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## THE LEGAL AND METHODOLOGICAL FOUNDATIONS OF THE DISSERTATION DEVELOPMENT OF LEGAL DOCTRINES IN RUSSIA (XIX - EARLY XX CENTURIES)

Evgeny Apolsky<sup>\*</sup>, Pavel Baranov<sup>\*\*</sup>, Alexey Mamychhev<sup>\*\*\*</sup>, Andrey Mordovtsev<sup>\*\*\*\*</sup>  
and Maria Vronskaya<sup>\*\*\*\*\*</sup>

**Abstract:** The article deals with the process of origin of national methodological foundations of the thesis development of state-legal doctrines during the XIX - beginning of the XX centuries in the Russian Empire. For this purpose, master's and doctoral dissertations on State Law, defended at the Law schools of the universities of the Russian Empire, were used as a toolkit. Problems and questions of the methodology of science were chosen as the subject of the study. With the help of legal-hermeneutic and comparative-historical methods, goals, tasks, content, as well as the results of master's and doctoral dissertations of the period were investigated. The authors determine the general laws of genesis and development of methodological legal doctrines contained in prerevolutionary dissertations, which were determined by the specifics of the development of legal science in Russia in the XIX - early XX centuries. The conclusion is drawn on the peculiarities of the origin of the national methodological foundations of the thesis development of legal doctrines in Russia in this period.

**Keywords:** Master's and doctoral dissertations, state law, university, methodology, Russian empire, general theoretical analysis.

### INTRODUCTION

With respect to any stage in the development of science, it can be argued that the methodological aspects are traditionally paid close attention regardless of the level of development of state policy in these areas. This is important because of the constant search for the most effective means and ways to develop state and legal phenomena, the continuous improvement of the set of methods used to solve various scientific problems. No less relevant, in our opinion, is the study of the

<sup>\*</sup> Head of the Department of Theory and History of State and Law of the Rostov Institute (branch) of the All-Russian State University of Justice (RPA of the Ministry of Justice of Russia), Candidate of Legal Sciences, Associate Professor, Rostov-on-Don, Russia. *Email: apolski@mail.ru*

<sup>\*\*</sup> Doctor of Law, Professor, Russian Presidential Academy of National Economy and Public Administration, Russia. *Email: pravosoznanie@gmail.com*

<sup>\*\*\*</sup> Doctor of Political Science, Candidate of Legal Sciences, Associate Professor, Vladivostok State University of Economics and Service, Vladivostok, Russia. *Email: mamychhev@yandex.ru*

<sup>\*\*\*\*</sup> Doctor of Law, Professor, Professor of the Department of Theory and History of Russian and Foreign Law of the Vladivostok State University of Economics and Service, Professor of the Department of Theory and History of State and Law of the Rostov Institute (branch) of the All-Russian State University of Justice. *Email: aum.07@mail.ru*

<sup>\*\*\*\*\*</sup> Candidate of jurisprudence, Associate Professor, Vladivostok State University of Economics and Service, Vladivostok, Russia. *Email: m.vronskaya@mail.ru*

genesis and development of the methodology of legal science in the early stages of its formation.

The methodology of science, in particular the means and methods of conducting legal research, revealing the regularities of genesis and the development of state and legal phenomena, political and legal doctrines, is very developed both in the Soviet and in the modern period. Nevertheless, methodological issues continue to be actively discussed among law researchers, there are calls for seeking new, more effective methods of finding objective truth, regularities, obtaining scientific legal knowledge that meets modern needs.

The object of research in this article is master's and doctoral dissertations on state law, devoted to various methodological problems and defended at the Law schools of imperial Russian universities in the XIX - early XX centuries. Attention has repeatedly been drawn to the need for a careful analysis of the content of these works, and not only in the theoretical and methodological perspective, but also in the legal context (Mordovtsev & Popov, 2007; Yakushev, 2014). Because of this, we carried out a general theoretical evaluation of the methodological legal doctrines contained in the theses, using both traditional means of legal cognition (comparative-historical, legal-hermeneutic method) and comparatively new methods (metatheoretical approach) (Protasov, 2009). In particular, when studying and general theoretical analysis of master's and doctoral dissertations, the main attention was paid to the evaluation of the subject-methodological component of these works, the place and role of the latter in the development of national methodological foundations for scientific thesis development of law in Russia (Mordovcev A., Mamychev A., Mordovceva T., 2016).

## METHODS AND MATERIALS

Up until 1917, seven theses on the methodology of science were defended in the Russian Empire:

- Master's theses: N.A. Zverev (Moscow University, 1883: "Foundations of the classification of states in connection with the general theory of classification"), F.V. Taranovsky (St. Petersburg State University, 1904: "The legal method in the state of science. Essay on the development of it in Germany"), N.N. Alekseev (Moscow University, 1912) (Alekseev, 1912; Zverev, 1883);
- Doctoral theses: A.A. Blagoveshchensky (St. Petersburg University, 1835: "The History of the method of science of jurisprudence in the XVIII century."), V.I. Sergeevich (Moscow University, 1871: "The Problem and Method of State Sciences, Essays on Modern Political Literature"), D.Ya. Samokvasov (Warsaw University, 1878: "The History of Russian law. T. 1. The Start of the political life of ancient Slavs. Vol. 1. Literature.

Sources. Development of a scientific methods sources”), B.A. Kistyakovskiy (Kharkov University, 1917: “Essays on the methodology of social sciences and general theory of law”) (Blagoveshchensky, 1835; Kistyakovskiy, 1916; Samokvasov, 1878; Sergeevich, 1871).

Object and subject of research. An analysis of the chronology of defended dissertations shows that until the 1980s, in the nineteenth century questions of methodology were raised exclusively in doctoral studies, which is most likely due to the complexity of the methodological research itself. Between 1883 and 1912 only master’s dissertations were defended; Only in 1917 the last study of the methodology of legal science is presented in the doctoral dissertation of B.A. Kistyakovskiy.

At the same time, the choice of methodological problems as the object of the study was due to the need for further development of science, which at that time desperately needed a coherent system of means and ways of mastering the Law. D.Ya. Samokvasov quite rightly expressed on this occasion in his doctoral dissertation, calling the cause of the work set of critical scientific assessments on the level of development of the history of political and legal relations of our ancestors (Slavs), and denoting the question: “Why is the scientific development of sources of knowledge of our ancestors has not given positive results for nearly 150 years, and how should these means be used in order to put the scientific development of the most ancient period of the history of Russian law on positive foundations?” (Samokvasov, 1878).

Often in theses one or another science is selected as a subject of research: “the science of jurisprudence” at A.A. Blagoveshchensky, “the science of state law” at V.I. Sergeevich, “social sciences”, “general theory of law” at B.A. Kistyakovskiy. Three works mention objects more limited in scope of scientific development: “classification, as the basis for a comparative historical study of social phenomena” at N.A. Zverev, “the idea of naturalism in socio-political theories of modern times” at N.N. Alekseev, as well as the “legal method in state science” at F.V. Taranovskiy. The object of investigation different from the above we find at D.Ya. Samokvasov: (A) the views and theories, and scientific schools formed on the basis of the political life of Russian Slavs in the era of Rurik vocation; (B) annalistic sources of knowledge began the political and legal life of the ancient Slavs; (C) material monuments of the history of Russian law of the ancient period; (D) historical monuments of different peoples, political and legal relations existing among modern nations, standing at different levels of civilization.

The subject of research in the analyzed works is in most cases characterized by the search for a new or more perfect methodology in the development of a particular science, doctrine. Thus, the following subjects have been singled out: the methodology of the general theory of law, dogmatic jurisprudence (B.A. Kistyakovskii); Place and general significance of the legal method in German state science (F.V. Taranovskiy), knowledge of classification as a method of research

(N.A. Zverev); Search for a new methodology for the scientific development of research objects (D.Ya. Samokvasov); Tasks and methods of science of state law in Germany, France and England (V.I. Sergeevich); Methods of the science of jurisprudence (A.A. Blagoveshchensky).

Only in the thesis of N.N. Alekseev the subject (mechanical theory and the theory of historical materialism) is a means of achieving a methodological goal: "Is it possible, and in what sense, to apply the methods of natural science to study social phenomena, is it possible and how sociology, as a natural science... to explore those formal cognitive prerequisites from which the socio-political rationalism proceeded" (Alekseev, 1912). Therefore, the mechanical theory and theory of historical materialism are taken by N.N. Alekseev as "manifestations of the idea of naturalism in socio-political theories of modern times, which were created under the influence of analogies borrowed from the hypotheses of mechanical natural science" (Alekseev, 1912).

Another feature that unites all seven methodological dissertations is that all authors, except for N.A. Zverev, before writing the work or during the period of its preparation, had passed training (or internship) abroad (usually in Germany); This fact directly influenced the choice of the object and the subject of the study. For example, F.V. Taranovsky during the years 1902-1903 held internships at the universities of Heidelberg, Göttingen and Berlin, worked in the libraries of France and Germany, selecting material for an essay on the development of the legal method in the state science of Germany. One can also single out A.A. Blagoveshchensky, who, after a foreign mission and training with prof. Savigny at the University of Berlin in his own thesis came forward as a follower of the positive law instead of the natural one.

Finally, one cannot but note the fact that practically all the authors of the dissertational studies analyzed remained faithful to the direction of development of methodological aspects and problems chosen at the dawn of their scientific careers, devoting further works to these issues. The tragic exception to the general rule is only A.A. Blagoveshchensky, who passed away almost immediately after the defense of the master's thesis.

Research methodology. The analysis of methods and means of cognition of the methodological problems used in the theses discussed in this article also demonstrates the authors' common approaches. This is evident from the set of methodological methods: in the overwhelming majority of cases, pre-revolutionary state scientists used the historical method as the main method (A.A. Blagoveshchensky, F.V. Taranovsky), or as an auxiliary (D.Ya. Samokvasov, N.A. Zverev, B.A. Kistyakovskiy). In the case when the historical method was not used (V.I. Sergeevich, N.N. Alekseev), this was determined by their purpose and subject. At the same time, the characteristic feature of all dissertations was the absence of a direct mention of the authors about the methods that will be used by them. Only

N.N. Alekseev in his methodological work, arguing about the mechanical theory of society and historical materialism, set the task of critical analysis of these theories, understanding them as pure teachings, without the admixture of evaluation literature. In particular, while discussing the theory of historical materialism, the author emphasized that "... his aim was not to characterize and refute what Kautsky, Labriola, Lafargue and their countless supporters and opponents say, but to formulate the most general principles of Marx's theory, if possible, distinguishing it even from the views of Engels" (Alekseev, 1912). According to him, the philosopher and methodologist "... strives to grasp the most common and genuine meaning of the theory, and not its private evasions" (Alekseev, 1912).

Along with the historical method authors also used the comparative method in combination with critical analysis (literary views, doctrines, doctrines).

## RESULTS

The above analysis and the general theoretical evaluation of master's and doctoral dissertations on State Law, devoted to the problems of the methodology of science and defended at the law schools of the imperial Russian universities in the XIX - XX centuries, made it possible to determine the following patterns of genesis and development of the legal doctrines contained in them:

- in most dissertational studies, the authors set the goal to contribute to the further development of legal science; The main task was seen as the supply of future scientists with the means and methods of scientific development of legal phenomena;
- the period of preparation of methodological research was accompanied by work and (or) internships abroad, at universities, libraries, or under the guidance of well-known professors;
- In the overwhelming majority of cases, the main method used in carrying out methodological studies was the historical one, which was used in combination with other methods (comparative, critical);
- methodological research is characterized by high efficiency, which was expressed both in the forms of scientific knowledge, and in practical recommendations on the most effective means and ways of knowing law and the state.

At the same time, it is necessary to highlight the results of the dissertational methodological studies in the field of State Law, which allowed systematizing the main criterion - the form of scientific knowledge. It is this category of science, in our opinion, that allows us to objectively assess the contribution of each thesis's author to the development and development of the methodology of science, and the contribution to the development of Russian science as a whole. So, in our opinion, we should use such forms of scientific knowledge as the scientific idea, hypothesis,

concept, classification, theory, etc. as a criterion for systematization of the results obtained in dissertations.

Speaking about the forms of scientific knowledge in which prerevolutionary legal scientists formulated the results obtained in dissertations, it should be noted that in the period under consideration the development of Russian science, the main goal of the majority of researchers was to prepare a scientific basis for further development. Because of this, in most cases, the main result of the work on the thesis was the historical or dogmatic development of a particular institution, a state legal phenomenon or doctrine.

Nevertheless, in some dissertations the forms of scientific knowledge are presented. In the very (chronologically) first methodological dissertation A.A. Blagoveshchenskii determined the pattern of the development of jurisprudence in the 17th century: "In Roman, ecclesiastical, lenient, state, civil and criminal jurisprudence, a spirit of strict order and a desire for continuous synthetic education was revealed... It was evident that each individual doctrine was to be systematically fragmented, From them positions, to prove and to put them in order, and all this is stated accurately, clearly and cogently. Even more evident was the desire to explain all positive jurisprudence from philosophical jurisprudence" (Blagoveshchensky, 1835). The definition of comparative jurisprudence is also presented there: "By the name of comparative jurisprudence one can understand that way of studying and teaching laws according to which the laws and legal rules of a particular state are compared with the laws of the same state, for example, the present laws with the former, or with laws Other states, in more or less taken, or, finally, with the laws and customs of all states and peoples that once existed and are now existing" (Blagoveshchensky, 1835).

A hypothesis on the relative nature of generic concepts and the definition of elementary similarity was suggested by NA. Zverev. According to him, there may exist different generic concepts about the same sensations or subjects, with their different placement in groups; Every concept is true only within the boundaries of its placement; Here, thus, the law of relativity manifests itself, subordinating to itself all the phenomena of our consciousness (Zverev, 1883). There is also a close connection between the forms of individual and clan thought, expressed in the fact that: (A) perception is usually created through the medium of concepts; (B) we use previously created generic concepts, as ready-made measures, by which we measure and determine individual sensations and objects; (C) if, in most cases, choosing a short path, we create individual perceptions with the help of generic concepts, then in the definition of each given sensation and object, the concrete and the abstract, the individual and the generic are intertwined in the closest possible way: in the light of the generic and abstract, we consider the individual and the concrete; He also substantiated the classification of states in the master's dissertation, which, according to his idea, should consist of the following elements: "(A) Simple forms,



with indivisible bodies of supreme power: (a) monarchy, (b) aristocracy and (c) democracy; (B) Complex forms, the supreme organ of which is divided into composite bodies: (a) monarchical, (b) aristocratic and (c) democratic complex states (or: complex monarchies, aristocracy and democracies) (Zverev, 1883).

The results proposed by the authors in their methodological works quite often had a practical orientation, which is generally uncharacteristic for pre-revolutionary dissertation teachings on law. So, D.Ya. Samokvasov, analyzing the methods of the scientific development of the sources of ancient Russian law, develops detailed instructions, recommendations (guidance) for the scientific use of mounds and fortifications, for the conduct of the excavation diary, for the description of the outer conditions of mounds, for the methods of excavating barrows, for describing the arrangement and contents of graves in the investigated barrows (Samokvasov, 1878). The author's conclusions on the monuments of Russian law are also of interest and of practical importance, in particular: (1) in the later monuments of Russian law and the customary law of the Russian people today, customs from the most ancient historical era are undoubtedly preserved; (2) the news of the most ancient historical monuments, the fact of the introduction of Christianity in Russia and the content of the Christian teaching give us a positive means to distinguish archaic traces or remains in some funeral and family customs, and therefore the scientific elaboration of these customs has already brought positive benefits in solving certain particular questions of the ancient period of history Russian law; (3) in regard to public, criminal and property relations, science does not yet possess a positive means to determine the time of origin of customs found in the later monuments of Russian law and the current customary law of the Russian people, and therefore the scientific development of this material in relation to a positive solution of the question of the principles of the political-legal life of the ancient Slavs, has until now been completely useless (Samokvasov, 1878).

D.Ya. Samokvasov also proposed his conclusions from the comparative study of historical monuments of different peoples and political and legal relations existing among modern peoples standing at different levels of civilization. In particular, it is necessary to observe the following conditions for conducting research using the comparative method:

- knowledge of all views expressed in the scientific literature on the subject of research, and the reasoning on which these views are based;
- knowledge of the facts reported on the subject of research by ancient monuments, both written and material (these facts must be obtained by means of scientific criticism of sources);
- knowledge of traces preserved on the subject of research in later historical monuments and the modern life of the people being studied;
- knowledge of facts that directly or indirectly relate to the subject of research and are preserved in historical monuments of other peoples, both related

by origin and not related to the people whose life belongs to the subject of research;

- knowledge of facts that have direct or indirect relation to the subject of research and are found in the modern life of peoples standing at different levels of civilization (Samokvasov, 1878).

Moreover, rejecting metaphysics, the author calls to use the methods of real sciences, in particular, induction: “The science of the present time must go the reverse way; The common beginnings of the political life of the ancient Slavs must be deduced from the facts of historical reality” (Samokvasov, 1878).

B.A. Kistyakovskiy also aspires to such a goal - to provide future researchers with practical recommendations in the field of choice of methodology: “We must draw a strict distinction between the legal-dogmatic and scientific-theoretical study of law. Dogmatic jurisprudence deals with quite limited material in principle. First of all, it studies the system of legal norms or the legal order operating in a certain society... To study it, it is necessary and sufficient to apply the methods of formal logic used in purely descriptive sciences, i.e. generalization, reduction of norms to concepts, their classification and derivation from the constructed concepts of all the consequences in them. In view of the fact that material that is subject to legal and dogmatic study, as completely delineated and completed in principle, can be studied exhaustively, the concepts obtained by dogmatic jurisprudence through purely formal logical generalizations have unconditional certainty and general validity” (Kistyakovskiy, 1916). In his opinion, it is necessary to synthesize all knowledge obtained by scientific research about law, the result of which should be “not the definition of a new concept of law, but the disclosure and comprehension of the meaning of law. Here, the science of law comes into contact with the philosophy of law” (Kistyakovskiy, 1916).

One cannot ignore the conclusions of B.A. Kistyakovskii concerning the methods of dogmatic jurisprudence: (A) dogmatic jurisprudence develops a quite definite type of scientific knowledge about legal phenomena, corresponding to the purpose it pursues. But since dogmatic jurisprudence for practical reasons, i.e. due to the constant demand on the part of legal life, is the most developed legal discipline, the methods that it applies for its scientific purposes are often generally accepted for the methods of scientific knowledge of law; (B) the ability to combine the composite elements distinguished in the analysis of a legal phenomenon in different ways, and in this way to obtain various definitions, it must be recognized as the main feature of the legal-dogmatic method, working exclusively with the help of formal logical generalizations and classifications; (C) in order to scientifically cognize subjective law in general and subjectively public rights in particular, it is necessary to investigate the causal and teleological relations that act in it and determine its nature; (D) knowledge about the right, obtained by a truly scientific study of

law, should be systematized and reduced to the four theoretical concepts of law: socio-scientific, psychological, state-organizational and normative (Kistiyakovsky, 1916).

The practicality of the results indicated above is to some extent present in all the methodological dissertations of the period under consideration.

## **DISCUSSION**

The general theoretical evaluation of methodological dissertational legal doctrines conducted in this article should be extended to other areas of scientific pre-revolutionary knowledge that will in the future make an objective picture of the scientific thesis development of branch legal sciences. As a result, the main results of the dissertation development of prerevolutionary legal science should be obtained and systematized. This seems to be of fundamental importance today, since the national legislation does not regulate what exactly is considered a scientific achievement, scientifically grounded solutions and developments, how to determine what results are new and which are not. At the same time, if we talk about the need to determine the novelty of the scientific result obtained in the candidate's or doctoral thesis, then the scientific result proposed by the author should be compared with the previous result obtained earlier in this specialty. This procedure is carried out today, as a rule, by official opponents and is reflected in a written review of the thesis. It also seems that the scientific result should be understood as the forms of scientific knowledge (theoretical or empirical), presented in theses to the thesis (hypotheses, scientific ideas, patterns, concepts, theories, etc.).

But if one imagines the number of dissertations defended annually in any branch of legal science, then an opponent or another person who estimates the novelty of the results obtained by the author should study and comprehend the vast amount of scientific information from the pre-revolutionary, Soviet and post-Soviet period, which is practically impossible, even considering the technical capabilities 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.

## **CONCLUSION**

In our opinion, in order to exclude such a (subjective) assessment in determining the novelty of the result, we need a certain database of scientific results obtained earlier (ideally - for the entire preceding period). It will allow comparing the results obtained today with previous ones (obtained by scientists earlier) and determine their novelty, originality and relevance. The first steps in this direction are precisely the systematization of the results of pre-revolutionary dissertation research.

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