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RADICAL PHILOSOPHICAL CONCEPTS AS A RESOURCE FOR DOCTRINAL RENEWAL OF CRIMINAL LAW

Abstract

This article analyzes the heuristic potential of radical philosophical concepts for the doctrinal renewal of criminal law. The expediency of a paradigmatic approach is substantiated, in which doctrine is considered an independent source of criminal law. Special attention is paid to the possibility of reconfiguring criminal-legal thinking, taking into account transgressive, postsecular, and activity-based approaches.

Modern criminal law increasingly encounters borderline situations that do not fit within the framework of positivist thinking. This is why interest is growing in radical philosophical concepts as a potential resource for doctrinal renewal of criminal law paradigms. Such an approach allows not only for the renewal of the norm, but also for the rethinking of normative rationality itself. In this context, an integrative analysis of the ideas of Georges Bataille, Michel Foucault, Georgy Shchedrovitsky, as well as the conceptual approaches of Leon Petrażycki and Pitirim Sorokin, is appropriate (Bataille, 2021; Foucault, 1998; Shchedrovitsky, 2007; Petrazhytsky, 1907; Sorokin, 1937).

A key analytical framework is the paradigmatic approach in law, within which doctrine is considered a source of criminal law (see Article 7 of the ECHR; Alexy, 2018). Furthermore, the results of the reform project for the renewal of the Criminal Code of Ukraine, presented in 2024, demonstrate an attempt to implement Western European models of normative sensitivity, flexibility, and axiological orientation, which correlates with the proposed philosophical analysis (Tuliakov & Savinova, 2024; Draft of the new Criminal Code of Ukraine, 2024).

1. Bataille's "Black Sun" as Radical Critique of Norm-Making
In Georges Bataille, the "black sun" is a metaphor for the ecstatic and destructive experience of transgression—a crossing of the boundaries of the permissible. This sun does not give light but absorbs—it destroys subjectivity, legal order, and moral structure (Bataille, 2021). This concept allows us to identify points where the legal norm loses its ability to justify its own moral legitimacy. Transgression as an event questions the fundamental foundations of punitive thinking. Such an approach becomes particularly relevant in the context of novel existential crimes: euthanasia, war trauma, ecological catastrophes, etc. In this vein, the new draft Criminal Code seeks to overcome blind repressiveness and integrate the notion of "value exceptions" for the assessment of borderline situations (Draft of the new Criminal Code of Ukraine, 2024).

2. Foucauldian Critique of the Disciplinary Society
In "Discipline and Punish," Foucault reveals the mechanisms of subject formation through discipline, control, and normalization (Foucault, 1998). Criminal law, according to this logic, appears as part of the architecture of biopower that eliminates otherness, transgression, and non-normativity. Thus, law loses its ethical dimension and becomes an instrument for the production of docile bodies. Rethinking this paradigm opens space for the humanization of criminal policy and the introduction of alternative response practices. This is especially evident in the Westernized approach of the new code's draft, which proposes response systems oriented toward minimizing intervention and promoting resocialization (Draft of the new Criminal Code of Ukraine, 2024).

3. Georgy Shchedrovitsky: Activity-Based Thinking and Transgression as a Condition for Renewal

Shchedrovitsky proposed viewing law as an activity-based system—one that constantly reconstructs its operational means through engagement with crises, boundaries, and anomalies (Shchedrovitsky, 2007). In this logic, transgression is not a threat but a methodological opportunity for transition to a new way of thinking. Thus, the "black sun" in the activity-based perspective is not a source of chaos but an impetus for creative law-making. In the renewed code, designed as an open and dynamic document, the possibility of rapid adaptation of institutions to new social challenges is envisaged through mechanisms for reviewing norms and principles (Draft of the new Criminal Code of Ukraine, 2024).

4. Petrażycki's Psychological Theory of Law and Sorokin's Sociocultural Dynamics

Leon Petrażycki considered legal experiences (emotionally-intuitive imperative-attributive representations) as the primary form of law, from which positive legal norms subsequently develop (Petrazhytsky, 1907). This view allows for a new understanding of the boundary between law and crime: crime becomes not only an act of violation but also an act of deep conflict of legal emotions. Pitirim Sorokin, in turn, emphasized the cyclicity of cultural types (ideational, idealistic, sensate) and the change in the type of morality and law depending on the phase of cultural dynamics (Sorokin, 1937). In contemporary criminal law, this is expressed in the concept of intuitive criminal law, where law enforcers increasingly appeal to social empathy, affect, and contextual understanding of the motives of the individual. This approach considers crime not only as a violation of the norm but as a complex ethical situation requiring psychological, cultural, and emotional interpretation (Robinson, 2013).

Hence, the Westernization of the new Criminal Code of Ukraine provides for the inclusion of culturally sensitive provisions and norms aligned with the idea of the variability of legal consciousness in a multicultural society (Tuliakov & Savinova, 2024).

5. Narrative Criminology as a Methodological Supplement

Modern approaches in narrative criminology, discussed within the framework of the EUROCRIM 2025 preparatory seminar, reveal crime not as a fact but as a process of narrative—a constructed event in interaction, particularly under conditions of power, identity, and context (Sandberg, 2022; Verde, 2025; Poppi, 2025). Criminal action is analyzed through the structure of narrative, emotional tensions, the unspoken (Verde, 2025), as well as the style and rhetoric of self-presentation (Poppi, 2025). In this context, the “black sun” emerges not only as a philosophical metaphor but as a narrative strategy for articulating trauma, identity, and borderline experience, which should be considered in the formation of criminal law doctrines. This aligns with the new code's provisions on considering “the specifics of the offender's personal motivation” as part of the structure of guilt (Draft of the new Criminal Code of Ukraine, 2024).

In the context of Ukraine, where war and social transformations have led to new forms of crime and deviance, narrative criminology can become a key tool for understanding and reforming criminal law. For example, studies of the narratives of war veterans who have committed crimes can reveal how traumatic experience influences their actions and perceptions of legal norms.

This, in turn, can inform the development of new approaches to criminal responsibility and rehabilitation.

Under wartime conditions in Ukraine, new forms of crime arise, associated with combat experience, post-traumatic stress disorder, and social maladaptation. For example, cases of domestic violence committed by veterans may result not only from individual psychological problems but also from broader social narratives about masculinity, strength, and the role of men. Analyzing such narratives can help identify how social expectations and cultural attitudes influence individual behavior, and how criminal law can adapt to these realities. This is especially relevant in the context of reforming the Criminal Code of Ukraine, where new social challenges and transformations must be considered through the theory of desert (Robinson, 2013).

6. Theory of Desert by Paul Robinson: Doctrine as Ethical Reconfiguration
In his theory of criminal law, Paul H. Robinson insists that punishment should be not only effective but also just from the perspective of the offender's desert. He contrasts utilitarianism with intuitive moral perceptions of justice. This opens the way for a new role of doctrine: it should not only interpret the law but also serve as a conduit for society's conception of just punishment (Robinson, 2013). From this perspective, the ideas of Bataille and Foucault can serve as tools for critiquing formal justice in favor of real justice, based on institutionally articulated doctrine. This is especially relevant in wartime, where traditional law often cannot provide answers to existential-level questions.

7. Doctrine as a Source of Criminal Law in the Paradigmatic Approach
The paradigmatic approach in law recognizes that doctrine can be a source of criminal law, provided it is verifiable, stable, and clear to the subject (Alexy, 2018). Article 7 of the ECHR does not exclude such a source if its foreseeability is ensured by professional scientific consensus. Modern legal thought recognizes the multiplicity of sources of criminal law. In the paradigmatic approach, actively developing in the continental tradition, doctrine plays the role of a normative source. This is especially important in situations where positive law does not keep pace with social transformations—for example, in matters of criminalization of artificial intelligence, post-traumatic wartime reactions, and bioethical conflicts (Ambos, 2013).

In this sense, Article 7 of the ECHR does not preclude a doctrinal source if it ensures: foreseeability (i.e., it is systematic and verifiable), clarity (i.e., understandable to the

addressee), stability (i.e., based on professional scientific consensus) (Alexy, 2018; Ambos, 2013).

In this context, the doctrine that integrates radical philosophical concepts, narrative strategies, and psychological theories can serve as a means of modernizing criminal law as an activity-based system. In the spirit of the axiological approach and the ideas of Y. Baulin, the regulatory function of criminal law should shift from formal punishment to ensuring justice as a core value. Institutional reform should be carried out through the prism of human rights, as substantiated in the work of V. O. Tuliakov and N. A. Savinova, who emphasize the need for decolonization of criminal law (Tuliakov & Savinova, 2024). The draft of the new Criminal Code of Ukraine reflects this position through ideas of functional codification, strengthening the role of principles, reducing formalism, and increasing the influence of academic doctrine as a source of law (Draft of the new Criminal Code of Ukraine, 2024).

In a globalized world, criminal law is no longer exclusively an internal affair of the state. International standards, decisions of the ECtHR, positions of the UN, and the International Criminal Court form a matrix of transnational criminal policy. In this context, doctrine serves as an integrative platform where local legal systems align with global requirements of humanism, human rights, and post-conflict justice (Ambos, 2013).

Conclusions

Radical philosophical concepts not only reveal the internal contradictions of traditional normativity but also contribute to the formation of a new axiomatics of criminal law. They allow for a different perspective on the boundaries of the punitive, the meaning of legal response, and the function of justice in postmodern culture. The new draft Criminal Code of Ukraine, oriented toward European standards, largely implements these approaches: it reduces the rigidity of institutions, increases the role of principles, and opens space for doctrinal influence. Thus, philosophical radicalism becomes not a threat, but a resource for legal transformation. Criminal law must be sensitive to transgression, emotion, narrative, and social pain, while maintaining the rational capacity for structural self-rethinking.

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