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TÍTULO: Estudios metateóricos en la historia de las doctrinas jurídicas y políticas: potencial heurístico

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RESUMEN: Este artículo aborda una herramienta tan importante en la investigación jurídica moderna como el enfoque metateórico. Los autores analizan la naturaleza y las perspectivas de utilizar este método en toda la gama de trabajos de investigación en derecho. El artículo concluye que el resultado de una aplicación competente de herramientas metateóricas es la capacidad de llevar a cabo un análisis sistemático de estudios jurídicos, lo que permite alcanzar el nivel de su implementación práctica en el proceso de desarrollo de políticas jurídicas y construcción del estado, así como usar un nivel interdisciplinario de comprensión de los problemas de génesis y desarrollo legal.

PALABRAS CLAVES: doctrina jurídica, reflexión científica, metateoría jurídica, enfoque metateórico, enfoque de sistema.

TITLE: Meta-Theoretical Studies in the History of Legal and Political Doctrines: Heuristic Potential¹

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ABSTRACT: This article discusses such an important tool in modern legal research as the meta-theoretical approach. The authors analyze the nature and prospects of using this method in the whole range of research work in law. The article concludes that the result of a competent application of metatheoretical tools is the ability to carry out a systematic analysis of legal studies, allowing to reach the level of their practical implementation in the process of developing legal policy and state-building, as well as use an interdisciplinary level of understanding of the problems of legal genesis and development.

KEY WORDS: legal doctrine, scientific reflection, legal metatheory, meta-theoretical approach, system approach.

INTRODUCTION.

A meticulous and long-term work on the study of state-legal doctrines of Russia of XIX - early XX centuries through the prism of the dialectic unity of their content and form, identifying the internal and external factors of their evolutionary development, evaluating the processes of intersection of the subject areas of theoretical and historical jurisprudence in sectoral legal studies, determining the place of the latter in the general system of humanitarian knowledge, in general, and legal, in particular, inevitably requires a shift to the level of general theoretical analysis and reflection, does not imply the possibility of avoiding or insufficiently using the resource of a specified research activity.

Therefore, the solution of the above tasks provides for entering both the theoretical and the higher (and correspondingly difficult) levels of cognition - the meta-theoretical, where the most effective technique (more broadly - the world-view approach) is the meta-theoretic method of cognition, which has gained deserved recognition in logic, methodology of science, philosophy of science. At the same time, in both Russian and Western jurisprudence, this toolkit is only gaining popularity and recognition but is still not used to the required extent [1, 2, 3, 14, 16].

This article is, therefore, a methodological study of the method and for the method, the result of which should be a certain theoretical basis for conducting advanced research related to reflection.

DEVELOPMENT.

Materials and methods.

The foundations of the meta-theoretical tools are based on the doctrine of scientific reflection, which, as is well known, is generally understood as an act of self-knowledge, self-esteem, and the cognition through science. According to V.A. Bazhanov, “the analysis of reflection in science suggests that we should talk not just about a certain “meta-level” of (scientific) consciousness where rejection of stereotypes of thinking takes place but about its fundamentally different position, from which science and its development are viewed at a particular angle from the object of study to its means, instruments of cognitive activity on the activity of the subject of cognition” [6, p. 73].

The essential thing for us is the idea that, by implementing “thinking about thinking” and thus, being purely theoretical, “reflexive procedures actually imply subsequent practical implementation. According to their strategic goals, they have a distinct critical focus, which consists in revising the previously adopted but outdated activity standards, revisions of seemingly obvious provisions, but often revealing a non-trivial and problematic character” [6, p. 73]. Analysis of legal texts itself indeed acquires methodological significance only with an eye to its future practical implementation,

praxeological perspectives, and access to an interdisciplinary level of interaction with related branches of knowledge.

Domestic philosophers and methodologists began to speak actively about the need for a third level (following empirical and theoretical) of scientific knowledge in the early 90s of the XX century [5] (in this case, there are also four main levels of scientific knowledge [13, p.72] for each scientific discipline: “1) the sensual level (observation and experimental data); 2) empirical level (facts and empirical laws of the studied subject area); 3) theoretical level (theoretically evidence-based models of empirical knowledge), and 4) meta-theoretical level (substantiation of the logical, instrumental, practical, and ideological significance of theories) [12, p. 97]). Such a purely methodological level is rightly considered to be the meta-theoretical, whose components, in turn, include “ontological, epistemological, and proper methodological background of both theoretical and empirical levels” [19, p. 272]. The meta-theoretical level can be figuratively expressed as a kind of special “filter” standing “on the border of science the ideas pass through in two directions - from science to culture, practice, everyday consciousness and, in turn, from these spheres to science” [19, p. 272].

The subject of meta-theoretical knowledge in philosophy is called scientific theories, and its goal is “the substantiation of scientific theories and the reflection of their content in terms of their compliance with methodological standards, scientific rationality, the existing scientific picture of the world, and the philosophical foundations of science. Meta-theoretical level of scientific knowledge is the most reflective type of knowledge in science, staying in direct contact with philosophical knowledge [13, p. 72-73].

Thus, this article uses the methods of chronological, problem-theoretical, historical-legal, legal-hermeneutic, and comparative-legal research to study the meta-theoretical approach. For the purpose of the comprehensive development of currently available approaches to meta-theoretical tools, a formal logical method will be used.

Main part.

The first attempts to substantiate the meta-theoretical level of knowledge and their producing methods (techniques) were made in domestic jurisprudence long before the conceptualization of the specified toolkit. N.M. Korkunov in his “Lectures on the General Theory of Law” persistently presented the idea that “there can be two sciences about each subject: empirical, drawing its knowledge from sensory experience, and philosophical, supplied from supersensory cognition” [11, p. 19]. However, the relative underdevelopment of the general theoretical foundations of pre-revolutionary legal science (in general, including the history of legal studies), on the one hand, and the change in the vector of scientific legal research in the Soviet period, on the other, contributed neither to the development of the theory of meta-theoretical knowledge, or to the accumulation of experience in using meta-theoretic method in the historical and legal sciences.

An outstanding Soviet and Russian lawyer, a researcher of philosophical problems of law, D.A. Kerimov, who made a significant contribution to the understanding of the need for general theoretical research, noted the importance of the interaction of sciences, which “in general is a necessary and urgent need for the development of science itself, improving the quality, efficiency, and effectiveness of scientific research” [10, p. 62]. Obviously, such interaction can be both a prerequisite and a consequence of the development of science, but only a shift to the meta-theoretical level of knowledge can ensure the real *mutual effect* of the legal sciences (as D.A. Kerimov notes, “each of the sciences still stays inside its “apartment” without this” [10, p. 64]).

The value of a metatheory as a unifying element for interacting branches of legal science is also noted by A.I. Ovchinnikov. Thinking about legal epistemology as a section of legal philosophy, where the methodology of knowledge of law, the specifics of legal knowledge and cognition, its structure, architecture, dynamics are studied, he actually equates epistemology with the metatheory of law: “The epistemology of law, or legal epistemology, includes various paradigms of legal thinking, studies legal

thinking itself, based on the structure of legal knowledge, studies the theory of law, and is the metatheory of law” [15, p. 61].

It turns out that today almost no one doubts the need for a meaningful analysis of the metatheory, “able to consider all the historical and meaningful specifications that would allow for full use of its heuristic and methodological potential” [8, p. 14]. This entirely applies to the metatheory in legal research, which has not yet been adequately applied as a fundamental research method.

Frankly speaking, the researchers have limited possibilities of its use, in general, due to an insufficient number of relevant works. An active and perhaps the most prominent supporter of the full-scale use of the meta-theoretical approach in jurisprudence (in particular, in the general theory of law, the history of law, the history of political and legal doctrines) is V.N. Protasov, Ph.D. in Law, who notes the special importance of building metatheories in legal research. In his opinion, legal science has an informational, intellectual, and theoretical content, and in theoretical and legal consciousness “these two levels (informational-theoretical and informational-legal, ontological) often mix one information layer is imposed on another” [17, p. 12]. Actually, the widespread occurrence of information systems in all branches of modern science is due to the increased relevance of “various kinds of “meta-” constructions, the development of various kinds of “meta-levels”, “which serve as a way of the system management” [8, p. 55].

Thinking about the legal metatheory, V.N. Protasov comes to the conclusion that a metatheory is “a theory about a theory: the theory itself is the object of scientific analysis. The latter is called subject or object (as an object of metatheory), or a meaningful theory since outside of the meta-theoretical analysis it is considered not as a whole, but only on part of the information, its content” [16, p. 85-89]. Accordingly, the meta-theoretical studies (representing a form of intrascientific search) “are aimed primarily at a critical assessment of the foundations of the studied theory, its initial premises, reliability, and effectiveness of methodological tools” [17, p. 8].

Resorting to this type of methodological tools contributes to the creation of a cognitive complex with enhanced research capabilities, and “the meta-theoretical approach becomes an essential component of modern scientific and theoretical thinking, an effective tool for obtaining new knowledge of a special type - reflexively oriented, aimed at analyzing the deep foundations of the theory, the reliability of its methodological prerequisites” [16, p. 85-89]. Another important point is that “the meta-theoretical level allows one to maximally distance oneself from concrete subject “fragments” described by a particular theory and reach a level of methodological reflection on some scientific knowledge or on scientific knowledge (syntax) and “put” theoretical knowledge in the context of culture (semantics)” [8, p. 56].

As for the direct content of the methodological approach (research activity algorithms), the process of building a subject theory “identifies the scientific status of the theory (a place in the system of sciences), its goals and objectives, functions, features of the methodology, structure (composition and structure, in particular the categorical apparatus), the subject of the theory, as well as the history of the theory (science). At the same time, the whole range of issues of the subject theory is considered as a complex and is integrally investigated” [16, p. 85-89].

Representatives of sociological science propose a somewhat different definition of a metatheory: “metatheory is a theory intended to analyze the structure, methodological principles, laws, and explanatory mechanisms of some objective theory” [7, p. 8]. As we can see, this definition almost completely (in its sense) repeats the definition proposed by V.N. Protasov. Nevertheless, we put an emphasis on a thesis, according to which the metatheory, as a principle and method of research, is important in its ability, in contrast to the simple accumulation of non-systemic information, to obtain new general theoretical knowledge and systematize various results of empirical and theoretical studies on the basis of known criteria. There is no fundamental difference in a particular scientific field where the researcher uses the indicated means of knowledge.

As mentioned above, the meta-theoretical approach in law is aimed at a comprehensive and systematic identification of the scientific status of a theory, determining its place in the system of sciences, clarifying its goals and objectives, functions, features of methodology and its structure (composition and structure), subject, and history. In this regard, the considered toolkit (if we evaluate its use in theoretical, legal, historical and legal studies and in the works on the history of political and legal doctrines) differ significantly (in substantive characteristics) from a similar approach in Russian sociology: it usually uses meta-theoretical *criticism* of various sociological theories, focusing on the analysis of logical, conceptual, and substantive difficulties inherent in these theories [7, p. 22].

As for the applicability of the meta-theoretical approach (if we continue to talk about sociology), meta-theorization, understood in instrumental measurement as “analytical sorting, theoretical codification, and conceptual standardization”, proved its effectiveness in “overcoming the communicative impasse, intellectual disunity, and theoretical crisis” [7, p. 326]. And it is hard to disagree with (analogies with legal research are absolutely acceptable and even necessary here).

The concept of meta-theorization proposed by sociologists J. Ritzer (the subject of cognitive activity in the meta-theoretical works should be interested, first of all, in the final result and its character rather than in the direct systematic study of theories) seems to be interesting [18, p. 563]. In his opinion, there are three types of metatheories, which are mainly determined by differences in the final results. “The first type, *meta-theorization as a means of achieving a deeper understanding of the theory...*, involves the study of a theory aimed at a better, deeper understanding of an already existing theory. The second type - *meta-theorization as an introduction to the development of a new theory* - means the study of an existing theory in order to create a new sociological theory. There is a third type of metatheory - *meta-theorization as a source of approaches to the generalization of sociological theory*: in this case, the study of the theory is focused on creating an approach (“a *separate* metatheory”) covering the entire sociological theory or a certain part of it” [18, p. 563].

Either directly or indirectly, the meta-theoretical approach in sociology was used in the works by many researchers as “analytical theorization” (J. Turner) and analyzing explanation models, systematizing analytical tools, explanatory “social mechanisms” (W. Outhwaite, D. Gambetta, R. Collins, R. Swedberg, J. Elster, and others) [7, p. 8].

The meta-theoretical approach in the history of doctrines of law and the state.

Recently, it has been rightly noted that “a metatheory represents a specific form, a mechanism for controlling movement and the development of a specific direction of scientific thought, the process of its growth and functioning” [16, p. 85-89]. If so, then we should agree with the statement that not only developed, well-established knowledge systems need its meta-theoretical assessment but also young developing theories (the latter requires even a greater meta-theoretical approach, since it provides for their organized development) [16, p. 85-89].

Thus, there is every reason to assume the validity and relevance of meta-theoretical knowledge in such a specific (and still insufficiently developed) subject field such as legal doctrines. The use of the considered tools then opens the way to the search for patterns of the genesis and evolution of various legal studies, based on the forms of their external expression, scientific assessment of the process of convergence (intersection, mixing) of subject areas of theoretical and historical jurisprudence in the doctrine of law (including various sectoral trends).

The need for a meta-theoretical analysis of these problems is determined by the fact that the laws of the genesis and development of legal doctrines do not stay locked directly inside the theoretical, legal, and historical-legal constructions expressed by legal scholars in their texts, but require an exit to the meta-level that binds (organically and conceptually) adjacent layers of general theoretical knowledge: 1) *the history of legal doctrines*; 2) *metahistory* (the result of learning things and phenomena in their historical development in organic connection with their originative conditions; the ratio of the history of legal doctrines and the state and history as a science in general); 3) *meta-theory of law* (place, role, tasks,

functions, methods of the general theory of law in legal studies); and 4) *metatheory of the state* (place, role, tasks, functions, methods of the theory of the state in legal studies).

The meta-theoretical approach also makes it possible to critically evaluate the causes and prerequisites for the formation of legal doctrines, their internal unity and uniqueness, and external facts that have influenced the direction of their evolution. In the same way, the key elements of legal studies should be analyzed systematically and in unity: the substantive part, which contains the solution to a particular issue; form of presentation; methodological (ideological) part; a program-evaluation part containing assessments and conclusions (recommendations) for the future [9, p. 18-19]. In other words, meta-theoretical knowledge and analysis of legal studies cannot do without examining the entire object in terms of a systematic approach they are part of.

We should also note that an essential task in applying the meta-theoretical approach in the history of the doctrine of law and the state is to achieve conventional knowledge: only the subsequent joint work of historians and theorists of law, researchers of the history of legal doctrine is a key prerequisite for the formation of the corresponding private scientific picture of the world (mediator that participates “in the processes of scientific communication and in the binding of theoretical and empirical levels, contributes to a more complete and meaningful interpretation of the results of the research, “tying” them into everyday life, embedding them in practice” [19, p. 283]). This kind of legal (historical-legal, theoretical-legal) world view can sanction a certain categorical view by science of its own empirical and theoretical (idealized) objects” [4, p. 41].

In this sense, L.I. Iakovlev rightly emphasizes that "the meta-theoretical level itself is conventional and its major function is to serve the cause of mutual understanding of the scientific community" [19, p. 274]. Indeed, the meta-theoretical approach is successfully used to reach the interdisciplinary level, which allows implementing the praxeological possibilities of legal studies, substantiating and

formulating the general laws of genesis and development of scientific legal thought. In fact, this is the only kind of research able to move fundamental legal research to a new level.

Results and summary.

As we could see previously, the humanitarian research field in recent years has shown a noticeable actualization of the requirements of “social and humanitarian rationality” - a set of conditions and criteria the social and humanitarian scientific knowledge must meet. They reasonably are as follows: “the social value characteristic of the studied objects, reflexivity, systematic character, cultural urgency, adaptability, openness to criticism, and changeability” [13, p. 72].

The metatheoretical approach here is the ideal tool for applying the general requirements of humanitarian (in our case legal) scientific knowledge to the totality of national legal doctrines: it provides a consistency (internal and interdisciplinary), social and value characteristic of the studied objects (ideals of law, legal conscience, proclaimed values in studies, etc.), reflexivity (generalization and search for patterns), cultural validity (all legal studies are a specific product of the domestic scientific thought), and finally, of course, adaptability, openness to criticism, and changeability (in the course of accumulating theoretical knowledge of the legal doctrine of all branches of law and the basic stages of development).

However, we should remember about the requirements of scientific rationality to the most meta-theoretical knowledge in science, which traditionally include: 1) explicit discursive expressibility, 2) unambiguous nature of meta-theoretical concepts and judgments, 3) consistency, 4) systematic nature, 5) intuitive obviousness or philosophical substantiation of the initial principles, 6) reliance on knowledge of history, philosophy, and methodology of science, as well as experience of their reflection, and 7) methodological effectiveness of meta-theoretical knowledge for the development of science and scientific world view [13, p. 73]. In this sense, it is obvious that using the meta-theoretical approach to understand the systematic nature of legal doctrines, the need to use them as a methodological basis for

the development of the history of political and legal studies, the general theory of law, the theory of the state, and other related sciences, is completely justified.

We should also add that since meta-theorization, understood in science as a general scientific and philosophical reflection, "requires a scientist with such skills and abilities as broad scientific and philosophical erudition, knowledge of history and philosophy of science, the ability to work at the intersection of science with philosophy, worldview, and culture" [12, p. 99], a general assessment of legal studies cannot but include an interdisciplinary component, as well as immersion in cultural and socio-cultural foundations of scientific activity.

Thus, the use of the meta-theoretical approach in legal studies in general, and in studies on the history of the doctrine of law and the state, in particular, is justified and has the following objectives:

- To develop the problem of meta-theoretical characteristics of legal studies through analysis: the subject of study in the doctrines; tasks and functions of the doctrines; the structure, methodology, external relations of the doctrines, the laws of their genesis and development.
- To carry out a systematic analysis of legal doctrines to reach the level of their practical implementation (praxeological conceptualization) during the development of legal policy and state-building and provision of the principle of scientific character in the law-making process (by creating the information and methodological basis).
- Enter an interdisciplinary level of understanding the problems of the genesis and development of legal doctrines: a meta-theoretical study of legal doctrines in the framework of the main branch of legal sciences will provide new knowledge that will be used as a method in related sciences - the theory of state and law, legal philosophy, sociology of law, legal anthropology, etc.

BIBLIOGRAPHIC REFERENCES.

1. Cohen, (1935). Transcendental nonsense and the functional approach. *Columbia Law Review*, 6, XXXV.

2. Hart, H.L.A. (2001). *Essays in Jurisprudence and Philosophy*. Oxford Clarendon Press New York Oxford University Press.
3. Hubbard, F.P. (1976). "One Man's Theory...": A Metatheoretical Analysis of H.L.A. Hart's Model of Law. *Maryland Law Review*, 36, p. 39.
4. Akopov, S.V. (2015). Transnational model of identification of individuals with macropolitical communities: metatheoretical analysis. Author's abstract, Ph.D. Politics. - St.P.
5. Alekseev, P.V., & Panin, A.V. (1991). *Theory of knowledge and dialectics*. - M.: Vysshaya shkola, - 382 p.
6. Bazhanov, V.A. (2002). Reflection in modern science. *Reflexive processes and control*, 2(2), 73-89.
7. Deviatko, I.F. (2003). Meta-theoretical analysis of sociological theories of activity and practical rationality. ...Author's abstract, Ph.D. Sociology. - M.
8. Ignatov, A.A. (2011). Meta-theoretical approach to the analysis of consciousness: based on the works by M.K. Mamardashvili: Author's abstract, Ph.D. Philosophy. - Rostov-on-Don.
9. *History of political and legal doctrines: a textbook* / Chief Ed. V.V. Lazarev. - 3rd ed., revised and extended. - M.: Norma: INFRA-M, 2016.
10. Kerimov, D.A. (2001). *Methodology of law (subject, functions, problems of the philosophy of law)*. - 2nd ed. - M.: Avanta+.
11. Korkunov, N.M. (2004). *Lectures on the general theory of law* / N.M. Korkunov; auth. foreword I.Iu. Kozlikhin; Legal Center Association. - 2 ed., [Reprint]. - St.P.: Legal Center Press.
12. Lebedev, S.A. (2017). Paradigms of the methodology of science. *Bulletin of M.K. Ammosov North-Eastern Federal University. Series: Pedagogy. Psychology. Philosophy*, 3(07), 94-102.
13. Lebedev, S.A. (2017). The structure of scientific rationality. *Problems of Philosophy*, 5, 66-79.

14. Musaelian, L.A. (2016). On the ontological foundations of law: a philosophical analysis of the problem. *Bulletin of Perm University. Philosophy. Psychology. Sociology*, 1(25), 13-22.
15. Ovchinnikov, A.I. (2017). The key problems of the philosophy of law and its place in legal science. *North Caucasian Legal Journal*, 1, 57-64.
16. Protasov, V.N. (2009). Some questions of legal metatheory. *State and law*, 11, 85-89.
17. Protasov, V.N. (1991). Basics of general legal procedural theory. - M.: Legal literature.
18. Ritzer, J. (2002). Modern sociological theories. 5th ed. - St.P.: Piter.
19. Iakovleva, L.I. (2009). Meta-theoretical level of scientific knowledge and its reflecting concepts. *Essays on the history and philosophy of science*, 1, 272-294.

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