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Cultural-Historical Jurisprudence as a Meta-theory in the Field of General Humanitarian Training of Penal System Employees

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Abstract

Introduction: general humanitarian training of penal system employees should be built taking into account understanding of law as an independent meta-structure. It includes both available knowledge and a whole complex of cognitive tools used at different levels of scientific knowledge. A metatheory is one of the elements of this cognitive system. It brings liberation from conceptual layers and reveals a true meaning of the phenomenon. Cultural-historical jurisprudence can be considered a legal metatheory. One of its developers was recently deceased Professor Yu.A. Vedeneev. *Methods*: abstraction, induction, empirical analysis, logical reduction, general scientific and philosophical justification. *Purpose*: to demonstrate capabilities of cultural-historical jurisprudence in the field of overcoming methodological isolation of certain areas in jurisprudence using heuristic potential of the theory of legal anthropology and sociology of law. *Conclusion*: some aspects of cultural and historical jurisprudence can be used in the penitentiary sphere, for example, in legal education of convicts; to understand a system of relations in the thieves' environment; to describe various aspects of the delinquency theory; to overcome conflict situations in the penitentiary sphere, etc. Thus, one of the areas of cultural-historical jurisprudence, anthropology of law, is aimed at studying man as the central element of legal communication, the primacy of man in relation to the law. It is this emphasis in legal education that can allow a convicted person to accept law as a value. The study of patterns of forming relationships in the thieves' environment can receive a new impetus due to a specific object of legal anthropology, such as the thieves' law. The anthropology of law makes a significant contribution to the formation of the theory of crime and the disclosure of meta-problems of crime. Another component of the subject of cultural-historical jurisprudence, sociology of law, includes legal conflictology as one of the areas. Its knowledge is necessary to overcome conflict situations that accompany penal system employees in their professional activities.

Keywords: cultural-historical jurisprudence, anthropology of law, sociology of law, metatheory, legal education of convicts, "thieves' law", legal conflictology, metacategories.

5.1.1. Theoretical and historical legal sciences

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Introduction

The reason that has prompted the author of this article to disclose the problems indicated in its title is caused by two independent, but closely related issues. *First*, penitentiary science is positioned, as a rule, in an applied way. Such an approach does not contribute to its development. So, it is limited and methodologically lame. Perhaps it is this fact that gives rise to discussions regarding the viability of the term "penitentiary science" itself [1]. The groundlessness of these discussions was brilliantly proved by Professor R.A. Romashov [2, pp. 239–243]. We believe that the solution to the problem outlined above lies in the sphere of a different understanding of disciplinary boundaries. *Second*, penitentiary science faces serious challenges. It should contribute to the formation of comprehensive legal thinking in penal system employees. To perform official duties, penal system employees should holistically perceive, evaluate and forecast the situation outcome, have knowledge not only in the professional field, but also in related disciplines, be able to work in conditions of instability and uncertainty. And here it should be noted that "it is not the set of competencies, but the level of thinking that determines the competitiveness of a specialist in the labor market" [3, p. 15].

Law as a meta-structure

Usual dichotomies and disciplinary barriers in the penitentiary sphere require a well-thought-out epistemological rapprochement strategy. Interdisciplinary and transdisciplinary approaches should be used to form systematic legal thinking. Such symbioses are increasingly being positioned in legal science. Professor R.A. Romashov considers it possible "to talk about penitentiary law as an intersectoral normative community uniting both specialized legal acts and acts indirectly related to penitentiary communications" [2, p. 242]. This actualizes the use of the above-mentioned approaches. Penitentiary science needs new cognitive models, methodological vaccinations, and perhaps more significant transformations. Research in the penitentiary sphere should be carried out with the involvement of various "level" tools based on the level of scientific knowledge used [4]. We agree with S.A. Bochkarev that modern knowledge of law "should include ideas about this law as an action, process and activity, simultaneously realized at the micro, macro, mega and meta levels" [5, p. 118].

Any legal discipline periodically needs an upgrade, a transition to a new level for further evolutionary development. Even such a seemingly well-established discipline in its structural and substantive part as "the theory of the state and law", according to reputable scientists, needs deep modernization. Thus, Professor V.M. Baranov proposes a consistent transformation of the "basic course of the theory of the state and law into the fundamental discipline of jurisprudence" [6, p. 219]. At the same time, the respected scientist proceeds from the fact that law is an independent meta-structure, "independent meta-relationships, a real multilevel, dynamic meta-state" [6, p. 219].

So what are all "meta categories" mentioned above? In jurisprudence, terminology is often used that changes semantic boundaries of an object phenomenon. Sometimes prefixes "meta" and "post" are used for this purpose. In the first case, there is a transition from the theory to a meta-theory, from the language of law to a meta-language of law, from the institution to a meta-institution, from the legal characteristic to a meta-legal characteristic, from modern law to meta-modern law, etc. The prefix "meta" is translated from Greek as "over, over, between, through, after" and means going deeper into the basics and studying the self of any phenomenon. For example, a meta-theory is considered as a way the theory self-learns [7, p. 35].

A "logical-mathematical" definition of the meta-theory existing in science needs a humanitarian refraction, since only the methodology of a wide range of meta-theoretical tools

remains in the "dry residue". Then why all this "rebranding"? If we proceed solely from formal logical approaches to understanding methodology and legal thinking, then we can conclude about their uselessness, and in a broad sense, the uselessness of all fundamental science. The absurdity of such statements is obvious and does not need a detailed argument. And here is an example of such a misconception, "It turns out interestingly: a person, overwhelmed by delusions, passions and vices, hopes to create perfect tools of self-regulation, worshipping his own inventions and fetishes. A person will be able to achieve this goal only if he stops constructing the supposedly existing "legal thinking" – fantasies of the second social order, but begins to correctly reflect rooted cultural traditions and formulate them in convenient and accessible, generally recognized and generally meaningful expressions" [8, p. 43]. Comments are unnecessary here.

The prefix "post" is translated from Latin as "after" and means rethinking, abandoning the old in favor of creating a new one. With the help of this prefix, the names of a number of philosophical trends (post-modernism, post-constructivism, post-structuralism) are formed. Post-classical studies are being conducted in legal science. I.L. Chestnov sees the post-classical theory of law as an "umbrella term" covering a number of promising research programs and approaches: "anthropological program, semiotics of law, constructivist direction, cultural, pragmatic or realistic concept, naturalistic theory of law" [9, pp. 27–28]. Yu.A. Vedeneev speaks of post-jurisprudence as jurisprudence without state and law [10, p. 12]. A monograph by E.V. Skurko with the intriguing title "Post-law" is published [11]. So, post-law is considered as "a consequence of the reflection in the sphere of law of the simplification and primitivization of social, economic, cultural and other ties and relations, their degradation, both in this society and within the state and (or) interstate relations" [11, p. 14].

Obviously, the prefixes "meta" and "post" generally have different meanings, but their semantic boundaries intersect in one of the meanings – "after" There is a similar situation with the understanding of the term "freedom". Its interpretation depends ontological roots – European or domestic. The European approach promotes two types of freedoms, such as "freedom from" (freedom from conscience, duty, justice) and "freedom for" (freedom for achieving certain goals). This (European) approach is often destructive. This is an instrument of immoral behavior, which, unfortunately, is sometimes resorted to by political elites. The domestic approach tends to other terminological forms, feels the need not for freedom, but for liberty. Ordinary people were inclined to gain liberty [12, p. 47]. Returning to the question of the ratio of words formed using the prefixes "post" and "meta", we believe that in the first case it is often freedom ("freedom from" or "freedom for"). The semantic context of words with the prefix "meta" is more like liberation in the form of liberty, although in its specific sense – liberty turned inward, into the depth of a cognizable phenomenon. It brings liberation from conceptual layers, reveals a true meaning of the phenomenon.

Meta-theoretical thinking is comparable to methodological thinking, but it is not identical thinking, since a meta-theory and methodology are not the same thing, as we mentioned earlier. Meta-theoretical thinking has its own methodology, which differs from thinking at a different level (empirical and theoretical). The purpose of meta-theoretical thinking is to establish "prerecursive principles" [13, p. 224] aimed both at developing certain rules of the cognitive process and establishing the semantic component of the cognizable phenomenon [14, p. 18].

Cultural and historical jurisprudence

The formation of meta-theoretical thinking is facilitated by the sphere of general humanitarian training of penal system employees. The dynamically developing directions in humanitarianism are disciplines located at the junction of legal, social and cultural. As Yu.A. Vedeneev notes, "there is a whole fan of epistemological possibilities for combining various disciplinary complexes hidden here. Their appearance has a significant impact on the general landscape and architecture of science itself as a historical form of existence and reproduction of social systems in terms of a certain socioculture, its language and discourse" [15, p. 119]. Cultural and historical jurisprudence is one of these areas. Yu.A. Vedeneev outlined his views

on cultural and historical jurisprudence in the monographs “Grammar of law and order” [16, pp. 142–147, 185–195] and “Jurisprudence: phenomenon and concept. Introduction to the genealogy of the language of conceptual paradigms” [15], as well as in his publications in periodicals [17; 18].

The subject of cultural and historical jurisprudence is not yet a dogma, since it has not been widely discussed and, accordingly, cannot be the result of scientific consensus. In general terms, it was formulated by Yu.A. Vedeneev. He included sociology and anthropology of law in it. Specific study objects of the anthropology of law are “legal custom, legal pluralism, community law, legal awareness and legal culture, as well as normative systems of various subcultures, such as, for example, “thieves’ law” [19, p. 89]. The latter aspect of anthropological analysis (thieves’ law) is the area of scientific interest of penitentiary science. Here it is necessary to proceed from the fact that “various social groups produce their own rules and norms of behavior, creating intricate interweaving of many legal quasi-orders that enter into complex relations with the official, state, legal order” [20, pp. 10–11].

The anthropology of law may be in demand in the field of legal education of convicts. Earlier, we have already drawn attention to the need to change the technology of legal education of convicts. Some prisoners, due to their unfree state, have a negative attitude towards any manifestations of dictatorship on the part of the state, including dictatorship of the law. It is necessary to use approaches that allow us to look at this dictatorship from a different angle and accept the coercive force of the state as a conscious necessity. The theory of natural human rights can act as a kind of soft power, which is usually considered as a basis in relation to the superstructure in the form of positive law. In some cases, it is advisable to move from promoting legal knowledge to understanding its essence and deep foundations [21, p. 13].

The anthropological approach with its consideration of law as an integral part of human culture in the eyes of convicts will look less conflictual than considering law as a product of the state, the will of the ruling class. Such an approach also looks more productive in connection with the topical question, whether it is possible to “consider growing chaotic mass of laws, decrees, regulations, rules, orders as law, or we are dealing with some fiction, imitation of law, increasingly alienating the “little man”? [20, p. 2]. Unfortunately, this issue is becoming rhetorical.

Anthropology of law is developing at the junction of the history of law, the theory of law, ethnology and biological law. It is aimed at studying man as the central element of legal communication, the primacy of man in relation to the law. It is this emphasis that can encourage a convict to accept law as a value. Anthropology allows us to trace the process of interaction of biological and social patterns of development, emphasizing characteristics of man as a biological being, but having features that distinguish him from the animal world system (spirituality, social qualities, cultural aspects of being).

Socialization does not exhaust the life content of a person who, by his existence, dialectically connects spiritual and material forms of being. It is not sociality that distinguishes a person from an animal, but spirituality. “However, human spirituality is imperfect, therefore imperfection, expressed in a destructive, including criminal, way of human actions, is an inherent quality” [22, p. 140]. Anthropology of crime should be the initial link in solving metaproblems of crime [23, p. 6]. Grounds for criminal behavior cannot be reduced to the sum of external conditions.

The methodology of cultural and historical jurisprudence should obviously be based on hermeneutical-dialectical philosophy, which considers “the understanding of the phenomenon itself in its one-time and historical concreteness” [24, p. 45]. Focusing on cultural and historical issues, it should be taken into account that “a mere fact of the anthropological research development in philosophy does not automatically guarantee the fact of improving general humanitarian training of specialists” [25, p. 274].

To understand the impact of culture on the development of law, the views of academician V.S. Stepin are also of interest. Considering law as a complex self-developing system characterized by transitions to different types of self-regulation, he speaks about hierarchical organization of elements inherent in this phe-

nomenon. The emergence of new levels of organization is accompanied by differentiation of law, a change in the type of self-organization, and phase transitions. The indicators of the phase transition are changes in culture, and above all in the value system [26, pp. 156–160].

We believe that cultural and historical jurisprudence will reduce the negative effect caused by the fragmentation of law, when an integral object of knowledge breaks up into many fragments. "Keeping even general ideas of this mosaic array in one person's memory becomes impossible, as, in fact, the guidance of these ideas in everyday life. Genuine law is being replaced by its surrogate in the form of arbitrary interpretations and comments" [20, pp. 7–8].

Another component of the subject of cultural and historical jurisprudence is sociology of law, with legal conflictology being one of its areas. Its knowledge is necessary to overcome conflict situations that accompany penal system employees in their professional activities. Conflict is a characteristic of the human environment. Legal conflict is determined by the inconsistency between the legal concept of reality and the real state of affairs. It should be distinguished from related legal phenomena, primarily such as a legal contradiction and a dispute in law (legal dispute). In the legal plane, a dispute and a conflict are considered as stages of a legal contradiction. The analyzed terms can be used at different levels of scientific knowledge, acquiring new contexts.

Conclusion

The intersection of legal, social and cultural is the starting point in the search for answers to many questions in the field of humanities, but not all approaches in this direction are identified and developed.

A "logical-mathematical" definition of the meta-theory existing in science needs a humanitarian refraction. It brings liberation from conceptual layers and reveals a true meaning of the phenomenon. Cultural and historical jurisprudence can be considered as a legal meta-theory.

Penitentiary science needs interdisciplinary approaches that allow the use of conceptual tools and methods from different fields of scientific knowledge, overcoming scholastic development. Conceptual borrowings should be of an auxiliary nature, be a reference point in the development of one's own problematization without replacing the latter.

In the field of humanitarian training of penal system employees, it is necessary to integrate knowledge on cultural and historical jurisprudence by synthesizing achievements into the unified conceptual framework. It should be built taking into account the understanding of law as an independent "meta-structure", which will create favorable conditions for the formation of meta-theoretical thinking necessary for decision-making in conditions of instability and uncertainty.

REFERENCES

1. Bobrov A.M., Mel'nikova N.A. Is there any reason to single out penitentiary law in the system of Russian law? *Penitentsiarnaya nauka = Penitentiary Science*, 2022, vol. 16, no. 2 (58), pp. 118–126. (In Russ.).

2. Romashov R.A. Penitentiary law: phenomenology and consistency. *Penitentsiarnaya nauka = Penitentiary Science*, 2022, vol. 16, no. 3 (59), pp. 234–244. (In Russ.).

3. Vinogradova N.V. Methodological thinking as one of the pedagogical cultures in the development of professional competencies. *Mir nauki, kul'tury, obrazovaniya = World of Science, Culture, and Education*, 2022, no. 2 (93), pp. 14–19. (In Russ.).

4. Shakhanov V.V. The "level-based" system of cognition of law as an epistemological matrix of jurisprudence. *Zhurnal rossiiskogo prava = Journal of Russian Law*, 2024, vol. 28, no. 3, pp. 18–31. (In Russ.).

5. Bochkarev S.A. *Filosofiya ugolovnogo prava: postanovka voprosa: monografiya* [Philosophy of criminal law: posing the question: monograph]. Moscow, 2019. 424 p.

6. Baranov V.M. Encyclopedia of jurisprudence as a basic element of general humanitarian training of specialists for public service in modern conditions. *Yuridicheskaya nauka i praktika: Vestnik Nizhegorodskoi akademii MVD Rossii = Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 2024, no. 1 (65), pp. 219–221. (In Russ.).

7. Protasov V.N. *Teoriya gosudarstva i prava: uchebnik i praktikum dlya vuzov* [Theory of state and law: textbook and workshop for universities]. Moscow, 2024. 455 p.
8. Osintsev D.V. Philosophy, science, ideology, and methodology in legal research: an experience of worthless knowledge. *Rossiiskii yuridicheskii zhurnal = The Russian Juridical Journal*, 2020, no. 1 (130), pp. 35–43. (In Russ.).
9. *Postklassicheskie issledovaniya prava: perspektivy nauchno-prakticheskoi programmy: kollektivnaya monogr.* [Postclassical studies of law: prospects of a scientific and practical program: collective monograph]. Ed. by Tonkov E.N., Chestnov I.L. Saint Petersburg, 2023. 500 p.
10. Vedeneev Yu.A. The legal science in the system of interdisciplinary connections. *Lex Russica = Russian Law*, 2017, no. 6 (167), pp. 9–31. (In Russ.).
11. Skurko E.V. *Post-pravo* [Post-law]. Saint Petersburg, 2022. 120 p.
12. Kornev A.V. Ideological grounds and the structure of the Russian constitutional law textbook by Doctor of Sciences (Law), Professor, Honored Scientist of the Russian Federation, Honored Lawyer of the Russian Federation Boris S. Ebzeev. Moscow, Prospect, 2019, 768 p. *Izbiratel'noe zakonodatel'stvo i praktika = Electoral Legislation and Practice*, 2019, no. 3, pp. 43–48. (In Russ.).
13. Porus V.N. *Perekrestki metodov (Opyty mezhdistsiplinarnosti v filosofii kul'tury)* [Intersections of methods (Experiments of interdisciplinarity in the philosophy of culture)]. Moscow, 2013. 384 p.
14. Shakhanov V.V. General characteristics of the metatheory of law. In: Averin A.V., Davydova M.L. [Eds.]. *Metateoriya i metodologiya prava i pravoporyadka: monogr.* [Metatheory and methodology of law and order: monograph]. Vladimir, 2023. Pp. 10–25. (In Russ.).
15. Vedeneev Yu.A. *Yurisprudentsiya: yavlenie i ponyatie. Vvedenie v genealogiyu yazyka kontseptual'nykh paradigm: monogr.* [Jurisprudence: phenomenon and concept. Introduction to the genealogy of the language of conceptual paradigms: monograph]. Moscow, 2022. 328 p.
16. Vedeneev Yu.A. *Grammatika pravoporyadka: monogr.* [Grammar of law and order: monograph]. Ed. by Lazarev V.V. Moscow, 2018. 232 p.
17. Vedeneev Yu.A. Cultural and historical jurisprudence: institutes and concepts. *Zhurnal yuridicheskoi antropologii i konfliktologii = Journal of Legal Anthropology and Conflictology*, 2023, no. 1, pp. 15–33. (In Russ.).
18. Vedeneev, Yu.A. Cultural-historical jurisprudence: institutes and concepts. *Vestnik Universiteta imeni O.E. Kutafina (MGYuA) = Courier of Kutafin Moscow State Law University (MSAL*), 2023, no. 4 (104), pp. 59–69. (In Russ.).
19. Luk'yanova I. E., Ovcharenko V. A. *Antropologiya prava. Material iz Vikipedii – svobodnoi entsiklopedii* [Anthropology of law. Material from Wikipedia – free encyclopedia]. Moscow, 2024. 240 p.
20. Kovler A.I. *Antropologiya prava: ucheb. dlya vuzov* [Anthropology of law: textbook for universities]. Moscow, 2020. 480 p.
21. Lapshin V.E., Shakhanov V.V. Legal education of convicts: the search for new approaches. *Vestnik instituta: prestuplenie, nakazanie, ispravlenie = Institute Bulletin: Crime, Punishment, Correction*, 2018, no. 1 (41), pp. 13–18. (In Russ.).
22. Ananian L.N. 2003.01.038. Kondratyuk L.V. Anthropology of crime (microcriminology). Moscow, 2001. 337 p. *Sotsial'nye i gumanitarnye nauki. Otechestvennaya i zarubezhnaya literatura. Ser. 4: Gosudarstvo i pravo: referativnyi zhurnal = Social and Humanitarian Sciences. Domestic and Foreign Literature. Series 4: State and Law: abstract journal*, 2003, no. 1, pp. 140–142. (In Russ.).
23. Kondratyuk L.V. *Antropologiya prestupleniya (mikrokriminologiya)* [Anthropology of crime (microcriminology)]. Moscow, 2001. 344 p.
24. Gadamer H.-G. *Istina i metod* [Truth and method]. Moscow, 2012. 704 p.
25. Sulima I.I. The potential of anthropological issues in general humanitarian training. *Yuridicheskaya nauka i praktika: Vestnik Nizhegorodskoi akademii MVD Rossii = Legal Science and Practice: Journal of Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 2024, no. 1 (65), pp. 274–275. (In Russ.).

26. Khabrieva T.Ya., Chernogor N.N. *Budushchee prava. Nasledie akademika V. S. Stepina i yuridicheskaya nauka* [The future of law. The legacy of Academician V.S. Stepin and legal science]. Moscow, 2020. 176 p.

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