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THEORETICAL AND HISTORICAL SCIENCES IN MODERN LEGAL EDUCATION, LAW-MAKING AND LAW ENFORCEMENT PRACTICE

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The subject. The issue of the modern value of theoretical and historical sciences is considered. It is proved that these sciences continue to be irreplaceable for the development of legal ideas, legal values, general legal dogma, fulfil a certain role as the basis of law-making and law-enforcement practice. The competence approach implemented in higher education should not lead to the reduction of theoretical and historical knowledge. At the same time, the assessment of modern research in the field of these sciences for their relevance and scientific novelty depends on the extent to which these studies actually contribute to the development of legal ideas (legal values) and general legal dogma applied in practice.

The purpose of the article is to substantiate the importance of theoretical and historical sciences in the field of legal science as a whole at the current stage of its development.

Methodology. The following methods were used: combination of dialectical method with the methods of formal logic, formal legal and comparative legal analysis.

Main results. It seems that the question about the expediency of studying theoretical-historical sciences in the educational programmes for legal specialties should be answered affirmatively, as they remain relevant and practically applicable and will continue to be in the future. Despite the fact that today there is a controversial but widespread view stating that theoretical and historical sciences are no longer able to respond to the relevant challenges and have a significant disconnection with practical jurisprudence, lawyers nowadays still should be taught to think, to analyse legal acts and other legal information,

be able to identify the ideas, values, and interests that lie at its core. This will not only develop their skills and overall intelligence but also prevent the formation of moral cynicism in them. This is especially important since theoretical and historical knowledge is widely used in law making and law enforcement practice, for instance, in form of terms, concepts and classifications.

Conclusions. In current conditions, the role of theoretical and historical sciences in the field of legal education is still significant. This also can be applied to so-called “competence-based” approach, which implies the preparation of professionals in compliance with the demands of employers, since theoretical and historical sciences allow the future professionals to develop such skills as systematic and critical thinking, the ability to analyse information and to argue their point of view. Therefore, all major theoretical and historical sciences should be included in educational programmes and considered in the state final examination.

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1. Introduction: problem statement

In 2024, the Department of Theory and History of State and Law of the Dostoevsky Omsk State University (hereinafter referred to as OmSU), following the entire university, celebrated its 50th anniversary.

Currently, theoretical and historical legal sciences (their teaching and study) continue to be a significant part of jurisprudence. Formally, this is confirmed, first of all, by the existence of a separate scientific specialty (5.1.1), in which candidate and doctoral thesis are defended. In addition, as is known, in a number of federal state educational standards for the relevant area of training bachelors and masters, such disciplines as "theory of state and law", "history of the state and law of Russia", "history of the state and law of foreign countries", "philosophy of law" were imperatively attributed to the basic (compulsory) part of the educational program.

The formal signs of the practical significance of this scientific field are also preserved. For instance, the sample lists of questions subject to preparing for and passing the qualification exam for the position of judge of a court of general jurisdiction, judge of an arbitration court, along with questions on the main branch disciplines, include more than 20 questions on the theory of law[1]. The list of questions to be included in the examination tickets when taking the qualification exam to obtain the status of an advocate includes one question on the history of the state and law of Russia ("Russian Advocacy under the Judicial Statutes of 1864")[2].

At the same time, the assessment of the significance of theoretical and historical knowledge in the system of legal sciences, compared to the Soviet and even the transitional post-Soviet period, is clearly undergoing certain changes not for the better, which also has external signs. Thus, nowadays, in most law schools (at law faculties), as part of the state final certification of students, a separate exam on the theory of state and law is not conducted. Often at this stage, students' knowledge regarding branch-wide issues is not assessed at all. Today, federal state educational standards do not provide for the mandatory study of such a science as "the history of political and legal doctrines". As a result, for example, at OmSU, the study of this once generally recognized theoretical and historical discipline is provided only by the curricula of the master's degree in a fairly compressed volume. Similar examples can be continued.

Over the past few years, the professional community has raised questions about the future of theoretical and historical sciences, their place in legal education, and their practical significance. These issues will be the subject of this paper, in which we will express our position on them.

2. Methodological basis for studying the problem

In our opinion, for the purposes of the study it is necessary to combine the dialectical method with the methods of formal logic, formal-legal and comparative-legal analysis.

3. The degree of scientific development of the problem

By the end of the pre-revolutionary period of development of domestic jurisprudence, the aspiration of jurisprudence to generalized knowledge through philosophy, theory, sociology, history of law, history of philosophy of law, the need to explain the essence of law, to derive and develop basic legal concepts, to study law using the historical and critical method were generally not in doubt. The corresponding provisions could be found in many works [1, pp. 47 – 78; 2, pp. 152 – 159; 3, pp. 15 –

[1] Preparation and examination questions for the qualification examination for the position of judge of courts of general jurisdiction, arbitration court judge, approved by the decision of the Higher Examination Commission for the qualification examination for the position of judge, Protocol № 52. URL: https://vekrf.ru/publication/1714/; https://vekrf.ru/publication/1715/ (accessed: 22.11.2024).

[2] The list of questions to be included in the examination tickets for the qualification exam approved by the Council of the Federal Chamber of Advocates of the Russian Federation. URL: https://fparf.ru/upload/medialibrary/2b8/fcs7llbn4m2i2b9n4ttozqj91n5jjynk/Voprosy-s-01.02.2023.pdf (accessed: 22.11.2024).

62].

At the beginning of the Soviet era, the publication of works by the "old professors" emphasized the fundamental importance of theoretical and historical sciences of law [4, p. 17] was combined with a growing alienation from these sciences as "bourgeois" and too abstract, the state of legal science in this sense was described by the proclamation: "Out with general theory!" [5, p. 4].

Gradually, however, this alienation was replaced, as is well known, by individual attempts to create a "class" theory and history of law, and then by the formation of full-fledged Soviet versions of theoretical and historical sciences, distinguished by a class (Marxist) approach to the subject of study and, at the same time, by the factual statement of the complete dependence of law on state power (the class dominating in politics). From the very beginning of their formation and right up until the collapse of the USSR, scientific and educational publications invariably emphasized the central, guiding significance of these sciences both for the study of the state and law as such, and for developing the ability to think in a Marxist (Leninist) way in relevant matters. [6, p. 13; 7, pp. 3, 8; 8, pp. 3 – 6; 9, p. 11].

Within the framework of modern training courses on the theory of state and law, the issues of science studies are traditionally given much attention. Through highlighting the main features of the theory of state and law as a science, its functions, the specifics of interaction with other sciences, as a rule, the fundamental nature of this discipline, its methodological and practical importance, sometimes - the original in comparison with other legal sciences, the nature of the discipline is noted [10, pp. 17, 18; 11, pp. 18, 22, 36; 12, pp. 33 – 36]. To a somewhat lesser extent, the same can be stated with regard to the educational literature on other theoretical-historical legal disciplines [13, pp. 17, 18; 14, pp. 13 – 19]. Theoreticians and historians of law continue to emphasise the role of the relevant sciences in specialized publications as well [15; 16; 17, pp. 41 – 53].

At the same time, there are numerous works that from a general legal or branch point of view state the crisis of theoretical and historical knowledge of law, its inability to respond to the contemporary challenges (including globalisation), the issues of sectoral jurisprudence, the gap between the theory of law and legal practice [18; 19; 20, p. 54; 21]. Moreover, there are also suggestions of transformation and even reduction and simplification of the relevant sciences (in particular, the theory of state and law) [22].

4. The importance of ideas for cognition, evaluation of state-legal phenomena, formation of the personality of a lawyer.

"Historically, the relationship between philosophical-theoretical jurisprudence and legal practice had a "dual-duality" character (J. Baudrillard). In this context, university education cultivated the belief in the transformative impact of the science of law on the subject of its cognition. However, such instructions inevitably lost their relevance as the graduating students moved temporally and spatially away from their alma mater. Career-focused lawyers "archived" their piety for "high" legal theory, tending towards instrumental-applied pragmatics" [23, p. 19].

On the one hand, jurisprudence is a practical discipline, generalising the practical activity of lawyers. On the other hand, through the theoretical-historical sciences, more general ideas specific to philosophy and other general humanitarian disciplines infiltrate into it. These ideas, contrary to neo-Kantians who divided all sciences into normative and descriptive, are not self-valuable, they are in one sense or another a generation of the historical process, the unity of the historical and logical. However, in relation to the branch legal knowledge they inevitably act as an external, transformative factor.

It is partly in this connection that, from the very beginning of the existence of the Soviet theory of state and law, it has been characterised not simply as a technical discipline generalising concepts typical of individual legal disciplines, but as a guiding and directing discipline. The same significance was generally attributed to other theoretical-historical sciences.

Under the conditions of the struggle between socialism and capitalism, educational publications on theoretical-historical legal sciences

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were formed on the basis of a peculiar but clear methodological position. The basis of a "truly scientific" approach to the problems of law and state, power, and economics was the historical-materialist approach. Let us allow ourselves to remind the contemporary audience of some of its provisions.

In accordance with it, the history of state-organised society was considered as a successive change of social and economic formations: primitive society, slaveholding state and law, feudal state and law, bourgeois state and law, socialist state and law. The materialistic understanding of history as interpreted by the classics of Marxism-Leninism was the basis for assessing the role of certain historical events, legal acts, as well as political and legal doctrines in the development of society.

It was believed, in particular, that both political and legal doctrines and legislation (law) give concentrated expression to the economic and political interests of one or another class or social group. These interests need to be protected by political power and, consequently, prompt classes and groups to develop their political ideas and legal norms. Since interests are different, a fierce struggle arises and is fought on the basis of difference. Reflecting this struggle and expressing in a generalised form the main economic and political interests of a class or social group, political-legal doctrines and legislation have an inverse effect on the economy and politics and play a significant role in the development of society. Their significance may be different. They can play a positive, revolutionary or negative, reactionary role.

Ideas and legal norms serving the outmoded forces of society, protecting the dying socio-economic system and its political superstructure, hinder the development of society and therefore are reactionary. On the basis of overdue tasks of development of material and spiritual life of society, new ideas, views, norms arise, serving the interests of advanced forces of society, reflecting the interests of progressive strata and the whole society. They contribute to the destruction of the old, the birth and strengthening of a new political order of society. They arise and develop in the struggle with the old, reactionary elements of the political and legal superstructure.

This approach, largely contrary to its original scientific and critical potential, has often been used to unequivocally qualify the former (bourgeois) state and law as an instrument of class domination, and the modern Soviet state and law as always and in all respects progressive, fully meeting the interests of the established community "the Soviet people". It was this, after the emergence of the "inexplicable" crisis and further collapse of the Soviet state, that led to its serious loss of scientific reputation.

At the same time, the need for a guiding state-legal ideology reflecting the prevailing interests in society has not disappeared, and could not have disappeared. This is evidenced by the ongoing polemics in the scientific literature about the very purpose of theoretical-historical disciplines, which is associated by honorable scientists, in particular, with the provision by the state and law of mandatory conditions for the functioning and progressive development of society (S.A. Drobyshevsky) [14, p. 19], implementation of the model of sustainable development of society (A.I. Ekimov) [17, pp. 51 – 53], implementation by law of its functional role as a means of resolving fundamental conflicts in society (L.V. Golovko) [20, p. 92] etc.

It is also notable that the idea that politics and (positive) law are "fertilised" and "ennobled" by some large and complex idea, or rather their system (self-valuable or arising from historical conditions) was characteristic of earlier types of legal understanding (natural law, theology, historical school of law), it manifested itself in the doctrine of principles (and axioms) of law. Even modern "non-classical" communicative legal understanding largely follows the same line.

In our opinion, it is more typical for jurisprudence than the postmodernist assertion of the complete relativity of law and, thus, the proclamation of law and justice as nothing more than a myth.

In our opinion, in modern Russian conditions this ideology constructing legal thinking should be "somewhere in the neighbourhood" of the social rule of law, the combination of public and private interests, monism and pluralism [24, 25]. This is

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quite consistent with the logic of the development of law, national traditions, and the Constitution of the Russian Federation. At the same time, if this kind of ideology is not sufficiently elaborated or does not meet the specificity and multidimensionality of society at a particular stage of its development, it is the theoretical-historical legal sciences (in particular, the history of the state and law, the history of political and legal doctrines, sociology of law, which investigate various modifications of the state, law, political and legal ideas), along with other humanities, and not various kinds of populists can offer society reasonable options for its transformation.

Modern lawyers, like their predecessors before the revolution and during the Soviet era, must learn to think, analyse normative and individual legal acts, other legal information, and be able to identify the ideas, values, and interests that underlie them. This also acts as a kind of inoculation against moral cynicism. Even if later lawyers in the course of law-making or law-enforcement activity will be "inclined to pragmatics of instrumental-applied type", the role of "ideal executors" they should be aware of the ideological basis of such pragmatics. For instance, to distinguish between "left-wing" and "right-wing" political ideas; between the social state of law based on the values of labour and compromise of interests and the neoliberal state of economic freedom and rent income for "their own"; between national interests and the interests of transnational capital; between genuine legal values and their imitation ("optimisation").

All the more so because the ideology and values inherent in lawyers are inevitably reflected in their practical activity whenever their activity is not unambiguously set by the dogma of law, including within a certain measure of freedom of law-making and limited, but inevitably existing law enforcement discretion.

5. "Technical" role of the general theory of state and law and legal regulation.

In addition, as is known, the general theory of state and law, relying on other theoretical-historical sciences, branch sciences formulate "general legal principles", "universal specific elements of law" [4, p. 17].

For the purposes of justifying the importance of theoretical-historical knowledge, it is important to emphasise that such generalisations (concepts, constructions, classifications, etc.) are used not only in the process of further educational activities within the framework of legal education and then can be well forgotten.

They are directly reflected in law-making and law-enforcement practice. Here we can say that legal doctrine, although not acting as a formal source of law, in a clear or "latent" form is constantly *manifested* in legal regulation, serves its systematisation and development.

The domestic tradition is not characterised by references to specific scientific works and studies in court decisions or administrative acts, although if you try hard, you can find such examples (such practice is not prohibited for law enforcers). In particular, as already noted, references to the views of famous scientists are sometimes cited by individual judges of the Constitutional Court of the Russian Federation to give weight to their own arguments when formulating a dissenting opinion [26, p. 174].

Much more often, in legislation and acts of higher courts legal terms, their definitions, features of relevant legal phenomena, legal constructions are reflected without indicating the authorship, which, of course, does not devalue the role of doctrinal borrowings for practice.

For example, the long-standing developments of professors A.V. Mitskevich and A.S. Samoshchenko in the field of the study of acts of law-making led to the clarification of the signs of normativity, the introduction of the category of "normative legal instruction" [27, pp. 34, 43; 28, p. 80; 29, pp. 43 – 45]. Currently, these conclusions are widely applied in the use of appropriate terminology in constitutional proceedings, to distinguish between normative and individual legal acts in the framework of administrative proceedings, to formulate the definition of a normative legal act in the relevant laws of the subjects of the Russian Federation, etc.

No less important for practice are many conclusions of the doctrine in terms of principles of law, the action of legal norms in time and space, defects of legal regulation such as conflicts of legal norms and gaps in the law. We would like to draw

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attention to the fact that, in general, legislators and judges use theoretical provisions of domestic legal doctrine. At the same time, in case of its insufficiency, the same judges of the Constitutional Court of the Russian Federation also use the conclusions of foreign scholars.

6. Conclusions.

This is enough to justify the continuing importance of theoretical-historical sciences in the system of legal knowledge.

In our opinion, even the so-called competence-based approach, which implies individual training of a specialist in accordance with the demands of employers [30], if properly understood, does not imply reduction, emasculation of legal science and education. Such competences, in which employers are clearly interested, as "systemic and critical thinking", "legal analysis", "legal expertise", "legal reasoning", regularly mentioned in the current federal state educational standards in the field of law, cannot be fully formed without mastering theoretical and historical sciences. Therefore, all major theoretical-historical sciences should be presented both within the framework of academic disciplines and during the state final examination.

At the same time, the assessment of modern research in the field of these sciences for their relevance and scientific novelty, of course, depends on the extent to which these studies really contribute to the development of legal ideas (legal values) and general legal dogma applied in practice.

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