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State And Legal Doctrines Of Russia Of The 19th Century - First Centuries Of The 20th Century In Its National-Cultural Dimension: Update Problems, Methodology And Systematization

Estado E Doutrinas Jurídicas Da Rússia Do Século Xix – Primeiros Séculos Do Século Xx Na Sua Dimensão Nacional-Cultural: Problemas De Atualização, Metodologia E Sistematização

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Abstract

The article addresses the problem of finding an effective research methodology and systematization of Russian state legal doctrines from the 19th century - beginning of the 20th century within the framework of its national and cultural dimension. Despite the research currently available on the individual legal doctrines of the Russian Empire, the context proposed by the authors requires their comprehensive study, general theoretical analysis and systematization, which is only possible if there is a proven methodological basis. The aim of the paper is to present the steps and results of the author's approach to identify, systematize and evaluate the legal doctrines of the State of Russia in the 19th century - early 20th century, which can be used as a basis for carrying out such studies in relation to other sectoral (legal) doctrines. The article bases the algorithm for obtaining systemic knowledge about the entire complex of state legal doctrines existing in the period indicated, showing the characteristics of monographic theses and research, the specificities of working with articles in the periodic legal press. The issues of updating and the effectiveness of the State's legal doctrines are addressed separately; the mechanism for using different forms of scientific knowledge in the 21st century is proposed.

Keywords: state legal doctrines, national-cultural dimension, science of state law, thesis, monograph.

Resumen

O artigo trata do problema de encontrar uma metodologia de pesquisa eficaz e sistematização das doutrinas jurídicas do Estado russas do século 19 - início do século 20 no quadro de sua dimensão nacional e cultural. Apesar da pesquisa atualmente disponível sobre as doutrinas jurídicas do Estado individuais do Império Russo, o contexto proposto pelos autores requer seu estudo abrangente, análise teórica geral e sistematização, o que só é possível se houver uma base metodológica comprovada. O objetivo do trabalho é apresentar as etapas e os resultados da abordagem do autor para identificar, sistematizar e avaliar as doutrinas jurídicas do Estado da Rússia no século 19 - início do século 20, que podem ser usadas como base para a realização de tais estudos em relação a outras doutrinas setoriais (jurídicas). O artigo fundamenta o algoritmo de obtenção de conhecimento sistêmico sobre todo o complexo de doutrinas jurídicas estaduais existentes no período indicado, mostra as características de teses e pesquisas monográficas, as especificidades de trabalhar com artigos na imprensa jurídica periódica. As questões de atualização e eficácia das doutrinas jurídicas do Estado são abordadas separadamente; é proposto o mecanismo de utilização de diferentes formas de conhecimento científico no século XXI.

Palabras clave: doutrinas jurídicas estaduais, dimensão nacional-cultural, ciência do direito estadual, tese, monografia.

Introduction

The evolution of the university system in the Russian Empire, which ended in the reign of Nicholas I, was witnessed in the first half of the 19th century. In particular, rules for organizing entry, transition and final exams were created. The connection between the academic degrees granted to students and applicants and the grades of the Table of Ranks was consolidated in the Decree of 1819 on Awarding Academic Degrees. Although exams had been a mere formality prior to this consolidation, success or failure in an exam from that moment meant winning or losing the degree to which job benefits were offered. To date, there is a unified point of view in the humanitarian research field about the importance and relevance of the analysis of legal teachings of the past for building an effective system of normative regulation in the present. At the same time, having been dealing with the problems of the history of awarding academic degrees in the Russian Empire for quite a long time (Andreev, 2019; Ilina, 2014; Zharova, 2014), we discovered a lack of systemic scientific knowledge about the sectoral legal teachings of pre-revolutionary Russia (civil law, criminal law, church law, financial legal, state legal, administrative-legal teachings about international law) and the weak development of methodological techniques for the development of the latter.

Of course, such conclusions do not imply a complete lack of research in this area. Thus, the first (and rather successful) attempts to present a systematic construction of the history of branch doctrines can be found (Apolsky, Mamychev, Gogin, et al., 2018; Apolsky, Mamychev, Mordovtsev, et al., 2018; Kuprits, 1980; Loba, 2010; Loba et al., 2017; Makiev, n.d.; Zolotukhina, 1985). A significant contribution to the development of the history of legal doctrines was made (Apolsky et al., 2019; Gaventa & Cornwall, 2008; Grafskiy, 2010; Muller & Young, 2019), and also by a number of qualifying works concerning the teachings of individual thinkers (Apolsky, Mamychev, Gogin, et al., 2018; Shapoval, 2005). At the same time, it is obvious that further understanding of the historical theoretical and legal heritage and its use in the legal policy of a modern state, integrated into the global information system, is required.

Materials and methods

Note that no one has yet succeeded in bringing all the existing domestic legal doctrines into a common logical and methodological system with distributing them according to key stages in the development of scientific thought (or highlighting only the pre-revolutionary and Soviet period), and perhaps such a goal was not set. On the one hand, such a task seems impossible due to the huge volume of doctrines, theories, concepts, etc. within each branch of legal science and then, indeed, their identification, systematization and analysis may take decades. On the other hand, the presence of a reliable and proven methodological basis that can lead a researcher to create a general picture of domestic legal doctrines could significantly facilitate the implementation of this difficult task; however, this problem is only at the stage of actualization today.

Considering these difficulties, we decided, as they say, to start small and carry out the identification, systematization and analysis of the state legal doctrines of Russia in the 19th - early 20th centuries, thereby trying to solve the problem of finding an effective methodology for searching and analysing legal doctrines in all branches of legal science for the entire period of its development. Further, the results of the search for an updated methodology for the systematization and analysis of the state legal teachings of Russia in the 19th - early 20th centuries will be presented (using techniques for interpreting legal texts and formal logical tools).

It should be noted that successful attempts to analyse individual state legal doctrines were undertaken in Russian jurisprudence (Apolsky, Mamychev, Gogin, et al., 2018; Bermeo & Nord, 2000; Yu L. Shulzhenko, 2011; Taranovski, 2019), and the research area included not only pre-revolutionary but also the Soviet period (Y. L. Shulzhenko, 2017). The same direction is developing quite successfully in Western jurisprudence, albeit in a broader sense (Card, 2002; Chynoweth, 2009; Hutchinson, 2015; Mateucci, 2014; Minow, 2013; Smits, 2017). At the same time, there was no work on the systematization of all state-legal doctrines (theses, monographs, periodicals) of the pre-revolutionary period.

In order to fill this gap, master's and doctoral theses on state law research defended at the law faculties of the imperial Russian universities (130 in total) were identified and thoroughly analysed (using the method of criticizing sources) at the first stage with the help of reference literature (Klimov et al., 2018; Krichevskij, 2004; Loba et al., 2017). Analysis of the subject matter and content of these works showed the presence in the number of theses defended in the "category of such sciences" as "State law"; there was a large number of studies unusual for today's science of constitutional law: about a third of all defended theses had general theoretical, historical and legal, philosophical and legal questions as to their subject, i.e. considered legal institutions, norms and processes in the national-cultural, and national-historical dimension.

Main part

The presence of unusual elements among defended theses was a consequence of the inconsistency of the

state policy in the field of attestation of scientific personnel with the position of the scientific community in the second half of the 19th century when certain prominent representatives of the historical and legal science emphatically and persistently called for the introduction of such a scientific specialty ("category of sciences") "History of Russian Law "for the award of Master and Doctor of Law degrees, but they did not wait for such a decision until 1917 when the former state system for awarding academic degrees ceased to exist.

However, theses on public law and the teachings contained in them were identified and bibliographically described, and the next step was their classification. At this stage, we were faced with the need to create a classifier of the science of pre-revolutionary state law, which would reflect the system (composition) of the corresponding branch of scientific knowledge in the pre-October period. The reason was the position of the state scholars of the Russian Empire, most of which included in the science of state law the elements which are unusual for it today (the theory of the state, sometimes sections of the general theory of law). The creation of such a classifier was complicated by a subjective assessment of the need to include certain sections and subsections in it; therefore, the views of leading scientists on the structure of the science of state law were analysed (V.M. Gessen, A.D. Gradovsky, V.V. Ivanovsky, F.F. Kokoshkin, N.M. Korkunov, N.I. Lazarevsky, A.V. Romanovich-Slavatinsky) and there was formed a classifier consisting of the sections "General theory of the state", "Theory of constitutional law", "General part of Russian state law", "A special part of Russian state law." As a result, it became possible to identify priority and poorly developed areas of state-legal judicial thesis research (for example, most of the works were defended on the history of the formation and development of state power in Russia and the development of political thought, among works on general legal, historical-legal and philosophical issues; works on the methodology of science and the legal status of an individual are distinguished among the so-called "pure" state-legal theses).

Next, it was necessary to systematize the state legal doctrines presented in monographs and papers, also taking into account their correlation with the sections of the classifier of the state law science. Here, however, a methodological problem also arose: it was not clear which of the monographs and (to a greater extent) papers should be considered as external expressions of doctrines, and what should be understood as such forms of expression of scientific thought. It is obvious that any attempt to cover all papers, essays, notes, reports on events published in the periodical legal press, in one way or another correlated with the sphere of science of state law, will not lead to any reasonable result; such attempt will be physically difficult and, possibly, completely senseless. The situation was also complicated by the absence in Russian legal science of a unified approach to understanding its teaching in terms of the form of external expression of scientific, legal thought, and also its essential and substantive characteristics.

As a result, the approach by V.S. Nersesyants was taken as the basis; he believed that teachings should be understood as "various forms of theoretical expression and consolidation of historically emerging and developing knowledge, as those theoretical concepts, ideas, provisions and constructions in which the historical process of deepening knowledge of political and legal phenomena finds its concentrated logical and conceptual expression" (Nersesiants, 2004). In addition, teaching understood in Russian scientific or encyclopedic literature often as a doctrine, has a fundamental character and “provides an appropriate functional purpose” (Anisimov et al., 2019; Goloskokov, 2015); it can also be perceived in a especially legal sense, as “doctrinal texts of recognized specialists in the field of law, containing specific rules of behaviour that are the source of the rule of law”.

To classify various scientific works as state legal teachings, we, therefore, have chosen a "borderline" interpretation that perceives the teaching as a scientific text of a recognized specialist in the field of law containing specific conclusions and solutions to legal problems, and capable of serving as a source in the law-making process. This understanding allows the methodologically correct use of the works of Russian state scholars expressed in the form of monographs and scientific articles. A prerequisite for the latter should be the criteria of scientific character, fundamental character, consistency and logical completeness.

The next step in solving the problem posed at the beginning of this paper was the analysis of the content and results of state-legal doctrines presented by pre-revolutionary state scholars in their monographs and scientific articles. In relation to the former, unexpected results were obtained, namely: the number of published monographs on state and legal problems is noticeably lower in comparison with theses. Not including educational literature within the boundaries of the research object (this literature, by the way, was in large quantities and variety by the second half of the 19th century, and by the beginning of the 20th century its number only increased) due to the peculiarities of writing such publications (they were oriented on students of higher educational institutions, and not on legislators and scientists), we identified about thirty monographs, the subject of which was exclusively questions of the science of public law (excluding, as was the case with theses, works on the history of Russian and foreign law, general theory of law, and philosophical problems of legal science in

general). Basically, there were on average two, maximum three monographs for each section of science of the pre-revolutionary state and law; the only exception is the section on local government and self-government bodies, where seven works were published (A.I. Vasilchikov, A.A. Golovachev, G.A. Dashkevich, S.S. Zak, A.G. Mikhailovsky, A.O. Nemirovsky, M.I.Sveshnikov).

In our opinion, the noted features of the monographic development in the science of state law in the 19th century and, in part, at the beginning of the 20th century (non-systematic and fragmentary studies) were due to the very initial stage of development of domestic legal science. At the same time, pre-revolutionary state scholars of the period under review themselves have repeatedly noted this feature, calling for an increase in the quantity and quality of research undertaken. Probably the greatest Russian state scholar A.D. Gradovsky in his review of M. Gorchakov's work "Monastic Prikaz" in 1868 wrote: "Our legal literature is slowly enriching. A year, two, and even three separate one composition from another. Moreover, this growth, so to speak, is artificial. Law books are written in our country, not in view of any pressing social needs, but to obtain an academic degree. Recently, only the awakened public consciousness has too little influence on the development of scientific, legal literature, especially on issues of state law. The choice of the topic, the way of presentation, the nature of the essay: all this is still left exclusively to the more or less random discretion of an author. All the more respect is deserved by those who know how to choose for their essay a question that is interesting not for some well-known scientists and state it in a language that is understandable not only for "priests of science".

Moving from monographs to scientific articles, we note that such work with such forms of expression of state-legal doctrines led to higher quantitative results: more than fifty articles of pre-revolutionary state scholars were identified and systematized; they were selected according to the above criteria (scientific nature, fundamental nature, consistency and logical completeness). A chronological and thematic analysis of articles containing state-legal doctrines indicates that the most significant publications by Russian state scholars coincided with events of a national scale (or anniversaries, like publications in 1874 dedicated to the 10th anniversary of the zemstvo reforms), and also demonstrates their significant increase by the turn of the XIX-XX centuries. On the other hand, in the period of 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.

As for the directions of state and legal research reflected in the articles, most often state scholars turned to the development of problems of self-government, the doctrine of law, the nature of the state, and the foundations of the state structure.

Conclusions

These are the stages of the work already done to identify, systematize and analyse the state-legal doctrines expressed by pre-revolutionary scientists in theses, monographic studies, as well as periodicals. At the same time, in spite of the fact that their comparative analysis has yet to be carried out, certain results can already be drawn.

First, the main result for the described stages of the state-legal doctrine development is the approbation of the methodology for identifying, systematizing, and analysing 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 doctrines in the field of other branch legal sciences, not only of the pre-revolutionary but also of the Soviet period.

Secondly, priority and poorly developed areas of state legal research were identified in the course of the work carried out. This, in turn, could help to increase the efficiency of modern thesis research both within the framework of the theory and history of law and state, the history of doctrines about law and state, and in the field of constitutional law, constitutional litigation; and municipal law. Obtaining systemic knowledge about state-legal doctrines of the pre-revolutionary, Soviet and post-Soviet periods will allow avoiding redundant research, and direct all attention to previously undeveloped sections of science.

Thirdly, the analysis of the entire volume of state-legal doctrines presented in science will allow obtaining information about the forms of scientific knowledge (theories, concepts, patterns, notions, scientific ideas, hypotheses, etc.) obtained by domestic state scholars in their works. Having consolidated in a common database, such forms can become a basis of legislative regulation in the development of criteria for determining the relevance, scientific character and "effectiveness" of thesis research in the modern Russian Federation. If we pay attention to the current Regulation on the awarding of academic degrees approved by the Decree of the Government of the Russian Federation dated September 24, 2013, No. 842 (as amended on August 28, 2017) "On the procedure for awarding academic degrees", then, enshrining the criteria that theses must meet for scientific degrees, the normative act establishes in clause ten the rule that the thesis must contain new scientific results and provisions; the solutions proposed by the author of the thesis should be reasoned and evaluated in comparison with other

known solutions (Gomó\lka, 2015; Ilina, 2014). There are no other criteria and, in fact, Russia does not regulate what exactly is considered a scientific achievement, scientifically grounded decisions and developments, and what is the procedure for determining which results are new and which are not. Moreover, 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 result obtained earlier in this specialty, institute, and narrow field knowledge. This procedure is carried out today, as a rule, by official opponents and is reflected in a written review of the thesis.

If the scientific result is understood as the forms of scientific knowledge (theoretical or empirical) presented in the provisions for the thesis (theories, concepts, patterns, concepts, scientific ideas, hypotheses, etc.), then taking into account the number of annually defended theses in any branch legal science, an opponent or another person evaluating the novelty of the results obtained by the author needs to study and comprehend a huge amount of scientific information of the pre-revolutionary, Soviet and post-Soviet period, which is practically impossible, even taking into account the technical capabilities available today. The consequence of this is often a subjective assessment by the opponent of the result proposed in the thesis declaring it new and relevant or not having such features.

In our opinion, the base of forms of scientific knowledge obtained due to studying legal doctrines in-branch legal science, the need (and most importantly - the real possibility) to create of which was mentioned above, will help to exclude such (subjective) assessment when determining the novelty of the result. It will allow comparing the results obtained today with the previous ones (obtained by scientists earlier) and determine their novelty, originality and relevance.

Using the above methodology of working with legal doctrines (in our case, state-legal), an opportunity seems to open up to use the potential of scientific knowledge presented in theses, monographs and articles of Russian scientists for the benefit of modern jurisprudence.

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