

# Modern Transformations of Legal Consciousness in the Context of Digitalization of the Russian Economy

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**Abstract**—The author analyses various approaches to understanding the legal consciousness that have recently been observed in Russia. The analysis focuses on the ways of how various views shape the concepts of the legal framework and corresponding requirements necessary for the effective promotion of the digital transformation of the Russian economy. There is an opinion that the successful outcome of the ‘digital environment’ project will be determined by the nature of the competition between two rivaling principles: the centralized and the decentralized. The outcome can be positively influenced by the law but subject to certain transformations of understanding of the law by users. It’s assumed that the influence of the positivist approach makes it difficult for the Russian legislators to decide on the proper definition of the ‘digital rights’ concept. In this regard, a ‘digital right’ is viewed as a subjective right with a high level of discretion of the right holder, capable of providing effective regulation where it comes to: the ‘virtual nature’ of relations that do not fit into the traditional framework of physically visible areas of jurisdiction. A liberal and individualistic approach to understanding the law is viewed as desirable. This approach has been dominating in today’s modern theory and practice. It makes it possible to successfully define digital rights, which is determined by their ability to allow the participants of relations to set the rules of conduct in a decentralized manner, making them beneficial for themselves (in their own interests). The participants are consciously becoming fully accountable for the outcome.

**Keywords**—centralized management; the concept of legal consciousness, digital rights, digitalization of the economy, legal law, law and legislation

## I. INTRODUCTION

It can be assumed that in the context of rapid digitalization, penetrating into all spheres of social life, the role and significance of legal regulation will change significantly. This will inevitably (objectively) require adequate transformations of legal consciousness, of general understanding of law, its nature, its essence and its major features, as well as understanding of the legal system and

the legal regulation mechanisms, etc. Without a new perspective, perceiving the realities of the digital environment via ‘legal vision’ is becoming impossible.

For example, A.I. Abramova, while studying the potential of integration and differentiation of legal regulation as a tool to increase its efficiency, rightly points out that “the current situation, with its distinctive expansion of the boundaries of legal regulation, its changing conditions in economic, political, and social life, with the intersection of public law and private law interests in a given area of relations, creates the preconditions for the development of new standards of understanding (italics mine – S.V.) these processes, for determining their priority and their appropriate combination in relation to different areas of legal regulation” [1].

Contemporary Russian legal consciousness is quite contradictory. To a certain extent, it reflects problems and conflicts of the current stage of our country’s ‘troubled’ development and its major aspects of life. According to T.Y. Khabrieva, the development of information and communication technologies creates a new reality in which “the operation and the image of many social and regulatory institutions, including law, are refracted. The new technological development becomes not only a means or a tool that ensures the introduction of digital technologies and their use in various spheres of public life, such as the economy, management and other social segments. It also becomes an object of digitization impact. The aforementioned changes affect the content, the form, and the mechanism of law.

Neither in doctrine nor in legal practice, there is a clear understanding of a vector, consistent patterns, or mechanism of these transformations” [2].

According to legal scholars A.V. Malko and O.L. Soldatkina, “building a digital economy is often presented as a priority task for the Russian government. At the same time, it adds certain confusion to this subject’s theoretical framework. Law flexibility should comply with the rapid

technological advancement. However, in the same time decision-making must be scientifically grounded and consistent, otherwise the efforts of the state to introduce digital tools to our life will be ineffective.” [3].

In our opinion, the fascination with the positivist concepts of law is quite obvious. As a result, the right is quite openly substituted by law, while law application practice does not fully take into account this difference. However, distinguishing between these two areas of law is necessary to adequately regulate the reality in terms of improving the quality of the production and making it technologically advanced. In this regard, the point of view of M.V. Zaloilo and O.V. Cherkashina-Schmidt deserves to be highlighted. They believe that ‘legal positivism that has long been prevailing in Russia, significantly limits the Russian law by regulatory legal acts only. This approach does not allow for the necessary and competent answers to be given to the numerous questions raised by lawmaking and law enforcement practices’ [4].

This enthusiasm for positivism, which clearly has a strong scientific capacity, also contains some risks for the dynamic perspective development of the Russian society, since the development resource is expected to be supported by all major subjects of the society (state, civil society, each individual). As A.V. Lubsky precisely points out, “the paternalistic-statist type of relationship is based on the identification of a person, society and the state [...]. The status of a citizen, his/her rights and freedoms are established by the state and are considered secondary (italics mine – S.V.) in relation to the state interests. [...] In this type of relationship, the state is focused on unilateral or collective decision-making, while disregarding certain legal instructions and providing formal or no explanation whatsoever to the decision made. Most importantly, a person’s opinion is not taken into consideration” [5].

## II. RESULTS AND DISCUSSION

We believe that despite the significant scientific value of the positivist concepts, their dominance is not entirely favorable, and modern legal consciousness requires certain transformation. This is due to the fact that ‘the competitive influence’ of other subjects’ (individual, civil society) interests on the state is not adequately provided for. Concurrently, the state’s will, as stated in law, becomes exclusive and obligatory for all and is not subjected to any restrictions’ [6].

The liberal-individualistic approach to legal consciousness is not quite welcomed in Russia, even though it could motivate further awareness of the social developments based on competitive principles and capable of fostering common interest in social dynamics.

In the current Russian economic paradigm, particular attention is paid to the management of the financial resources. This results in a fairly high level of centralization and the state’s involvement. The state’s influence doesn’t only decline in favor of its competitive principles of the economic development, but on the contrary, it’s strengthening its positions. One can’t but agree with S. Bodrunov who believes that the phenomenon of “financialization” or the dominance of financial capital is taking place in Russia’ economy. As a result, disparities

with the real economy are increasing, while the quality of its product (consumer capacity) and the level of its development are declining [7]. The concern is that in the course of digitization our law needs to positively influence the nature of the competition between two rivaling principles (which will be determined by legal thinking): the centralized and the decentralized, which will determine the success of the “digital environment” project in the near future.

According to V. D. Zorkin, “we need now such an adjustment of the liberal-individualistic approach to legal consciousness (which is dominant in today’s world theory and practice), which would introduce the idea of solidarism into the very concept of the right” [8].

In our opinion, the solidaristic approach has a certain positive potential, but it will not provide a fundamental solution to the problems of legal support for reforms in Russian society. It does not help to form the right as an effective regulatory tool that can ensure responsible behavior of all the main subjects of Russian society, and, first of all, the state. The solidaristic approach, so to speak, “blurs” responsibility for what is happening and does not fundamentally go beyond the positivist concept of the right.

Very interesting and directly related to the topic of our research are the arguments of A. V. Malko and O. L. Soldatkina about the theory of legal policy, which, in their opinion, has received “rapid development and spread among legal scholars in the last two decades”[3]. In our opinion, this is a unique attempt to strengthen formal legal consciousness, creating a kind of state-legal doctrine, which will probably claim the status of “most correct”.

We do not fully agree with this point of view, because science is strong point is that it is free in expression, providing a powerful discussion platform, where in the course of a clash of various opinions, truth is born. In this regard, the problem of data limitation arises, which complicates research in the field of business and human rights. For example, according to foreign scientists, the problems associated with the closed nature of data in the field of business and human rights (BHR) make it difficult for scientists to progress in creating new conceptual achievements [14].

It is in the individualistic-liberal type of relationship between a person and the state that E.V. Titova discovers the potential of worthy legal instruments for expressing and protecting special interests. According to the scientist, this type is “characterized by [...] the restrictive function of civil society and the restriction by the state of the direction of the dissemination of civil will” [9].

Civil society and the state almost equally limit each other, not allowing one interest to dominate the other.

The problem of non-identity of the law and legislation is very poorly (for obvious reasons) worked out in official law enforcement of the positivist orientation, which probably leads to the loss of significant resource opportunities of the legal space and some of its “backwardness” against the background of world achievements in the doctrinal interpretation of the right as the greatest civilizational conquest.

When studying the law “in a positivist way”, a number of its characteristics that are crucial for the high management quality of this regulatory tool practically does not receive proper and adequate reflection (they are ignored). For example, the abstract (universal) nature of law. It can be assumed that this characteristic is not entirely welcome by those who see law only as *jus*. It is not fully realized that this nature of the law provides its powerful regulatory potential, which includes the objectivity of the law, its independence, which turns the law into an instrument that everyone trusts as completely reliable and fair.

The abstractness of the law confirms that it is not related to any particular interest, is not engaged by it, and does not support (provide) it directly. Such objectivity of the regulator is highly demanded in modern conditions of Russia, it differs from the specificity of law “in case”, expanding the possibilities of regulation that is tolerant of diverse and conflicting interests, allowing them to independently find acceptable points of contact.

It is obvious that the abstract nature of law provides competitive, adversarial beginnings of the formation of relations. Competition is the main element of stable economic development in the direction of high-quality product improvement. Competition always involves (and this should be supported by law) an element of uncertainty (= unpredictability), which forces those who participate in it to strive to set the best indicators and characteristics of the quality of their efforts (actions), hoping to attract the demand that can enrich them. Competition obliges to invest in the best – and this guarantees the progressive movement of the economy.

In our opinion, there are two main models for regulating relations, which ultimately determine the differences in legal consciousness. For example, the trajectory of “movement” (behavior) of each participant in the interaction space is determined centrally (by law), thereby “separating” them, preventing collisions, intersections, and providing each of them with a guaranteed space of freedom. But it is also possible in a different way, giving everyone the opportunity (right) to determine their own trajectory, placing on them the responsibility for finding agreement with other moving ones (by agreeing, using their own resources, their own means, attracting others, and so on.).

The first option is closer to the Russian reality, in which regulation by legislation is proclaimed as a kind of guarantee of the security of the rights and freedoms of many (the vast majority) of citizens, which is positioned as a high level of their security. Due to state regulation, citizens must (duty) be within the “freedom cell” measured by legislation, so as not to interfere with others in the exercise of their rights and freedoms. The state as if divides (centrally regulating the process) rights and freedoms among all, organizing a certain “common fund”, the use of the resources of which is designed to reliably and materially ensure the right of everyone. At the same time, the security of the law of everyone is determined by the fact that the opportunities (rights) of other users are limited by the performance of their duties. Freedom acts as a common property, a common (collective) value (collectivist approach), created by the efforts of all subjects and these

efforts are required by the state, for example, through the performance of duties. This approach may make it difficult to create high-quality content for these rights and freedoms, but it is possible to make them widely available.

In our opinion, this is an example of a collectivist (solidaristic) legal consciousness.

The second option, with the possibility for everyone to determine their own trajectory of “movement” (behavior), freely using their own resources under their own responsibility, is a liberal-individualistic approach to the law. Its advantages are that it is based on a high personal responsibility, first of all, to oneself (its regulating effect is that you cannot hide from it or escape from it), which allows you to activate a huge creative resource of capable citizens on the conditions of their interest in their own creative actions. The implementation of rights and freedoms takes place in their special interests, which become the main stimulator of high-quality efforts.

In connection with the above, the issue of legal regulation of the spheres of society’s life, and, first of all, the economic sphere, which are subject to serious changes due to the active implementation of digital technologies in them, is acute. In fact, it sounds like this: will the legal space of our country help the rapid development of modern technologies based on digitalization, or will it become an obstacle to such a technological breakthrough, contributing to the existence of our economy in a non-competitive state “in the backyard” of the world community?

Digitalization of the economy requires, as it seems to us, a change in the very paradigm of the current economy in order to get away from its spending and distribution type, implemented due to excessive state regulation of this key area of the Russian society.

“Digitization” of resources can play both a positive and negative role, and therefore appropriate legal support is required, which will not allow the digital beginning in the economy to replace its essence as an effective reproduction process that creates a quality product (use value). Within the framework of the positivist legal consciousness that dominates in Russia, there is a temptation to legislatively use those elements of the digitalization potential that will ensure the processing of various data arrays in the “law dimension”, which can strengthen the possibilities of centralized management of economic processes. The need for this is generally reasonable and is explained by the basic requirements of security, rational use of funds, improving the efficiency of resource management, etc. But at the same time, there is a risk of legal (more precisely, legislative) “hindering” the decentralization of economic processes and making them competitive. There may be difficulties for the growth of economic activity, the formation of a resource of creative private interest in the development of high-quality, innovative and highly effective technologies in the civil sphere (civil society).

The danger is that distorted ideas about the nature (essence) of modern phenomena of the legal sphere can further aggravate the crisis processes in the legal space of the country and knock out the legal regulator from the ranks of reliable associates of progress. As mentioned above, under the seemingly quite favorable slogan “further

expanding the legislative concretization of the norms of right, strengthening the legal mechanisms for their implementation", there appears the idea (and these are the issues of legal consciousness) about the rights provided exclusively by legislation to participants in legal relations. This, in turn, is capable of striking a blow to the expansion of the practice of active use of the instrumental potential of the inalienability of natural rights and freedoms and ensuring a proper competition to legislation. Under such slogans, the legislation receives obvious preferences in relation to the law, which may carry some negative consequences of "legislative monopoly", gradually turning the legislation, according to legendary classics, exclusively into the "will of the ruling class." For example, of interest is the opinion of Australian scholars discussing "the legislative activity and the reaction of the courts in the light of the privilege not to incriminate oneself" [12].

We can assume that the legal consciousness of lawmakers is not yet able to overcome the narrow positivist framework, since already in defining the fundamental concept of "digital rights", without which the dynamic development of the digital economy is inconceivable, some difficulties emerged. The proposed definition does not justify the "liberal" expectations, as well as pre-representing, in the main, the obligations of the right holder himself, assumed in the law, which subsequently must provide a mechanism for the implementation of the right.

The positivist-solidarity approach to the law with the domination of the supremacy of legislation conceals some shortcomings that, in modern conditions of extreme need for a constructive and creative free initiative of right holders and a balanced progressive development of the state-social organism, must be taken into account in order to correct legal consciousness adequately to realities. There is a risk of transformation of the law through the legal "implementation mechanism" into the endless obligations of the rightholder to other participants of the relationship, which actually neutralizes him. The benefits of the active potential of reasonable independence, stimulated by a deep awareness of one's own responsibility, are reduced to nothing (the resource is lost). It is necessary to understand (transform legal consciousness) that the right is a kind of advance permission for actions at your own peril, at your own responsibility, provided by your own resource for mastering some sphere and forming the "rules of the game" in it. This is some kind of self-regulation, the need for which is objectively increasing.

The need for active self-regulation of participants in the digital market space [10] is pointed out by U.S. Breu, since problems arise for traditional regulators (governments, legislators). According to this scientist, "storing data on worldwide networks makes the blockchain applications difficult to regulate as they are not residing in a specific area of influence of any given regulation or jurisdiction. Also the blockchain applications offer an extensive level of anonymity to their rightholder" [10].

The most important sign of the existence of the law is the expansion of opportunities to explore the space with the decisive participation of the right holder, but not his obligation to act exclusively according to the prescribed rules within the framework of the legal "implementation

mechanism". In the conditions of Russian "legislative monopoly", this mechanism inevitably ensures the priority of the interests of one of the parties of relations – the state apparatus, reducing the level of interest of others due to the actual loss of such an instrument of support.

In connection with the above, the opinion of T.Y. Khabrieva, who notes that "many states, like Russia, rely primarily on legislation in regulating public relations in the context of digitalization. Taking into account the fact that the relations in this area are very dynamic, in our opinion, the prevalence of legislative acts reduces the effectiveness of legal regulation, reduces the ability to quickly respond to changes in the subject of regulation. In order to adequately reflect the dynamics of development of the modern legal sphere, legal regulators must be extremely flexible"[2].

One cannot but listen to D.A. Pashentsev, who, while agreeing with the opinion of T. Y. Khabrieva, notes that "in the context of digitalization of public relations [...] there is a need to expand the arsenal of regulators used [...] in the future, this may lead to the fact that legislation will lose its former role, which will inevitably affect the scale and directions of legislative activity [...] This trend is objective [...]" [11]. According to a number of foreign scientists, society is undergoing a digital transformation as artificial intelligence and other technologies develop to optimize decision-making and improve operational efficiency, which can hinder the effectiveness of public institutions responsible for adopting, regulating and enforcing the law [13].

It is more and more obvious that the digitization of the economic sphere will inevitably require its substantial democratization, decentralization, and widespread use of blockchain technology based on the so-called "distributed registers" that deprive the system of rigid centralized management. There is a contradiction with the current hypertrophied presence in the economy of an administrative and power resource striving to take control of economic processes, sometimes contrary to the action of market laws. Conceptually, the economic sphere should become a real sphere of freedom of action and competition.

### III. CONCLUSION

Concluding the article, we note the following: from the point of view of contemporary legal consciousness, it can be assumed that our legislator has not yet been able to achieve the proper level of abstraction which is necessary to formulate the concept of "digital rights" as a subjective right with a high level of discretion of the rightholder. It is not possible in the process of lawmaking to sufficiently overcome the regulatory limitations of the legislative form and its specific prescriptions that try to establish a detailed connection among the subjects through mandatory rules of behavior. This type of centralized impact is not quite suitable for rapid "changes in the subject of regulation" when it comes to virtual space that does not fit into the traditional "geometric framework" of the foreseeable areas of jurisdiction, about the widespread anonymity, as an element that stimulates the positive activity of users, about distributed data that do not lend themselves to the usual centralized management and subjective power adjustment, etc. Therefore, the desire "to strengthen our faith in the logic

of traditional legal reasoning” [15] is welcome, but should be taken with some elements of criticism.

Such a vision of legal regulation (legal consciousness) no longer fully corresponds to the main digital technologies (blockchain, cryptocurrencies), which determine the success of the development of the digital economy, and are designed for distributed regulation. The success of the definition of digital rights is determined by their ability to allow the rules of behavior to be formed in a decentralized way by the participants in the relationship, making these relationships beneficial for themselves, and quite consciously taking full responsibility at these conditions. It is necessary to somewhat reduce the share of participation of the competent government institutions in this process and strengthen the self-regulation processes. Free movement in this area is very significant and it is this, however paradoxical it may seem at first glance, that ensures the high efficiency of transactions (interaction) and their reliability and balance.

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