

## IDEOLOGY OF LEGAL NORM

*IDEOLOGIA DA NORMA JURÍDICA*

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**RESUMO**

O presente trabalho traz como pano de fundo a manifestação do fenômeno ideológico. O ponto de partida para a análise fixa-se na Escola Histórica do Direito com suas bases historicistas e nas constatações que Marx faz ao perceber a incongruência entre a defesa do positivismo histórico proclamado por Savigny e o concretizado, sob a influência de uma ideologia classista, quando da sua atuação como legislador da Prússia. Descrevem-se as características do processo ideológico, sua identificação e suas formas de atuação. Analisa-se o pensamento marxista que constata a sobreposição de interesses de classes dominantes que moldam o pensamento coletivo numa projeção de dominação. Inserem-se nesse contexto a apreciação da influência ideológica no direito e o embate criado pela manipulação jurídica direcionada pelo fator econômico. Observa-se a manifestação ideológica no campo jurídico, desde a conceituação da ciência com seus princípios norteadores até a completa alienação de escopo, origem e fim do direito.

**Palavras-Chave:** Ideologia. Ideologia Jurídica. Influência Econômica.

## **ABSTRACT**

The present work presents as a backdrop the manifestation of the ideological phenomenon.

The starting point for the analysis is fixed in the historical School of Law with its historicists bases and in the findings that Marx makes when perceiving the incongruence between the defense of the historical positivism proclaimed by Savigny and the concreted, under the influence of a Classist ideology, when acting as a Prussian legislator. The characteristics of the ideological process, its identification and its forms of action are described. It analyzes the Marxist thought that verifies the overlap of interests of dominant classes that shape collective thinking in a projection of domination. In this context, the assessment of the ideological influence in the law and the clash created by the legal manipulation directed by the economic factor is inserted. It is observed the ideological manifestation in the legal field, from the conceptualization of science with its guiding principles to the complete alienation of scope, origin and end of law.

**KEYWORDS:** Ideology. Legal ideology. Economic influence.

## **1 INTRODUCTION**

This present work proposes an analysis of the influence of ideology on law from an economic perspective. The starting point for the investigation is the Historical School of Law, through the analysis of the figure of its greatest exponent: Friedrich Carl Von Savigny. By analyzing the fundamental frameworks defended by the German school and the practical attitudes of Savigny, Marx awakens to the existence of a system of ideas capable of distorting reality and preventing the real from being apprehended, which makes it impossible for social, political and economic relations to be analyzed free of interference or conditioning.

Evaluating this distortion between ideas and reality, Marx takes up the definition adopted by Napoleon, when he designated the opponents of his regime as metaphysicians and ideologues. From this perspective, the term ideology is disseminated as a synonym for the process that prevents or hides the perception of reality, acting as a curtain or veil that does not allow for an independent

analysis of reality. Marxist analyses go further and verify a direction of collective thought directed by the classes that hold power.

By exploring the ideological incidence in the legal field – starting from the observation that the law is composed of coercive rules, edited and maintained by a political system, its ideological disengagement seems impossible –, multiple arguments that complement and simultaneously oppose each other were collected in an exercise of bibliographic research and dialectic of adverse points of view.

The work ends with an examination of capitalist society from the point of view of market ideology, a space in which only economic utility carries weight in the scale of value, and human needs (the source-value of law) remain, when not banned, relegated to legally inferior levels.

## 2 SAVIGNY AND THE HISTORICAL LAW SCHOOL

Friedrich Carl Von Savigny is recognized as the greatest exponent of the Historical School of Law, also called the Historical School of German Jurists (CUSTÓDIO, 2013). The jurist based his works on Gustav Hugo, from the University of Göttingen, differentiating himself from the latter in terms of the distance from the Natural Law School, which influenced, even though slightly, Professor Gustav Hugo (ASHTON, 2013).

Gustav Hugo established the critical basis of law, defining it as a historical fact of tradition, of the specific culture of a people. He proposed the creation of a positive law as a historical phenomenon, as opposed to a product of dogmatic reason.

In Savigny, the jurists' work did not consist in reasoning about the construction and elaboration of a legal order suitable for men, but specifically to collect the legal object already produced by the spirit of the people and then order and systematize this collected legal matter (ASHTON, 2013). The jurist understood law as a historical product that arises from the conscience of each people, based on their customs, and not a mere will of the legislator (GONZAGA, 2017).

Based on these arguments, Savigny published a text under the title: "On the necessity of a civil code for Germany" (ENDERLE, 2005). The document presented strong criticism of his university colleague, Anton Justus Thibaut, who had

advocated, inspired by Napoleon's Civil Code, the unification of German legislation.

Thibaut advocated a rational view of jusnaturalism and believed in the need to merge all laws in force in the various German states into a single code. Inspired by Wolf, he supported the idea that a rational set of natural rights should allow the systematic construction of a group of elements of positive law in a single code, ordered in a logical-systematic way (BILLIER; MARYIOLI, 2005).

Savigny's criticism was materialized in the text "On the vocation of our time for legislation and jurisprudence" (JOUANJAN, 2003). In this study, he argued that, at that time, German law was in decline, therefore, to positivize it would be to transmit to posterity a decadent law. However, the author did not define a moment that he considered appropriate for codification, since none of the three phases he mentioned – formation, maturity and decadence of law – had the ideal qualities for the preparation of a code (ENDERLE, 2005).

In the in the above-mentioned treaty, the German instituted that the "right invests the State, it does not proceed from it, because it is a part of the organic existence of the community" (CUSTODIUM, 2013, p. 14). Perhaps for this reason, some recognize Savigny as an anarchist, or at least a sharer of society's rights against the state (MICHEL, 1986).

Savigny's contempt for codifications was so great that, when he took the first chair of Civil Law in Prussia – from 1810 to 1819 – he taught Roman law, despite the prevailing Prussian Code. The Historical School simply ignored the Codex as a source of law (WIEACKER, 1967).

At this point, it is worth making a peculiar remark: Savigny, contrary to what might appear, was a positivist, but he rejected dogmatic positivism in defense of a historical positivism. Some say that this political position of Savigny is expressed much more as opposition to a codification founded on French libertarian ideas than as appreciation of the indeterminate spirit of the people. Criticism of the German school describes a less spiritual attitude when more is said about the spirit. In Hengel, the most peculiar sign of the school would be the aversion to the law (SOBREIRA FILHO, 2011).

With Savigny, the Law should develop philosophically – through organized concepts, elaborated in a systematic way – and historically, in close connection with the historical roots of its creation (COSTA, 2008, p. 58).

The methodological requirement imposed by Savigny in the foundation of a true legal science consisted in considering the object – Law –, at once, as history

and as a system. It is about thinking in an organic unity of historical considerations and systematic considerations (JOUANJAN, 2003).

In Savigny, interpreting consists of reconstructing the thought emanating from the Law (JOUANJAN, 2003). It is verified the insertion of the historical element in hermeneutics as a means of ensuring the interpretation of the rule, observing the historical conditions at the time of its preparation, since the law is the result of certain historical occurrences, and not to ensure that the law is interpreted, molding itself to the historical values of the moment of application. Thus, it reflects a conservative use of the historical element, since it links the meaning of the law to the occasion of its elaboration, does not allow the implementation of new institutes and contributes to the maintenance of the traditional Germanic law, preventing state codifications and opposing the modernizing conception of positivism (COSTA, 2008).

The aim of the German school was to guarantee the hegemony of the past (COSTA, 2008). The juridical process of the Historical School, in an attack to the legislative reason, was exclusively directed to the identification, in the roots of positivism, "of a permanence, a historical continuity to be interpreted, consecrated, never innovated, deviated" (ENDERLE, 2005, p. 113).

It is important to note that the Historical Law School was associated with the ideas of the bourgeois theories and the opinions of Adam Smith; it preached the autonomy of society before the regulation of the State, considering such interventions deleterious and harmful; and asserted that society was a biological organism linked to an autonomous and hidden spirit – which genuinely represented bourgeois society (ASHTON, 2013).

É ali, na sociedade, e não no Estado que é formulado o Novo Direito baseado na Ciência Burguesa, representada pela Escola Histórica do Direito e pelo seu Direito das Pandectas. Portanto, o autêntico Direito da sociedade burguesa não deve ser um produto de leis estatais, como ocorre no Direito Natural. (ASHTON, 2013, p. 224).

### **3 THE ANALYSES OF THE YOUNG KARL MARX**

For a period, Savigny stepped away from academia to hold the position of Minister for the Reform of Prussian Legislation. At that time, he worked on the revision of the legislation and participated in the formulation of the General Bills Exchange Code and the General German Commercial Code (ASHTON, 2013).

Savigny's appointment as minister incited Karl Marx, his student<sup>1</sup> to write, in August 1842, the "Philosophical Manifesto of the Historical Law School". In this article, the young Marx harshly criticizes Gustav Hugo, recognized by him as the precursor of the Historical School of Law (ENDERLE, 2005), and classifies Gustav Hugo's work as the old testament of the Historical School. He attacks him by saying that, despite calling himself a disciple of Kant, Gustav Hugo falsifies his master, criticizes his doctrine and questions whether Gustav Hugo's followers had the vocation to be lawmakers of that time (MARX, 2006). He also attacks the modern representatives of the German School, by stating that they promoted, in Gustav Hugo's philosophy, a make-up of fundamental concepts to make it more attractive, without, however, losing the core, deciphered by a close look at the law, of the arbitrary power in all versions of the Historical School (ENDERLE, 2005).

Initially, the critique of the "Philosophical Manifesto of the Historical School of Law" was to have been published in the journal of a Hegelian, Arnold Ruge. However, the publication was not accepted, and the ideas joined others in a series of writings later published by the Rhenish Gazette, at which time Marx discussed the law on the theft of firewood (SOBREIRA FILHO, 2011).

As a Minister for the Reform of Prussian Legislation, it was up to Savigny to produce a law regulating the harvesting of pieces of fallen wood in the forests along the Rhine River. The bill elaborated by the precursor of the Historical School of Law, who became known for his defense of customary law against "the vocation of our time for legislation", provided for the gathering of firewood as theft and established a penalty of fine or forced labor to whoever performed the act, which should be paid to the forest owner – property (GUERRA FILHO, 1995).

The fact overlooked by Savigny was that the collection of branches fallen on the ground along the banks of the Rhine was absolutely necessary for the survival of German peasants who used them to produce fire. Such gathering was a consolidated custom (GUERRA FILHO, 1995).

Marx refused to consider the harvesting of fallen branches, practiced by peasants, similar to the theft of firewood by cutting down trees. He asserted that a law could not change the nature of things under penalty of becoming false (GUERRA FILHO, 1995). "If the law calls theft of wood an action that does not even constitute a penal contravention regarding wood, the law is therefore lying

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<sup>1</sup> Karl Marx foi aluno de Savigny no curso de Inverno da Universidade de Marburgo de 1836 a 1837; sob o tema 'Pandectas' estudavam as compilações do direito romano.

and the poor are sacrificed because of a legal lie" (MARX, 1961, n.p.). For Marx, collecting fallen firewood and stealing wood were essentially different things, which made it impossible, therefore, to equate a custom with the concept of theft, under penalty of hurting the principle of adequacy (SOBREIRA FILHO, 2011) "the legal nature of the thing cannot, therefore, behave according to the law, but it is the law that must behave according to the legal nature of things" (MARX, 1961, n.p.).

Marx also considered that, by ignoring a custom sedimented in the region, i.e., to freely collect sticks, Savigny contradicted the conception harshly defended by the Historical School, for which custom constituted the primary source of law (GUERRA FILHO, 1995). Marx claimed for the poor the customary law and affirmed that "by its nature, it can only be the right of those lower masses, dispossessed and elementary" (MARX, 1961, n.p.).

The criminalization of conduct enshrined by custom was rejected by Marx, who refused to admit its compatibility as a regulatory norm, simply because it was issued by a competent power to produce it, and considered that the production of a coalition of interests prevented the law from harmonizing with the legal order (SOBREIRA FILHO, 2011).

Finally, Marx criticized the sanctioning measure that transposed the field of public law to private legal relations, focused on the defense of private interests, of patrimonial nature, since the penalty of forced labor would be applied to the person, and the fine provided alternatively would not be directed to the public coffers, but to the offended private individual in his property right – patrimonial justice (GUERRA FILHO, 1995). He protested, stating that "the owner of the forest cannot, through the State, acquire the private right to public punishment" (MARX, 1961, n.p.). And he attacked the use of criminal sanction that placed private and patrimonial interests above social interests, besides denouncing the disproportionate sacrifice imposed on the disadvantaged in relation to the advantages attributed to landowners (SOBREIRA FILHO, 2011). "Beat the wooden idols, fall the human victims!" (MARX, 1961, n. p.). "Le propriétaire a triomphé, l'intérêt s'est imposé au droit" (MICHEL, 1986, p. 18).

Sobreira Filho (2011) points out that, in the case of the Law on the theft of firewood, it was the first time that Marx issued a manifestation in an express and punctual manner about concrete and everyday problems, explicitly stated in economic issues.

It was from the analysis of the case described above that Marx perceived the problem of the manipulation of laws by interests alien to their legitimate purposes, i.e., the opposition between the juridicity anchored in the conscience of the people and the legality directed by jurists in the social sphere (CUSTÓDIO, 2013).

In this perspective, he located an evident contradiction between theory and practice grounded in the interests of a class represented by Savigny and pointed to the "imperative need to perform a critique of ideology, which shows contradictions between one's practice and one's own conception of the world" (GUERRA FILHO, 2011, p. 72).

#### 4 THE IDEOLOGICAL PHENOMENON

The use of the term ideology was born during the French Revolution, when a current, led by Antoine Louis Claude Destutt, Count De Tracy, called itself ideologist, suggested an institutional revolution that proposed an analysis of ideas, a science of ideas. This was the philosophical current that dominated the French intellectual environment between the last years of the 18th century and the beginning of the 19th century. The ideologists argued that educating was to reconstruct the paths that men produce when they follow nature, and that, under the guidance of a philosopher, knowledge would be within everyone's reach (PIMENTA, 2012).

The ideas of the liberal illuminist aimed an advance in the sciences as a progress for humanity, which, through the liberation of religious and political dogmas, would be able to break with the Old Regime. These concepts were gathered in the work *Les Eléments d'idéologie*, published in 1803 (PEREIRA, 2016).

In De Tracy's scientific project, "ideology should serve as a basis for all branches of knowledge, especially for the human sciences" (ARAUJO COSTA, 2001, p. 60). Philosophy was considered a propaedeutic subject.

With the fall of Robespierre, in the Thermidor coup, the *École Normale* was instituted in Paris, an academy destined to train educators for the provinces. De Tracy was in charge of organizing a course on moral and political sciences, in which he introduced the new science based on the systematic study of ideas (ARAUJO COSTA, 2001, p. 60). However, the concept that philosophy could be the introduction to another system lost strength with the replacement of the newly



created school by the National Institute, whose goal was to produce studies of general utility and that would praise the glory of the republic (PIMENTA, 2012).

Although the term ideology was coined by De Tracy for his scientific proposal, it was Napoleon Bonaparte who changed the meaning of the word, giving it a pejorative sense and popularizing its definition (CARNIO, 2009).

Not obstant the fact that the ideologues were noble, in tune with the revolution, Napoleon's centralizing and imperialist ambitions did not please them, just as the group's discourse for the republic contradicted the sovereign. To downgrade the ideas they propagated, Napoleon ridiculed the ideologues, pejorating the doctrine as speculative and detached from the reality of political rule (TOMPSON, 2011). He nicknamed them metaphysicians (PEREIRA, 2016).

After a disastrous campaign in Russia, Napoleon returned to Paris, accusing the ideologues of subverting the state and the power of law. In a speech, he attributed France's ills to ideology, ridiculed its pretensions, and classified the doctrine as speculative-abstract. As Bonaparte's position weakened, his attacks on ideology became more intense (TOMPSON, 2011).

From this perspective, ideology came to represent a form of de-authorization of discourses and renunciation of debates. It is noteworthy that it was exactly this definition of ideology, woven as utopian and artificial abstraction, which came to be gathered and spread by the classical tradition of Marx (FREITAS; FEITOSA, 2014).

During his period of exile in France (from 1844 to 1845), Marx became familiar with the work of the ideologues led by De Tracy and attacked by Napoleon. Following Napoleon's use of the term ideology, Marx and Engels compared the French ideologists to their compatriots by stating that they too labored under the illusion that the real battle to be fought was in the field of ideas, exorbitantly estimating the role and value of ideas in history and social life (TOMPSON, 2011).

In *The German Ideology*, a work published in 1846, Marx and Engels point out that "none of these philosophers had the idea of asking themselves what was the connection between German philosophy and German reality, the connection between their critique and their own natural environment" (MARX; ENGELS, 1989, p. 10) and, in this sense, they were unable to give practical and effective force to their critique (TOMPSON, 2011).

According to the authors, the followers of the Historical School aspired to a transformation only with the force of criticism and enlightened thought, without

giving importance to the role of the practical battle as an element of intervention in reality (PEREIRA, 2016), and, for historicists, "the important thing was the spirit and the struggle to change society, it was a spiritual struggle, a critical struggle" (LÖWY, 2008, p. 23).

Marx and Engels argued that the method used was wrong, since changes do not happen as a result of changes in the realm of ideas, but in the economic infrastructure of a society. For this reason, they wrote, in Theses on Feuerbach, that "philosophers have so far only limited themselves to explaining the world in different ways, but what is necessary is to transform it" (MARX, ENGELS, 1989, p. 103).

For the German critics, the problem of ideologists was that, when elaborating theories, they relegated material reality to the background, reversing the order of starting from reality and arriving at ideas; on the contrary, they started from ideas to reality and, in this context, even if unintentionally, projected the contradictions of the real world into consciousness, creating exclusively spiritual or discursive solutions that hid the existing adversities (MARX, ENGELS, 1989, p. 103).

Since then, Marx was already developing the idea that economic transformations are at the root of historical, social, political, cultural and legal changes (ANAV, 2017). It is worth noting that, although in embryonic form, this observation was anticipated by De Tracy, for whom "economic interests were the ultimate determinants of social life" (DE TRACY apud EAGLETON, 1997. p. 69).

In the 1846 book, Marx and Engels refer to ideology as illusion, false consciousness, a belief system, and bring the concept that the ideologue is someone who alters the meaning of the relations between the idea and the real (CARNIO, 2009). Therefore, they define ideology as "a theoretical doctrine and activity that erroneously looks at ideas as autonomous and effective and that fails to understand the real conditions and characteristics of socioeconomic life" (MARX, ENGELS apud TOMPSON, 2011, p. 52).

It can be seen that, from the analysis of the law proposed by Savigny, Marx awakened to his critique of ideology, by realizing the contradictions between the practices and the conceptions of the world of someone identified with the overlapping interests of one class over another (CARNIO, 2009).

In this context, Marx's greatest contribution was to change the conception attributed to the word ideology. From German ideology on, the term lost its concept of naive way of thinking about the world to mean a way arising from

class relations and economic conditions, in a system in which the relations of domination are hidden in order to maintain the established position. Thus, we come to understand ideology not only as a false vision of the world, but as a false vision that is directed towards the dominant class maintaining its privileged position in society (ARAUJO COSTA, 2001).

Ideology has come to be defined as a system of representations that sustains existing relations of class domination through directing people toward the past rather than the future, or toward images and ideals that shroud class relations and distract from the collective pursuit of social transformation (TOMPSON, 2011).

In such a way, ideology is posed as a social imaginary in which the attention of reality is blocked or offers illusory compensations for the misfortunes of life and society. The reproductive imaginary blocks knowledge, since it only reproduces reality, but attributes to it seductive, magical, dream-filled aspects, justifying an illusion as it appears to be (CHAUI, 2000). Ideology is recognized as a value that runs through people, alienating subjects and annulling them from their protagonism.

Penso, pois, a ideologia como auto-imagem da sociedade, imagem que é construída pela sociedade, a partir da religião, da filosofia, da ciência, da arte da educação, do direito, da indústria cultural, difundida e manipulada pelos grupos sociais que detém a hegemonia e o poder, e que dispõe dos instrumentos de manipulação, principalmente, da educação, do direito e dos meios de comunicação social.(COELHO, 1985, p. 67)

Castells worked from a similar perspective in *The Power of Communication*. For him, power was based on the control of information and communication in a space where dominations act over the human mind through informational messages. He emphasized the need to understand human thought in order to understand the processing of these messages and the interference they are able to produce on the political level, a place where politicians deliberately intervene in communication networks to promote their interests, influence decisions, and ensure access to positions of state power (CASTELLS, 2015).

It is important to emphasize that, in this sense, the doubt remains as to whether a non-ideological, unattached, presupposition-free thought is possible. According to Marxist thought, no. But this does not imply considering all shaped thinking as ideological, because, at this point, it is necessary to differentiate

ideology from mere social conditioning of thinking and unveil the valuation of socially determined points of view and to what extent they influence the apprehension of reality (EAGLETON, 1997).

Taking up the reasoning that ideas are dominated by a class that holds power, Marx moved the dominant material relations into the realm of thought:

Os pensamentos da classe dominante são também, em todas as épocas, os pensamentos dominantes; em outras palavras, a classe que é o poder material dominante numa determinada sociedade é também o poder espiritual dominante. A classe que dispõe dos meios de produção material dispõe também dos meios de produção intelectual, de tal modo que o pensamento daqueles aos quais são negados os meios de produção intelectual está submetido também à classe dominante. Os pensamentos dominantes nada mais são do que a expressão ideal das relações materiais dominantes... são as ideias de sua dominação. (MARX; ENGELS, 1989, p. 48)

It is elaborated, therefore, that "ideology is a continuous projection of the infrastructure on the superstructure, in the Marxist sense of these words, which express the influence of the economic base on the other facets of social life" (SANTOS FILHO, 2004, p. 28). In this path, the bourgeoisie, recognized as the dominant class, concerned with maintaining order, takes advantage of its position in the social structure to limit the knowledge process of society (PEREIRA, 2016).

Although ideology links the thinker's discourse and problematics, it is constituted independently of subjective motivations. The ideological phenomenon is not verified by individual factors, such as the individual's bad faith and intellectual capacity. The fact is objective. One can verify the existence of capable scientists who involuntarily are affected by cognitive restrictions (PEREIRA, 2016). This does not imply, however, to affirm the inexistence of intellectuals who voluntarily deform their own discourse, developing theories that camouflage the real movement, based on extra-scientific interests. Those who, although influenced by ideological illusions, produced loyally in the search for truth, Marx calls classical ideologues. On the other hand, those who, for cynical reasons, consciously submit knowledge to political interests, whose goal is the creation of a false ratification of preconceived interests, Karl names vulgar ideologues (MARX, 1983).

In order for ideology to exercise its domination, it uses devices that establish and maintain authority relations. In *Ideology and Modern Culture*, Thompson (2011) presents five *modus operandi* of how ideology acts to exercise its domination, but clarifies that the ways displayed are not exhaustive and can also act individually or in association.

The first form is legitimation, in which relations of domination can be established and sustained by being represented as legitimate, that is, just and worthy of support. The second is dissimulation. In this context, dominations are concealed, denied, obscured, or represented so that attention is diverted. The third way ideology operates is through unification, that is, domination occurs through the construction of a collective identity that links individuals regardless of the differences that separate them. The fourth way ideology operates is fragmentation. In this method, individuals who, united, could be a real challenge to rival groups are segmented, directing the forces of one group against the other, which is considered dangerous and threatening. The last mode of action of ideology, according to Thompson, is reification. By this method, the socio-historical characters of the phenomena are overshadowed or eliminated and we come to believe in the events as natural, eternal or passivized (TOMPSON, 2011).

In *Topology of Violence*, Han (2017a) verifies the existence of violence since archaic societies, in which brute deadly force was a badge of power. The author reports that this scenario remains in Antiquity, a time when the staging of violence was part of society, and continues in the Pre-modern era, with the theater of cruelty, which, in addition to exercising, starts to focus and expose violence. In those societies, violence was not hidden. The author calls attention, however, to the fact that modernly the violence of brute force has been losing legitimacy and, in this context, its forms of manifestation are changing. The ostentatious staging is camouflaged, and violence moves to invisible spaces. In modern societies, violence is viral, microphysical, neural, sub-communicative, virtual, psychic; brutality moves from the external to the internal, from the physical to the psychic. "There are things that never disappear; among them is violence" (HAN, 2017a, p. 7).

This same paradigmatic change observed by Han with regard to violence can be projected onto dominations, spaces in which the ideological phenomenon has caused transformations. The dominations, previously imposed by force, now instrumentalized by ideology, have become more sophisticated, internalized, psychic, and operate through consensus.

This characteristic was anticipated by Habermas (1968, p. 47) when he realized that, in advanced capitalist societies, domination tended to lose its exploitative and domineering character to become rational, without the political domination fading away. The author notes that, although this repression remained, it tended to disappear from the collective consciousness because it took on a new character of legitimation, instrumentalized by the increasing productivity that provides amenities to the society that recognizes itself as satisfied.

## 5 LEGAL IDEOLOGY

The manipulation of ideology is elaborated in the sense of maintaining a prevailing social order, with the concealment of reality and the substitution of values, ideals, and myths that are absorbed by the collectivity as true and adequate (COELHO, 1985).

If law is a system of coercive rules governing social relations and norms legislated by a political system, it seems obvious that it has a connection with the ideological phenomenon (SYPNOWICH, 2014). Thus, law can be understood as a normative projection that instrumentalizes ideological principles, such as security and certainty, and the forms of control of a given social group (WOLKMER, 2003).

The manifestation of the ideological phenomenon is verified, according to Coelho, in the very concept of law, when he describes that, despite the traditional concept being carved in the idea of good, balance, justice, peace and love, mankind has always used the law to sow injustice, hatred, revenge, torture, misery, selfishness, corruption, intolerance, tyranny and oppression. There are plenty of examples. All in the name of justice (COELHO, 1985).

Correas (1995) directs his criticism at the State, stating that it has never produced norms whose objective has been to improve the standard of living of the impoverished and unprotected sectors. For him, any way of conveying the idea that the State produces norms to benefit the underprivileged sectors is an apology for the power that acts for the benefit of poverty.

In today's society, relationships are not presented as they are, individuals are confused, and social roles are blurred. We live in a tired society, a place where performance subjects renounce thinking, are too haggard for discussion. Today's violence touches us much more from the conformism of consensus than from the

antagonism of dissent. (HAN, 2017b) And it is precisely in this social environment that ideology finds fertile ground to exercise its domination.

In this sense, "All legal activity is an ideological practice" (WOLKMER, 2003, p. 154), and, among the widespread forms of the ideological process in the legal field, the ideology of legal equality stands out.

At the core of this ideological form lies the apparent existence of a free, just, and equal world, which is materialized by the understanding of the existence of equality concerning the legal status of people, with the absence of qualitative differences between citizens before the State. In this logic, the law presents itself as an essential instrument for sustaining an ideology that distorts reality (PEREIRA, 2016).

Law develops the role of a false universalizer as it propagates principles that construct and reinforce the image of a fictitious community of equals: "Legal discourses have the legitimating power, they do because they sketch pictures of widely shared, wistful, inchoate visions of an ideal-society of dealings between genuinely free and independent equals" (GORDON, 1987, p. 16).

In societies that live in systems of equality, the discourse of exploitation appears as a contradiction in terms, and it is at this point that the law presents itself as a pillar for the functioning of capitalism: "the formal equality verified in the state-legal sphere fulfills the ideological function of making capitalist relations of exploitation unviable by representing relations of inequality as equitable" (PEREIRA, 2016, p. 317).

In private law, the civilist notion of autonomy of will, a presupposition of synallagmatic contracts and the foundation of the theory of obligations, is an excellent example of ideological manipulation. Regardless of the society that is observed, the individual will is not free. The influence appears in consumerism, in the adhesion clauses, in the market demands that dictate supply and demand, in the fear of violence, in the fight for survival: "those who are hungry are not free" (COE-LHO, 1985, p. 70).

The verification of freedom of decision making becomes impossible when the equality between the parties does not go beyond the limits of formality. However, the ideologically sedimented notion of isonomy prevents a protest speech. Among individuals in a society that recognizes itself as equal, the logic of exploitation does not prevail.

In legal hermeneutics, the ideological influence also operates in an undeniable way. The valuation of ideology allows both creating false situations of antinomy

and instrumentalizing the interpreter to find exegetical solutions, persuading the dialectic in the search for a favorable decision. Once the antinomy or gap is observed, the law operator works to present extrapositive factors as positives, manipulating persuasive and partisan discourses in the search for the best result for himself (DINIZ, 1981, p. 246).

"Every legal structure reproduces the play of social and political forces, as well as the moral and cultural values of a given social organization" (WOLKMER, 2003, p. 155). It is observed that legislative discourses are impregnated with insignias and images that, most of the time, rationalize and justify endless configurations of social order presented as natural, necessary and just (GORDON, 1987).

In Marx's works, the bases for the analysis of capitalist society were presented, a collectivity in which the theoretical background is the law of value. Considering that modern law is capitalist, its main function is to protect the production and circulation of goods: "reasons are numbers: they are an incitement to supply the reasons of law, and who would doubt that private interest has many incitements to supply them?"(MARX, 1961, n.p.).

Although the findings and analysis about the ideological influence on society were proposed by Marx, ironically, the German ended up being criticized for the dogmatic ideology and moral relativization of his doctrine. In *The open society and its enemies*, Popper (1974) accuses Marx of abandoning his origin as a moral humanitarian in exchange for an ideology that does not admit contradictions; condemns his ideas as reactionary, comparing them to totalitarian ideologies; censures the illusion of scientific socialism, calling it primitive superstition; combats the partiality of his analyses because they are based on territorially limited capitalism; and recognizes the dictatorship of the proletariat, although Marx demonstrated a fundamental attachment to freedom. Finally, he adds that it is "a danger to insist too much on economism and interpret it as a doctrine that all social development depends on economic conditions" (POPPER, 1974, vol. II, p. 115).

Under this perspective, it is admitted that not even Marx was able to work without ideological influence in his doctrine, but it is emphasized that such findings do not discredit the work developed in the sense of verifying and directing studies about the manipulation of ideas in society.

Marx's thought flows in the sense of affirming that, despite modern law being capitalist, an ideological curtain insists on disassociating politics from economics. This rupture distances the economic apparatus from the legal-state



apparatus and gives the mistaken idea that each subject follows its own logic. In this way, individuals are led by the erroneous idea that, in the political space, people relate disconnected from economic issues, as citizens inserted in relationships in which the presumptions of exploitation are erased, suppressed and exchanged (PEREIRA, 2016).

It is warned that the economic aspect remains an indispensable instance in the struggle for another world and that, although idealizations of the ruling classes try to disassociate economic instances from human life, deep down they are interdependent. This breakdown of the general vision distorts the idea that economic theory should not dwell on humanistic values and makes the progress of humanity impossible. It is predicted that after this dissociation, the market becomes a high and omnipotent value, and society is directed, ideologically, to believe that lower values should be sacrificed to avoid deformities (HINKELAMNERT, 2014).

By separating the legal function from the economic apparatus, the false idea is created that each one follows its own dialectic. Separated, economic issues gain greater prominence and submerge the other claims that, without the possibility of prominence, remain relegated and analyzed in a secondary manner. In a society where the logic of economic efficiency prevails, no other hypothesis finds coherence: "The indispensable becomes useless because it cannot be considered in the calculation of utility" (HINKELAMNERT, 2014, p. 199).

This is the position sustained by Hayek and other members of the Austrian School, who defend the inexistence of alternatives beyond the logic of market results. From this point of view, they consider social justice, as advocated by state capitalism, an illusion because they believe that distributive justice only works for small groups. Besides, in the Hayekian vision, justice is a word that only applies to actions, never to results. They qualify state capitalism as oppressive and totalitarian, in which planning is recognized as undemocratic in the sense that bureaucracy prevents immediate decision-making. They attack representative democracy, stating that in this system only "the worst come to power", because only unscrupulous populists are able to promise the people that the State will solve their problems. Hayek calls attention to the fact that law does not have the primary function of improving the world, but of guaranteeing the rules of the good life and of instrumentalizing the economy, 2 since achievements depend on economic progress (HAYEK, 1990). This is the use of rational judgment.

Inspired by Max Weber, Habermas (1968) defines rationality as capitalist economic activity guided by bourgeois private law in which the public spheres are subjected to rational decision criteria, a space in which the choices of alternatives, in logical actions, are directed to a specific end, namely, economic efficiency. However, he quotes Freud, pointing out that the rational method operates so that the true motive, that is, the maintenance of domination, remains hidden.

In Hinkelammert, Hayek's axioms are considered utopian. In *Critique of Utopian Reason*, analyses of neoliberalism were built that place the market as the central point, without considering that its ideal concept materializes in an infinite and, therefore, unreachable progress. It is noted that the defenders of the market start from a precarious reality (they work with hypotheses of perfect markets and in equilibrium) and polarized (they disregard the satisfaction of human needs for considering them irrelevant from reality) in a context where only mercantile criteria are analyzed (HINKELAMMERT, 1986). In this space, they work under an ideological influence that makes it impossible to develop actions independent of political-ideological conditioning. These are the numbers inciting legal production: "interest does not think: it calculates". 3

Based on the assumption that human limitations, whether conscious or not, prevent the apprehension of reality, the proposal that is presented consists of the development of a possible and desirable model, with the inclusion of ethics in the instrumental rationality that values the human, to prevent ends from being achieved at any price. The widespread mercantile ethics causes distortions in human life, so that needs go beyond mere consumption. To assure what is essential today implies guaranteeing future possibilities (HINKELAMMERT, 1986).

## 6 FINAL CONSIDERATIONS

From the study presented, it is concluded that it is impossible for social behavior to be free from ideological conditioning. In this field, the law, whose production is restricted to a minority that holds power, with its multiple possibilities of manipulation by coercive or persuasive methods, may also suffer the projection of a distorted reality and work, even if unconsciously, in the legitimization of market circumstances in which the legal epistemology is transformed to the detriment of the source value on which the scope of law rests.

Ideological conditioning has always influenced and will continue to determine social decisions; however, attention must be directed to not allowing the final recipients, the reason why and for whom the law was created, to be inserted in a dispute in which the means prevail over the ends, and the fundamental legal design, the human being and his essential needs, to be relegated to subordinate instances.

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