UMCS, Lublin 2020; see also: J. Kurczewski, *Spory i sądy 25 lat później*, in: *Polskie spory i sądy*, eds. J. Kurczewski, M. Fuszara, Warsaw 2004, p. 39; A. Kojder, *Godność i siła prawa*, Oficyna Naukowa, Warsaw 2001, p. 408–409; *Biznes i klasy średnie. Studia nad etosem*, eds. J. Kurczewski, I. Jakubowska-Branicka, Zakład Socjologii Obyczajów i Prawa. Instytut Stosowanych Nauk Społecznych. Uniwersytet Warszawski, Warsaw 1994, p. 169–184.

The second question was about the opinion on the aim of penalty. 45.8 % of respondents answered that the re-education of sentenced criminals is the main purpose, 27.6% answered that to make them suffer is the main purpose, and 21.9 % said that the purpose was to isolate them.

If we are to repeat the conclusions reached by A. Podgórecki they are the following:

(1) The opinion that re-education is the main purpose is held by people with secondary or higher education, people who show no signs of insecurity, people who are rationalistic in their attitudes, who are well adjusted to life, who are engaged in social work (and in the rural areas likewise people who show strong social affiliations and who were brought up by gentle methods). Those who are in favour of corporal punishment are people aged 50 and over, people who had a severe upbringing, who are socially maladjusted, and frustrated.

(2) The opponents of corporal punishment, are recruited from among those who are aged 18–24, who were brought up by mild disciplinary methods, and who think that their prospects in their job are likely to improve.

(3) A tolerant attitude, that is, the view that the boss should talk privately to the man caught stealing, is shown by women, brain workers, people with no legal experience, people with wide social affiliations, and religious persons.

(4) A more rigorous attitude – demanding the sack for the man caught at petty theft – is represented by the skilled workers, by people with legal experience, by people who are insecure, by people who are socially isolated or who belong to primary groups, by people who are inhibited, dogmatic, and irreligious.

(5) A number of social traits lead to greater rigour and therefore incline people to approve of more severe punishment. These traits are as follows: low level of education, manual work, lack of engagement in social activities, absence of legal experience, feeling of insecurity, loose social affiliation, dogmatism, rigorous upbringing, poor social adjustment, and frustration. In the case of punishments sanctioned by the law (in case of capital offences, or theft), people who possess some of the above traits will be inclined to approve of the strict application of the punishments).³⁷

Asking the question on the attitude to the death penalty in a totalitarian system (1960s) is quite a brave and progressive act. Podgórecki dares to pose this problem and thus gives impetus to similar studies in other countries with totalitarian rule. Here, the author of this article allows himself to present data from similar studies in Bulgaria before and after the democratic changes.

Consequently, in 1979, 1982, 1990, and 2009, empirical studies on the attitude towards the death penalty were conducted in Bulgaria jointly by the

³⁷ A. Podgórecki, *The Prestige of the Law...*, p. 86–87.

Institute of Legal Sciences at the Bulgarian Academy of Sciences, the Institute for Criminological Studies, and the Methodical Council for Prison Cases at the Ministry of Justice. The idea was to see how the rigorism-tolerance relationship changed during the period of authoritarian rule, after the changes in 1989 and the subsequent accession of the Republic of Bulgaria to the EU. The study of this relationship is related to various stages in the development of society and law. The first stage is the authoritarian rule until 1989, the second is the transition to democracy after 1989, and the third is the membership of the Republic of Bulgaria in the EU.³⁸

Table 1. Opinion on capital penalty in Bulgaria³⁹

Do you think the death sentence should be used?	1979	1982	1990	2011
Definitely no	12.1	11.2	37.6	23.7
Rather no	9.8	0.2	34.0	10.0
Definitely yes	41.7	29.9	10.5	34.6
Rather yes	22.6	44.2	6.1	18.0
Don't know	13.8	14.5	11.8	13.7

Source: own research.

What can be clearly seen in the table is that during the time of totalitarian rule, the percentage of people who supported the death penalty was high. After the changes that took place in 1989, this percentage has been decreasing. The death penalty was abolished in the Criminal Code of Bulgaria in 1992, when the country became a member of PACE. Since 2007, Bulgaria has been a member of the European Union, and it should be expected that the citizens' legal awareness remains tolerant of the changes in the Criminal Code. However, it is clearly visible that several years after our admission to the EU, strong rigorist attitudes toward capital punishment are observed. These changes in the legal consciousness of Bulgarian citizens are very indicative of the mechanism of the social action of law. The explanation can be found in the inadequate application of the necessary legal measures to fight crime, especially organised crime. Society is becoming more and more rigorist. There is a populist attitude, which is expressed in the view that crime can be liquidated (restricted) through high

³⁸ S. Naoumova, *Negative Social Phenomena and the Role of Legal Consciousness in Their Overcoming*, in: *Bulgarian-Polish Dialogues in Sociology of Law and Criminology*, eds. M. Fuszara, J. Kurczewski, Sociology of Custom and Law, Institute of Applied Social Sciences, University of Warsaw, Warsaw 1990, p. 35–51; S. Naoumova, *Sociologia na prawoto...*, p. 238; S. Naoumova, *Die rechtssoziologischen Forschungen in Bulgarien*, "Zeitschrift für Rechtssoziologie" 1990, no. 1, p. 102–119.

³⁹ S. Naoumova, *Sociologia na prawoto...*, p. 151, 183, 205.

penalties. This relationship is characteristic of persons with lower education, older age, and occupying non-management positions. The issue of the return of the death penalty to the Criminal Code has been repeatedly raised in the Bulgarian parliament by patriotic parties and formations.

Legal Conformity

The question about compliance with law, which was formulated by Adam Podgórecki, is of utmost importance in the context of the empirical characteristics of legal consciousness. The question is well known and was as follows: "Please choose from the sentences that are the most appropriate for you or enter your own opinion on the subject."

The list of possible answers, formulated by Podgórecki was as follows:

(1) Law should always be observed, even if we consider it wrong. (2) When we come across regulations (provisions) that we consider wrong, one should only keep up the appearance of applying them but attempt to circumvent them. (3) Provisions we consider to be wrong should not be followed at all. (4) I have another opinion on this.⁴⁰

According to A. Podgórecki,

the following categories of people are inclined to respect the law even when they think it is wrong: people aged 35–49 and people over 60, people who have a higher education, brain workers whose families belonged to the intelligentsia, people who have no feeling of insecurity, members of small groups, people who are rationalistic in their attitudes and who engage in social work (while these have a slight tendency to evade the law).⁴¹

The research shows that not only the various types of socio-political systems but also the internal values held by various social groups that have diverse legal

⁴⁰ See: A. Podgórecki, *The Prestige of the Law (Preliminary Research Results)*, "Acta Sociologica" 1966, vol. 10, no. 1/2, p. 81–96 (question no. 6 of the questionnaire). This question has been asked many times in different versions both in Poland and in Bulgaria. S. Naumova, *Legal-Sociological Parameters of the Fight against Crime and Social Deviance – Them. Coll.*, in: *Sociology and Law: The 150th Anniversary of Emile Durkheim (1858–1917)*, eds. S. Hunt, M. Serafimova, M. Marinov, Cambridge Scholars Publishing, Cambridge 2008, p. 19–29. Recently, this question was asked in a joint study using a common methodology and a common survey in Poland, Bulgaria, Hungary, and Ukraine. See: J. Kurczewski, P. Orzechowski, S. Naumowa, *Razgrad Area Study in Ethnic Dispute and Dispute Resolution Patterns*, in: *Sociology of Law and Contemporary Directions in the Development of Legal Knowledge. Thematic Collection on the Occasion of the 150th Anniversary of the Bulgarian Academy of Sciences and in Honour of the Anniversary of Professor Stefka Naumova*, Sofia 2020, p. 155–185.

⁴¹ A. Podgórecki, *The Prestige...*, p. 88.

subcultures, affect the way people regard the law, accept it, internalise it, and acquire behaviour habits; it is also propounded that within the framework of these legal subcultures, the extent, the way, and the degree to which the law is respected also depends on certain specific types of target groups.

Conclusions

The main purpose of this article was to present a summary of the theoretical and empirical studies of Prof. A. Podgórecki on legal consciousness. It is not possible, of course, to present his extremely interesting and significant research in full in such a short analysis.

It is particularly important to note, however, that his research conducted in the 1960s and 1970s not only has not lost its relevance, but is becoming increasingly relevant today. His later research, carried out in the period after 1977, when he left Poland, can be defined as particularly valuable and important for the development of the sociology of law.

The main starting point regarding the theoretical and empirical studies of legal consciousness in Poland was formulated by A. Podgórecki in a precise way. He believes that it is extremely important for jurisprudence to study not only the external manifestations of the law (the behaviour of its actors and agents), but also the internal (or internalised) dimension of legal phenomena.

Today, when jurisprudence is subordinated to the requirement of the rule of law, it is even more necessary to examine the legal consciousness of both citizens and legislators. There is no doubt that even today the relationship between law and morality is essential, especially considering that European Union law for the most part places this problem in the context of legalism and the validity of law in the sociological sense of the word. The rise of crime and social deviance demands that the relationship between rigorism and tolerance be examined with even greater care.

Podgórecki initiated these studies in the context of social deviance and raised the issue of resocialisation and humanism in penal policy. The empirical data analysed in the article, which are the result of Podgórecki's research, still sound very relevant today and serve as a basis for further analyses of legal consciousness.

At the end of the conclusion, I would like to include a few sentences about my legal-sociological research. Theoretical and empirical studies of legal consciousness occupy a central place in my scientific development. In this context, I should point out that I have researched theoretically and empirically the problems of legal awareness of civil servants, legislators, investigative bodies, judges, and prosecutors. I have published empirical studies of discrimination as a form of social pathology, of white-collar corruption, of employees in the Registration

Agency, etc. All my research on legal consciousness has been done in the spirit of A. Podgórecki. As his student, I have always adhered to his scientific legacy and faithful to his sense of what is good, fair, and moral.

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