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## SOCIAL AND HISTORIC CONDITIONALITY OF THE CONCEPTS OF LAW AND THEIR REPRESENTATION IN FICTION

*The article proves the necessity of integrated approach to the research into legal concepts representation in fiction, using knowledge, methods and instruments of literary, legal and cultural studies. Such approach helps to reveal common and distinct features of legal concepts content in the pieces of literature, and mark out timeless or temporary content in them.*

**Keywords:** legal concepts; representation; fiction; socio-historic conditionality; literary studies; legal studies.

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### **Социально-историческая обусловленность концептов права и их репрезентация в художественной литературе**

*Доказывается необходимость использования интегрированного подхода к анализу репрезентации концептов права в художественной литературе, включающего в себя не только методы и инструментарий литературоведения, но и знания по истории, юриспруденции, культурологии. Таким образом достигается наиболее полное и всестороннее описание концептов права, включающее их всеобщее, национально-специфическое и индивидуальное наполнение. В качестве примера эффективности такого подхода использовано описание социально-исторической и правовой обстановки в Российской империи конца XIX – начала XX века и то, каким образом она отразилась в содержательном наполнении концептов права в художественной литературе указанного периода.*

**Ключевые слова:** концепты права; репрезентация; художественная литература; социально-историческая обусловленность; интегрированный подход; литературоведение; юриспруденция.

**Problem setting.** Modern scientific trends are marked with integration processes which, with the help of different sciences data, methods and instruments combina-

tion, give the researchers the opportunity to study some objects more completely and comprehensively.

Such branch of science as legal studies or jurisprudence has been enjoying the advantages of its links with other branches of science for a long time. There its close connections with philosophy, history, sociology, psychology, economic studies should be mentioned, which then, resulted in formation and successful functioning of now considered as self-contained legal disciplines as philosophy of law, history of legal studies, sociology of law, financial law, judicial psychology and others.

In philology, the integration mergers of this kind resulted in appearing and functioning such disciplines as jurilinguistics (a branch of science which studies interconnections of law and language), represented by N. D. Golev, his school and other scientists; linguistic cognitology (studies interrelations of language and conscience in the processes of world conceptualization and categorization), represented by Ch. Fillmore, G. Lakoff, H. Kubryakova, Z. Popova and others; linguistic culturology (studies interconnections of language and culture), represented by E. Sapir, B. L. Whorf, A. Wierzbicka, S. Vorkachiov, V. Maslova, Yu. Stepanov and others.

Both linguistic cognitology and linguistic culturology operate with the term 'concept' which has several meanings and is used by several other sciences, except these.

The 'Concept' in linguistic culturology was defined by Yu. Stepanov as the main cell of culture in human mentality [17], and by D. Lihachiov, H. Kubryakova as the result of the collision of a word's lexical meaning with personal and ethnic background of humanity [12].

The term 'concept' in its culturological meaning, to our point, can be successfully applied to literary and cultural studies of fiction, combined with some legal studies to describe representation of different concepts in the pieces of literature, fiction, in particular. Such application of the 'concept' is seen as an instrument for description of mentality and conscience of the nation, including the legal conscience, value orientations, cultural traditions, stereotypes of a nation, of a social group, or an individual.

**Recent research and publication analysis.** Cultural concepts (N. Alephirenko, S. Vorkachiov, V. Vorobiov, H. Zinovieva, V. Maslova, Yu. Stepanov, E. Sapir, B. L. Whorf and others) have social and historic character and «are bunches of culture» in human conscience [17, p. 43]. They can be represented in different forms – in literature, arts, music, etc. The most volume and meaningful form of the concepts representation, to our mind, is the work of literature.

Numerous recent researches used conceptual analysis which then led to appearance of such collections as, for example, «Antology of Concepts» [1], but the researches of the pieces of culture, including fiction, with the help of 'concept' are in progress.

**Paper objective.** On the basis of literary, cultural and legal studies' instruments this paper aims to substantiate the socio-historical conditionality of the concepts of

law as they represented in literature of the period of second part of the XIX – the beginning of the XX centuries.

**Paper main body.** The analysis of the pieces of fiction from the point of the main concepts of law representation seems impossible without historical and social background, national conditions and legal trends description that influence the concepts formation. D. Lihachiov rightly mentioned, that the concept ‘can be differently deciphered depending on the momentary context and cultural experience, cultural individuality of the concept-bearer [13, p. 156]. Definitely, to decipher all complex of meanings which stands behind a concept, a researcher needs to have wide background knowledge, possibly all intra- and extra-textual links and connections embracing the whole culture at that period and place. Thus, notional filling of a concept has social and historic character, even in spite of existence of so called universal concepts or eternal themes (A Wierzbicka, G. Gachev, Yu. Stepanov, L. Sinelnikova). The notion of the ‘universal concept’ means, that it exists in different cultures, but, to our mind, its meaningful content and sense in different cultures will differ. In this case, one can say about dialectics of universal and nationally specific in the concept content [14, p. 3]. Among universal concepts there are *the good* and *the evil, love, law*, etc.

Thematically *law* belongs to legal concepts. Besides it, among the legal concepts there are *justice, guilt, crime, punishment* and others, which bear national, as well as the universal character.

The institutional character of *law* should be also considered. Law is as important part of a human’s social life as religion, culture, science, and daily routine. Legal concepts and their language representations comprise legal conceptosphere. Legal conceptosphere is one of the basic forms of social awareness. It has social significance and worth.

Law as a science has its terminological corpus and its specifics is that the legal terms serve not only the legal science itself, but simultaneously are used in people’s everyday life. When functioning in everyday life, legal terms sometimes can acquire not terminological, but evaluation meaning.

Studying legal concepts means studying them as the parts of legal worldview, as the reflection of legal science and legal institutions development, as an aggregate of legal norms and principles which exist in the state in a certain historical period. Besides, the complex of legal views, ideas, beliefs, conceptions, the level of legal awareness of a society, its moral is the necessary constituent of the legal worldview. Thus, analyzing representation of the legal concepts in the works of art and literature, a researcher should necessarily engage all this knowledge in such piece of work. For this purpose, for example, while analyzing legal concepts representation in Russian fiction of the period – the end of the XIX – the beginning of the XX centuries, it will be necessary to employ the analysis of legal and juridical texts, decrees and orders, etc; to reveal the peculiarities of legal norms and institutions development of the time; to study the discourse of terminological use in the situations of regulated legal communication; to analyze publicist and belle-letters texts to study out the

legal awareness level of the definite society in the definite period of time. This will help to represent social or national content into the concepts.

But all mentioned above will not yet reconstruct the legal worldview and the concept as a part of it, as it is considered of by culturologists. Yu. Stepanov gave a vivid illustration of how concepts can be explained on the example of the concept of *law*. In an ordinary person's, but not a lawyer's representation the concept *law* (which exists in a person's mental world) does not look like a notion of the separation of powers, or the historic evolution of the notion of 'law', etc. It is the bunch of representations, conceptions, ideas, experiences, feelings and emotions which accompany the word 'law' to comprise the concept [17, p. 43]. And all these will give the individual content in the concept. The combination of national, social and individual elements in the concepts contents can be found in the works of culture, literature and fiction, in particular. Thus, to reconstruct them will be possible by using the methods of literary, jurisprudence, psychology and linguistics.

The questions of law, justice, crime and punishment have always existed in all types of literature, starting with the Bible. Such existence can be explained by the vast scale of the legal part of life, which embraces different relations between people including social, economic, political, etc. It is known, that human society exists in progress thanks to regulation of these relations, and any of their violations make a conflict. We should say that a conflict is the key element in the literary work development. Individuals' involvement into the conflict creation and solving, psychology of their behavior, motivation of their acts and actions, to our mind, can be most fully discovered at the moment of their actions' evaluation by the society on the basis of those evaluations that this society has worked out. Such conflicts often become the object of depiction in the works of literature. Among other objects of depiction are the motives of persons, the acts of persons, the system of justice, etc.

If to look, for example, what was the legal concepts' content in the Russian Empire in the second part of the XIX – at the beginning of the XX centuries, what exactly from the legal sphere was represented in fiction, it would be necessary to consider social and historic situation in the Empire, to overview the legal sphere and legal relations development in the stated period of the society development, to characterize literary process and the process of public opinion formation on the basis of the literature.

It should be said, that in the stated period of time the legal discourse was actualized in one way or another in the works of almost all the authors: legal scholars, practical lawyers, publicists, fiction writers. Representation of the legal sphere and some aspects of it in the works of Russian authors have been studied previously by the scientists, including I.T. Goliakov, T.S. Karlova, A.F. Kony, and many others.

I. T. Goliakov depicted how the theme 'court and trial' was represented in the literature of the XIX century, starting his analysis with the works by A. N. Radishchev, to F. N. Dostoyevsky, L. Tolstoy and V. G. Korolenko [4]. T.S. Karlova tried to describe the development of the theme 'court and trial' and analyzed it in the

Dostoyevsky's novels and in «The Author's Diary» [7]. The famous lawyer and attorney A. F. Kony wrote essays about Russian writers and specially marked their contribution into the legal issues and public legal awareness of that period [10]. Even some modern lawyers could not stay apart from the topicality of legal issues and their collaboration with literature, law and arts [2, 17].

The social and historical conditions in the Imperial Russia of the second part of the XIX – the beginning of the XX centuries has been described in numerous scientific works on history, legal studies, cultural studies, for example, [5]. A general characteristic of the time and literary process has been given in academic publications, in textbooks and monographs. «At the turn of XIX–XX centuries in the European and Russian spiritual life there appeared the tendencies which were connected with XX century person's attitudes. They demanded the social and moral problems comprehension: a person and society, arts and life, the place of an artist in society, etc., and all that led to the search of the new image methods and tools» [6].

We should mention, that the period of the second part of the XIX century in Russia was characterized by significant changes in industry (production development) and industrial relations, by the change in the economic model, the development of public awareness and the revolutionary upraise. The considerable reforming of many spheres of life, including legal, took place. Alongside with the other spheres, the in 1864 the judiciary was reformed. As the result the new legislative acts, so called, Orders appeared. The reforms meant to asset respect to the judiciary. The Orders affirmed the judicial power as separate and independent branch. The courts of general jurisdiction with the participation of jurors and the conception of competitiveness in the judicial process were set up. A defense lawyer was expected to be the client's attorney, and the attorney's professionalism influenced greatly the jury's verdict and client's further fate.

That period was characterized by the rapid development of the institute of Advocacy. A. F. Kony wrote: «Judicial reform was called upon to strike the worst of the arbitrariness, that is judicial arbitrariness, hiding behind the mask of justice» [11]. Such talented and influential lawyers and attorneys as A. F. Kony, F. N. Plevako, N. P. Karabchevsky, V. D. Spasovich, A. Urusov, S. A. Andreevsky, P. A. Alexandrov and others were at the high of their career. These people embodied unprejudiced judiciary and high moral. Their speeches were and still are the examples of professional oratory, eloquence, argumentation and persuasion. Some of the cases they participated in then became the literary plots in the works by Dostoyevsky, Tolstoy, Bunin and others.

But to the end of the XIX century there social and political changes happened, and among them were so called counter reforms of the judiciary. They were connected with fighting the revolutionary movement and straightening the autocracy in the country. Shortly, these counter reforms meant adoption of special law for fighting revolutionary movement, limitation of publicity in political trials, elimination of magistrates' courts.

The beginning of the XX century, as it is known, was marked by further straightening of the autocracy in Russian Empire, its involvement into Japanese, and then, into the World War I, further revolutionary upsurge, raising number of strikes in industries. What should be especially mentioned is the adoption in 1906 of the «Provision on the Establishment of Military Courts». Its enforcement resulted in numerous death executions, amounted to 7,500 people hanged in the years 1907–1909, according to the statistics [8, p. 339]. Many people were also shot dead without trials. The main form of execution in that period was hanging, and the hanging was figuratively called ‘Stolypin’s tie’. Mass executions caused social indignation and protest. The most outstanding people of the time actively reacted to the executions. B. E. Kvashis who investigated the problem of death penalty in Russia, wrote, «Death penalty has always been a social phenomenon; this is the special cultural and social and psychological phenomenon, that is why vast number of philosophical, historical, juridical and fictional literature is devoted to it» [8, p. 6].

Among the famous writers who actively responded to death penalty were F. M. Dostoyevsky, L. Tolstoy, V. G. Korolenko, L. N. Andreev and others. They created appealing imagery (L. N. Andreev, *The Story about the Seven Hanged* «Rasskaz o semi poveshennyh») and loud publicism (L. Tolstoy *I Cannot Be Silent* «Ne moy molchat»; Korolenko *Common Phenomenon* «Byutovoe yavleniye») to show that violent deprivation of life by the state was inhuman, unnatural, and more deadly than any other form of killing people. These and other authors, for example, [3, 9, 15] contributed to the concepts *death penalty and punishment* contentful fillings, which differs from the juridical notion of punishment as revenge, retribution, removal of the offender and his possible correction. In literature and fiction death penalty is seen as spiritual torture, horror, death, instinct to live, killing, executors, hope, etc. «In our literature, not juridical, but in fiction this side of death penalty (moral protest against executors) is the most amazingly expressed <...>, more convincingly and compelling than thousands of scholarly writings and statistic columns. They do not prove, they show, and this is their power», wrote V. D. Nabokov, Russian criminologist and forensic expert of the end of the XIX – the beginning of the XX centuries. [16, p. 208].

As for the concept *punishment* as a whole, it is most fully represented in such pieces of literature as *The House of the Dead*, *Crime and Punishment*, *The Karamazov Brothers* by Dostoyevsky, *The Resurrection* by L. Tolstoy, *The History of My Contemporary* by V. Korolenko and others.

In the famous *Crime and Punishment* by Dostoyevsky Raskolnikov, the main character of the novel, committed a crime, murdering two women. The crime is described only in one chapter of the novel. The most part of the novel is devoted to his punishment which is marked there as suffering and anguish. Raskolnikov feels anguish, and he is pushed by other characters of the novel to take suffering, to bear suffering. To Doetoyevsky, this inner person’s punishment, moral suffering, Christian acceptance of his guilt and penance are quite more valuable than official judicial punishment.

In other Dostoyevsky's novel, *The Karamazov Brothers*, there is also proved the inevitability of person's moral punishment through Christian values, which can, as well, help to hold a person from committing crimes.

In L. Tolstoy's *The Resurrection* the system of judiciary which is set up by people is contrasted to the higher, the God's system of judging people, to self-judgment, self-punishment, and, thus, self-improvement and resurrection of a person.

V. G. Korolenko wrote notable, many-sided panoramic *The History of My Contemporary* after many years the events of 60–90s of the XIX century had taken place, trying to evaluate them objectively from the position of time. The described events, thus, became historical. Many of them were connected with the penal system of Russian Empire of that period. Korolenko pays his special attention to the personality of those involved in any activity: a populist revolutionary, a prisoner, a potential convict, a penal officer, etc. It is personality that is the important factor to create true justice system in the state in which there is no lawlessness, arbitrariness and violation of human dignity.

**Conclusions of the research.** It is necessary for a researcher of the concepts of law and their representation in fiction to engage wide comprehensive knowledge of social, historic, legal context of the time aimed at the description of their content fully, to trace the changes and development in their content, to find out interconnections of the temporary and permanent and timeless elements in their notional content. Such integrated approach is very topical at the modern stage of the scientific development.

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**Соціально-історична обумовленість концептів права та їх репрезентація в художній літературі**

*Доводиться необхідність використання інтегрованого підходу до аналізу репрезентації концептів права в художній літературі, який включає в себе не тільки методи та інструментарій літературознавства, а й знання з історії, юриспруденції, культурології. Таким чином досягається найбільш повний і всеосяжний опис концептів права, що означає виявлення їх універсального, національно-специфічного та індивідуального наповнення. Як приклад ефективності такого підходу використано опис соціально-історичних та правових обставин у Російській імперії кінця XIX – початку XX століть і те, яким чином вони вплинули на зміст концептів права у художній літературі цього періоду.*

**Ключові слова:** концепти права; репрезентація; художня література; соціально-історична обумовленість; інтегрований підхід; літературознавство; юриспруденція.

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