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LEGAL CONSCIOUSNESS IN THE POLISH PEOPLE'S REPUBLIC: THE EPISTEMOLOGICAL ROOTS OF THE HIGH CONSENSUS CONCEPT

Abstract. The paper explores the case of legal consciousness research in Poland during the period from the 1960s to the 1990s, focusing on its epistemic foundations. Three distinct traditions – Western, Soviet, and Polish – are identified, each with varying levels of scholarly consensus and diverse sources of that consensus. The study offers a concise analysis of different conceptualisations of legal consciousness. The methodological framework of the sociology of law during this era is examined, drawing from Carl. E. Schorske's concept of "new rigorism". The research observes a certain feature of the Polish legal consciousness research – a prevalence of tripartite distinctions. The reasons behind this phenomenon are explored and interpreted as a consequence of deep epistemic assumptions rooted in positivism.

Keywords: legal consciousness, Polish sociology of law, Adam Podgórecki, Maria Borucka-Arctowa, legal epistemology

ŚWIADOMOŚĆ PRAWNA W PRL. EPISTEMOLOGICZNE PODSTAWY WYSOKIEGO KONSENSU POJĘCIOWEGO

Streszczenie. Artykuł bada konceptualizacje pojęcia świadomości prawnej w polskiej socjologii prawa w okresie od lat 60. do 90. XX w. i analizuje ich podstawy epistemiczne. Porównywane są trzy tradycje, wyraźnie odrębne w tym okresie: zachodnia, polska i radziecka, charakteryzujące się odmiennym poziomem konsensu i odmiennymi jego źródłami. Omawiane są różne konceptualizacje pojęcia w tych tradycjach. Koncepcje te umieszczane są w perspektywie "nowego rygoryzmu" (pojęcie Carla E. Schorskego), który był dominującą ramą metodologiczną, określającą kryteria naukowości w tym okresie. Analizując konceptualizacje świadomości prawnej w Polsce, artykuł zwraca uwagę na wszechobecność trójczłonowych kategoryzacji. Jako propozycja wyjaśnienia tego zjawiska, wskazuje się głębokie założenia epistemiczne pozytywizmu (w jego odmianach filozoficznej, socjologicznej i prawnej).

Słowa kluczowe: świadomość prawna, polska socjologia prawa, Adam Podgórecki, Maria Borucka-Arctowa, epistemologia prawna

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1. INTRODUCTION

Scholars use the concept of legal consciousness to describe how law, knowledge, society, and consciousness intersect. However, there is a notable lack of consensus among legal theorists and empirical sociologists regarding its conceptualisation and operationalisation. The academic literature on this topic in both English and German is highly fragmented due to diverse interpretations and methodologies. In contrast, in post-Second-World-War Poland, legal consciousness was a much clearer concept, with a wide consensus among the sociologists of law and legal scholars on its conceptualisation and empirical meaning. Adam Podgórecki, Maria Borucka-Arctowa, and many other scholars developed and refined this concept over many years, making it a hallmark of the Polish sociology of law. I claim that this high consensus lasted from the 1960s to the 1990s, spanning from the post-Stalinist era to the years after democratic transformation, when the barriers between the Eastern Bloc and Western academic circles were lifted, allowing for increased intellectual exchange.

In this paper, I suggest that this difference stems from two primary factors: the political context (constraints imposed by the socialist regime and ideology) and the dominant methodological perspective called "new rigorism". These factors contributed to an intellectual environment defined by a strong concept of "scientific knowledge." One of the most distinctive feature of this environment is the organisation of ideas into triangular structures or tripartite divisions. The concept of legal consciousness serves as one of the primary examples of this phenomenon.

2. LEGAL CONSCIOUSNESS IN WESTERN AND SOVIET JURISPRUDENCE

Legal consciousness is one of many vague sociological terms in American and European jurisprudence, and different authors define it in various ways based on their research goals (Czapska 2017; Keßler 1981).

The psychological aspects of law was a well-established field of study within the sociologically-inclined jurisprudence in Austria and Germany (Szilágyi 2023, 7). The early 20th-century school of *Freirechtslehre* (Kantorowicz, Ehrlich) distinguished two concepts: *Rechtsbewusstsein* (legal consciousness – a more intellectual concept associated with knowledge) and *Rechtsgefühl* (legal feeling, an intuitional concept rooted in intuition, experience, and shared national culture) (Turska 1961; Gryniuk 1979, 5–6; Turska 1965).

After the Second World War, the concept of *Rechtsgefühl* faced significant criticism for two primary reasons. First, it did not meet the new methodological standards that emerged after the war (a new rigorism). The concept of *Rechtsgefühl*,

rooted in the German tradition of the historical school of law, was vague, poorly-defined, and difficult to operationalise for empirical research, relying heavily on intuition. It also became a fundamental concept in Nazi legal discourse – a link between individual consciousness and the collective national soul – and, consequently, after the war it was discredited (Schröder 2014, 597–616).

In 1964, the concept of legal consciousness (*Rechtsbewusstsein*) underwent critical examination by Theodor Geiger, a leading figure in German and Danish sociology of law. Geiger reviewed various approaches to the concept and ultimately dismissed its relevance to empirical legal research. He argued that it is a theoretical and heterogeneous construct, because psychological phenomena are inherently unobservable. Therefore, in his view, legal consciousness must be translated into observable human actions to hold any empirical significance (Geiger 1987, 340–375).

In the following decades, several conceptualisations of legal consciousness were developed for empirical legal research. As in other countries, attitudinal research became quite popular, along with defining legal consciousness simply as opinions on the law (Heitzmann 2002, 84–85). However, also more original approaches emerged. Lutz H. Eckensberger, and Heiko Breit applied Lawrence Kohlberg's theory of moral development to identify the stages of legal understanding (Heitzmann 2002, 78–80). K. H. Reuband introduced orientation criteria of individuals in their contact with the law (Heitzmann 2002, 85–86). R. Lautmann focused on individuals' ability (or competence) to use the law as an instrument to achieve their goals (Heitzmann 2002, 87–88). Meanwhile, in the German Democratic Republic (DDR), the sociology of law adopted the Soviet concept of legal consciousness (Heitzmann 2002, 92–96). This diversity of approaches is also reflected in the German-language journal *Zeitschrift für Rechtssoziologie*, which regularly published reviews of recent literature on this topic (Keßler 1981).

In English-language sociological literature of the discussed period, the concept of legal consciousness remained underdeveloped until the 1990s, leading to a diverse range of approaches. In addition to legal consciousness, several related concepts were in use (e.g. "legal awareness", "knowledge of law", "legal literacy", "images of law"). Additionally, there was a considerable overlap and conflation between the concepts of legal consciousness and legal culture (in contrast, these concepts are more sharply differentiated in languages such as German and Polish). Despite the establishment in 1962 of a specialised panel (Knowledge and Opinion about Law – KOL) within the Research Committee on Sociology of Law (RCSL) of the International Sociological Association, this diversity has not diminished (Keßler 1981; Szilágyi 2023, 12).

Two common approaches included attitudinal empirical research, which focused on opinions and knowledge about the law (Ewick, Silbey 1992, 738–739; Keßler 1981), and the Marxist framework (more theoretical than empirical),

which connected legal consciousness to class consciousness and treated it as epiphenomenon (Ewick, Silbey 1992, 739–741). Beginning in the 1980s, critical legal scholars began to view legal consciousness as a form of legal culture, using it to analyse cultural patterns within societies (Kennedy 1980). Additionally, research on rights consciousness emerged, studying individuals' knowledge and ability to use their rights as instruments in political engagement and empowerment (Scheingold 2004[1]). During this time, the English-language discourse was enhanced by the contributions of scholars from Poland, Germany, or Russia, who introduced their own perspectives on legal consciousness (Kozhukhova, Zhiyenbayev, 2018; Podgórecki, Kaupen, van Houtte, Kutchinsky 1973). Adam Podgórecki emerged as one of the leading scholars in the field of KOL studies.

In consequence, the field of legal consciousness remained fragmented. The renewed interest in it arose in the late 1990s.[2] Patricia Ewick and Susan S. Silbey's influential conceptualisation of legal consciousness – as how individuals experience the law and construct the concept of legality in everyday life – opened new research possibilities for analyses on a micro-level, legal ethnography, and other forms of qualitative sociology of law (Ewick, Silbey 1998).

This fragmentation is reflected in the Oxford University Press' *Companion to Empirical Legal Research*, gathering the experiences of the field in all its variety. Legal consciousness (and related concepts) is mentioned numerous times in different contexts, but there is no separate chapter dedicated to it (Cane, Kritzer 2010, 7–8). Currently, legal consciousness research can be divided into three main currents: (1) conceptualising it as a part of the characteristics of social actors, and employed as an explanatory variable (in this tradition, one may put attitudinal research, by scholars such as Borucka-Arctowa and Podgórecki, along with the new theoretical framework developed by Grażyna Skąpska's team); (2) understanding legal consciousness as a form of hegemony, a perspective embraced by many critical legal scholars (e.g. Duncan Kennedy) as well as contemporary empirical researchers (Austin Sarat, Patricia Ewick, and Susan Silbey); and (3) linking it to the concept of legal mobilisation (e.g. rights consciousness research) (Chua, Engel 2019, 337–342). As can be observed, these three currents are a continuation of the diverse approaches that had emerged in the latter half of the 20th century (the period of primary focus in this text).

The contrast between this lack of unity in Western legal scholarship and the Soviet tradition is striking. Russian interest in legal consciousness can be traced back to pre-revolutionary times, to the circles of liberal and conservative jurists such as Nikolai Korkunov, Leon Petrażycki, or Ivan Ilyin (Walicki 1992). These

[1] First Edition: 1974.

[2] Chua and Engel (2019) published a graph illustrating the increasing interest in legal consciousness research. The chart shows a fast rise in the number of publications beginning in 2000, with figures in 2018 being several times higher. However, the methodology behind this graph, which relies on Google Books data, may be questionable, and the data is undoubtedly incomplete.

pioneering scholars sought to integrate jurisprudence with the social sciences, bringing legal theory closer to the social contexts of their times. The intellectually-vibrant environment of late Tsarist Russia produced several notable figures who explored the interconnections between law, society, and human consciousness. Following the revolution, these researchers emigrated and disseminated their ideas internationally: Leon Petrażycki to Poland, Georges Gurvitch to France, Nicholas Timasheff and Pitirim Sorokin to the United States, and Ivan Ilyin to Switzerland. In post-revolutionary Russia, a diverse range of new theories appeared (e.g. by Stuchka or Pashukanis), attempting to apply the Marxist concepts of class consciousness into the legal domain. This Leninist period of intellectual experiments was transient, giving way to the dominance of Stalinist orthodoxy. In jurisprudence, this ideological shift manifested as socialist normativism, a synthesis of legal positivism, and a rhetoric of state orthodox Marxism (Varga 2013). Jurisprudence during this time became markedly conservative in both form and method, despite maintaining ostensibly revolutionary goals in its rhetoric. Fundamentally, this legal framework functioned as a façade, concealing the underlying reality of the oppressive power of administration and providing a rhetorical justification for decisions of authoritarian administrative state. Legal consciousness was considered an aspect of class consciousness, reflecting the class situation of an individual. "Legal consciousness is a form of social consciousness comprising a system of views, beliefs, judgments, perceptions, moods, feelings of a given class or society, determined by their material life conditions, aimed at establishing a legal system that would correspond to the interests and goals of this class or society" (Łukaszewa 1977, 93–94).

Special attention was paid to the concept of socialist legal consciousness, a consciousness of the working class, which was considered as "a new and higher type of legal consciousness, and, at the same time, the last historical type of legal consciousness." (Łukaszewa 1977, 98). In the words of Mikhail Strogovich: "Socialist legal consciousness is a necessary condition for strict compliance and correct application of socialist laws. It guarantees a proper understanding of the laws and does not allow even the slightest infringement of the laws issued by the Soviet power. Therefore, the socialist legal consciousness of Soviet judges forms the basis of their inner conviction when deciding court cases" (Strogowicz 1959, 127).

Legal consciousness was a theoretical (not empirical) concept, a derivate of class consciousness. It was only secondarily concerned with the consciousness of individuals. As a highly normative idea, it involved judging whether the citizens possessed the "correct" socialist consciousness. Such legal consciousness was an important part of the official Marxist rhetoric of law and was not researched empirically.

The aftermath of World War Two saw the subjugation of the Central and Eastern European countries and the forceful imposition of Soviet theories. The

geopolitical shift resulted in the transformation of universities according to the Marxist model, ending academic freedom and imposing restrictions on research. Handbooks by Russian theorists (e.g. Vyshinsky and Strogovich) were translated into the languages of the Eastern Bloc countries and the Soviet concept of legal consciousness was widely adopted. However, after the death of Stalin, political control over academia in Poland became weaker, creating the possibility for much more independent social research.

As a result, three distinct intellectual traditions emerged in Europe:

– the Soviet tradition is characterised by high consensus rooted in political constraints and a dogmatic academic discourse;

– the Euro-American tradition exhibits low consensus, where legal consciousness is a vague and diversified concept;

– the Polish tradition demonstrates high consensus, influenced by minor political constraints and predominantly shaped by a methodological and philosophical framework. In contrast to the Soviet model, this approach is distinguished by its strong empirical basis.

The concept of "high consensus" is drawn from Thomas Kuhn's influential work on scientific revolutions (Kuhn 1962). In Kuhn's framework, when a discipline reaches the stage of "normal science," there is a strong, often implicit agreement among the practitioners on fundamental concepts, theories, methods, and standards for evaluating research. In high-consensus sciences, disagreements typically focus on technical details rather than challenge foundational principles. The results of the research projects are cumulative and viewed as contributions to a shared discussion rather than as divergent or unrelated to one another. I argue that during the period under discussion (1960s–1990s), the Polish sociology of law (especially in the legal consciousness research) functioned as a high-consensus field. This does not imply an absence of scholarly debates, but, rather, that these debates did not challenge core elements such as the methodological framework (quantitative surveys on large populations) or the attitudinal concept of legal consciousness.

3. POLISH THEORY OF LAW – THE INTELLECTUAL CONTEXT

The restoration of Polish independence in 1918 led to the polonisation of local universities and the establishment of new ones. Scholars from diverse backgrounds and experiences – previously engaged in Russian, German, or French academic circles – began publishing in Polish. This brought together different traditions of research on the psychological aspects of law. Scholars influenced by the school of *Freirechtslehre* (such as Antoni Peretiatkowicz and Bronisław Wróblewski) encountered Leon Petrażycki, whose ideas had developed within Russian liberal circles. Petrażycki knew well both German and Russian traditions, and established

his own school of thinking after returning to Poland. His psychological theory of law, grounded in the concept of legal consciousness, gained immense notoriety in interwar Poland. When the communist party took control after the war, these traditions were suppressed and the sociology and philosophy of law disappeared from university curriculums. Following Stalin's death, a new concept of legal consciousness emerged, though it only partially constituted a continuation of the pre-war traditions.

After 1956, many Polish scholars sought a way out of Marxist orthodoxy, and it is not surprising that they found a gateway in the prevailing paradigms of the social sciences in the West. Carl E. Schorske coined a term for the overall intellectual climate of the era from the late 1940s to the late 1960s, calling it a "new rigorism" (Schorske 1997). Schorske analysed four different fields: economics, political science, philosophy, and literary studies. In each of these fields, a similar overarching intellectual climate became predominant – shaping the mainstream discourse and replacing the old approaches – based on diverse historical, cultural, and philosophical attitudes. "The passage here is from range to rigor, from a loose engagement with a multifaceted reality historically perceived to the creation of sharp analytic tools that could promise certainty where description and speculative explanation had prevailed before" (Schorske 1997, 295). In economics, this trend was marked by the rise of econometrics, the application of statistical methods, and the development of economic modelling. In political science, it meant a behavioural revolution and the dominance of quantitative methodologies. In literary studies, this new rigor was brought by the New Criticism school. In philosophy, the trend was characterised by the logical positivism of the Vienna Circle and the preeminence of analytic philosophy. Some of these observations can be extended to other disciplines, such as sociology, psychology, architecture, and jurisprudence, as well as beyond the Anglo-American world.

This concept will help us to understand the development of Polish legal theory after the Stalinist period, as the majority of the works that were published at that time shared many features with the new rigorism. These were as follows:

– strong emphasis on logic;
– the idea of "scientific jurisprudence";
– focus on methodology;
– strict definitions of basic concepts;
– precision as the highest value;
– the integration of jurisprudence with other disciplines (the idea of the unity of sciences);
– neglect of or aversion to historical, ethical, and political contextualisation.

This served as the model of what "scientific" meant at the time and became the methodological standard of the era, favouring unity, objectivity, and methodological strictness. It aligned well with Marxist criticisms of pre-war theories (for their lack of rigor, vagueness of concepts, and anti-naturalism) and

resonated with its rhetoric emphasising scientific rigor. Consequently, it provided a convenient gateway for researchers to explore new horizons while merely paying lip service to official Marxism.

In the USA, the dominance of new rigorism waned in the 1970s, as its methodological weaknesses became evident and new approaches emerged (Schorske 1997, 305–309). In the field of the sociology of law, this period was characterised by the emergence of critical legal studies, introducing the novel conceptualisation of legal consciousness (Kennedy 1980). In Poland, the new rigorism came later (in the early 1960s) and it maintained its position as the predominant paradigm in jurisprudence or sociology until the end of the 20th century.

This is the context of the development of the Polish concept of legal consciousness. Two circles of researchers were formed, one in Warsaw (the Adam Podgórecki school) and one in Kraków (the Maria Borucka-Arctowa school). These scholars were familiar with both Western and Soviet sociological traditions, but initially they stayed within the general framework of Marxist sociological theory and its goals (the transformation of society, the problems of scientific management, the centrality of the working class). However, they began to use Western research methods and philosophies of science (e.g. quantitative neopositivism in sociology and analytic positivism in law)[3] (Afeltowicz, Pietrowicz 2012; Czapska 2017). This initial period was marked by several large-scale research projects, starting with the study on the legal consciousness of workers (1971–1973) (Borucka-Arctowa 1974), followed by research on youth, lay judges, and the general public (Czapska 2017; Kwaśniewski, Winczorek 2009; Podgórecki, Kaupen, van Houtte, Kutchinsky, 1973).

The transition was not immediate. Russian texts continued to be translated (Kudriawcew 1978, 185–191; Łukaszewa 1977) and the Soviet concept of legal consciousness remained present in academic discourse, although the number of

[3] This paper addresses three currents, each referred to as positivism within their respective disciplines. These currents, though loosely connected, share a common epistemic perspective. Philosophical positivism (or logical positivism, associated with the Vienna Circle) is a philosophical approach notable for its critique of metaphysics, with its aim being to develop a scientific philosophy and its project that of establishing a unified methodological framework for all sciences. Sociological positivism (or neopositivism), rooted in the philosophical tradition (notably through Otto Neurath), was primarily advanced by empirical sociologists and methodologists such as Paul Lazarsfeld, with a focus on developing quantitative research methods, particularly surveys. Legal positivism, an older and more diverse tradition, is often reduced to three key theses concerning the relationship between law and morality and the origins of legal norms. In this paper, I focus on the epistemological foundations of the legal positivist approach, particularly the relationship between the subject (interpreter) and the object (legal text), as well as issues of truth and knowledge in jurisprudence and the possibility of a "science of law." The form of legal positivism that became predominant in post-war Poland shared many of the assumptions found in other forms of positivism.

references to it decreased. The lack of its empirical relevancy played an important role here. In 1962, there was an ideological campaign against the so-called "survey-mania" [Pol. *ankietomania*], initiated by Adam Schaff and targeted at prominent sociologists Stefan Nowak and Stanisław Ossowski (Mokrzycki 1990, 21–30). Non-rigorist pre-war concepts (such as *Rechtsgefühl* or Petrażycki's ideas) experienced a revival, e.g. Adam Podgórecki used the *Rechtsgefühl* concept in his early empirical works (Podgórecki 1964, 37–52, 123–132). However, it was ultimately abandoned in favour of legal consciousness as a basis of empirical research, following comprehensive criticism by Anna Turska. Her main argument was that *Rechtsgefühl* was vague, subjective, unrigorous, and, consequently, unscientific (Turska 1961; 1965).

A distinctive feature of this Polish approach to legal consciousness was its focus on individuals; it ceased to be viewed as a collective phenomenon, as seen in Durkheimian or Marxist traditions. This individualistic perspective arose from methodological individualism that was a core component of the positivist paradigm in both sociology and jurisprudence (Cywiński 1996, 12).

There were two (similar and mutually-translatable) main conceptualisations of legal consciousness. One approach viewed it as an attitude comprising three components: cognitive, evaluative (affective), and behavioural. The other approach defined it as a collection of knowledge and opinions about the law, including the evaluation of current laws and suggestions for their reform. This conceptualisation of legal consciousness as individual attitude was one among many legal consciousness theories developed in the West. It was also present in some Eastern Bloc countries, such as Hungary (Gryniuk 1979, 8; Szilágyi 2023). However, it was in Poland that this theory achieved a high level of consensus and became the pillar of the sociology of law.

Adam Podgórecki, the leading sociologist in this field, not only was interested in understanding the workings of the law in society, but also sought to employ the law as a tool for social engineering. In his concept of "sociotechnique", the law is treated as the primary instrument of the state. This can be compared to the Western traditions of applied sociology (e.g. clinical sociology and public sociology) (Gryniuk 1979, 8), or Roscoe Pound's idea of social engineering, but it had roots also in Polish traditions (Petrażycki's idea of the politics of law), or the Soviet concept of the law as a mechanism for social transformation. Podgórecki's theory was developed in the 1960s and 1970s, and gained also international recognition (Pogórecki 1968; Pogórecki, Schulze 1968; Podgórecki 1974; Podgórecki, Alexander, Schields 1996; Podgórecki, Kaupen, van Houtte, Kutchinsky 1973; Dębska 2022, 126–129).

Podgórecki's work is notable for its extensive use of three-part distinctions. Not only was legal consciousness conceptualised as a tri-componential attitude;

the scholar also distinguished between three levels of the functioning of the law[4] (the socioeconomic relations, the subculture in which the law is supposed to work, and the type of individual personality), three types of sociotechnique, three levels of socio-technical operations, three types of evaluative attitudes, three types of attitudes towards legal institutions (Podgórecki 1964, 67), three types of legalism, three types of links between the postulation of a value and its realisation, and three types of behaviour according to legal or moral norms. It could be stated that categorising things into three groups is intuitive and does not require further explanation. However, I will argue that this practice reflects the underlying ontological framework of positivism.

The other leading figure in empirical research on legal consciousness was Maria Borucka-Arctowa. Borucka-Arctowa was instrumental in establishing the standard concept of legal consciousness for empirical legal research, and her approach became a model for others in the field (Czapska 2017). Starting with her 1974 book on the legal consciousness of workers (Borucka-Arctowa 1974)[5], she and her research group conducted extensive surveys across different social classes and groups, using a consistent methodological framework. For several decades, empirical studies of legal consciousness have been a hallmark of the Polish sociology of law. Borucka-Arctowa's theory reached its mature form in her 1981 book titled *Świadomość prawna a planowe zmiany społeczne* (1981) (*Legal Consciousness and Planned Social Changes*), where she connected legal consciousness with the instrumental use of the law for the centrally-planned transformation of society.

High consensus within the field does not imply the absence of discussions and controversies. Rather, it signifies that a shared general framework exists, concepts are closely interrelated, research results build cumulatively, and there is a collective sense that all research contributes to the same ongoing debate. The most important point of divergence was the structure of legal consciousness (three or four elements). In this discussion, the term "attitude" is used in two distinct ways. According to the most popular concept of attitude, it comprises three aspects (the ABC of attitudes): affective (the evaluation of the object of the attitude), cognitive (the knowledge that an individual has about the object of the attitude), and behavioural (the tendency to act) (Nowak 1973, 23).

The two elements, cognitive and affective, are represented as knowledge and opinions about the law. The third element, behavioural, poses challenges primarily because quantitative survey methodologies are insufficient for capturing behaviour.

[4] There is no established translation of Podgórecki's phrase "*hipoteza trójstopniowego działania prawa*". Podgórecki himself translated it as "three levels of functioning of law", "three step hypothesis on the functioning of the law", or "three modifiers of the operation of the law" (Podgórecki 1966). In secondary literature, one can also find the term "three-stage working of law." However, this issue is of lesser importance here.

[5] It was based on earlier theoretical work (Borucka-Arctowa 1967).

Instead, they rely on verbal indicators, such as declarations of intended actions or tendencies to act. Thus, the debate between proponents of three- and four-element models can be reduced to discussions on how to operationalise the "tendency to act." Gryniuk and Podgórecki (Gryniuk 1979, 10; Podgórecki, Kurczewski, Kwaśniewski, Łoś 1971) argued that the third element represents a "general attitude" towards the legal system as a whole. Borucka-Arctowa accepted this element, but additionally introduced a fourth element: postulates for changing the law (Borucka-Arctowa 1974, 5–6).

In mainstream empirical sociology and psychology, an attitude is understood as a compound feature, encompassing three aspects: affective, cognitive, and behavioural (ABC). Despite this, scholars discussing legal consciousness as an attitude, including those proposing that legal consciousness comprises four elements – namely knowledge, evaluations, postulates, and "an attitude towards the law" – were addressing the behavioural aspect of attitude (a tendency to act). The concept of an "attitude towards the law," introduced by Danish sociologist Bert Kutchinsky (a co-author of Adam Podgórecki's book titled *Knowledge and Opinions about Law* (Podgórecki, Kaupen, van Houtte, Kutchinsky 1973, 101–134), was a simpler variable compared to the ABC model, representing a general tendency towards the legal order as a whole. Nonetheless, these debates should not obscure the underlying shared foundations. Legal consciousness research remains predominantly an ABC attitudinal study, employing quantitative surveys conducted on large populations. All discussions were grounded in the same theoretical framework, which treats legal consciousness as a characteristic of social actors and as an explanatory variable (Chua, Engel 2019, 337–339).

While there are fewer tripartite structures in the works by Borucka-Arctowa, the ones that exist are essential and widely accepted within the discipline. Here we encounter a mature form of empirically-operationalised legal consciousness, characterised as an individual attitude, consisting of three components: cognitive (knowledge about the norms), evaluative (affective), and behavioural (the tendency to act). Additionally, there are three general types of motivations to act according to the law: conformist, legalistic, and opportunistic. The law functions through three stages: (1) information about the norm is transferred to the individual; (2) the norm is evaluated by the individual; and (3) the individual acts in relation to a norm (Borucka-Arctowa 1967).

Podgórecki and Borucka-Arctowa gathered a significant number of scholars and educated generations of sociologists of law. The high consensus within this discipline was achieved partly due to the close contact between its practitioners, but also largely because of the compelling authority of the adopted methodology and the appeal of the scientific rigor behind it (Dębska 2022). Among these researchers, several other tripartite distinctions were introduced.

Anna Turska delineated three distinct modes of analysing legal consciousness: firstly, through information processes (using the cybernetic method); secondly, by

examining attitudes towards law (using surveys and psychological methods); and thirdly, by studying the actions of individuals, which integrates both information and attitudes.

Grażyna Skąpska developed the earlier typology of three evaluative attitudes toward legal norms by differentiating between the acceptance of the norms themselves and the acceptance of the goals of these norms. This refinement led to the creation of a matrix, resulting in nine possible individual attitudes based on the combination of these two criteria (Skąpska 1981, 23).

In the following section, I will argue that the high-consensus concept of legal consciousness and the tendency towards tripartite distinctions among Polish scholars are rooted both in the political context and in the basic premises of neopositivist ontology and epistemology, both of which favour hierarchical and authoritarian structures (Raburski 2022). The prevailing methodological climate of new rigorism – manifested as logical positivism in philosophy, as neopositivism in sociology, and as analytic legal positivism in jurisprudence – further reinforced these tendencies.

Following the democratic transformation of Poland in 1989, unrestricted academic communication with the Western academic world was re-established. The timing of these events coincided with the decline of the new rigorism methodological perspective in the West. Polish legal theory began showing interest in non-positivist approaches in the late 1980s, but the dominance of sociological neopositivism remained unquestioned for much longer. It was not until the 21st century that this intellectual landscape began to shift. Notably, several publications explored the concept of legal consciousness in new ways, culminating in a significant sociological research project led by Grażyna Skąpska in 2020 (Skąpska, Radomska, Wróbel 2022). This research reconceptualised legal consciousness, incorporating previously neglected aspects such as competencies, the forms of activities performed with the law, and the personal significance of law. Through factor analysis, the project enabled a more nuanced understanding of the sociological and psychological dimensions of the law in society.

4. DUALIST AND TRIALIST THINKING

One might argue that there is nothing particularly unique about the aforementioned tripartite distinctions in Polish sociological theory. However, I will attempt to demonstrate (though the reader will ultimately judge the strength of this argument) that the prevalence of those distinctions stems from the underlying epistemic assumptions of positivism in all its three forms. It was the methodological framework of new rigorism that led theorists to organise their thinking in this manner. However, as evident in contemporary works, this tendency appears to have weakened with the decline of the new rigorism's concept of science. For instance,

Skąpska's recent work does not conform to this tripartite scheme, despite being a critical re-examination of Polish experiences with legal consciousness research (Skąpska, Radomska, Wróbel 2022).

Many legal theorists drew attention to the tendency to dualist thinking or to organise knowledge into dichotomies. The tripartite divisions or trichotomies were less commonly studied or even noticed (Gizbert-Studnicki, Dyrda, Grabowski 2017). The argument is as follows: new rigorism is linked to positivist epistemology, which, in the natural sciences, tends to promote dualist thinking. However, in the social sciences, strict dualism proves unworkable and instead evolves into trialism. Consequently, tripartite distinctions and triangular theoretical structures recur in various contexts.

The human inclination to interpret reality through binary oppositions is deeply rooted in the way the human mind works. As Levi-Strauss and other structuralists have shown, this tendency results in the creation of structurally-ordered institutions within society.[6]

When discussing modern societies, their institutions, and modes of thought, great importance is given to René Descartes and his mind-body dualism. This framework, built on the separation between the immaterial mind and the material body, has exerted a profound influence on the Western thought and society. Descartes distinguished two essences: *res extensa* and *res cogitans*. *Res extensa* [En. the material world] is characterised by determinism and is perceptible through the senses. In contrast, *res cogitans* is immaterial, constituting the realm of freedom and morality. Notably, these two substances require different approaches and methods for inquiry. The natural sciences were supposed to explore the realm of *res extensa*, i.e. a world of empirical, deterministic phenomena. Meanwhile, speculative philosophy delved into the field of *res cogitans*, where freedom and morality held sway.

This framework gave rise to numerous other dichotomies that populated the Western culture (the following table provides examples). Nevertheless, it is crucial to remember that the interpretation of such pairs is highly contextual and varies across different cultural domains (Zirk-Sadowski 2004). The relationships between these dichotomies are dynamic and subject to interpretation within specific cultural contexts. In certain discursive contexts, the concept of "reality" may be associated with either factual or normative aspects. Therefore, Cartesian thought should be understood as a tendency rather than a rigid and systematic ontological division.

[6] For other interpretations of tendency to dualisms in jurisprudence, see: Gizbert-Studnicki, Dyrda, Grabowski 2017; Zirk-Sadowski 2011; Raburski 2022.

Body	**Mind**
Res extensa	*Res cogitans*
Real	Ideal
Fact	Norm / Value
Is	Ought
Objective	Subjective
Passive	Active
Material	Ideal / Formal

New rigorism thrived on these dichotomies. It was coined in contrast to non-rigorous methodologies that tended towards holistic and nuanced approaches, avoiding clear-cut and sharp distinctions. This dualist framework was particularly well-suited for the natural sciences, characterised by the strong opposition between the perceiving subject and the perceivable object. For the social sciences, the humanities, and social practices, this model proved to be too restrictive, as the boundary between these opposing terms is often blurred.

Consequently, there was a need for a third, intermediate term, something that exists in-between, allowing for blending and mediation, a bridge between opposing ideas. Thus, a triadic structure emerges, with its own characteristic symmetry. In this framework, there are two opposite terms: the first – "hard", material, and often passive; and the second – "soft", ideal, elusive, and often active. The third, middle term, is a blend of these two extremes, mediating between them. On the following pages, I will use specific letters to denote the position of each concept within this triangular structure. "I" will represent the Ideal, "M" will stand for the Material, and "MI" will indicate the middle term. These assignments are not strict and fixed, but relative. The same term or idea may be marked as Ideal in one configuration and play the Material role in another. The tripartite division reappears in various contexts, demonstrating its generative force and usefulness for theorists.

M	MI	**I**
Intelligence (cognition)	Will	**Emotions**
Facts	Text	**Norms**
Practices	Institutions	**Values**
Individual	Interaction/Group/Role	**Society**

The middle term is a mix of the extremes, making it both impure and complex. This complexity allows mediation and flexibility in response to the varied theoretical needs of social sciences. In the field of jurisprudence, the law itself is seen as a middle term or, as Jürgen Habermas described it, something stretched between facts and norms (Habermas 1996).

As has been mentioned, there is a strong tendency in positivistic jurisprudence towards tripartite distinctions. New rigorism brings also a strong inclination to unify all forms of knowledge about the law. This unification is driven by the belief in a single standard of scientific knowledge and the idea that jurisprudence should adopt scientific methods. However, this is done not by adopting a single scientific method (legal naturalism), but, rather, by creating subfields, whereby each is governed by different standards and researched with differed methods. As a result, the law becomes a lens that captures a comprehensive picture of society, encompassing the complexities of culture and political systems. Central to this framework is the concept of legal consciousness, which addresses the relationship between the individual, the state, and the law.

Many aspects of legal theory in Poland, including legal consciousness, were influenced by this fundamental generative mental framework. Legal consciousness seems to be built on more basic distinctions: the main currents of legal theory, the planar theory of the law, and the concept of attitude. These three distinctions were based on the neopositivist framework. One of the elements in each of these distinctions is treated as central and the most rigorous, and, in consequence, the most important.

5. THE LAW AS A COMPLEX PHENOMENON

M	MI	**I**
Realism	**Positivism**	Natural law
The socio-psychological plane	**The logical-Linguistic Plane**	The axiological Plane

1. A common view in legal philosophy is that it is divided into three main traditions: natural law theory, legal positivism, and legal realism. This division is an extension of the dualism between morality/values (as seen in natural law) and the material world (real actions, social structures, and facts). Legal positivism serves as a middle ground, focusing on legal texts (material aspect) carrying normative meanings (ideal aspect). It is not surprising that this middle position is the most important and practical one, as it bridges the two opposites. However, from the point of view of the history of ideas, this tripartite division is overly simplistic, as it lumps together such diverse theories as Catholic Thomism, Kantianism, Rothbardian libertarianism, and social Darwinism (all of them under the "natural law" label).

This division is important because of its wide acceptance, and because it establishes a crucial link between the primary methodologies of jurisprudence and the ontology of law. By enabling swift generalisation and the dismissal of certain arguments without the need for in-depth and nuanced analysis, it fosters the dominance of legal positivism as the prevailing perspective within legal practice.

This division was of particular consequence in Poland: after the Second World War, the studies of the philosophy of law were suppressed and replaced by the Marxist discipline of the theory of law and state, as well as the history of legal and political doctrines, initially based on Marxist methodology. The tripartite division allowed for the treatment of one element (positivism) as the sole “scientific” form of legal thinking. Its two contenders were classified as different forms of idealism: natural law was viewed as a historical or religious form of idealism, whereas realism was considered a “false realism”, a product of ideal tendencies within the contemporary imperialist bourgeois societies (Seidler 1957).

2. However, the suppressed aspects of law did not disappear. Socialist normativism was unable to fully account for the complexities of legal phenomena. As a consequence, the original “plane theory of law” emerged in Poland. This theory represented another tripartite division, developed on similar grounds as the previous classification.

The concept of the three planes of law was proposed by Grzegorz Leopold Seidler in 1967, and later refined into its canonical form by Kazimierz Opałek and Jerzy Wróblewski (Seidler 1967; Opałek 1962; Wróblewski 1961; Leszczyński 2014). These researchers distinguished three such planes: linguistic, axiological, and socio-psychological. The linguistic plane reflects the material aspect of legal texts and their normative meanings, aligning with legal positivism. The axiological plane reflects the moral and value-based aspects of law, corresponding to natural law. The socio-psychological plane deals with real actions, social structures, and facts. It was researched by legal realists, sociologists, and psychologists of law.

The concept of the three planes of law became widely used in Polish legal theory. Some researchers proposed other planes (political, historical, or cybernetic), but these did not gain acceptance, probably because they introduced too much complexity, and did not fit into the ordering principle.

This theoretical framework, while nominally critical to the one-sidedness of earlier conceptions of the law (e.g. legal positivism was focused solely on legal text, while legal realists relied on social actions), led to the fragmentation of the study of the law. The planes were treated independently, and distinct disciplines were assigned to them, employing separate methodologies. The linguistic plane was dominated by the positivistic, analytical approach, while the socio-psychological one was soon dominated by empirical sociologists, drawing more and more from the Western neopositivist methodology and paying only lip service to Petrażycki’s theory (Cywiński 1996, 14). In comparison to these two, the axiological plane was studied only to a very limited extent and thus remained underdeveloped. The primary reason behind this underdevelopment of the axiological plane research was the discrepancy between the official socialist ethical system and the morality of the Polish society. Since the late 1950s, so-called “socialist morality” became less advertised, and the concept was becoming less prominent in literature. However, official institutions, including courts, continued to use it. Among scholars, there

was a growing understanding that the actual morality of individuals was different from the officially declared values, which were perceived as merely a facade. The recognition of these tensions could only be partially mentioned in publications. At the level of survey methodology, sociologists were able to ask respondents about their opinions or values, which were later compared to the official value system. However, there were limits to these inquiries. Consequently, reflection on the axiological aspects of law remained at a general and abstract level, and avoided addressing many problems. In consequence, the linguistic plane was paid the most attention by scholars, as traditional jurisprudence was also focused on this plane.

3. Let us now turn to the third tripartite distinction, namely the concept of attitude. Since attitudes are measured through survey research, which captures declarations rather than observed behaviours, this distinction introduces a different approach to separating the real from the ideal. In this context, "the real" is understood as something that can be evaluated objectively as true or false (truth in the classical, correspondent sense), whereas "the ideal" refers to something subjective, which cannot be judged by truth criteria but, rather, by sincerity.

The cognitive component of attitude	The behavioural component of attitude	**The affective/emotional component of attitude**

4. Attitude is a psychological concept that became one of the fundamental instruments of quantitative neopositivist sociology. The majority of sociological survey forms were designed to examine individual attitudes (Nowak 1973). According to the most popular concept of attitude, it comprises three aspects (the ABC of attitudes): affective (the evaluation of the object of the attitude), cognitive (the knowledge that an individual has about the object of the attitude), and behavioural (the tendency to act) (Nowak 1973, 23). In our framework, the intellectual component is categorised as M, representing objective knowledge that can be labelled as true or false, while the affective/evaluative component is categorised as I, representing subjective values. The behavioural component acts as a bridge, indicating that a person with the right knowledge and values is inclined towards some form of action.

According to Paul Lazarsfeld, who was the most influential scholar responsible for the wide application of this concept in sociology, attitudes function as hidden mechanisms, representing crucial variables that drive individuals to action. They are not directly observable but are inferred from responses to survey questions. The number of fundamental underlying attitudes is relatively small. Thus, positivist sociologists believed that this concept opened the door for constructing simple empirical models of complex social situations (Hindess 1977, 53).

6. LEGAL CONSCIOUSNESS AS A TRIPARTITE CONCEPT

The Polish concept of legal consciousness was built on these foundations, applying the tripartite concept of attitude to the legal field and integrating it with the tripartite theories of law and the planes of law. In the cultural milieu of new rigorism, this approach achieved a high level of consensus. Political constraints influenced the development of various aspects of legal consciousness, causing some to become more prominent, while others were subdued. To fully understand this, one must revisit the aforementioned tripartite concepts developed by Polish sociologists.

The concept of legal consciousness can be broken into three components: 1) cognitive, which pertains to information about the law (Gryniuk 1979, 16–33); 2) axiological, which involves the evaluation of the law (Gryniuk 1979, 62–137); and 3) behavioural, which reflects the tendency towards action in contact with the law (Gryniuk 1979, 138–146). Legal consciousness was a multidimensional concept, encompassing a variety of mental responses to the law. It was regarded as the primary independent variable used to explain the social workings of the law.

Two of these components were dominating in the empirical research: knowledge and evaluation. It is essential for individuals (citizens) to have the right knowledge of legal norms and to hold a positive attitude towards them. Because of the limitations of quantitative survey methodology, researchers had to ask about knowledge and evaluations. Given the complexity of legal systems and legal knowledge, questionnaire questions had to be quite general to remain workable. This led to the development of the idea of generalised attitudes, which were assumed to be underlying variables generating specific responses to the law, e.g. "The general evaluative attitude" (e.g. general legalistic or conformist attitude) was a derivate of specific evaluations of particular norms. A person had a general legalistic or conformist attitude towards the norms.

The behavioural aspect of legal consciousness was not well-defined, as quantitative survey methodologies struggled to capture real behaviour. Its instruments are designed to gather linguistic responses rather than observe actual actions[7], limiting them to asking about individuals' declarations or inclinations to act (Skąpska 1981, 34). As a result, these surveys can only ask about what individuals claim they would do. In many studies, the behavioural aspect of legal consciousness is understood as "having postulates for changing the law" (*de lege ferenda*).[8]

Despite the individualistic methodology behind legal consciousness, it was seen as a crucial element of the social engineering agenda of the government.

[7] This is a general problem of attitude research (Nowak 1973, 48–57).

[8] "By legal consciousness research we will understand here the research of all three elements of this concept, i.e. knowledge of the law, evaluations and attitudes towards existing legal norms and institutions, and possible postulates for changes in the law" (Borucka-Arctowa 1974, 5–6).

Most notably, the widely used model for the functioning of the law was as follows: the law is considered an act of communication formed by a centralised legislative organ, which conveys its will through legal texts. These texts are received by citizens, reacting according to their attitudes (legal consciousness). Ideally, citizens should first have a good (true) knowledge of the law (a cognitive component of the attitude). Then, they should possess positive emotional attitudes towards the law (an emotional aspect), which then motivates them to act accordingly (the behavioural component of legal consciousness) (Borucka-Arctowa 1967). To promote obedience to the law, the state should focus on the proper linguistic form of legal texts, which was the subject of sophisticated studies on the methodology of legislation. Additionally, the state should prioritise legal education to ensure that citizens have true knowledge of the law, and it should foster positive emotions towards the law, such as trust and legalistic attitudes. The expected behaviour should follow from these premises.

The concept of legal consciousness appears to represent the perspective of the state. An optimal level of legal consciousness is characterised by citizens possessing knowledge, positive attitudes, and a disposition to act in accordance with legal norms. When any of these components is lacking, the level of social consciousness is considered unsatisfactory and one can expect that the law will not work the way the law-giver had intended. This concept aligns well with the authoritarian model of the law (or state-society-law relations) (Nonet, Selznick 1978), where the law is an expression of power and will of the government. It was built on an earlier, cybernetic concept of the law, where the legal process is understood as the processing of information through channels. Initially, Soviet Marxism was opposed to cybernetics, dismissing it as a bourgeois discipline. However, the post-Stalinist doctrine eventually reconciled with it, recognising the potential of cybernetics for the "scientific management of society." Consequently, cybernetic works were translated and accepted behind the Iron Curtain, fitting well with the authoritarian model of the state and its administration. In this model, citizens were treated as passive receivers of signals, with the primary concern being how to transmit an unaltered signal from the centre of power to the individual and how to trigger desired behaviour (Studnicki 1965).

The strong consensus around legal consciousness in Poland began to fade in the late 1990s. This shift appears to confirm our thesis that the paradigm was established through two key factors: political constraints and new rigorism as a general methodological paradigm. The former factor disappeared after the democratic transformation and the latter is slowly eroding with the emergence of non-positivistic approaches in legal theory and qualitative methods in sociology (Raburski 2022, 44). Nowadays, we can observe a greater diversity in approaches to legal consciousness in Poland, but primarily at the theoretical level. In empirical studies, the old paradigm seems still strong (Cywiński 1996).

7. CONCLUSION

The paper examined the development of research on legal consciousness in Poland, focusing on the epistemic foundations of research conducted from the 1960s to the 1990s. It begins by noting that this field, often considered a special feature of the Polish sociology of law, differs significantly from the Western or Soviet sociological discourses. I argue that it is a consequence of two contextual pressures: constraints imposed by the political system and the prevailing concept of the scientific methodology of the time (new rigorism). Polish researchers integrated influences from German, Russian, and contemporary empirical traditions, creating a new distinctive form. The intellectual milieu of new rigorism endowed the concept of legal consciousness with unique features, one of which was the prevalence of tripartite distinctions. The second part of this article argued that these distinctions (and the way they shaped the concept of legal consciousness) were a byproduct of positivist epistemology. In the 1990s, the new rigorism concept of scientific methodology seemed to loose the grip and new, more diversified methodologies emerged. Consequently, the field of legal consciousness in Poland began to align more closely with Western research paradigms.

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