SCIENTIFIC REVIEWS

Review by the official opponent on the Doctor of Sciences (Law) dissertation of Sergei A. Bochkarev "Theoretical and methodological study of criminal law as a system of scientific knowledge", specialties 12.00.01 – Theory and history of law and state; history of doctrines on law and state; 12.00.08 – Criminal law and criminology; penal law[1]

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Criminal law is a unique treasure trove of knowledge. At the same time, it is itself a system of scientific knowledge. It is gratifying to note that S.A. Bochkarev already mentioned this in the title of his research. The key problem is the answer to the seemingly simple question: "What is knowledge?" And how does scientific knowledge differ (or should differ) from routine or everyday knowledge? Are there any such differences at all? For example, a person knows that the sun rises in the East, but they do not know why it rises there and not in the West. They have no idea about the structure of the Universe or the rotation of the planets around the Sun. Does this somehow diminish their basic knowledge that the sun rises in the East? And there are a lot of such questions. In general, our whole life consists of these questions.

As far as criminal law is concerned, this field is no exception. A person commits a crime and should be punished for it. But what is a crime? And what is the punishment? Why was it considered a crime to tread on the shadow of the Pharaoh in Ancient Egypt? And today there is no such crime, and there are no pharaohs themselves. And thefts were committed under the pharaohs and are being committed now. Thefts outlived pharaohs. Will they be committed in the future? Who knows?

Previously, people were quite often executed for crimes. Moreover, they were often executed in a very sophisticated way. Experts count more than two hundred types of death penalty. Today, such things happen less and less often, but the agenda is personality modification as a criminal punishment. Is it better or worse? Who knows?

Such questions have been accumulating for millennia and will continue to accumulate. It is like the process of learning itself: it has a beginning, but it has no end.

It would seem that nothing has changed. Pharaohs were replaced by other types of rulers, and theft has partially remained unchanged, and has partially transformed into other forms of theft. And the shadow of the pharaohs (presidents, monarchs, and other leaders) has not gone away.

But according to the historical process, as the most objective criterion, it can be judged that changes were actually occurring latently and eventually they have occurred. First and foremost they concerned knowledge. The knowledge of what the "shadow" is and what its sanctity is, and how this sanctity differs from the no less sacred right of property, has been formed. The understanding came through the modification and accumulation of this knowledge.

As the candidate convincingly demonstrated (p. 290), first came an individual and in many ways advanced understanding at the level of individual thinkers that, unlike property, "shadow" has no ontological value, and the value attached to it has only "coming" and "going" properties. Only then, many centuries later, came the public understanding and recognition of these same provisions. In other words, there was a socialization of knowledge.

As a result of long-term and, as a rule, experienced knowledge of public life, its changes under the influence of various factors, the full amount of knowledge about the objects protected by law was achieved. Its formation, in turn, did not pass without a trace and did not remain in the minds of philosophers. It led to specific consequences for criminal law – to its transformation, to its humanization or dehumanization, to the expansion or narrowing of its sphere of competence and jurisdiction.

In this regard, we cannot but agree with the author of the dissertation when he convincingly describes knowledge in its two key and inextricably interrelated hypostases. The first one is an object of the evolution of social consciousness (p. 20), and therefore he applies a metaphysical approach to it, since without a high degree of abstraction inherent in this approach, the processes of a supra-historical order cannot be traced by any positive method. The second one is a result of concrete historical development (p. 23), when knowledge about the event of the case, a person's guilt, danger and punishability of the actthey committed is produced "here and now" by the participants in the proceedings.

All these parameters of criminal law and knowledge about it are usually either lowered or not raised in science. Why? The problem, according

[1] At the meeting of the Dissertation Council D 002.002.07 on June 25, 2020 at the Institute of State and Law of the Russian Academy of Sciences it was decided to confer the degree of Doctor of Sciences (Law) on Sergei A. Bochkarev, following the results of his defending the dissertation entitled "Theoretical and methodological study of criminal law as a system of scientific knowledge".

to the author, lies in the type of scientific rationality that scientists have adopted (p. 21). Because of its inherent limitations, judgments about the dynamics of criminal law today are dominated by a localized view and situational logic. In the best traditions of positivism, experts, as a rule, explain changes in the system, structure and norms of criminal law specifically by historical events, the will and preferences of the current government (the ruling class). A very convenient approach, I must say, because it helps them to find answers to trivial and largely populist questions without delving into social matters: "Who is to blame?", "What to do and who should do it?" As a result, it turns out that the positivist approach is actively used mainly due to its clarity and convenience, and not because of its cognitive usefulness and integrity.

The course of epistemological processes hidden from the naked eye is practically not taken into account. No attention is paid to the fact that through socio-political institutions, which are usually referred to by positivists as a sufficient explanation of the changes taking place in society, knowledge is mainly objectified, recognized and given an official status due to social approval, wide dissemination and introduction into practical life.

What has already been said makes us consider the whole process comprehensively, and this sooner or later should lead the researcher to the system and all knowledge.

The doctoral candidate called his dissertation a theoretical and methodological study of criminal law. Of course, criminal law was studied long before it, and it is still being studied today. It is also studied as a system. However, until now, no one has taken the liberty of studying this problem as a system of scientific knowledge. This is fundamentally important, because it allows us to look at all criminal law as if from the outside, while being inside. The effect of cognition increases many times.

All this makes it possible to evaluate the work as relevant, having great theoretical and, strange as it sounds in this case, practical significance. It can serve as a solid basis for a number of further studies.

The work is very well structured. Given a wide range of issues, the author was able to select those that best highlight all the problematic aspects of the topic and scrupulously described them.

When writing the work, the author used a very large amount of literature, including foreign. He used normative material, judicial practice, and research by other authors. All this makes it possible to evaluate the conclusions and suggestions made by him as scientifically sound and reliable, which can be used in other scientific research.

The work contains quite a lot of "live" examples that not only illustrate the author's idea, but also allow us to get deeper into the essence of the problem, highlight some new aspects of the topic, and make the process of learning more capacious.

The structure of the work is very interesting. The author begins the research with the study of the genesis of criminal law knowledge (Chapter 1). I would like to highlight the fact that he is talking about the genesis and criminal law knowledge. Then he goes on to describe the state of the subjects of criminal law knowledge (Chapter 2). This is a very important point: who and how creates criminal law knowledge. As a rule, we do not think about it at all in our daily life, and a close look allows us to highlight such unexpected layers and approaches that wit makes us think: "Who is at the helm of the process?". Then he begins to study the state of criminal law knowledge as an object of knowledge (Chapter 3). I would, however, swap these chapters, but this would require other changes (primarily within these chapters themselves). However, the author is free to choose his own path of knowledge; anyway, he is the author. In Chapter 4, the author gives his vision of the picture of the philosophical prerequisites for the formation of criminal law thought and its transformation into knowledge. It is fundamentally important to note that the author sees first the appearance of thought as such (how can we not remember: "In the beginning there was a word"), which can then, but not necessarily, be transformed into knowledge. This is a very promising research approach, in the field of criminal law as well. Chapter 5 "The potential of the philosophical approach in the knowledge of criminal law" concludes the dissertation. If you carefully read the author's descriptions, we will see a truly boundless ocean of possibilities for using philosophy in criminal law. And this is very good.

It should be noted here that the author's appeal to the philosophical experience was meaningful. He consistently and extensively justified throughout the first three chaptersthe need for its use by the modern science of criminal law, which mainly shares directly opposite views on philosophy. At the same time, S.A. Bochkarev made the transition to the philosophical foundations of criminal law not only to indicate the imperfection of the structure of scientific knowledge and to fill the existing shortage of the philosophical element in it.

The transition was purposefully made by the author in contrast to the traditional approach, with the help of which criminal law knowledge is now obtained in mainly an empirical and very time-consuming way, and therefore, we can say, in a socially unjustified way. It takes centuries, or even millennia, to realize and implement "simple" truths, as the author has proved on a rich historical material (p. 289–370). Let us recall what Protagoras said in the fifth century BC: he proposed to abandon retribution as an idea of punishment and use it only to reform the guilty; and the mass adaptation of these proposals and their gradual implantation in legislation as a norm of public life began only at the dawn of Modern Times.

The author proved and showed by examples that close cooperation between scientific and philosophical knowledge is an alternative, useful and authoritative way for science to replenish knowledge through understanding the ontological foundations of criminal law. It helps learn "here and now" what is the good protected by this right through going

deep into its nature and without applying the trial and error method to it, which requires significant time, resource, and socio-political costs for its implementation. The same way is not an alternative for checking the criminal law knowledge that science has obtained exclusively by empirical means, for distinguishing speculative values from the so-called true goods that really need criminal law protection.

The structure of the work chosen by the author and the methods of description he used allowed him to achieve his goals and objectives and fully reveal the content of the problem.

It should be noted that the work is defended in two specialties, and this deserves respect and approval. In general, the division of knowledge into specialties today is becoming more and more conditional. No wonder I. Wallerstein argued that such a division (in the areas of science)exists only in our head and has nothing to do with real life or real science.

The overall positive assessment of the work does not exclude the possibility of making some comments.

First. Some of the theses of the provisions submitted for defending raise questions. Thus, on page 20 (regulation No. 5), the author states: "The true and permanent source of criminal law knowledge is human consciousness". Is it always so? Consciousness can receive ready-made knowledge from outside. For example, a rule of law, provisions of criminal law theory, etc. In this case, will it – consciousness – also be a source of knowledge?

Second. On page 21, regulation No. 8, the author states that the logical-positivist and critical-rationalist traditions led "to the development of restrictions in the scientific knowledge of criminal reality, to the achievement of limits in the practical understanding of criminal law validity, as well as to the appearance of costs in social support of law". How could this lead to "the development of limitations in scientific knowledge"? What are these limitations in scientific knowledge? Are they possible in principle?

Third. In Chapter 1, the author pays much attention to the description of the process of formation of the science of criminal law in Russia. At the same time, he uses the materials of a discussion published in the newspaper Pravo in 1915. Today, the newspaper itself and that discussion have been forgotten for a long time. A.N. Traynin wrote well about it in his time, and his work on this subject is practically forgotten. And for no good reason. The fact is that the discussion about the development of criminal legislation in Germany has actually caused a crisis in the science of criminal law in Germany. We had something similar in the 1950s, when scientists were trying to determine what guilt is in criminal law. There is a well-known phrase uttered by Poskrebyshev during the 19th Congress of the All-Union Communist Party of Bolsheviks: "You can't understand guilt without wine", which ended the entire discussion. Instead of dealing with this complex issue, we stopped all search for the truth for many years. The question is, can we avoid the mistakes of the past in the search for truth, or will we repeat them with absurd persistence?

Fourth. On page 122, the author quotes a work from a decade ago, which states that Russian society is moving into the era of globalism. In our time, there are a lot of reasoned conclusions that the era of globalism is over. One of the latter is described by academician S.Yu. Glazyev in his report "On the deep causes of the growing chaos and measures to overcome the economic crisis". Globalism as such was also abandoned by its "parents" (Soros and others). Should we rely on long-standing conclusions today?

Fifth. I cannot agree with the author's support for the long-standing position of I.G. Mikhailovskii that criminal policy is not a science (p. 146). Much water has flown under the bridge since that time, everything has changed. The author contradicts himself to some extent, when later (p. 203) he places criminal policy and criminal law next to each other. Does it mean that criminal policy is a science after all?

These commentsare of a private and clarifying nature, and can be challenged if desired. They do not compromise and cannot shake the overall positive impression of a work that meets all the requirements for this type of work, is an independent, complete scientific work and is quite reasonably submitted for defense.