SPER Publications and Solutions Pvt. Ltd.

Original Article

Historicism in criminal law science "historical methods and their significance for evolution of criminal law"

Anzhelika Irekovna Alimova[1]*, Andrey Nikolayevich Batanov[2], Marina Igorevna Verevicheva[2], Alexander Alexandrovich Gorshenin[2], Valery Vasilievich Romanov[2], Elena Robertovna Abdrakhmanova[2]

[1] Izhevsk State Agricultural Academy, Studentskaya Street, 11, Izhevsk, 426069, Russia. [2] Ulyanovsk State University, Leo Tolstoy Street, 42, Ulyanovsk, 432017, Russia.

Correspondence: Anzhelika Irekovna Alimova, Izhevsk State Agricultural Academy, Studentskaya Street, 11, Izhevsk, 426069, Russia.

ABSTRACT

The present article examines different methodological approaches to studying the history of criminal law in Russia. The conceptual framework is examined, namely, the relationship between the terms method and methodology of legal historical research including the historical method and the method of comparative cognition. Various perspectives on the retrospective study of criminal law are presented. Common properties and patterns of development are identified that are typical of criminal law as a social phenomenon and that determine the application of the corresponding methodology of historical and social studies considering the unique aspects of the subject. Therefore, the authors analyze the theoretical and methodological aspects of retrospective criminal law science, common trends, the concept, and structure of the methodology of such sciences. Moreover, the authors examine the evolution of theoretical views, doctrines, theories, and academic discussions about the ideology and methodology of historical and legal science as a whole, as well as particular issues of historical analysis of criminal law.

Keywords: method; methodology of cognition; historical method; method of comparative cognition; method of source analysis; criminal law science.

Introduction

The study of the conceptual basis of the changes that take place in law as a whole i.e. the evolution of theoretical views, doctrines, theories, and academic discussions about the ideology and methodology, as well as particular issues of law, is crucial for understanding the essence and nature of law and the changes within it. The study of the history of criminal law is of great theoretical and practical importance both for the development of approaches to understanding criminal law, its role, and objectives in the life of society and for the formation of modern criminal policy in the field of fighting crime. The history of criminal law allows one to assess the institutions of criminal law from the perspective of their historical conditionality and the fulfillment of the functional purpose of the law, obtain an understanding of criminal legal phenomena and processes, i.e. grasp their essence, content, inner structure and on that basis determine and substantiate the patterns and prospects of development. Criminal law is closely linked to the social development context; therefore, once the context changes, so do the views on crime and punishment, the ideology of crime-fighting which, in turn, causes the change in criminal law. The study of the history of criminal law shows the direct connection between specific ideas and their practical application, fosters a deeper, more thorough, and comprehensive understanding of legal criminal concepts, their place, and role in science, the assessment of accumulated knowledge. The historical legal analysis makes it possible to justify scientific concepts from their compliance with the current law and traditions of society or, inversely, undermines the basis of the academic concept. Further development of criminal law science is unthinkable without the study of history, analysis of achievements and flaws, and considering the experience.

Access this article online	
Website: www.japer.in	**E-ISSN:** 2249-3379

How to cite this article: Anzhelika Irekovna Alimova, Andrey Nikolayevich Batanov, Marina Igorevna Verevicheva, Alexander Alexandrovich Gorshenin, Valery Vasilievich Romanov, Elena Robertovna Abdrakhmanova. Historicism in criminal law science "historical methods and their significance for evolution of criminal law". J Adv Pharm Educ Res. 2020;10(2):215-30. Source of Support: Nil, Conflict of Interest: None declared.

Moreover, one cannot successfully develop the criminal legal theory and improve criminal law and law-enforcement practice without the critical analysis of the pre-existing concepts and views, without examining the conditions of their emergence and development. Therefore, by turning to the history of the development of criminal legal thought, one can avoid mistakes made in the past. The history of criminal law science indicates the close connection to criminal law, i.e. the importance of criminal law for criminal law science and vice versa – the role of criminal law science in the emergence and development of law enforcement, particularly through considering and applying historical experience. The development of criminal law science is significant as it helps to give a correct legal assessment to its modern status, solve theoretical issues of criminal law, identify the features and formation principle of rules of criminal law, the conceptual framework and terminology of criminal law and determine the development of theoretical concepts and criminal law. No in-depth theoretical study of a legal phenomenon in modern jurisprudence is possible without the historical method of cognition.

The examination of methodological foundations of studying criminal law in its historical development necessitates the preliminary consideration of the terms method and methodology of cognition. Various researchers use different interpretations of the meanings of method and methodology, which causes some confusion when defining and distinguishing these terms. In legal literature, a distinction is not always made even between methods of regulating criminal legal relations and methods of criminal law science. Unsolved methodological issues influence the content and scope, as well as the instrumentarium, of the studied concepts both directly and indirectly.

Methods

The research methods utilized in this article include systemic-structural, deductive, inductive, statistical, historical, logical, comparative-legal, and others.

The historical development of any social phenomenon is a complex set of processes that is almost impossible to assess and study from the perspective of a single field of knowledge. The above fully refers to studying legal history in general and the history of criminal law in particular. At the same time, historical legal science has specific features determined by the fact that to understand the essence and nature of law and the changes within it. It is not enough to merely note and witness the changes while comparing them to the previous ones.

Philosophical consideration of criminal law reveals its essence, its methodological foundations, and the crucial institutions – crime and punishment, categories of criminal law, contributes to the development of conceptual approaches to criminal repression, the modern penal system, the distinction between criminal and non-criminal, significant and insignificant from the perspective of danger to the public, the release from criminal liability and punishment, as well as the application of other criminal measures.

Such consideration should be based on not only purely legal but also social and political aspects that determine the general context of legal regulation during the specific historical period, the features of the development of society, and the needs for fighting crime using criminal law.

The examination of methodological foundations of studying criminal law in its historical development necessitates the preliminary consideration of the terms method and methodology of cognition. The method of research as a method of studying legal matters is a crucial tool of cognition that no researcher can do without. Even during the Modern era, the philosopher and father of English materialism Francis Bacon [1] poetically compared the scientific cognition method to a light illuminating a traveler's path in the darkness.

One should agree with A. V. Naumov [2] who writes that "the matters of methodology, research method become exceedingly relevant during critical times in history when life itself makes one reconsider or even reevaluate a lot of traditional methodological postulates". Indeed, even though science as a form of social consciousness stems from antiquity, the issues of scientific method and methodology remain relevant to the present day and occupy the minds of many researchers, including criminal law theoreticians.

Various researchers use different interpretations of the meanings of method and methodology, which causes some confusion when defining and distinguishing these terms. In legal literature, a distinction is not always made even between methods of regulating criminal legal relations and methods of criminal law science [3]. Unsolved methodological issues influence the content and scope, as well as the instrumentarium, of the studied concepts both directly and indirectly.

The term methodology is defined ambiguously and contradictorily in philosophical and specialized literature: as philosophical, belief-related side of science; [4] as a theory, science of the method, methods of scientific cognition of the world; [5-7] as a set of research techniques; [5] as an independent field of scientific knowledge that goes beyond the scope of philosophical analysis (does not coincide with philosophy); [8] as a system of principles, methods and logical techniques of scientific cognition (the status of independent science is denied). [9] Otherwise, the methodology is equated with dialectics, [10] historical materialism [11] and general theoretical challenges of any science. [12] At present, there is still no comprehensive, definitive, and unambiguous interpretation of the notion of methodology.

In the general theory of law, method and methodology are seen as interconnected but not equal notions. The relationship between methodology and method is that of the dialectic correlation of the whole and its part, the system, and its element. The method allows one to discover a side of the studied phenomenon. The methodology allows one to grasp the essence of the phenomenon. [13] The most common scientific point of view is the general understanding of the method of scientific

cognition as a way of obtaining a result, the researcher's chosen way of cognition, specific techniques, actions, and measures. The methodology is a more extensive notion encompassing several components including, besides belief-related and fundamental theoretical concepts and dialectic categories and law, general and specific scientific methods.

At the same time, the notions "method" and "methodology" are often confused and used as synonyms. Moreover, there is a diametrical approach to understanding these terms in scientific literature, in particular, for the consideration of criminal law methods. For example, N. F. Kuznetsova points out that the notion "method" includes methodology and methods of cognition and the semantic features are determined by the subject of criminal law. [14]

The philosophical and legal methodology as a systematized set of means of exploring the legal reality in its various connections with the global whole is comprised of the particular instrumentarium that consists of several independent methods used for solving specific cognitive issues. [15]

It is generally understood that methodology is the same for all sciences. However, in every science, methodology acquires features determined by the uniqueness of the subject of cognition. It is the specific nature of legal objects of study that requires the methodology of law to be relatively independent as a part of general philosophical methodology. It seems that the methodology of studying the history of law is determined by the content of the subject of cognition and its regularities (note 1). [16]

In a scientific and philosophic sense, a method is a means of reflecting the reality in its natural development in the mind of the subject of cognition. Methods of scientific cognition emerge at the same time as scientific knowledge and to support it. That is why "the categories of thinking are not the help of man but the expression of the law of nature and people". [17]

The methodology of studying the history of criminal law, like any other scientific methodology, cannot be reduced to the complex of methods: it has a more complicated structure. The methodology of historical legal science has the following elements: the needs to study history in general and criminal law in particular (objective and subjective); belief-related (philosophical) and scientific positions of researchers; goals, principles, laws, and categories of studying; the actual methods of cognition and maintaining a connection with practice (methods of applying the results of the study). [18]

Results

Therefore, the scientific methodology of historical legal science is a system based on a philosophical worldview. The system includes interconnected principles, laws, and categories and the means (ways) determined by them, as well as procedures for cognizing the development of state-related legal phenomena.

The methodology includes worldviews, general theoretical concepts, and the synthesis of different methods of cognition (general and specific scientific) operating based on the relevant principles, philosophical laws, and categories that reflect the global connections of reality and cognition. The methodology is an integral concept that includes several components: worldview and fundamental theoretical concepts, dialectical categories and laws, general and specific scientific methods. [19]

A methodology can be considered efficient if it possesses:

a) cognitive and heuristic ability;
b) comprehensiveness, completeness, and objectivity of the obtained knowledge;
c) scientific nature, which means both philosophical justification (ascent to general scientific and philosophical methods of cognition), and reliance on the general principles of the science wherein it is applied;
d) practical feasibility (usefulness) of the research results, verifiability;
e) prognostic ability (results can be extrapolated). [18]

The concept of the methodology is based on a philosophical idea or a specific goal that determines the direction for the cognition of the phenomena of reality, including legal ones, i.e. establishes connections between various methods of cognition.

In modern science, the conceptual foundations of cognition are determined by such philosophical traditions as materialism, pragmatism, neopositivism, postpositivism, structuralism, existentialism, personalism, etc. [20]

The analysis of the current state of the methodology of historical legal science and its theoretical background in academic literature indicates the presence of significant challenges that hinder adequate cognition of the studied phenomena. The challenges can be summed up as follows:

1. the professed renunciation of the previously dominant Marxist-Leninist methodology is often not implemented in the specific historical and scientific methods and results. Essentially, there are currently no conceptual heuristic programs of historical legal science;
2. the specialists studying the history of law encounter objective difficulties determined by the specific features of the object of the study. As A. O. Lyadov fairly notes, these difficulties are connected primarily with chronological remoteness ("temporal distance") between the modern researcher and the object of the study – historical forms of law manifestation. Such an object can be, for example, a previously existing custom or law that functioned in an archaic society but now has lost all significance for the political and legal practice. From the perspective of the gnoseological subject, such an object existed (and, possibly, exists) in a particular ontological world – in the past – which makes it unobservable for the researcher who exists and acts in the present. Therefore, the sensory-empirical ways of defining and analyzing studied objects typically used in empirical sciences (geology, chemistry,

sociology, etc.) are usually inapplicable in historical legal science and should be carried out with the help of other cognitive procedures; [21]

3. most researchers perceive the object of study only through the lens of the modern context. Because of this, the issue of the reliability of historical research arises. The main mistake is that the researcher begins to reconstruct the object of study (in particular, the essence, role, and significance of the monument of law) from the position of today, within the framework of the cultural tradition that exists at the time of the study, without taking into account the specific features of the studied period of history. As a rule, this results in misconception regarding the role and significance of the studied phenomenon, for example, a monument of law.

Because of this, we believe it is necessary to proceed from the dual nature of the historical and legal phenomenon. On the one hand, the difficulty of cognition is objective since it is removed in time and it can only be assessed by indirect signs (at best, monuments, at worst – based on assessments of contemporaries or researchers of an earlier period that cannot be fully objective due to their theoretical position). On the other hand, the studied object is manifested in modern times due to the well-known law of succession.

Therefore, criminal law needs to be studied not only positively but also retrospectively. The latter is possible due to the presence of common properties and patterns of development inherent in criminal law as a social phenomenon that determines the application of the corresponding methodology of historical and social research adjusted for the specific features of this subject.

On the one hand, there is no doubt that changes in criminal law are inevitable following changes in social reality, which it aims to regulate. Moreover, these changes are irreversible. The law of the past cannot be applied to present social relations, no matter how perfect it may seem.

On the other hand, the process of the historical development of criminal law is determined by the patterns laid down in its essence and the interpretation by new generations, the application of knowledge and achievements obtained through the study and evaluation of the historical experience.

Historical and scientific research, on the one hand, develops by encompassing more and more data and accessing the previously unexplored areas of the history of science and, on the other hand, by revealing the internal connection and causality of historical events.

Based on the general theoretical tasks inherent in any historical research, it is possible to formulate the goals of the history of criminal law:

1. systematization and generalization of historical material that can be used to evaluate both the social aspect ("public nature") of criminal law and its form (legal and technical expression). At the same time, one must proceed from the fact that the development of criminal law is determined by the conditions of social life;
2. identification and analysis of the main historical facts that determine the patterns and trends of development of criminal law in general and its legal institutions, rules of criminal law, methods and forms of their formation, the particular way in which they reflect social phenomena;
3. study of the criminal legal views of scholars and practitioners that serve as the theoretical basis for the development of criminal law;
4. explanation of the causes and conditions that led to the emergence or change of a specific criminal law phenomenon;
5. comparative analysis of the repealed and current legislation to identify criteria for efficiency and sustainability of the provisions and institutions of criminal law, the delimitation of obsolete forms from universal provisions;
6. critical assessment of historical experience and the development of institutions for improving current legislation based on historical experience;
7. prospect of its further development based on the extrapolation of historical experience and future trends. [18]

Discussion

At present, like in the past, there are various approaches to scientific cognition. Thus, when examining the application of dialectic materialism in criminal law science, N. F. Kuznetsova notes that the dialectic theory on determination can be applied in the study of the causality between a criminal act (inaction) and harmful consequences, as well as the study of complicity. Moreover, the dialectics of the transition of an opportunity into reality justifies the legislative recognition and application of legal rules on the stages in the commission of a crime, the study of the preparation of the crime, and the attempt to commit a crime. At the same time, the laws of historical materialism ensure the reliable cognition of the development trends of society, revealing the interaction of the socioeconomic basis with the political, legislative, and spiritual superstructure of this formation, with the social structure of society. As for methods in criminal law, they include a system of techniques and operations, means, and instrumentarium for studying criminal legal phenomena and notions, as well as the historical-comparative method. [18]

From the standpoint of positivism, the problem of the methodology of criminal law was considered by N. D. Sergeevskii. [22] The author proposed to proceed from the essence of those provisions that form or should form the content of the so-called positive criminal law. To this end, Sergeevskii put forward two opposing points. According to the first point, criminal law contains eternal, unshakable truths that stand above people, with their specific properties and needs, with those

transient forms in which humanity develops. The second thesis states the opposite: there are no such unshakable truths in criminal law. On the contrary, all the provisions and the entire content of criminal law arise from the specific properties of people and, therefore, change together with these properties and conditions of the historical development of society.

Analyzing the dilemma, N. D. Sergeevskii believed that if one proceeded from the basis of the first point, then had to recognize that "there is natural or rational law as ideal legislation for all times and all cases". This approach is typical of representatives of the school of natural law, in particular, Savigny, who proposed "to use it to improve positive law once and for all". [23]

According to N. D. Sergeevskii, [22] this approach means that criminal law should be considered philosophical science. If one proceeds from the basis of the "second point, then we must turn to the study of reality and in it alone look for means for criticizing the existent and for establishing something new and better. The science of criminal law will be a positive science".

L. S. Belogrits-Kotlyarevskii [24] recognized deduction as the main historical and legal method and assigned a secondary role to the induction method. The scholar believed that the theory of crime should be based on the logical content of the concepts of crime and punishment. If the inductive method connects the researcher with positive law, based on which the researcher obtains a criterion for assessing the institutions of criminal law, then the deductive method obtains such a criterion from the logical content of the concepts. [24]

Thus, M.F. Vladimirskii-Budanov generally named three methods of scientific cognition – dogmatic, philosophical, and historical, noting a connection between them and highlighting the historical method, namely the historical-comparative method. According to the researcher, the use of all three methods of scientific cognition is relevant. However, the significance of the historical-comparative method consists in the fact that the similarity of legal phenomena among different peoples is determined by the unity of the psychological and physical laws of human nature. [25-28]

M. F. Vladimirskii-Budanov wrote that initially the dogmatic method was expressed in the practical study of the decrees and the Code of Tsar Alexei Mikhailovich that were in force at that time, as well as some foreign legislation. The dogmatic method was dominant approximately until the 18th century. Essentially, M. F. Vladimirskii-Budanov makes a historical conclusion about the importance of the methods of scientific cognition, the necessity of the methods, the replacement and development of one method from another, that is, the qualitative transition of one method into another. "The variety and imperfections of the existing codes led to the idea of the possibility of establishing the best legal norms a priori (through philosophical constructions) <…> After the coup of the 18th century and the disappointment that seized European society in the first quarter of the 19th century, it was no longer possible to consider the current laws nor the philosophically constructed law to be the true expression of rights; one could only recognize the historically given right as such <…> Then the Historical School of Jurisprudence (Savigny and others) arose in Germany that claimed that the only true way to study law was the historical way. This advanced the science of law and, at the same time, had a favorable effect on the development of legislation. However, the extremes of the Historical School gave rise to a reactionary movement, that is, to the desire to return the forms of law that had already been experienced historically and to the preference of national, albeit imperfect, rules of law over any others". [29]

In the Russian history of the criminal law science, empirical views on crime and punishment have been developed from the perspective of the theory of natural law. These views are associated with the beginning of the doctrinal development of Russian criminal law and criminal law science. The first works of Russian legal scholars specifically devoted to criminal law (K. G. Langer, A. A. Artemev, S. E. Desnitskii, I. M. Naumov, O. Goreglyad, L. A. Tsvetaev, P. Gulyaev) began in the 18th century, [30-32] which is expected since criminal law science in Russia were founded no earlier than the 18th century. In particular, B.S. Utevskii, while noting the exploration of general theoretical and historical issues, pointed out that the history of criminal law science in Russia is over 200 years old. [33]

At the same time, M. Kovalevskii wrote about the methods of scientific cognition that "historians and lawyers were utilizing them all the time without specifying the nature of the methods for the readers, in other words, they were acting methodologically, although did not write about methods". [34] However, already in 1880, M. Kovalevskii recognized the historical-comparative method in jurisprudence.

The interest in the history of criminal law arose in Russian science in 1840 to "reveal the features of the national spirit of their decrees". [35] In the academic works of the pre-revolutionary school of law, quite successful attempts were made to use the historical method in criminal law, which in turn can be considered a significant and invaluable contribution to the current Russian criminal legal doctrine (L. S. Belogrits-Kotlyarevskii, S. Budzinskii, O. Goreglyad, I. N. Danilovich, S. N. Desnitskii, V. V. Esipov, A. F. Kistyakovskii, G. V. Kolokolov, P. D. Kolosovskii, A. V. Lokhvitskii, P. Lyakub, N. A. Neklyudov, A. A. Piontkovskii, N. D. Sergievskii, G. I. Solntsev, V. D. Spasovich, N. S. Tagantsev, P. P. Pustoroslin, L. A. Tsvetaev and others). [36]

According to the prominent researcher of the pre-revolutionary criminal law science G. S. Feldshtein, when attempting to construct the dogma of Russian criminal law, "in these first scientific experiments, we encounter primarily two movements. One of them is based on a historical study of the dogma of Russian criminal law… The other movement chooses the historical-comparative method of presentation in the dogmatic development of Russian criminal law. Ultimately, aiming at the systematic arrangement of the current law, the movement tries to explain certain features of Russian criminal law not only from the perspective of historical forms of our legislation but attempts

to link its very content to certain historical conditions that cause its features". [35]

According to G. S. Feldshtein, the representatives of the first movement include F.H. Strube de Piermont, the author of Concise manual on Russian laws. In this work, F.H. Strube characterizes some categories and concepts of criminal law: classification of crimes, criminal negligence, the concept of an intentional act, the significance of misprision for criminal law.

G. S. Feldshtein considers K. G. Langer, A. A. Artemev, S. E. Desnitskii, and A. Ya. Polenov to be representative of the second movement. [35]

As one can see, the methods of scientific cognition, including the historical method in the pre-revolutionary criminal law doctrine of Russia, were covered ambiguously and not in full. This is quite logical and understandable since the origin of criminal law science in Russia dates back to no earlier than the 18th century.

The historicity of the criminal legislation was emphasized by A. N. Radishchev who wrote that certain criminal laws are inherent in each historical period. Therefore, the laws must be brought into line with the conditions of the time when they are applied. Everything within the criminal law that is not in line with the time should be excluded from it promptly. [37]

The radical changes that took place in the public ideology during the Soviet period affected the ideological foundations of the criminal law methodology by introducing into its foundations the doctrine of the class aspect, the anti-people, and reactionary nature of the criminal law in bourgeois countries and the fundamental opposition to Soviet law. [38] In Soviet times, the methods of scientific cognition were not developed further due to the adoption of Marxist ideology that did not recognize any methods other than the method of dialectical materialism. [39, 40]

The following opinion was spread in Soviet academic and educational literature: "based on the Marxist-Leninist dialectics, Soviet criminal law science show the fundamental opposition of Soviet criminal law to the criminal law of the exploiting states. [41]

The issue of the correlation of history and modernity was at the center of the debate between representatives of Soviet and Western sciences. According to V. V. Ivanov, [42] this happened because a different interpretation of the historical experience is associated with a different attitude to the experience, to its use in modern practice and progressive development.

The representatives of the country's leadership and Soviet science, especially in the initial stages of the formation of Soviet power, adamantly refused to use the legislation and the accumulated experience of the pre-revolutionary period. For example, M. Yu. Kozlovskii wrote in 1918, "The system for the transition from capitalism to socialism experienced for the first time on the globe after the October Revolution in Russia, creates special, unprecedented law in the process of the socialist revolution". [43]

When evaluating these statements, it is necessary to take into account the Communists' natural desire to build everything fundamentally differently, in a new way, not like in pre-revolutionary Russia or other capitalist countries.

In Soviet times, the historical method was harshly and unjustifiably criticized as inconsistent with the Marxist criminal law concept. [19] In general, the usefulness of historical knowledge was often questioned or completely denied. [44]

In Soviet legal science, including criminal law science, the use of the historical method came down solely to criticism of non-Marxist legal concepts and their "reactionary" nature. Contrary to the principle of historicism, the continuity of the pre- and post-revolutionary criminal law of Russia was denounced. For example, A. A. Piontkovskii attributed N. S. Tagantsev's definition of the object of crime to the normative theory of the object, [45] without taking into account the crucial fact that in this case, one did not mean the norm as such but the norm in it real being.

In Soviet academic literature, the global method of dialectical materialism was considered the universal method of cognition. "Soviet criminal law science, like all Soviet science, is based on the only truly scientific method – the method of materialistic dialectics". [46] Partly for this reason, the question of the methods and methodology of criminal law in its Soviet period of development has not been comprehensively investigated. Thus, the methodology of science, like all areas of public life, was ideologized and aimed at harsh criticism of bourgeois law and legislation, as well as domestic pre-socialist legal theories.

In the second half of the 1980s – early 1990s, the process of reassessing the history of Soviet criminal law began in academic and educational literature, and everything or almost everything was criticized, no attention was paid to the achievements and continuity of the Soviet school of criminal law. "During the 70 years of the Bolshevik dictatorship, the Russian school of criminal law, one of the strongest in the world, has almost lost the status of science, turning from an ideologist and a generator of progressive laws into a servile commentator on the legal mayhem that was cynically called "socialist legality". [47]

One should not underestimate Soviet criminal law science. Many of the provisions formulated by Soviet forensic scientists have preserved their scientific and practical significance. That is why modern researchers turn to the works of M. N. Gernet, A. A. Gertsenzon, M. M. Isaev, B. S. Osherovich, A. A. Piontkovskii (son), M. D. Shargorodskii, etc.

In modern Russian historical and legal science, a gradual departure from the Soviet-Marxist methods and stereotypes has occurred, many traditional methodological postulates have been reevaluated, the existing methodological approach to criminal law and its history has been critically revised. However, as already indicated, this sometimes leads to the other extreme when some modern authors are inclined, like the revolutionary thinkers of the early 20th century, to deny the value and significance of Soviet law. According to R. David, the understanding of socialist law is inseparable from the knowledge of Marxism-Leninism. Universal concepts and categories acquire a special meaning. Morality means to give all powers and energy

to socialism and the state that is building; freedom means to do what one ought to want, and not what one wants; Soviet society is the highest type of progressive society, social justice, equality of citizens; the Marxist doctrine is the only correct one; all the others are a threat to peace and security. [48]

This is echoed by N. P. Meleshko [49] who argues that criminal law as a tool of coercion and suppression prevailed in the socialist system of law.

Such an approach can hardly be considered productive. Each historical era is characterized by the features of state ideology, public consciousness, law, etc. These features are primarily determined by the objective prerequisites of the historical period. One should agree with the opinion of several experts who believe that each historical period has its logic and value system. It can be judged in terms of "good" or "bad" only from the position of the same "system of coordinates" or by the degree of expression of objectively developing trends determining the development of a phenomenon. [50]

According to A. A. Suleimanov, while characterized by a certain novelty, the Soviet criminal law was not created from scratch; it was not something fundamentally different. It adopted the previously existing provisions "in a removed form" as it is customary to say in philosophy. Based on law enforcement practice, the Soviet legislator created a law that met the needs and realities of that historical period and was consistent with the conceptual ideas that the new state system was based on and that encompassed all areas of social life. At the same time, this did not rule out continuity in the evolution of law expressed in the adoption of the basic ideas and provisions developed earlier by legal science and law enforcement practice. [18]

The historical and legal method is used to study the evolution of Russian (pre-revolutionary Russian and Soviet) criminal legislation and criminal law science and represents a system of methods and techniques of a single subject – the history of criminal law and legislation.

A detailed definition of the historical method of legal science is given by V.M. Syrykh [51] who understands it as a way of studying the patterns of functioning and development of the researched by reproducing its history, genesis in a whole variety of facts, events that followed each other in chronologically consistent form and expressed the internal natural course of history.

To understand the process of cognition and interaction of cognition methods at different stages of research, it is necessary to establish the logical structure of the historical method. However, due to the particular nature of the objects of research of the historical method, it is not possible to determine formally and unambiguously its structural elements. This, in particular, is confirmed by the variety of scientific constructions of the structure of this method of scientific cognition.

Thus, the difficulty in distinguishing the logical structure of the historical method consists in the fact that there is no generally recognized analysis of the historical method in academic literature and there have been many logical methods used in the study of various phenomena over long historical periods.

As a rule, the structural elements of the historical method determine the stages of the process of cognition and their sequence. For example, B. A. Grushin proposes the following stages of historical cognition:

a) definition of the spatiotemporal boundary of the investigated system and the identification of its determining patterns, relationships;
b) isolation of the historical states of the object and the study of their structure;
c) construction of a "genetic pair", i.e. highlighting the starting and ending point of the development process or the initial assumption of the process;
d) establishing a fact and discovering the essence of the process;
e) disclosure of the mechanism;
f) scientific reproduction of the development of the system as a whole. [52]

The goal of the research task, in Grushin's opinion, "comes down to finding and fixing several historical states of the object and revealing the mechanism of transition from one to another". The method of scientific research is defined as a system of organically interconnected techniques determined by the ultimate goal of the study and the source material. [52]

Considering the sequence of the course of historical cognition, E. P. Nikitin proposes the following scheme of the logical structure of the historical method:

a) establishing the original data or a description of "traces of the past";
b) intertemporal transition, i.e. the process of transition from information about objects that currently exist to information about objects in the past;
c) restoration of the entire structure of the object (complete image, the structure of the phenomena of the past through individual elements of this structure);
d) a description of a past event, object (the result of research). [53]

The author defines the method of cognition of the past as a way of indirectly deriving knowledge about the present or other past subjects. [53]

When comparing the presented structures of the historical method, one can see that B. A. Grushin does not have such a stage as "establishing the original data" or "describing the "traces of the past". Therefore, it is unclear how in this case, one is supposed to obtain knowledge about the object under investigation before reconstructing historical states.

When considering certain aspects of historical cognition, A. V. Gulygi generally sense determines the sequence of stages of cognition, namely: a collection of sources (results of past human activity); verification of the reliability of sources (analysis, interpretation of sources), and, as a result, the emergence of historical facts; selection of important facts and identification of laws that determine the development of society (the study of historical patterns). Thus, the path covered by the historical

development of society is considered "in all its zigzags, in all the variety and originality of the events that occurred" (the problem of the whole). [54]

When determining the logical structure of the historical method, N. P. Frantsuzova indicates that the reconstruction of the stages of development entails the following:

1. study of "traces of the past" as the results of historical processes;
2. comparison of the "traces of the past" with the results of modern processes and assumptions about the possibility of applying knowledge about the nature and causes of modern processes and reconstruction of the past;
3. recreation of events and phenomena of the past in their spatiotemporal relations based on the interpretation of "traces of the past" with the help of knowledge about modern processes;
4. identification of the main stages of development and the reasons for the transition from one stage to another. [55]

The presented scheme encompasses the process of historical cognition most fully from studying the "traces of the past", reconstructing historical events, and studying the causes of the functioning of phenomena in the past to identifying the stages of development and the reasons for transitions to a new state. This allows one to investigate the patterns of the process of cognition, i.e. gain new knowledge and identify its structure.

The most common interpretation of the principle of historicism at present consists of the cognition of things and phenomena in their development, formation, connection with specific historical conditions that determine them. Historicism denotes such an approach to phenomena that views them as a product of a certain historical development in terms of how they arose, developed, and came to the modern state. As a certain method of theoretical research, historicism is a fixation not of any change (even if it is qualitative) but of change in which the formation of specific properties and relationships of objects that determine their essence, their qualitative originality, is expressed. Historicism involves the recognition of the irreversible and successive nature of changes in objects and phenomena. In the modern period, historicism has become one of the most important principles of science allowing it to provide a scientific image of nature and social phenomena, to discover the patterns of their development. Historicism is based on the postulate of the dialectical connection of the phenomena of the past, present, and future (the unity of two opposite processes – continuity and renewal), which determines the specific nature of their cognition.

According to the principle of integrality substantiated in science, each event in the general chain of historical processes is not considered analytically when one side of this chain is artificially isolated from its other sides, but synthetically, comprehensively, considering all its sides in mutual subordination corresponding to the relative weight of each of them in general historical movement. The interconnection of internal and external factors of the development of science and the objects of its study has been proved. The factors that are extrinsic to science itself and act as its source are recognized as objective criteria for verifying the results obtained by science. The factors that are intrinsic to science itself are its logic, the logic of all scientific cognition. [56]

Meanwhile, the gnoseological nature of the historical method remains the subject of debate at present. In Soviet academic literature, the historical method was defined as a method of empirical research. [57, 58] Other scholars believed that the historical method should contribute to obtaining the same level of knowledge as the logical method, i.e. the scholars understood these methods as of the same magnitude and equivalent. [59]

V. M. Syrykh [51] notes that historical and logical methods provide equivalent knowledge, but this is achieved in different ways. When the historical method is used, the patterns of development of the researched are revealed by reproducing its history, genesis. The logical method is used when considering the structure, the current state of the researched.

According to R. Lukich, [19] the historical and legal method is a comprehensive research method that includes almost all the methods used in scientific cognition since the unifying element is the object of scientific research, namely the law of the past.

However, some authors do not share this point of view as they point out that the historical method consists of reproducing the facts of the past and it is necessary to use the historical method with other scientific methods, in particular with the logical method. [60]

It seems that various scientific methods are used in conjunction with the historical method in the process of historical research. According to A. I. Kosarev, the generalization of the facts in a historical study of legislation is carried out using the comparative method. The structure and elemental composition of the scientific method of specific legal studies are also affected by the process of cognition. [60]

It should be clarified that in criminal law science, instead of the historical or historical legal method, some authors distinguish the historical-comparative method (Note 2), which due to the essence and purpose of application can be equated to the historical method.

The formation of the comparative method in Russian legal thought of the second half of the 19th – early 20th centuries is associated with the name of the prominent historian, jurist, and sociologist M. M. Kovalevskii. When the scholar examined methods of studying law, the term "historical-comparative" was used instead of the term "comparative method". Kovalevskii writes: "Speaking of the comparative method, we do not at all mean by it a simple comparison or contrast. What, if not contrast, is the comparative method? In answer to this question, I will, first of all, allow myself to change the term itself a little and speak not about the comparative method simply but about the historical-comparative method". [61]

As a result of the study, M.M. Kovalevskii concludes that the historical-comparative method is a special technique of studying the history of law and "is not intended to enrich the history of law with new material but to explain the fact of the origin of

certain phenomena of legal life", which distinguishes it from other methods of studying law.

A historical-comparative study of the law reveals the reasons for the similarity of legal norms among different peoples by scientifically explaining the established historical facts. [61]

M. M. Kovalevskii formulated two conditions for the correct application of the comparative method:

1. the comparison should not be limited to peoples of any one race or peoples speaking the same language or having the same religion;
2. one can only compare such laws and legal systems that are at the same level of social development. [61]

It should be noted that the author not only thoroughly substantiated the historical-comparative method but also demonstrated how to apply it in historical and legal research, i.e. developed the historical-comparative method in parallel with its practical application.

Along with the historical-comparative method of studying experience and legislation, scholars distinguish the comparative legal (comparative) method used to compare codes of different legal systems and states. [14]

It is believed that the historical cognition of criminal law should take into account different approaches and techniques for the study of legislative acts. This is the only way to form a comprehensive idea of the object of study.

At the same time, it should be noted that the Russian historical school was heterogeneous – there were the historical-dogmatic, historical-philosophical, and historical-comparative movements. [62]

According to B. S. Volkov, the study of individual institutions of criminal law should not be purely historical, since, with a strictly historical examination of the criminal law, theoretical provisions, individual institutions, one can only state facts. [63]

The most important and essential methodological basis for the study of criminal law is the unity of the historical-logical study of criminal law phenomena and criminal law institutions, which allows one to identify the historical continuity and logical sequence of their development.

As D. A. Kerimov rightly noted, any research should, in its methodological basis, proceed from the unity of the historical and the logical. "Without historical reproduction of reality, there is no chance to logically comprehend its patterns but even without a logical comprehension of the course of history, it is impossible to reveal the internal causes and mechanisms of its natural movement". [64]

The historical and logical methods are inextricably connected, they interact since the logic is based on the history which in turn permeates it. Thus, the unity of the logical and the historical is based on the interconnection and mutual transition of the various patterns of law – its occurrence, functioning, and development.

The historical method consists of the reproduction of historical and legal facts, i.e. a phenomenon is studied from the moment it occurs, and then the sequence of development of this phenomenon is traced. The logical research method considers the phenomenon from a certain stage of development. The historical method is the basis for logical research. In other words, historical research precedes logical research, historical and logical correlate as content (historical) and form (logical). Thus, the interpenetration of the historical and the logical occurs, and the logical acts as a concentrated expression of the historical, and the historical is internally logical. The historical and the logical exist, therefore, in dialectical unity. [65]

The unity of the historical and logical methods of studying criminal law phenomena lies in the fact that a specific criminal law phenomenon is considered in its historical context, and the knowledge of these phenomena, including ideas, views, and theories, is perceived as determined by the historical period of their occurrence and existence.

The specific nature of the historical and logical methods is considered by M. M. Rozental. The scholar writes, "The historical method of research reveals the same logic, the same laws of development as the logical method but if the latter does it in an abstract theoretical form, the former reveals this logic in the flesh and blood of specific events, the activities of peoples, classes, parties, individuals". [66]

When analyzing the methodological challenges of the study of law, V. M. Syrykh wrote that the historical and logical methods are forms of the method of legal science. The historical and logical methods do not have significant differences in the sum of methods used at the stages of explaining empirical information and ascension from the concrete to the abstract. Within the historical method, such techniques as the ascension from the concrete to the abstract, the systemic-structural approach, the ascension from the abstract to the concrete, are its immanent methods, its main elements, adapted to study a certain state of a phenomenon, its genesis. [51]

Thus, "based on the developing object of science, there are two layers of historical sciences: sciences that have as their subject the history of the development of the object and sciences that have as their subject the history of knowledge about the object". [67]

V. S. Dobriyanov concludes that logical and historical methods are indivisible. It is impossible to create separate purely historical and purely logical courses; the difference consists in a greater or lesser bias towards the logical or historical element in the formation of science. Therefore, it is impossible and absurd to look for the specific nature and independence of theoretical and historical methods since both of them require both elements – historical and logical. [51]

Naturally, the historical research method should be used in conjunction with other methods of scientific cognition of phenomena, such as logical, systemic, comparative-legal, dialectical, as well as philosophical views and ideas. It is in such an interconnection that the methodological significance of the historical method in the cognition of criminal law is manifested, which makes it possible to determine the directions of development of criminal law institutions and systematize scientific knowledge about a particular legal institution. The

"purely" historical research method contributes to the isolation of empirical material and is the basis for its logical understanding. As V. S. Solovyov noted, "Logical and empirical elements are equally necessary for true cognition and, therefore, the exclusive isolation of one or the other elements is in both cases a one-way distraction". [68] This is the necessary condition for the comprehensive cognition of legal phenomena and objects.

Historicism is closely connected with the dialectical method since it involves the study of legal phenomena in their connection and development, as well as in the correlation, i.e. in the process of transition of some phenomena into others. The historical method describes the law as a process of translational movement of law from one stage to another through time and space. Because of the above, a distinction can be made between the historical, historical-comparative methods of cognition and the actual method of historical cognition, which are not the same in volume, structure, and functions.

In turn, the methods of historical cognition are the analysis of monuments of law (other historical sources), abstraction, the systemic-structural approach, the periodization method.

The source analysis method is an analysis of objects existing at the time of the study and containing information about the facts of the past. They have cognitive significance and characterize the historical process. [44] The central place among historical sources is held by written texts (monuments of law, chronicles, letters, documents, etc.), statements by lawyers and public officials, and statistical data that help to identify individual facts, events and justify their reliability and authenticity. Such historical sources are read and interpreted and their provisions are compared using the dogmatic-normative method, which is also used in the study of current legislation. Some difficulties may arise in the study of ancient law due to the objective loss of some information and facts far from the past.

The method of genetic segmentation (periodization) was first used in R. Moroshkin's research work "On the gradual formation of legislations – reasoning" (1832). One of the first periodizations of the history of criminal law is not based on a chronological criterion but on goals that determine the purpose of criminal punishment. Thus, the law in the first period is the law of unconditional retribution, in the second period it is a system of intimidation, in the third, it is a system of correction. [33]

Similarly, A.F. Kistyakovskii distinguished three "modes" in the development of criminal law: the mode of private revenge, the mode of public intimidation, the mode of public correction, and warning. Moreover, the scholar noted that the development of criminal law is not an arbitrary process, there are no leaps or surprises, on the contrary, everything in it is subject to the law of gradual development. [69]

The periodization proposed by L.S. Belogrits-Kotlyarevskii is also noteworthy. The researcher identified two main periods in the historical development of criminal law. 1. The period of private punishments (the punishments are chosen and executed by the victim and their relatives); 2. The period of public punishments (the assignment and execution of punishment are carried out by state bodies to protect public law and order). The researcher divided each period into two modes. There are the following modes in the first period: the first mode is blood feud, the second mode is the mode of compositions that arises with the union of neighboring clans and the emergence of a higher power – patriarchs and princes. The second period consists of the following modes: the first mode is the mode of public revenge or intimidation; the second mode is the mode of humane ideas. Thus, regardless of the period, the first mode is based on the emotional-sensual component and partiality, and the second model is based on the rational component and reason. [70]

In the modern period, somewhat conventionally, one usually distinguishes three main periods of development of the Russian criminal law science. [3]

B. M. Kedrov [56] identifies three milestones in the development of science – the past, the present, and the future, "Studying the past can and should serve as a means to understand the present and foresee the future and, based on this, comprehend the development of science as a focused historical process". This, in Kedrov's opinion, is the main task of the history of science.

Due to the knowledge obtained during historical and scientific research and the identification of the direction of their previous development, it is possible to establish the prospects for future scientific cognition. "The present contains an indication of the historical significance of those ideas and teachings that arose in the past. Indeed, in science today, we often encounter the same ideas and teachings but those developed more completely and expressed more specifically. Therefore, going back from the present to the past, we can find the sources of current scientific ideas and understand all their previous history from the perspective of modern views".[3]

Thus, B. M. Kedrov formulated the following general theoretical tasks of historical research:

- to mentally restore to the fullest extent possible the lines of development of scientific cognition from its origins to the present day from fragmented materials relating to scientific discoveries, works, and research;
- to present and understand the development of science as a continuous process unfolding entirely regularly;
- study the past to understand the present and foresee the future;
- based on this, to comprehend the development of science as a focused historical process. [56]

The researcher notes that one can roughly distinguish three stages in the development of any science: a) empirical or collective, when the researcher discovers how the historical process unfolded; b) theoretical or explanatory, when the researcher seeks to find out why this process unfolded in this way, and not otherwise; in other words, seeks to reveal its causes; c) prognostic when the researcher tries to look into the future and

reveal the prospects for the development of the studied subject. [56]

The principles of historical-legal research should include the principle of scientificity, the principle of prospects, the principle of determinism, and the principle of integrality.

The principle of the scientificity of cognition requires any social phenomenon, including legal to be considered in historical development. The historical cognition of individual legal phenomena consists in determining the conditions for their occurrence, i.e. a specific period of the historical era, the main stages of development, the recurrence of phenomena, general principles of development, a scientific assessment of the current state, taking into account the changes that have occurred and determining development trends. Without the knowledge of how these phenomena occurred, it is impossible to cognize their current state and development prospects. The methodological foundations, the stages of application, the objective nature of the historical method determine the appeal to objective and subjective law, regulatory legal acts, and lawmaking.

Hegel noted, "The concept of an object does not come to us naturally. Every person has fingers, can get a brush and paints, but this does not make them an artist. It is the same with thinking. The thought of law is not something that everyone has explicitly; only correct thinking is knowledge and cognition of the subject, and therefore our cognition must be scientific". [71]

The principle of prospects consists in knowing the specific laws of the process under investigation to determine future development and being able to draw the right conclusions from the cognition of previous development.

The principle of determinism is based on the recognition of a common logical connection between the phenomena of reality and, as a result, the identification of specific causes of a particular event.

The principle of integrality suggests that each event in the general chain of historical processes is considered comprehensively in mutual subordination and not in isolation. This approach allows one to identify the main periods in the history of science and, consequently, find an objective basis for their identification. [56]

These principles act as a comprehensive methodological guarantee of the reliability of the results. The part of a factual guarantee of reliability when using the historical method in criminal law is played primarily by legislative sources of the corresponding era, as well as data of official criminal statistics and generalizations of judicial practice.

To assess adequately these principles, one must use the method of "immersion" into the historical context, i.e. to take into account both the objective circumstances of the historical period under consideration (social, political, economic conditions) and the features of the prevailing social psychology and worldview. This method allows one to identify the prerequisites for the formation of most objectively and the essence of the studied legal phenomenon.

Thus, the historical-legal methodology involves the study of the works of prominent scholars and the use of a large legal legacy of criminal law theory and law enforcement practice.

Given this, historical facts must be evaluated based on their influence on the current situation. Negative experience is also valuable since learning the lessons and preventing the situations that would lead to it in the future helps to improve legislation and law enforcement practice. Therefore, this experience is a necessary element of the process of forming a positive experience.

In this regard, researchers rightly note that "every new generation of scientists seeks to summarize certain results of previous work, evaluate the completed stage, and outline new prospects". [72]

To corroborate the continuity of modern criminal law, one can say that, certain criminal legal principles and institutions that are still in force were formulated, researched, and conceptually laid down even in the pre-revolutionary criminal law literature. In particular, the most important provision of the institution of punishment was the principle of its proportionality to the crime (gravity of offense), the use of punishment only for guilt, the impossibility of assigning several punishments for one crime. Such important points were defined as the goals, the content of the punishment, as well as circumstances mitigating liability (committing a crime out of familial feelings as a result of hunger and poverty), circumstances precluding criminal liability (execution of an order), etc. [73]

One cannot say that the Bolsheviks completely denied the continuity in the development of law. The moment of continuity in the historical development of phenomena is emphasized, for example, in the works of V.I. Lenin. Considering the essence of the historical approach to the study of phenomena, Lenin noted: in order not to get lost in the mass of small things and the variety of opposing opinions, approach the study of the issue from a scientific point of view, one needs to "remember the basic historical connection, look at every question from the perspective of how a well-known phenomenon in history arose, what the main stages in its development were, and from the point of view of its development look at what this thing has become now". [17]

Individual attempts to renounce the heritage of the past, in our opinion, were characteristic only of the initial years of Soviet power. [74]

The Soviet government could not possibly completely abandon the old law for an objective reason – the earlier stage is the basis for the development of the next stage. This pattern can be traced throughout history. It seems, there are no subjective preferences in this matter. On the contrary, the new authorities always seek to dissociate themselves from the ideas of the previous ones. However, paradoxically, the new authorities always go in the wake of the old ones. This can be explained by an objective pattern, which is formulated as follows: at each subsequent historical stage, the law objectively needs changes, but the starting point of these changes can be nothing but the previous

law. Without perceiving it as the initial basis of legal regulation, it is impossible to outline and implement any changes since it is unclear what legislative acts need changing, what the changes should be, and what is acceptable for the new stage. In other words, without considering the old (generally obsolete) law, without taking into account its relationship with the new law in both form and content, it is impossible to determine the needs, goals, objectives, scope, and parameters of changes, as well as their consequences determined by extrapolating the development of the old law for the future. This denotes the fundamental importance of the law of the past for modern law.

Confirmation of the law of succession in the development of criminal law can be evident through the example of individual criminal law institutions that emerged as a result of lawmaking practice in the first years of the Soviet power. Thus, the material concept of crime was established in the first Soviet codes. The concept was based on the category of danger to the public; the same material characteristic is contained in Art. 14 of the Criminal Code of the Russian Federation.

Many aspects of the theory of punishment embodied in the regulatory legal acts of the first years of Soviet power remained unchanged. According to G. N. Toskina's fair observation, the basic principles and mechanisms of the functioning of the camp system for incarceration that was laid down at that time are still valid today. This is further evidence of the continuity of the development of the existing system of punishment, which is still based mainly on the principles of Soviet penology. One of the most typical remains the principle of recoupment of prisoners, which was a distinctive feature of the Soviet penitentiary (camp) system. [75]

In general, the political-philosophical (socialist) doctrine, based on the teachings of K. Marx, F. Engels, and V. I. Lenin, continues to actively influence the punitive policy, [76] which is manifested in giving the punishment an educational emphasis and increasing its social role. In this regard, punishments based on public condemnation and work for the public good are of great importance. Since the formation of the Soviet Union, the re-socialization of the criminal has become the main goal. Therefore, penalties largely depended on their characteristics. According to the prominent scholar and teacher A.S. Makarenko, [77] "for the first time in history, criminal punishment was facing the most complex, scientifically substantiated tasks of correcting and re-educating offenders, educating them to become active figures of a new era".

In the Soviet era, a whole series of new punishments appeared which still exist almost unchanged: a fine, confiscation of property (Note 3), forced labor without incarceration (correctional and compulsory labor), a ban on holding a position, performing certain kind of work (deprivation of the right to occupy certain positions or engage in certain activities).

Already in the Guiding Principles of Criminal Law of 1919, there were many new types of punishments that did not exist in the pre-revolutionary Russian penal system nor the punishment systems of many capitalist countries. [78]

It should be noted that the punishment itself underwent significant changes: the interpretation of its essence, content, functions, and purposes became different. Initially, the goals of punishment were defined in the Guiding Principles as the protection of public order from a committed or attempted crime, as well as from future crimes of this person, as well as other persons (Art. 8). The adoption of the Criminal Code of the RSFSR in 1922 marked a gradual transition from the concept of "punishment" to the concept of "measure of social protection" which enabled criminal prosecution not only for crimes but also for non-criminal acts (Art. 5, 49). The Criminal Code of 1922 changed the purpose of punishment (Art. 8).

In the Basic Principles of the Criminal Law of the USSR and Union Republics of 1924, the legislator finally abandoned the term "punishment" and enshrined only social protection measures. The 1926 Criminal Code of the RSFSR established a different hierarchy of punitive policy goals than before; the first place was occupied by a special provision – "the prevention of new crimes by the persons who committed them". According to the Criminal Code of the RSFSR of 1960, the punishment was not only retribution for the crime committed but it was also aimed at correcting and re-educating the convicted person in the spirit of honest attitude to work, observing laws to the letter, respect for the rules of communal life as well as preventing the commission of new crimes by both the convict and other persons (Article 20).

In view of this, it is worth noting that the continuity processes operate in conjunction with the processes of renewal. In other words, obsolete phenomena give way to new ones while successfully functioning phenomena continue to exist.

Conclusion

To summarize the above, the importance of the development of criminal law in the fundamental sense is determined by its continuity and the dialectical connection of the stages. At every stage, previous experience is considered and improved. Thus, by analyzing history, one can not only find an explanation of the current state of the theory and practice of fighting crime but also draw up long-term improvement plans based on a scientific forecast.

Continuity is also evident in the science of criminal law. Until now, the works of scholars of the 19th – 20th centuries who laid the foundations of the modern theory of criminal law (A. A. Zhizhilenko, A. F. Kistyakovskii, E. Ya. Nemirovskii, L. I. Petrazhitskii, A. A. Piontkovskii, N. D. Sergeevskii, N. S. Tagantsev, I. Ya. Foinitskii, M. D. Shargorodskii, etc.) have been considered reputable.

In particular, A. F. Kistyakovskii, speaking of the need to study the history of criminal law, wrote that "only history can explain the reasons for both the current state of criminal law and its state in previous periods. Without the light of history as a science that interprets the gradual development of the human race, the

criminal law of the previous formations would in many aspects be a work of a madman". [69]

A consistent supporter of using the historical method in criminal law, the forensic scientist emphasized that modern concepts of crime and punishment are the result of the long-term life of peoples. Continuity in law including criminal law acts as a pattern of its development and movement, it extends into ancient times and combines the past and the present, and thereby the future. [69]

The modern science of criminal law considers any phenomenon, especially a social one, in its connection with other objective phenomena and processes that foster or oppose its development (Note 4). Therefore, the laws of Hegel's dialectics are applicable only if adjusted for the fact that the driving forces of development are embedded in nature itself (both material and social) and the historical process.

The significance of the development of the science of criminal law is determined by its contribution to the general development of criminal law as a social and legal phenomenon.

This is why one cannot refuse to consider theoretical approaches, results obtained by researchers of the history of law even if they do not correspond to the modern doctrine. First, the works of lawyers-historians contain valuable positive material, legal monuments are analyzed or referenced. Second, they can be used to obtain an idea of the theoretical status of the problem under consideration, determine the further direction for scientific research, state the object, subject, goals, and objectives of the study taking into account the aspects that have not yet been sufficiently analyzed. Finally, these works are an essential basis of scientific discussion.

Further development of criminal law science is unthinkable without the study of history, analysis of achievements and flaws, and considering the experience. Moreover, one cannot successfully develop the criminal legal theory and improve criminal law and law-enforcement practice without the critical analysis of the pre-existing concepts and views, without examining the conditions of their emergence and development. Therefore, by turning to the history of the development of criminal legal thought, one can avoid mistakes made in the past.

The history of criminal law science indicates the close connection to criminal law, i.e. the importance of criminal law for criminal law science and vice versa – the role of criminal law science in the emergence and development of law enforcement, particularly through considering and applying historical experience. The development of criminal law science is significant as it helps to give a correct legal assessment to its modern state, solve theoretical issues of criminal law, identify the features and formation principle of rules of criminal law, the conceptual framework and terminology of criminal law and determine the development of theoretical concepts and criminal law. No in-depth theoretical study of a legal phenomenon in modern jurisprudence is not possible without the historical method of cognition.

The study of the history of criminal law shows the direct connection between specific ideas and their practical application, fosters a deeper, more thorough, and comprehensive understanding of legal criminal concepts, their place, and role in science, the assessment of accumulated knowledge.

The historical legal analysis makes it possible to justify scientific concepts from their compliance with the current law and traditions of society or, inversely, undermines the basis of the academic concept.

N. D. Sergeevskii wrote, "Regardless of the history of the text of the current law, which provides the key to understanding it, the science of criminal law cannot be limited to one existing criminal law, abandoning its past, its history. Having traced the origin of a well-known institution or legal provision, we find the conditions that gave rise to it and that influenced its development. Knowing this, we have the opportunity to evaluate its current significance. In other words, we get the opportunity to decide: should this provision be preserved or should it give way to another, having lost its reason to exist due to changed conditions. What should this new legal provision be – when resolving this issue, the study of past eras also provides indispensable help through centuries of experience. In conclusion, to understand, evaluate, and criticize a criminal law, one needs to know its history; otherwise, all our speculations will be unjustified. The historical movement does not lead to a regression of criminal law nor a return to the old forms but, on the contrary, it is a prerequisite for lasting progress. Without the help of historical research, it is possible to create an ideal more or less colored by subjective arbitrary actions, to create a utopia consisting in the denial of everything substantial; but only those who know the conditions of this era and have studied their basis in the past can create a provision that meets the needs of a given era. Every era is the result of the previous one without which it is inconceivable". [79]

Modern public institutions are closely connected with the historical past, which is also true for criminal law. Researchers of the 19th century wrote about the unity and continuity of the historical process, the relationship between the evolution of social and legal phenomena, the socially determined nature of criminal law. [69]

The study of the history of criminal law is of great theoretical and practical importance both for the development of approaches to understanding criminal law, its role, and objectives in the life of society and for the formation of modern criminal policy in the field of fighting crime.

The historical cognition of criminal law allows one to assess the institutions of criminal law from the perspective of their historical conditionality and the fulfillment of the functional purpose of the law, obtain an understanding of criminal legal phenomena and processes, i.e. grasp their essence, content, inner structure and on that basis determine and substantiate the patterns and prospects of development. Criminal law is closely linked to the social development context. Therefore, once the context changes so do the views on crime and punishment, the

ideology of crime-fighting which, in turn, causes the change in criminal law.

Notes:

Note 1. B. M. Kedrov, speaking about the connection of the subject and the study, noted that the specific features of the method of the study are determined by the specific features of the subject. The method is when a person reveals the essence of the subject of the study, observes the internal pattern of the subject of the study.

Note 2. The historical and comparative method was used in the first half of the 18th century in the works by Ch. Montesquieu, whom many legal scholars call the founder of comparative jurisprudence. In Montesquieu's theory, the main task of the legislator is to propose to society such laws that would correspond to the historical level of development of the people's general spirit. Consistently adhering to the historical point of view in the analysis of political and legal phenomena and institutions of law, Montesquieu, comparing the political and legal institutions of different periods among different peoples in their historical development, pointed out their universal laws of development.

Note 3. As confiscation of property was given the status of an alternative criminal legal measure as per the Federal Law No 2153-FZ dated 27 Jun. 2006, it has made practically no changes to its essence or content.

Note 4. In this case, one does not consider the scientific theories that are based on the philosophical platform of subjective idealism that has not been adopted in any of the prominent research paradigms of the modern scientific community.

References

1. Bacon F. Collected works: in two volumes. Philosophical heritage. Moscow: Thought; 1972; Vol. 2.
2. Naumov AV. Updating the methodology of the science of criminal law. Modern state law 1991; 12: 23.
3. The encyclopedia of criminal law. St. Petersburg: Publishing house of professor Malinin; 2001.
4. Golovakha IP. (ed.). V. I. Lenin and the methodological questions of contemporary science. Kiev: Scientific thought; 1971.
5. The Great Soviet Encyclopedia. Moscow: Publishing House "Soviet Encyclopedia"; 1977; Vol. 27.
6. Mostepanenko MV. Philosophy and methods of scientific cognition. Leningrad: Lenpub; 1972.
7. Girginov G, Yankov M. Methodology as an area of gnoseology. Philosophy questions 1973; 8: 127.
8. Stefanov N. Theory and method in social sciences. Moscow: Progress, 1967; 156–157.
9. Kutsenko VI. (ed.). Methodological challenges of social prediction. Kiev: Scientific thought; 1977.
10. Andreev ID. Problems of logic and methodology of cognition. Moscow: Science; 1972.
11. Ugrinovich DM., Larmin OV, Ugledov AK. et.al. Essays on the methodology of cognition of social phenomena. Moscow: Thought; 1970.
12. Yanovskaya SA. Methodological problems of science. Moscow: Thought; 1972.
13. Gorbuza AD, Kozachenko, IYa, Sukharev EA. The concept of methodology of criminal law science. In Gorobtsov VI, Kozachenko IYa, Kruglikov LL, Sukharev EA, Tupitsa AYa. Criminal law measures to combat crime in the context of perestroika (pp. 4-13). Sverdlovsk: Publishing House of the Sverdlovsk Law Institute; 1990.
14. Kuznetsova NF, Tyazhkova IM. (eds.). Course of criminal law. General part. Vol.1: Notion of crime: university textbook. Moscow: Zertsalo-M; 2002.
15. Golik YuV. Philosophy of criminal law. Saint Petersburg: R. Aslanov Publishing House "Yuridichesky Center Press"; 2004.
16. Kedrov BM. Issues of logic and methodology of science. Selected works. Moscow: Science, pp. 272–273; 1990.
17. Lenin VI. Collected works. Institute of Marxism-Leninism at TsK KPSS. 5th edition. Moscow: Govpolpub; 1958-1965.
18. Suleimanov SS. The First Criminal Code of the RSFSR: conceptual framework and general characteristics. Vladimir; 2006.
19. Lukich R. Methodology of Law. Moscow: Progress; 1981.
20. Ilin VV. Criteria of scientificity of knowledge. Moscow: Highest school; 1989.
21. Lyadov AO. Methodological challenges of the historical-legal science. Legal educ sci 2003; 3: 26–27.
22. Sergeevskii ND. Philosophical techniques and the science of criminal law. J civ crimin law 1879; 1: 85.
23. Chuchaev AI. Facets of talent (essay). Lex Russica 2006; 65(4): 627-664.
24. Belogrits-Kotlyarevskii LS. The goal and method of the science of criminal law: Introductory lecture at Kiev University named after St. Vladimir. Kiev: Univ. typ. (V.I. Zavadskogo); 1891.
25. Zhytnik T, Yermak H, Moskalyova L, Podplota S, Fedorova O, Liapunova V. Socio-Psychological Aspects of HIV Infection Prevention among First-Year University Students as a Health-Saving Factor. Int J Pharm Res Allied Sci. 2020;9(1):1-8.
26. Shutenko A, Shutenko E, Shadrina I, Gushchina A, Ivanischeva O, Koreneva A. Psychological potentials of modern ICT as a tool for ensuring students' self-fulfillment and personal well-being in university education. Int J Pharm Res Allied Sci. 2018;7(2):143-152.
27. Aggarwal A, Agrawal N, Goyal R, Kamal R, Dahiya P. Evaluation Of Psychological Factors In Patients With Oral Lichen Panus. Ann. Dent. Spec.2020;8(2):5-12.
28. Rajhans N, Byakod G, Bhargude B. E Evaluation of effects of yoga on psychological stress, serum cortisol level and

periodontal disease in adult Indian population - A pilot study. Ann. Dent. Spec. 2018 Jul 1;6(3):276-280.
29. Vladimirskii-Budanov MF. Overview of the history of Russian law. Rostov on Don: Phoenix Publishing House; 1995.
30. Chuchaev AI. Historical school of Russian Criminal Law. Proceedings of the 6th International Scientific and Practical conference « Criminal law: development strategy in the 21th century» 29-30 Jan. 2009; 87-92. Moscow: Moscow State Law Academy; 2009.
31. Chuchaev AI. The science of criminal law in Russia from the first quarter to the end of the 19th century. Law pract 2008; 5: 19–32.
32. Chuchaev AI. The science of criminal law in pre-revolutionary Russia. Togliatti State Univ Sci Vector 2008; 2(2): 207–220.
33. Utevskii BS. History of the science of criminal law. Moscow: Typ. "Red Star"; 1946.
34. Kovalevskii M. Historical and comparative method in jurisprudence and methods of studying the history of law. Moscow: Typography F.B. Millera; 1880.
35. Feldshtein AS. The key movements in the history of the science of criminal law in Russia. Moscow: Zertsalo; 2003.
36. Chuchaev AI, Ovsepyan LG. Lacunae in criminal law research methods. Togliatti State Univ Sci Vector 2008; 2(2): 220–229.
37. Radishchev AN. Collected works. Vol. 1. Moscow; Leningrad: Publishing house of the USSR Academy of Sciences; 1938-1952.
38. Kriger GA, Tkachevskii, YuM, Kurinov BA. (eds.). Soviet criminal law. General part. Moscow: MSU Publishing House; 1981.
39. Soviet criminal law. General part. Moscow: Publishing house "Legal Literature"; 1975.
40. Lyaso ND. Stages of criminal activity in Soviet criminal law. Ph.D. thesis. Leningrad State Order of Lenin University named after A. A. Zhdanov, Leningrad, 1952; 62-63.
41. Gel'fer MA. (ed.). Soviet criminal law. General part. Moscow: Publishing house "Legal Literature"; 1972.
42. Ivanov VV. Comparison of history and the present as a methodological problem. Moscow: Science; 1974.
43. RSFSR. People's Commissariat for Justice. Materials of the People's Commissariat for Justice. Issue 11–12. Moscow: Publication of the People's Commissariat for Justice; 1921.
44. Rakitov AI. Historical cognition: systemic-gnoseological approach. Moscow: Polpub; 1982.
45. Piontkovskii AA., Romashkin PS, Chkhikvadze, VM. (eds). The course of Soviet criminal law. In 6 volumes. Vol. 2. Moscow: Science; 1970.
46. Soviet criminal law. General part. Moscow: Govlawpub; 1952.
47. Kozachenko IYa, Neznamova ZA. (eds.). Criminal law. General part. Moscow: Infra M – NORMAL; 1997.
48. David R. Les grands systemes de droit contemporains. Transl. from French by V.A. Tumanov. Moscow: International relationships; 1999.
49. Meleshko NP. The socialist system of law and some challenges of improving the modern criminal law of Russia. Proceedings of the 5th International scientific and practical conference «The history of the development of criminal law and its significance for the present»; Faculty of Law of the M. V. Lomonosov Moscow State University; 26–27 May 2005; Moscow: LeksEst; 2006.
50. Dvoryanskov IV, Druzin AI, Chuchaev AI. Criminal protection of the administration of justice (historical and legal research). Moscow: 4th branch of the Military Publishing House; 2002.
51. Syrykh VM. The method of jurisprudence (basic elements, structure). Moscow: Publishing house "Legal Literature"; 1980.
52. Grushin BA. Essays on the logic of historical research (The development process and the challenges of its scientific reproduction). Moscow: Highest school; 1961.
53. Nikitin AP. Method of cognizing the past. Philosophy questions 1966; 8: 56.
54. Gulygi AV. Philosophical challenges of historical science. Moscow: Science; 1962.
55. Frantsuzova NP. Historical method in scientific cognition (questions of methodology and logic of scientific research). Moscow: Thought; 1972.
56. Kedrov AM. History of science and principles of research. Philosophy questions 1971; 9: 76-89.
57. Razumovskii IP. The October Revolution and the methodology of law. Under the banner of Marxism 1927; 10–11.
58. Vasilev AM. (ed.). Theory of state and law. Moscow: Publishing house "Legal Literature"; 1983.
59. Tille AA, Shvekov GV. Comparative method in legal disciplines. Moscow: Highest school, 1973.
60. Kosarev AI. On the use of the comparative method in historical and legal research. Soviet state and law 1965; 3: 53.
61. Kovalevskii MM. Historical and comparative method in jurisprudence and methods of studying the history of law. In Isaev IA. (ed.). Anthology of world legal thought. Vol. 5: Russia: Late 19th Century - XX century (pp. 123-126). Moscow: Thought; 1999.
62. Chuchaev AI. N. D. Sergeevskii: milestones and creative heritage. Ulyanovsk: Ulyanovsk State University; 2007.
63. Volkov BS. Methodology of historical cognition of criminal law. In Proceedings of the anniversary Russian scientific conference "Two centuries of legal science and education at Kazan University"; May 13-14, 2004; 339-341. Kazan: Center for Innovation Technology; 2004.
64. Kerimov CA. Introduction to the philosophy of law. Moscow: Manuscript; 1992.

65. Kopnin PV. Dialectics as logic and theory of cognition. Moscow: Science, 1973; 160–164.
66. Rozental MM. The historical and the logical. Categories of materialist dialectics. Moscow: Govpolpub; 1956.
67. Dobriyanov VS. Methodological challenges of theoretical and historical cognition. Moscow: Thought; 1968.
68. Solovyov VS. Collected works in two volumes. Philosophical heritage. Vol. 2. Moscow: Thought, 1988.
69. Kistyakovskii AF. Elementary textbook of common criminal law. Kiev: Typ. I. A. Davidenko; 1882.
70. Belogrits-Kotlyarevskii LS. Essays on the course of Russian criminal law. Kiev-Kharkov: F. A. Ioganson's South Russian Book Publishing; 1896.
71. Hegel GWF. Elements of the Philosophy of Right. Moscow: Thought; 1990.
72. Kudryavtsev VN. (ed.). Criminal law. History of Jurisprudence. Moscow: Science; 1978.
73. Solodkin II. Essays on the history of Russian criminal law. Leningrad: Leningrad University Publishing House, 1961: 62–63.
74. Gertsenzon AA. Criminal law and sociology. Moscow: Publishing house "Legal Literature"; 1970.
75. Toskina GN. Criminal punishment in the legislation of the RSFSR and the USSR (1917–1926). Moscow: IG Lawer; 2005.
76. Bogdanov VYa. Correctional labor. Issues of essence and efficiency. Moscow: All-Union Research Institute of the Ministry of Internal Affairs of the USSR; 1978.
77. Makarenko AS. Pedagogical works. Moscow: Publishing house of the APN RSFSR; 1950; Vol. 1.
78. Bagrii-Shakhmatov LV. Criminal punishment and the law of correctional labor. Moscow: Publishing House of the Higher School of the Ministry of Internal Affairs of the USSR; 1969.
79. Sergeevskii ND. Russian criminal law. General part. Teaching aid for lectures. St. Petersburg: Typ. M.M. Stasyulevicha, 1911: 8–9.