

On the Methodology of Modern Russian Law

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Abstract:

An analysis of modern Russian literature made it possible to identify two equally negative tendencies in the methodology of jurisprudence. The first is that legal scholars pay little attention to methodology; the second is in attempts to introduce new methods into the methodology that are not used in practice.

Keywords:

methodology; legal science; negative tendencies; hermeneutics; existentialism

I. Introduction

I believe that in domestic jurisprudence there are at least two negative trends regarding its methodology, which plays an invaluable role in the study of law, other legal phenomena and processes, because it disciplines the search for truth, allows (if correct) to save time and effort, move to the destination in the shortest way. The true method, as the core of the methodology of law, serves as a kind of compass, according to which the subject of cognition and action paves his way, allows him to avoid mistakes. It is now generally recognized that any fruitful independent research, including in the field of jurisprudence, inevitably involves reliance on thoroughly developed methods of cognition and the corresponding methodology. The importance of the methodological foundations of legal research is beyond doubt.

On this occasion, Aleksey Vasilyevich Surilov noted the following: “Methodology is necessary in legal knowledge, since it ensures the improvement, and therefore the fruitfulness of the methods of cognition ... Nothing can be improved without its cognitive development, the quality of which is determined, first of all, by what methodological basis, it is accomplished” (Surilov, 1989).

II. Research Methods

When preparing a scientific article, the following methods were used:

1. General philosophical (dialectical-materialistic), which is used in all social sciences;
2. General scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.), which are used not only by the theory of state and law, but also by other social sciences;
3. Special methods (philological, cybernetic, psychological, etc.), developed by special sciences and widely used for the knowledge of state and legal phenomena;
4. Private scientific (formal legal, interpretation of law, etc.), which are developed by the theory of state and law.

III. Discussion

3.1 Underestimation of the Methodology of Knowledge of Law

So, the first of these trends is that, despite the undoubted value of methodology for legal research, scientists show a very "cool" attitude towards it. This has been repeatedly written by various authors. So, Nikolai Nikolaevich Tarasov believes that "the methodology of legal science today is ... its most "weak point" and "... the efforts of a very narrow circle of lawyers who have made (and preserved) the methodology of legal science the main subject of their scientific interests cannot ensure the degree of its development comparable to the level of problems facing domestic jurisprudence today" (Tarasov, 2001). Hence, the critical assessments of the state of affairs that have developed in the field of methodology of domestic jurisprudence, which are encountered in the literature, are quite understandable and justified.

So, Vladimir Mikhailovich Syrykh speaks rather categorically on this subject, noting that today "the logical and methodological section of the general theory of law, as well as jurisprudence in general, lags far behind the level of the "theoretical" development" of law, its laws and does not fully take into account modern philosophical interpretation of the logical-epistemological problems of scientific cognition", addresses a number of very serious reproaches of a methodological nature to legal theorists. "Lawyers," the researcher writes, "still identify the subject and object of science, the theory and methods of its cognition, believe in the powerful force of the system-structural approach, and the most advanced minds - in synergetics, the systemic connection of scientific cognition methods is forgotten, and everyone a single special or private method is certainly elevated to the ranks of a theoretical one, capable of revealing objective patterns and forming an independent branch of jurisprudence" (Syrykh, 2001). From the standpoint of a scientist, "the need for knowledge about what requirements a general theory as a system of theoretical knowledge should satisfy and in what ways and means it is possible to achieve such a level of knowledge is felt more and more acutely. And if the cabinet maker with the help of an ax is not able to create high-quality furniture, then lawyers, all the more, cannot positively solve modern problems of law, correlated with the deep laws of law, without mastering modern methodological tools" (Syrykh, 2001).

Dzhangir Abasovich Kerimov has no less serious claims to domestic legal theorists in this regard, who, considering the methodologisation of science ("turning science to the knowledge of itself") as a natural trend of its modern progressive movement, the author wrote: "Unfortunately, the noted regularity is least of all extends to jurisprudence, whose representatives neglect the methodological problems of their own science" (Kerimov, 2000).

Andrei Vasilievich Polyakov, characterizing the essentially methodological problem of creating a "working" theory of law as relevant "for at least the last two centuries" and seeing the minimum requirement for it in the ability to "respond at least to the demands of its time", the researcher states : "Unfortunately, in modern Russian science at the turn of the millennium, this task is far from being fulfilled as never before, which allows us to speak about the symptoms of a crisis in modern Russian theoretical legal consciousness" (Polyakov, 2000).

Noting that "more recently, the study of any legal reality was "normatively" determined by the methodological principles of Marxist philosophy", which in the theory of knowledge in the present period of time are relegated to the background by some researchers,

Andrei Ivanovich Bryzgalov believes that "... at present, such guidelines in to a certain extent are also lost in legal science" (Bryzgalov, 2004). However, it should be borne in mind that many lawyers, seeing in Marxism-Leninism and rational, do not ignore it as a methodological tool. Incidentally, Russian theoreticians paid attention to this aspect of the problem.

Thus, Yevgeny Ivanovich Temnov, believing that in order to study complex periods of history or the confrontation of ideological views, it is quite possible to take into account class interest, he emphasizes that "... such an approach should not turn into an exclusive and self-sufficient one (as was the case in the Marxist-Leninist general theory of the state and law. - Vladimir Valentinovich Kozhevnikov) in the methodological arsenal of the study. Reflecting on the methodology of cognition of the state-legal reality, the author argues that "to see behind party spirit and classism more than one of the methods of cognition - a specific methodological approach and elevate it to a universal principle - means to ideologize the means of scientific analysis and, ultimately, its results" (Evgeny, 1992).

Orest Vladimirovich Martyshin, reflecting on the concept of the state, noted that until the 90s of the last century, the Marxist-Leninist concept of the class nature of the state reigned supreme in our country, but then it began to be supplanted by ideas about the state as a blessing of civilization, serving not as a class, but as a universal interests. The author identified the following trend in domestic legal science: one extreme - the Marxist interpretation of the state in the Soviet version, is replaced by another - a one-sided assertion that the state serves the common good and only it, while the differences between what is and what is due are erased (Martyshin, 2002). For example, Vladimir Alexandrovich Chetvernin believes that "state power serves society as a whole and therefore expresses the general interest of ensuring the integrity and stability of the social system. But state power, in addition to the general interest, also expresses the interests and common interests of individuals - ensuring freedom, security and property" (Chetvernin, 2003).

Taking into account the spread, including in the West, of a more moderate and flexible approach, which boils down to the fact that the social content of the state is multifaceted, that in the activities and nature of each state, the interests of those in power, the interests of some social groups and the general fortunately, the scientist quite reasonably argues, justifying the so-called realistic approach to the characterization of each state, not excluding the modern Russian one, that "it is much more reasonable not to go to extremes, not to get involved in either absolutization or uncompromising denial of Marxism, but try to analyze the ratio of three groups of interests (rulers classes, the whole society) in the activities of each state"(Martyshin, 2002).

It is easy to see, and this is important, that, despite the criticism of Marxism-Leninism, the vast majority of modern theoretical scientists prefer the method of dialectical dialectics as a general philosophical (universal, ideological) method. It seems that this method has not lost its relevance in legal research. A number of other scientists agree with this statement.

For example, a team of authors of a textbook on the philosophy of law believes that "the basis of the synthesizing qualities of the philosophy of law lies in the fact that the core of philosophy as a methodological science is the unity of dialectics, logic and theory of knowledge. This means in a generalized form that the same system of laws and categories in dialectics acts as principles of knowledge of the objective world, in the theory of knowledge - as a means of solving specific cognitive problems, and in logic - as a form of scientific thinking.

Viktor Mikhailovich Korelsky directly categorically states that “our domestic science is characterized by an orientation towards a materialistic approach, according to which the deepest essential aspects of the state and law are ultimately determined by the economy, cash forms of ownership. The materialistic approach allows us to trace the connection between the state and law and real processes and explore their possibilities for strengthening the material foundations and increasing the economic potential of society. According to the scientist, “the philosophical basis of the theory of state and law is the dialectical method, i.e. the doctrine of the most general natural connections of the development of being and consciousness” (Korelsky, 2000).

Recognizing that the method of dialectical and historical materialism has made a huge contribution to the knowledge of political and legal reality, Vyacheslav Nikolayevich Zhukov writes that “at present, to consider the state and law in development, historically, in the unity of the political, spiritual and economic life of society based on social practice as a criterion of truth (the main, but not the only one - Vladimir Valentinovich Kozhevnikov) has become characteristic of the methodology of theoretical and legal science”(Zhukov, 2019).

In the variety of approaches used in modern science, the dialectical-materialistic methodology, from the point of view of Valery Pavlovich Kokhanovsky, plays an ever-increasing (dominant - Vladimir Valentinovich Kozhevnikov) role (Valery, 2005). Domestic scientists, in our opinion, quite reasonably declare that there are no convincing arguments against the use of materialistic dialectics as one of the variants of the theoretical worldview and elements of the methodology of scientific research today. As the authors say, “in the modern philosophical market, it is quite competitive” (Baranov, 2007).

Vladimir Mikhailovich Syrykh, being a staunch supporter of the Marxist theory of law, writes that in the history of political and legal thought for the last hundred years, it was the Marxist doctrine that has been the undisputed leader and has not lost its leading position at the present time, “for there is no other theory capable of fully and consistently answer difficult questions of jurisprudence that other theories cannot solve” (Syrykh, 2001).

In another work, the scientist, referring to the characteristics of the methodological function of dialectical (and historical) materialism, emphasizes that it “...is expressed in the orientation of the cognizing subject to obtain objectively true knowledge, to discover the ways and means of obtaining such knowledge and the forms of its objectification, presentation. As the universal laws of scientific knowledge, the principles of dialectical logic constitute the initial methodological basis for the knowledge of any special, specific science, show what the path of comprehending objectively true knowledge should be” (Syrykh, 2001).

It seems that a convincing confirmation of the significance of the analyzed method is the position of the American professor Lauren G. Graham: “If we recognize the legitimacy of raising fundamental questions about the nature of things, then the dialectical-materialist approach - scientifically oriented, realistic, materialistic - claims superiority over existing and competing with them universal systems of thought, and these claims can be quite justified” (Graham, 1991).

Oleg Alexandrovich Puchkov, naming and characterizing the main properties of the theory of state and law in the era of the dominance of the communist doctrine - mythology, autocratism, speculativeness, utopianism and orthodoxy (Puchkov, 2001), nevertheless further writes that, “... despite the heavy burden of decades of imposed archaic political and legal provisions ... the science of the state and law is now developing. It is freed from those

scientific constructions that do not allow explaining the complex phenomena of political and legal reality, it is looking for new approaches” (Puchkov, 2001).

Alexander Ivanovich Demidov is more skeptical about the process of development of domestic theoretical science, speaking about retardation (from Latin Retardation - slowdown) of its methodology, which, in an effort to preserve the familiar and really explaining a lot of Marxist paradigm of interpretation of legal reality, which "... explains legal reality with the help of such categories as class, formation, economic determination of state-legal phenomena, their superstructural nature and development according to the “laws of dialectics”, identification of revolutionary with fundamentality, depth of transformation”. Moreover, this methodology "... coexists with a visible recognition of the need for change, but within the framework of the usual style of thinking"(Demidov, 2001).

It seems that the scientist does not see or does not want to see that it is the dialectical method that is defined as the main method that allows revealing the patterns of development of a particular legal phenomenon, is used by scientists in preparing dissertations for the degree of candidate (doctor) of legal sciences, preparing monographs and textbooks.

3.2 Application of New Methods in Law Research

The second trend, characteristic of domestic jurisprudence, is the unacceptability of using new methods in research that differ from classical methods, meaning hermeneutics, semiotics, existentialism, etc. And this state of the methodology of law exists, despite the position of scientists who believe that in Currently, a situation has developed in legal science when an adequate understanding of the political and legal phenomena of the past and present requires a significant expansion of the research context with the involvement of scientific methods that are fundamentally new for legal science, which would be paradigmatic in nature (Zvonareva, 2003).

In principle, Vladik Sumbatovich Nersesyants did not rule out the need to include new approaches, principles and methods developed within the framework of the methodology of other sciences into the orbit of the methodology of legal science, and Vladik Sumbatovich Nersesyants, in whose opinion, legalization means the legal and conceptual transformation of other non-legal methods and disciplines, their transformation from the defining positions of the concept of law and their inclusion in the new cognitive-semantic context of the subject and method of legal science (Vladik, 2002).

Pyotr Leonidovich Kapitsa wrote: “As you know, the development of science consists in finding new natural phenomena and discovering the laws that they obey. Most often, this is due to the fact that they find new methods of research. The creation of something new, which did not exist before, we attribute to the creative activity of man, and this is recognized as the highest spiritual activity of people. Giftedness for creative activity determines the talent of a person, and not only as a scientist, but also as a writer, artist, musician, and even a commander and statesman” (Kapitsa, 1987). We draw attention to the fact that even those scientists who had certain hopes for legal hermeneutics in terms of research have now begun to doubt its potential.

For example, Ilya Lvovich Chestnov, having named his monograph “Law Understanding in the Postmodern Era”, having analyzed phenomenology, hermeneutics, synergetics, etc. in it, came to the conclusion that these approaches to law as independent ones have not yet taken place” (Chestnov, 2002).

Vyacheslav Nikolayevich Zhukov believes that “concepts built on the basis of phenomenology and existentialism look strained, invented (Zhukov, 2019).

In this regard, Igor Yurievich Kozlikhin rightly notes that the last decade has been characterized by the search for a new paradigm. Increasingly, they are trying to find it outside of law, to involve in the study of law the knowledge developed in the bosom of other sciences. This is most clearly manifested in the general theory. The scientist believes that such attempts should be welcomed, but only if they deepen our knowledge about the law, and not about the subject of those sciences to which we turn (Kozlikhin, 2006).

IV. Conclusion

In this part of the scientific article, it should be noted that research scientists should use the full potential of the so-called classical methods, both theoretical and empirical. If a scientist believes that new, non-traditional methods should be used in the study of law, he must not only substantiate this, but also determine the methodology for its application. Otherwise, the "new" method will simply be unclaimed.

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