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**FATHERS AND SONS OF “THEORY OF REFLECTION”
IN SOVIET AND POST-SOVIET LEGAL SCIENCE**

This article reviews factors that determined the establishment as methodological ground of Soviet and post-Soviet theory of legal evidences “Lenin’s theory of reflection”. Considered and assessed are concepts of “retrospective reflection” and “prospective reflection”. Summed up the drawbacks of “theory of reflection” in the role of methodological paradigm.

Key words: legal evidence; theory of evidences; theory of reflection; reflection; retrospective reflection; prospective reflection.

Висвітлено чинники, що зумовили утвердження “ленінської теорії відбиття” як методологічної основи радянської та пострадянської теорії юридичних доказів. Розглянуто й оцінено концепти “ретроспективного відображення” та “випереджувального відображення”. Підсумовано недоліки “теорії відбиття” в ролі методологічної парадигми теорії доказів.

Ключові слова: юридичний доказ; теорія доказів; теорія відбиття; віддзеркалення; ретроспективне відображення; випереджувальне відображення.

Famous Soviet criminal law expert R. Belkin in one of his works wrote about numerous “inventors of theories ” and their springs from loins, which claim the scientific novelty: “Most often these discoveries are peculiar kinds of phantoms, brain game of ambitious author trying in this way to leave his trace in science. As a rule, these illusions either does not hit the chord of scientific community at all (they are silently ignored as pardonable weakness of a neophyte), or cause the appearance of a couple of non-essential articles by fellows sympathizing with the author. Next – is dark oblivion, and even the creator himself prefers not to recall his epoch-making discovery.

However, there happen other metamorphoses when real idea or concept unanimously supported by multiple advocates attracts the whole array of followers, is actively developed, gives birth to illusions of wide practical use, and then, sometimes after a lapse of much time, turns out to be a typical phantom. But it already has taken deep roots, and by far not anyone, even of those who understood the delusiveness of hopes put on this theory or concept, would risk to try to root out these roots and prove the wisdom of famous expression: “The emperor wears no clothes!” [1, 761].

Rightness of this assertion is the subject of substantiation in this article. And its paradoxicality lies in that the matter in question will be “theory of reflection” as a methodological basis of legal procedural science on the whole and theory of evidence in particular.

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Inasmuch as namely R. Belkin can rightfully be considered the “godfather” of retrospective theory of reflection, which acquired paradigm nature in the Soviet legal theory of knowledge of the last century and in current century keeps the precedence on the post-soviet space as a basis of cognitive theory in legal science.

Professor Rossinskaia considers it possible to draw parallel between the theory of criminalistics identification: empirically the identification, matching as a practical task was solved already on the early stage of development of science of criminal law by its pioneers, however, theoretical grounds of identification were enunciated much later, in some 50 years, when there developed philosophic, gnoseological backgrounds necessary thereof. The same situation is with universal property of reflection, which was empirically used by criminal law experts in most different spheres of criminalistics science and practice: in theory of identification, graphology, trace evidence science, ballistics, and in tactics of investigative actions, etc. However, the first to claim the theory of reflection as epistemic ground for criminal law science and its practical applications was particularly R. Belkin in fundamental work for legal science “Lenin’s Theory of Reflection and Methodological Problems of Soviet Criminal Law Science” (1970) [1, 7].

The matter is that three times mediated by metaphor of mirror [2, 71] Lenin’s definition of matter as given to us in the sensations of objective reality, which is “copied, photographed, reflected” by our senses and his “genius guess” that matter is based on the property close to the property of sensing, – property of reflection, – in the 30th of the last century were dogmatized and ideologically biased as solely possible understanding of cognition and consciousness and received the name of “Lenin’s theory of reflection” [3, 151]. Its main thesis in black-and-white thinking asserts that senses, perceptions, ideas, pronouncements about scientific laws, theory have the form of images, “mould”, copies and even photographs of the outer world that arise as a result of reflection of objective reality by human brain and analyzers. Metaphor of mirror often impersonates the theory of reflection [2, 71], though at that one speaks that this is not “mirror-deadly act” [4, 151].

In actual practice, pronouncements of V. Lenin about reflection do not form unified and consistent concept and concede different interpretation [3, 151]. “No theory of reflection was created by Lenin, – more judgmentally states E. Rossinskaya, – but according to prevailing in those years stereotypes one or two remarks made by V. Lenin in his works turned out to be enough to acclaim just another “Lenin’s theory or principle” [1, 7].

Moreover, “Lenin’s” theory of reflection originally builds upon the same laconic mention of reflection by F. Engels [3, 151], who in his turn did not invent this concept but just followed the tradition of Neoplatonism that indirectly significantly influenced German classical philosophy. So, for example, at Plotinus we find the idea that matter is appropriate of some sophisticated property, a sort of wisdom in creation of ghostly similarities. While Porphyrius, Plotinus’s student, supposed that matter had properties of reflection and fluidity [4, 151–152]. Does the bell ring?

However all this did not prevent, as prof. Rossinskaia puts it, acclaim of “just another” Lenin’s theory and principle. In general philosophy scale “milestone mark” of Lenin’s theory of reflection approval became the same name work by Bulgarian T. Pavlov (1949), and in legal science – first of all works by R. Belkin (in the part of retrospective reflection) and Dz. Kerimov (in the part of prospective, the so-called “advanced” reflection).

“In scarce methodological background of domestic science of law is totally absent some detailed development of theory of reflection of objective reality in law, – dispiritedly stated Dz. Kerimov. – However, this theory, reproducing the most sophisticated mechanism of human thinking (sic!) plays extremely important methodological role in the whole system of sciences, inclusive of science of law, since lawmaking and its exercise is nothing more than reflection, and most often advanced reflection of objective reality, directing its development. The problem of reflection is crucial (sic!) in legal science, and its solving will promote further improvement of both law-making and law enforcement” [5, 101]. Foreseeing possible objections in view of rather disputable construction of advanced reflection, Professor Kerimov makes haste to disarm his possible opponents: “Mechanistic materialism stating that reflection cannot exist without what is displayed, similar to that there is no consequence without reason, does not concord with theory of advanced reflection” [5, 104]. Since “being the theoretical perception about future, it differs from all forms of scientific insight with that it is directly oriented upon practical implementation in real life via fixing corresponding social relationships in legal norms and through their realization” [5, 108]. That is, in the period of formation of Lenin’s theory of reflection when making decision на killing one or another social stratum, the Soviet State by no means unleashed terror against its own people while just turned advanced reflection into reality. What is to be, will be.

I have to grounds to doubt the theory of prospective reflection; moreover, I know for certain at least one confirmed case of it. In particular, Milorad Pavić authoritatively witnessed the fact of Khazar Princess Ateh having fast and slow mirrors. “They almost did not differ from other Khazar mirrors. Both were made of polished block of salt, but one of them was fast and other one was slow. Whatever fast mirror showed, reflecting the world as if borrowed from future, the slow ones repaid the debt of the first one and fell behind the same time as the first one advanced” [6, 29]. That means that first mirror practiced prospective (advanced) reflection, while second mirror – retrospective ones, both scientifically substantiated by Soviet Science).

Whereas Dz. Kerimov devoted himself to research of nature and abilities of prospective reflection, R. Belkin devoted himself predominantly to “delayed”, retrospective reflection.

Retrospective reflection acts as a link between past event and change of environment caused by this event. In spite of “literal” sense of mirror metaphor (mirror does not keep reflections), retrospective reflection is considered as reflection – print. Judging by “Lenin’s” understanding of reflection as immanent property of matter, one should estimate the event based on related changes in the environment. “These changes in the environment, related to the event, are the result of interaction between them, result of reflection of the event in the environment, – writes R. Belkin. – Only based on them we can judge the content of the event” [1, 277]. At that, as elements of environment one renders not only material formations – things, objects but also people in whose consciousness events are reflected [1, 278]. Some followers of theory of reflection as a result of too literal understanding of metaphor of reflection are inclined to consider images of human mind “prints on the brain” (so we see this poor brain with ruthlessly depressed cortex), but such people are little. Majority perceives this kind of “reflections” as “subjective (mental, image-bearing) form of psychological reflection” – images of perception, consciousness, memory [1, 280].

In respect to changes in human consciousness one often uses metaphor “mirror imprint”. On the one hand it is a textbook case of oxymoron, combination of incompatible, and on the other hand – a phenomenon, based on archaic ideas that mirror can keep reflections. In

this respect we should mark the story of J. Gutenberg, who in his time founded industrial output of compact mirrors for pilgrims counting that they would use mirrors to capture blessed reflections of holy places and holy relics, and further draw God's grace from mirrors "blessed" by reflections. His grandeur plans were ruined by plague, but on the whole the intention was correct and met the pilgrims' expectations towards compact mirrors. But as people say, every cloud has silver lining: having failed in mirrors business, Gutenberg invented printing machine that makes much longer lasting reflections – prints. The dream of mirror keeping the reflections further on was embodied in daguerreotype, since the plate for daguerreotype was a silver-plated "mirror" surface. Therefore the construct of "reflection-print" is not groundless.

"For the purposes of proof process of changes in the environment as a result of reflecting the event in this environment – this is the proof of this event, i.e. factual data, by means of which one can only judge of crime event, – R. Belkin is sure – Consequently, the process of proof origin itself is the process of reflection, while origin of proofs – is the result of this process" [1, 277]. Just as any event of crime (like any process) compulsorily reflects in the environment, so and process of origin of proof bears necessary, repeated, stable and general character – is a conformity [1, 277–278]. This is the point of theory of reflection as methodological grounds for theory of evidence.

In complicated connections in evidences origin events take part both object of crime, motive, purpose, and guilt of the criminal. According to right opinion of prof. Belkin, the object of crime as social relations, infringed by criminal, is represented in the act of reflection by actions and object of infringement, while subjective moments are represented by actions only. By this means both object of crime and subjective moments take part in the process of evidences origin indirectly: through reflected and reflecting objects, and through means of reflection [1, 279].

Another important point: to judge the reflected by reflection R. Belkin considers its possible only in case if reflection possesses some specific content and connection of changes with event can be found out, identify, understand by the content of these changes [1, 279]. Each act of origin or disappearance of evidences as indispensable contains elements that are common for all similar processes proceeding in this situation, and this common means possibility of defining the typical for specific situations of development of these processes, their mechanisms. It becomes in principle possible to define the circle of situation typical reflected and reflecting objects, means of reflection and, which is most important, results of reflection, i.e. evidences [1, 284]. Here is briefly the core of "reflective" methodology.

Further ideas laid down by prof. Belkin gained the meaning of methodological canon of theory of evidence and thoroughly reproduced in most works dedicated to proving. It is easy to see for yourself having analyzed the works of "children" of father founder of criminalistic theory of reflection.

So, for example, A. Belkin in the part of his work dedicated to general characteristic of proving process [1] meticulously reproduces the ideas of works by Belkin elder concerning "reflecting nature" of proving [7, 29 – 30], correlation of reflection and information [7, 30–33], reflections-facts [7, 79–80], and reflections-evidences [7, 43], trends of formation and disappearance of reflections- evidences [7, 33–38], incomplete and false "reflections" [7, 43–44], content of evidences [7, 43], essence of proving as operating of evidences [7, 42], etc. reproduces literally but without corresponding references to the source, mentions of Lenin and in accordance with conditions sometimes changing "reflection" to "information". Nevertheless,

in the introduction Belkin-junior frames than “a number of ideas that entered scientific usage and became common knowledge are given without references to works where they are used, if their various readings are absent in texts and they are laid textually univalently by different authors or by same author in different works” [7, IX]. Page by page analysis of mentioned part of the text by A. Belkin brings to light its total saturation with aforesaid and practical absence of author’s own thoughts and ideas, exclusive of the sole one: “R. Belkin’s position on the whole deserves serious attention” [7, 124].

Partly A. Belkin is justified by family similarity with the author and obvious comprehension of himself as successor of his artistic legacy, which however does not withdraw the question of Belkin’s junior own contribution to elucidation of this methodological problem. Then again, particularly this piquant fact in the best way possible confirms the entrance in scientific usage of significant number of ideas of “theory of reflection” by R. Belkin and their acquiring the nature of “common knowledge” of theory of evidences (which was to be proved).

Methodological importance, irreplaceability of theory of reflection in modern conditions also proved by G. Pechnikov [8].

“Cognition is the reflection of nature by human, – he writes. – Reflection is an ability of any material formation in its changes to reproduce objects of outer world, which interact with it ... Principle of reflection is underlying for theory of cognition, human reproduces the surrounding world in his brain not only by means of organs of senses, but also with the help of abstract thinking. Creating notions, theories, formulating scientific laws in the language, therewith he reflects objectively existing laws. In this sense reflection means the same as cognition, identical to it ... Underlying scientific idea about undeniable truth must be the theory of reflection, according to which our sensations and ideas are moulds, pictures of reality, objective reality finds its reflection in our notions and judgments” [8, 10-11]. During reflection the object “transits” to subject in the form of undeniable truth; real facts exist independently from consciousness, sensation, experience, psychic state, etc. of the subject and humanity in general [8, 13, 27].

In connection with the last statement, it makes sense to make a small remark. Followers of theory of reflection loving to philosophize of “central node of all court system, soul of the whole criminal process, impulsive origin, forming the most significant section of the process” [9, 17], prefer not to mention the following author’s words of such poetic and precise definition of theory of evidence: “What do we demand from judge? The truth. And what is truth? This is a true reflection of reality in human consciousness; this is perfect, as far as possible, identity of our ideas about object with object as it is in reality. But if truth is nothing more than relation between reality and consciousness, if it is, so to say, photographic print of nature, obtained by means of optical glass of our conscience, than obvious that it is as much depends on reality, nature, as on cognizing subject. In other words to say, it has two sides: one is objective, not depending on cognizing entity, and other is subjective, depending on properties of cognizing entity, on his individual mind, which can be mistaken and judge recklessly and hastily, on his will that can bend the truth and present it in perverse view. Both these sides must be honored in correct method of cognition” [9, 66].

Adherents of cognition-reflection, as a rule, bespeak that reflection of outer world in human consciousness – this is not “mirror-deadly act”. But render this sentence quite peculiarly: “One should clarify that reflection must not be too objective, absolutely, adequate beyond all reason, but always with some portion of subjectivity, imagination, human fancy, –

H. Pechnikov is sure. – Particularly by this is achieved, provided true objectivity, adequacy of reflection, cognition. And on the contrary, too adequately precise, purely mechanical copying turns into inadequate, truth turns into delusion”. And clarifies this flagrant nonsense by more flagrant example: “It is reliably known that during Great Patriotic War for our legendary intelligence officer Nikolai Kuznetsov his forged documents for the name of German officer Paul Zibert are made not by way of mechanically precise, absolutely adequate copying of German original docs, but by drawing by hand by one of our artists. Germans checked seventy eight times documents supposed Paul Zibert, but did not manage to detect the forgery” [8, 12–13]. One must suppose the particularly by “drawing by hand” was “attained, provided true objectivity, adequacy of reflection, trueness” of the forgery.

To speak about cognition as reflection of self-sufficient world in the mind of some “impersonal subject” is as good as seriously speculate about “autogenesis” of mice and fleas from dirt (there existed such concept in the past). As a figure of speech such turn of phrase is fully justified (dirt and disorder really can promote the appearance of rodents and parasites), but not more than that. It hardly makes sense to build the whole theory on this ground.

However, Mr. Pechnikov is sure of the contrary: “If we refuse from theory of reflection, i.e. recognition of that the reflected object exists independently of consciousness of reflector, subject perceiver of this object, and from idea of correspondence between reflected and reflector, than we will not get real objective cognition, objective truth” [8, 13]. And if not clear for someone: “one cannot ascertain objective truth without acknowledging the theory of reflection of objectively real outer world by human consciousness” [8, 31]. Refusal from principle of reflection is a mistake after all, which leads to subjectivity, agnosticism in theory and practice, leads to rejection of objective truth [8, 14]. This is it: nothing more nor less.

Prof. Rossinskaya marked that original concept of reflection by R. Belkin was called “Lenin’s” forcedly [1, 7], while Jr. Belkin by no means accidentally deleted all references to Lenin when rewriting large fragments of texts by Belkin elder in his work. But still the theory of reflection is totally Lenin’s by style of substantiation: adherers of the theory of reflection, as a rule, quite in Lenin’s way practice aggressive rhetoric instead of rational arguments preferring unreasonable statements and depreciative valuations.

Let us say, the work by H. Pechnikov speckles with labels like “idealism”, “subjectivism”, “agnosticism” (naturally in strictly negative pictures) [e.g.: 8, 13, 14], statements without proofs “it’s a mistake” [e.g.: 8, 14] and categorical assertions “must establish”, “cannot help carrying” [e.g.: 8, 35] etc. at that the author either does not know or ignores the fact that “dialectician Hegel” [8, 29] bepraised by him – is an idealist, while Neo-Platonists comprehended the principle of reflection long before dialectical materialists...

On the whole discussion concerning “theory of reflection” strongly reminds polemics described by V. Shukshin “Srezal” (“Cutting Them Down To Size”) [10, 115 – 123], since one can win the argument with violent ignorant in one way only by not taking part in it, but alas this is not always possible.

Methodological inferiority of theory of reflection as scientific basis of theory of evidence is brought to light in a number of problematic points most fully systematized by Ukrainian scientist – processualist V. Hmyrko:

1. With this approach happens the mixing of ideas of “common sense” and philosophy; transfer of “commonplace” senses into philosophical context leads to naivety and inconsistency of “reflective” cognitive theory [11, 275–276].

2. Subject of cognition in “reflective” concept is presented inconsistently, simultaneously in two “focuses”: as an abstraction of individual “empiric” subject performing sensual cognition and reflection, and as utterly abstract subject deprived of some individual-sensual or concrete-historical characteristics. Other words to say, as “alive mirror”, “copying device”, “still camera” [11, 276].

3. Sensory perception is a unity of representation and designation, thus common to theory of reflection antagonism against sign form of sensory perception [see for example: 8, 13–14] leads to naive-realistic identification of sensual picture of objective reality with reality itself [11, 276–277].

4. Traditional “step type” division of cognition into sensory and logical – is rather imperfect and approximate abstraction, thus we should speak not so much about “step type”, consistency and stepping of cognition “from sensual perception to abstract thinking, and from it to practice”, as complementarity, organic fusion of direct and mediated, sign and image, logically-rational and intuitional-notional points in each act of cognition activity [11, 277].

5. Existence of “objective reality” irrespective of consciousness of the subject [see, for example: 8, 27] is also in question since “penetration” and “arrangement” of outer world in the consciousness of perceiving object happens not in the form of “objective truth piercing the consciousness”, “printed image in the consciousness” as adherers of theory of reflection prefer to think [see, for example: 8, 13], while by way of laborious building of inner reality, that is supposed an adequate reflection of outer world and to a large extent conditioned by personal needs, properties and reactions of perceiving subject [11, 277–278].

6. As reasonably marked by R. Belkin [1, 281] and twice (either due to inattention or exclusive importance) repeated by Belkin junior [7, 33, 35] “reflection as a result of interrelation of objects taking part in the act of reflection is the final phase of this process”. In such a manner basic metaphor of “reflection” is concentrated rather of final result of cognition, than on its “procedural aspect”, since cognition as it is performed mainly by “non-reflective” by its nature operations, such as selection, categorization, reduction, interpretation, representation etc. [4, 28–29; 11, 276; 12, 79]. It is presented that metaphor and based on it theory of reflection have rather ideological than methodological value, since they legitimate the final result by way of appealing to primarily visual every-day experience and hackneyed common sense, based on acknowledgement of priority of “reflected” before “reflector”. In methodological terms the metaphor of reflection, as any other metaphor, places emphasis only on one mediated by concept of “reflection” aspect of cognition, inevitably preventing noticing other aspects incompatible with it. When we say that concept is structured by metaphor, we mean that it is partly structured and can be developed only in one direction. Therefore, some part of metaphorically conceived concept does not fit and cannot fit corresponding metaphor. In case of cognition, metaphor of reflection “darkens” the sides of cognition, which have non-reflective nature, that are primarily used for performance of cognition [12, 78–79].

V. Lectorskyi, pointing out problematic points of metaphor conditioned reflection of reflection of cognition understanding, remarks that “the term “reflection” itself is not good as it arouses beliefs about cognition as consequence of causative impact of real object upon subject passively perceiving this impact. In reality cognition even on the level of perception – is an active process of data gathering about outer world that implies usage of perceptive hypotheses, cognitive maps, some of which can be innate. In the process of cogitation one uses various sign means. Cognition (different from reflection) can pertain to subjects, which are still not available (cognition of future) or which are not available already (cognition of past). We

should note that domestic authors who develop the problematics of theory of reflection (in general philosophy context), understood cognition as active process and in most cases put into the term “reflection” such contents that allowed them to overcome mechanistic associations connected with this term” [3, 153]. Close to “Lenin’s theory of reflection” presentation-istic realism originating from identity of existence and cogitation, and developed by some Soviet philosophers, did not get support and recognition; researches by a number of authors putting emphasis on artistic nature of cognition were held not thanks to but contrary to “Lenin’s theory of reflection”. Dogmatization of “Lenin’s theory of reflection” impeded the research of a number of problems of cognitive theory, inclusive of because it did not allow to compare this understanding of cognition with other theoretical-cognitive concepts: established and officially recognized “the only true” metaphor of cognition as reflection persistently squeezed out concepts incompatible with it [3, 151–153].

Though authors who researched this topic in a number of cases in practice on their own interpreted these ideas, as a matter of fact digressed from Lenin’s wordings, officially they could not go beyond “Lenin’s theory of reflection” [3, 153]. In essence, these were the attempts to define one sub-notion by means of another, which is sub-notion too, at that ignoring generic notion. Other words to say, this is something similar to attempts to define the shark as “tiger that looks like sturgeon”, infinitely specifying points of similarity and inevitable generic differences, instead of going to proper generic notion.

Prof. Lectorskyi considers it incorrect to cross out the results of researches held *sub specie* of metaphor of reflection; according to his opinion real contents of researches of cognition as reflection may be more adequately interpreted in notions of theoretical-cognitive realism [3, 153–154]. But having imagined the *credo* of “fathers and sons” of theory of reflection in legal science, I freeze with horror thinking about possible coming of grandsons.

After all Khazar princess Ateh, owner of fast and slow mirrors, dies with a strange death. In the night on each eyelid she wore a letter of forbidden Khazar ABC, characters of which killed everybody who read them. Letters were written by blind men, and in the morning before Princes’ washing maids served her with eyes closed. In this way she was protected during sleeping when person is most vulnerable [6, 26]. Once upon a time in Spring morning in order to entertain the Princess, servants brought her both mirrors, fast and slow ones. When mirrors were placed before Princess Ateh, she was still in her bed and letters were still on her eyelids. In the mirror she saw herself with eyes closed and died instantly. Princess disappeared in split second when she first read the deadly letters written on her eyelids, since mirrors reflected how she blinked both before and after her death. She died killed simultaneously by letters from the past and future [6, 29]. Retrospective and prospective reflections.

For this reason I fear so much coming of grandsons. I would rather that with legal science on the whole and theory of evidence in particular did not happen same thing as with Princess Ateh who fell for reflections.

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