



State legal concepts XIX - early XX centuries. in modern scientific discourse

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Abstract

The paper examines the problem of searching for an effective methodology for identifying, systematizing and analyzing state legal concepts of Russian political scientists of the 19th and early 20th centuries. Despite the available studies to date on individual state-legal concepts in the Russian Empire, their comprehensive research, general theoretical analysis and systematization is required, what is possible only if there is a proven methodological basis. The aim of the work is to present the stages and results of the authors' approach to the identification, systematization and evaluation of state-legal concepts in Russia in the 19th and early 20th centuries, which can be used as a basis for conducting similar studies in relation to other sectoral legal exercises. The paper substantiates the algorithm for obtaining systematic knowledge about the entire complex of state-legal concepts of the designated period showing the features of dissertational and monographic studies, the specifics of work with articles in the periodical legal press. The issues on the effectiveness of state-legal exercises are separately touched upon and a mechanism for using the forms of scientific knowledge obtained in the past is proposed to determine the novelty and relevance of the studies conducted today.

Keywords: state-legal concepts, state law science, thesis, monograph, scientific paper, a form of scientific knowledge, the Russian Empire.



Introduction.

To date, a unified point of view has emerged in the humanitarian research field about the importance and relevance of analyzing the legal concepts of the past for building an effective regulatory system in the present. While studying the problems of the history of awarding academic degrees in the Russian Empire for quite some time, we found the lack of systematic scientific knowledge of the branch legal concepts of pre-revolutionary Russia (civil law, criminal law, church law, financial law, state law, administrative law, concepts of international law) and the poorly developed methodological methods for developing the latter.

Of course, such conclusions do not imply a complete lack of research in this area. Thus, the first (and quite successful) attempts to present a systematic construction of the history of sectoral concepts can be found in the works of A. V. Gorozhanin [1], N. M. Zolotukhin [2], N. Ya. Kuprits [3], V. E. Lob [4], S. D. Makiev [5], A. Yu. Mordovtsev [6], Yu. N. Ovsyannikov [7]. A significant contribution to the development of the history of legal concepts was made by V. G. Grafsky [8, 9], and a number of qualification papers relating to the concepts of individual thinkers [10, 11, 12]. At the same time, it is obvious that further comprehension of the historical theoretical and legal heritage is required and its use in the legal policy of a modern state integrated into the global information system.

Materials and methods.

It should be noted that no one has succeeded in summarizing all the existing domestic legal concepts to the general logical and methodological system, distributing them at key stages in the development of scientific thought (or singling out only the pre-revolutionary and Soviet period), and perhaps no such goal was set. On the one hand, such a task seems impossible because of the huge volume of concepts, theories, concepts, etc. within each branch of legal science, and then, indeed, their identification, systematization and analysis can take decades. On the other hand, the existence of a reliable and proven methodological framework capable to lead a researcher to creating a general picture of Russian legal concepts could significantly facilitate the fulfillment of this difficult task, however, this problem is only now in the stage of actualization.

Given these difficulties, we decided to start small and identify, systematize and analyze the state-legal concepts of Russia developed in the 19th and early 20th centuries, thereby attempting to solve the problem of finding an effective methodology for the search and analysis of legal concepts in all branches of the legal science for the entire period of its development. Next, we will present the results of the search for an updated methodology to systematize and analyze state-legal concepts of Russia in the 19th and early 20th centuries (using methods of interpreting legal texts and formal-logical tools).

It should be noted that successful attempts to analyze individual state legal exercises were made in the Russian jurisprudence (E.E. Nikitina [13], Yu.L. Shulzhenko [14,15], etc.), and not only for the pre-revolutionary, but also the Soviet period [16]. The same direction is quite successfully developing in Western jurisprudence, albeit in a broader sense [17, 18, 19, 20, 21, 22]. At the same time, works on systematization of all state-legal concepts (dissertational, monographic, published in periodicals) of the pre-revolutionary period were not carried out.

In order to fill this gap, at the first stage master and doctoral dissertations on state law (total 130) defended at law faculties of Russian imperial universities were identified with the use of reference books (primarily the works of G.G. Krichevsky and A.N. Yakushev [23,24]). The analysis



of the subject matter and content of these works showed the presence of a large number of studies that are not relevant to modern constitutional law science within the number of dissertations defended according to the "State Law" "category of sciences". About a third of all defended dissertations were subject to general theoretical, historical legal, philosophical and legal questions.

Main part.

The presence of elements that are not peculiar to the subject matter among the defended dissertations was the result of the inconsistency of state policy in the field of attestation of scientific personnel and the position of the scientific community at the second half of the XIX century. At that time, some prominent representatives of historical and legal science persistently and patiently called for the introduction of a scientific specialty (the "category of sciences") "The History of Russian Law" for the award of master's and doctoral degrees, but did not wait until 1917, when the former state system of awarding academic degrees has ceased to exist.

Nevertheless, the theses on state law and the concepts contained in them were identified and bibliographically described, and the next stage was their classification. At this stage, we faced the need to create a classifier for the science of pre-revolutionary state law that would reflect the system (composition) of the relevant branch of scientific knowledge in the pre-October period. The reason was the positions of political scientists of the Russian Empire, most of which included in the public law science the elements which are alien to it today (the theory of government, and sections of the general theory of law sometimes). The creation of a suitable classifier was complicated by a subjective assessment of the need to include certain sections and subsections into it, therefore the views of leading scientists on the structure of the state law science were analyzed (V.M. Gessen, A.D. Gradovsky, V.V. Ivanovskiy, F. F. Kokoshkin, N.M. Korkunov, N.I. Lazarevskiy, A.V. Romanovich-Slavatinskiy), and a classifier consisting of sections "General theory of government", "Theory of constitutional law", "General part of Russian state law", "The special part of the Russian state law". As a result, it became possible to identify priority and poorly developed areas of state legal and juridical research dissertations. For example, most of the works were defended on the history of formation and development of state power in Russia and development of political thought. Works on the methodology of science and the legal status of the individual are distinguished among the works on general legal, historical legal and philosophical issues, as well as the so-called "pure" state-legal theses.

Further, it was necessary to systematize the state-legal concepts presented in monographs and papers, also taking into account their correlation with the sections of the classifier of the state law scienc. Here, however, a methodological problem also arose: it was not clear which of the monographs and (to a greater extent) papers are to be considered as external expressions of concepts, what is to be meant as such forms of scientific thought expression. Obviously, the attempt to cover all articles, essays, notes published in the periodical legal press, and also reports on the conduct of events that in one way or another are correlated with the field of the state law science, will not lead to any reasonable result: it would be physically difficult and perhaps completely meaningless. The situation was also hampered by the absence in the Russian legal science of a unified approach to understanding the concept in terms of the form of external expression of a scientific legal thought, its essential and content characteristics.

As a result, V.S. Nersesyants's approach was taken as a basis, who believed that the concepts should be understood as "various forms of theoretical expression and fixation of historically emerging



and evolving knowledge, those theoretical concepts, ideas, positions and constructions in which the historical process on deepening the cognition of political and legal phenomena obtains its concentrated logical and conceptual expression" [25, p. 1]. Moreover, a concept often understood in the domestic scientific or encyclopaedic literature as a doctrine, has a fundamental character and "provides a corresponding functional purpose" [26, p. 8]; it can be perceived in the special legal sense as "doctrinal texts of recognized legal experts that contain specific rules of behavior that are the source of the norms of law" [26, p. 34].

In order to classify various scientific works as state legal concepts, we have thus chosen a "boundary" interpretation that views a concept as a scientific text of a recognized specialist in the field of law, containing specific conclusions and solutions to legal problems, and which can serve as a source in the law-making process. This understanding allows us to methodologically correctly use the works of Russian political scientists, that were expressed in the form of monographs and scientific papers. An obligatory condition for the latter should be the criteria of scientific, fundamental, systemic and logical completeness [27, p. 23].

The next step in solution of the problem posed at the beginning of this paper was to analyze the content and results of state-legal concepts presented by prerevolutionary political scientists in monographs and scientific articles. In regard to the first, unexpected results were obtained, namely: in comparison with dissertations, the number of published monographs on state-legal problems is much lower. We did not include educational literature within the scope of the object of study, which, by the way, was available in large numbers and in varieties by the second half of the nineteenth century, and by the beginning of the 20th century its number only increased due to the peculiarities of writing such publications, because they were aimed at students of higher educational institutions, and not on legislators and scientists. Despite this, we found about thirty monographs, the subject of which were exclusively questions of the state law sciences (without taking into account, as it was in the case with dissertations, works on the history of Russian and foreign law, the general theory of law, and the philosophical problems of jurisprudence in general). In general, there were two or three monographs at most on average for each section of the prerevolutionary state and law science. The only exception was a section on local government and self-government bodies, where seven works have been published (A.I. Vasilchikov, A.A. Golovachev, G.A. Dashkevich, S.S. Zak, A.G. Mikhailovskiy, A. O. Nemirovskiy, M.I. Sveshnikov).

In our opinion, the noted features of the monographic development of the state law science in the nineteenth century and, in part, at the beginning of the 20th century (non-systematic and fragmentary studies) were due to the very beginning of the development of domestic jurisprudence. At the same time, pre-revolutionary political scientists of the period under review noted this feature repeatedly calling for an increase in the number and quality of research undertaken. Perhaps the great Russian political scientist A. D. Gradovsky expressed about this most vividly in his review on M. Gorchakov's work "The Monastic Order" of 1868: "Our legal literature is slowly enriched. A year, two or even three separate one work from another. Moreover, this growth is, so to speak, artificial. Legal books are written in our country not in the name of any urgent social needs, but for obtaining an academic degree. Recently, only awakened public consciousness has too little influence on the development of academic legal literature, especially on issues of state law. The choice of the topic, the way of presentation, the nature of an essay, and all this is for the time being given exclusively to the more or less casual discretion of the author. Those deserve more respect who know how to choose



a question that is interesting not for some dyed-in-the-wool scientists, and describe it in a language that is understandable not for some "priests of science". [28, p. 88].

Turning from monographs to scientific articles, we note that such work with such forms of expression of state-legal concepts led to higher quantitative results: more than fifty papers of pre-revolutionary political scientists were selected and systematized according to the above criteria (scientific, fundamental, systematic and logical completeness). Chronological and thematic analysis of papers containing state-legal concepts testifies that the most significant publications of Russian political scientists timed to the state scale events or anniversaries, as the publications of 1874, devoted to the 10th anniversary of Zemstvo reforms. It also demonstrates a significant increase in the number of papers to the turn of the XIX - XX centuries. On the other hand, in the period 1915-1917 the authors showed minimal publication activity. Perhaps this fact is explained by the general pre-revolutionary situation in the country, when most scientists were keen on describing current state events [29; 30; 31].

As for the directions of state-legal studies reflected in the papers, most often the political scientists turned to the development of problems of self-government, the concept of the law, the nature of a state, the foundations of the state structure.

Conclusions.

These are the stages of the work that we have already done to identify, systematize and analyze state-legal concepts expressed by prerevolutionary scientists in dissertational and monographic studies, as well as periodical publications. At the same time, in spite of the fact that it is still necessary to conduct their comparative analysis, it is already possible to sum up certain results.

Firstly, the main result of the described stages in the development of state-legal exercises is the testing of a methodology for identifying, systematizing and analyzing the content and assessing their place and role in the system of domestic legal knowledge. It seems reasonable in this regard to use in the future the experience of developing state-legal pre-revolutionary concepts in the field of other branch legal sciences of not only pre-revolutionary, but also the Soviet period.

Secondly, in the course of the work, priority and poorly developed areas of state-legal research were identified. This, in turn, could increase the effectiveness of carrying out modern dissertation research both within the theory and history of law and state, the history of the concepts on law and state, in the field of constitutional law, constitutional litigation, and municipal law. Obtaining systematic knowledge of the state-legal concepts of the pre-revolutionary, Soviet and post-Soviet periods will help to avoid excessive research, and focus on the undeveloped sections of science.

Thirdly, the analysis of the entire volume of state-legal concepts presented in science will make it possible to obtain information about the forms of scientific knowledge (theories, concepts, objective laws, terms, scientific ideas, hypotheses, etc.) received by national political scientists in their work. Collected and arranged in a common database, such forms can provide the basis for legislative regulation in developing criteria for determining the relevance, scientific character and "effectiveness" of dissertation research in the modern Russian Federation. If you pay attention to the Regulations on the awarding of academic degrees valid today, approved by the RF Government Decree No. 842 of 24 September, 2013 (as amended on 28 August, 2017) "On the procedure for awarding academic degrees", then regarding the criteria that the thesis must meet for a competition of academic degrees, clause 10 of the normative act establishes a rule that the thesis should contain new scientific results and provisions. The solutions proposed by the author of the dissertation should



be argued and evaluated in comparison with other known solutions [32]. There are no other criteria and, in fact, Russia does not regulate what exactly is considered a scientific achievement, scientifically grounded solutions and developments, what is the procedure for determining which results are new and which are not. At the same time, if we are talking about the need to determine the novelty of the scientific result obtained in the thesis for the degree of candidate or doctor of sciences (for example, legal), then the scientific result proposed by the author should be compared with the previous results obtained earlier for this specialty, institute, or narrow area of knowledge. This procedure is carried out today, as a rule, by official opponents and is reflected in a written review of the thesis.

If to understand scientific results as the forms of scientific knowledge (theoretical or empirical) presented in provisions to a thesis (theories, concepts, regularities, concepts, scientific ideas, hypotheses, etc.), then given the number of annually defended dissertations in any branch of legal science, opponent or another person who estimates the novelty of the results obtained by the author, must study and comprehend the vast amount of scientific information of the pre-revolutionary, Soviet and post-Soviet period. It is almost impossible, even considering the technical capabilities that are available today. The consequence of this is often a subjective evaluation by the opponent of the result proposed in the dissertation, declaring it to be new and relevant or not having such characteristics.

In our opinion, this base of scientific knowledge forms obtained in legal concepts on branch legal science, about the necessity (and, most importantly, the real possibility) of creation of which was discussed above, will help to exclude such a (subjective) evaluation in determining the novelty of the result. It will allow you to compare the results obtained today with the previous ones (received by scientists earlier) and determine their novelty, originality and relevance.

Using the above methodology of working with legal concepts (in our case, state-legal ones), it seems that it opens the possibility to use the potential of scientific knowledge presented in dissertations, monographs and papers of Russian scientists for the benefit of modern jurisprudence.

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