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## DOCTRINAL AND LEGAL DEVELOPMENTS OF THE STATE LAW INSTITUTIONS IN THE CONTEXT OF THE RUSSIAN LEGAL MENTALITY (XIX - EARLY XX CENTURIES)

Evgeny Apolsky<sup>\*</sup>, Pavel Baranov<sup>\*\*</sup>, Alexey Mamychev<sup>\*\*\*</sup>, Andrey Mordovtsev<sup>\*\*\*\*</sup>  
and Alexey Ovchinnikov<sup>\*\*\*\*\*</sup>

**Abstract:** The article analyzes 1) the research directions in master's and doctoral dissertations on State Law, defended in Imperial Russian universities, 2) the state policy in the field of certification of scientific personnel in the Russian Empire, and 3) its influence on the formation of the structure of science of state (constitutional) law. Proceeding from the analysis of the pre-revolutionary normative legal documents of the Ministry of Education, the statutes of the imperial Russian universities, the bibliography of dissertations on state and legal subjects, a conclusion was drawn on the specifics of the formation of the nomenclature of legal scientific specialties in the Russian Empire, and specific patterns of the legal development of branch legal sciences.

**Keywords:** Dissertation, academia, State (Constitutional) Law, Russian empire.

### INTRODUCTION

Issues and problems of state policy in the field of attestation of scientific personnel are regularly raised in scholarly publications (Apolsky & Mordovtsev, 2017; Yakushev, 2013; Yakushev, 2014), but interest in this problem only increases. In this article we will analyze the state policy in the field of attestation of scientific personnel in the Russian Empire, as well as topics, research areas and content of master's and doctoral dissertations, defended at the law faculties of the universities of the Russian Empire. The main tasks in the work are: (1) the identification, with the help of comparative-legal and comparative-historical methods, of specific patterns of the thesis studies of branch legal sciences, (2) the search for the reasons for the formation of the complex specialty "State Law" for awarding academic degrees of master and doctor of state law, which in pre-revolutionary Russia included such

\* Candidate of jurisprudence, Associate Professor, Rostov Institute (branch) of the All-Russian State University of Justice. *Email: apolski@mail.ru*

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

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

\*\*\*\* Doctor of Law, Professor, Vladivostok State University of Economics and Service, FGBOU VO Rostov Institute (branch) of the All-Russian State University of Justice (RPA with the Ministry of Justice of the Russian Federation). *Email: aum.07@mail.ru*

\*\*\*\*\* Doctor of Law, Professor, Russian State University of Justice, Russian Federation. *Email: k\_fp3@mail.ru*

today independent branches of legal science as the History of Political and Legal Doctrines, the Philosophy of Law, the General Theory of Law.

### **MATERIALS AND METHODS**

Immediately, it should be noted that throughout the history of the functioning of Russian imperial universities, the number of master's and doctoral dissertations in State Law prepared and defended does not look impressive in comparison with today's statistical data: from the moment of the beginning of defenses (the first quarter of the 19th century) to 1918 only 128 works have been estimated. Such a small number (in our modern view) of awarded degrees is due not to the decline of legal science or the lack of interest in state-legal problems. The reason was hidden in the rather stringent requirements that were applied to applicants for master's or doctoral degrees, the mitigation of which by the second half of the nineteenth century caused the growth of public defenses and its peak performance by 1910-1918. At the same time, against the backdrop of dissertations on other branches of science, the law (civil, financial, criminal, police, church) quantitative indicators of state and legal research are far ahead of all others.

Analysis of the general legal bibliography of the dissertation development of pre-revolutionary jurisprudence reveals interesting patterns:

- dissertational research in almost all branches of jurisprudence abounds with historical-legal or theoretical-dogmatic works;
- in most cases, regardless of branch, most of the works have the form of a historical review of the development of the subject of research, referring to the institution of law, legal relationship, and other issues.

On the one hand, such facts are unremarkable. Indeed, for example, with regard to the Roman Law, a bank toward historical and legal analysis is absolutely logical and justified: the norms of Roman law initially represent a value precisely as a historical model and an experience of effective regulation of social relations. It is no accident that one of the two priority areas of research in Roman theses was the development of history, theory and methodology of Roman law (Makiev, 2006).

On the other hand, a large number of historical and legal theses on civil law is amazing, where every fifth work contained the history of a certain institution of civil law, and the civil process, when the history of the formation and development of the Russian civilian judicial system and proceedings was the subject of scientific development in four master's degrees and one doctoral dissertation (Krichevsky, 1998).

The same is also observed with the dissertation development of pre-revolutionary State (Constitutional) Law: more than forty master's and doctoral dissertations (about a third of the total) were prepared and defended on the history

of the development of state institutions, the evolution of legislation, the development of the management system in Russia and overseas.

It should be noted that the formation and early development of the science of pre-revolutionary state law, which is quite lengthy in time, is described in detail in the writings of scholars of the 19th and early 20th centuries. We will dwell in more detail on the development of the university teaching of state and legal science, paying attention to university statutes and regulations on the awarding of academic degrees, in which the disciplines and sciences in the departments and the list of tests for obtaining academic degrees were normatively fixed.

Thus, the first in normative legal acts mention of State Law is found in the Charter of the Imperial University of Dorpat in 1803 among the academic disciplines of the Department of Law: § 84 ordered that ordinary professors have “positive state and people’s law, politics, history of rights and legal literature” (“Charter of the Imperial University of Dorpat”, 1864).

The course of Political and People’s Law was established somewhat earlier in the department of the moral and political sciences in accordance with the Charter or general regulations of the Imperial University of Vilnius and the colleges of its district of May 18, 1803 (“*Charter or general...*”, 1864), with the Charter of the Imperial Moscow, Kharkov and Kazan universities § 24 (“*Statutes of the Imperial...*”, 1864), in the document “Distribution of subjects of tests for academic degrees of master and doctor” in 1814 (“*On the distribution of subjects...*”, 1866).

The title of the discipline was amended in 1819 in the Regulations on the Production of Scientific Degrees, where among the sciences belonging to the circle of the Faculty of Law for the testing of degrees and granting degrees, § 6 contains the “Russian Public Law” (“*On the production of scientific...*”, 1864). The Charter of the University of St. Vladimir in 1833 contains a reference to the disciplines taught at the Faculty of Law “Basic Laws and Institutions of the Russian Empire, Laws on the Condition of People in the State” (“*About the Charter of the...*”, 1875).

1835 saw the General Statute of the Imperial Russian Universities published, where the science of state law was designated as “Russian State Laws”, consisting of the Laws of Basic Laws, State Laws and State Institutions (“*General Charter of the...*”, 1875).

In the Regulation on the tests for academic degrees in 1837, the categories of sciences for the master’s and doctorate tests do not differ. So, the master of state jurisprudence, as well as the doctor, had to pass the tests on the subject “Russian state laws” (“*With the presentation of the...*”, 1875). In 1844, in the new Regulation on the production of scientific degrees, the legislator firstly refers to the branch as state law: in § 34, when referring to the first or main subjects of tests for master’s degree, the term “Master of Public Law” is mentioned (“*Regulations on the production...*”, 1876).

In general, we can say that by the middle of the 19th century the term “state law” was in general use, both in scientific circles and in normative legal acts. This can be confirmed by the document approved by the Emperor “On the suspension of teaching in public law universities” (*“On the suspension of...”*, 1876). In substantiating the absence of the need for teaching state laws of the most important European states in universities, the author of the document mentions state law and the science of state law several times.

Also, the General Statute of the Imperial Russian Universities of 1863 contained a norm in which the basic structure of state law was fixed: § 15 of the General Charter defined the Department of State Law among others in the University Law Faculty, which included: a) the theory of state law; B) state law of the most important foreign states; C) Russian state law (*“General Charter of...”*, 1865).

Finally, in the Regulations on tests for the title of a valid student and for academic degrees in 1864, State Law is declared the main subject for the acquisition of a master’s degree in Public Law at the Faculty of Law (*“Regulations on tests for the...”*, 1867).

## RESULTS

Proceeding from the recognition of the key role of dissertational research in the development of legal science, including the science of the state (constitutional) law of the Russian Empire, it is necessary to determine the reasons for the “popularity” of historical, legal and theoretical and legal studies in state and legal science.

To answer the question of the causes of such “phenomena” in pre-revolutionary legal science, especially in the field of dissertation development, one can turn to the legislation of the Russian Empire. Analysis of the decrees and orders of the Ministry of Public Education, the provisions on the awarding of academic degrees, as well as the statutes of Russian universities shows that for the entire pre-October period of domestic jurisprudence, the historical, legal and theoretical and legal categories of scientific specialties for the award of a master’s degree and doctor of law were never established legislatively. The above mentioned studies were carried out within the framework of the discipline “The History of Russian Law” taught at universities.

One of the earliest references to “The History of Law” discipline is found in the Charter of the Imperial University of Dorpat in 1803, when the post of ordinary professor of “positive state and people’s law, politics, history of rights and legal literature” is introduced in the legal department of the university (“Charter of the Imperial University of Dorpat”, 1864). In the same Charter, the editorial board of 1820 also highlights the discipline “The History of Rights and Legal Literature”.

In accordance with the requirements of the General Charter of the Imperial Russian Universities in 1863, among the departments of the Faculty of Law, the

Department of the History of Russian Law was first named as mandatory in the teaching of law students (§15) (*"The General Charter..."*, 1865). This same norm was also transferred to the General Charter of 1884, which confirmed the necessity of the functioning of the department of the history of Russian law in the structure of law faculties.

Since the second half of the XIX century, the History of Russian Law is present as a science and academic discipline in university statutes. In 1865, at the Faculty of Law of Kazan University, in the category of legal and state sciences among common subjects, the History of Russian Law (*"On the division..."*, 1874) is indicated. The eponymous department was also established at the Faculty of Law at the University of Warsaw in accordance with the Charter of 1869 (*"Charter of the Imperial..."*, 1871).

Surprisingly, the fact that in the first Regulations on the production of academic degrees in 1819, among the sciences "included in the circle" of the Faculty of Law, the history of Russian law was not listed. The same was observed in the Regulations on tests for the title of a valid student and for academic degrees in 1864, where this discipline was not mentioned among the subjects for the master's degree tests. Nor did it appear in the General Charter of the Imperial Russian Universities of 1835.

Such a gap in the normative legal acts in the field of awarding academic degrees in practice deprived professors and private docents of imperial universities of the opportunity to defend theses in the History of Russian Law, as a result of which scientists "adjusted" their scientific works to "authorized" categories of sciences (State, Civil, Police, Financial, Church Law).

In addition, it is obvious that the systematic and regular lectures on the discipline "The History of Russian Law" in the universities of the Russian Empire, the organization of the departments and the establishment of posts for this scientific specialty did not play a role in the distribution of categories of Sciences, which awarded the master's and doctorate degrees in Law. The objective reasons for this inattention of officials of the Ministry of Public Education to the problem of establishing the category of science "History of Russian Law" for testing for academic degrees are not known to us and are not clear, especially if we take into account the continuous appeals of the scientific community to the Minister of Education, all in vain.

Due to this, quite a large number of works, the subject of which was the historical and legal aspects of the development of the state and law, passed as "state law", "civil law", "police law", "church right", etc.

In March 1915, according to the results of the "Meeting of Professors of Russian History and the History of the Russian Law of Russian Universities" held in Moscow, a petition was submitted to the Ministry of Public Education about the necessity and urgency of establishing the degrees of a master and doctor of the history of Russian

law. The authors of the appeal prof. M.F. Vladimirovsky-Budanov, A.N. Filippov, and M.Ya. Yasinsky, pointing to the obsolete Statute of tests for academic degrees in 1864, confirmed the impossibility and harm of the further absence of the degrees of the master and doctor of the history of Russian law in the presence of an extensive and independent science taught at universities for dozens of years.

The authors cited the following arguments in support of their petition:

- the history of law is one of the main foundations of jurisprudence, and science is not only independent, but also essential;
- The absence of special academic degrees in the history of Russian law makes it necessary to replace this department with representatives of other legal disciplines, mainly by magisters and doctors of state law;
- The establishment of academic degrees on the history of Russian law is urgently needed in the interests of replenishing the future teachers of the department of the history of Russian law.

However, these aspirations were not destined to be realized until 1917.

It is worth mentioning about such a field of legal science as the general theory of law and the state. The importance of the latter for the study of law, in general, is difficult to overestimate, and in scientific research, the general theory of law and the state necessarily serves as a methodological and theoretical foundation for the organization of applied and branch legal developments. At the same time, in the Russian Empire, the general theory of law and the state as a science or a discipline was not normatively fixed anywhere.

As a result, the master's and doctoral dissertations on the theory of law and the theory of the state were mostly defended in the specialty "State Law". Among the most famous and notable such works are the Master's theses of I.I. Grenberg (Reasoning about the relation in which the common law is to a positive law, to the philosophy of positive law, to politics and ethics, 1833), K.N. Jarosh (The history of the idea of natural law, Part 1. "Natural law" among Greeks and Romans, 1881), N.E. Chizhov (Elements of the concept of law, 1881), V.M. Gribovsky (The people and power in the Byzantine state, the experience of historical dogmatic research, 1897), N.I. Palienko (Sovereignty, Historical Development of the Idea of Sovereignty and Its Legal Importance, 1903), V.A. Savalsky (Fundamentals of the philosophy of law in scientific idealism, the Marburg School of Philosophy: Cohen, Natorp, Stammler, etc. Vol. 1., 1909), E.V. Spektorsky (The Problem of Social Physics in the 17th Century, Volume 1. A New Worldview and a New Theory of Science, 1910), Doctoral Studies of G.I. Solntsev (Natural, Private, Public and People's Law, 1816), K.A. Nevolin (Reasoning about the philosophy of legislation in the ancients, 1835), N.K. Rennenkampf (Essays on the legal encyclopedia, 1868), I.V. Kashnits (On the essence of the law, 1872), N.E. Chizhov (Law and its content according to the teachings of Lorentz von Stein, Essay on modern German legal literature, 1891),



N.I. Palienko (Teaching on the essence of the law and legal coherence of the state, 1908), S.A. Kotlyarevsky (Legal State and Foreign Policy, 1910), E.V. Spektorsky (The problem of social physics in the XVII century, T. 2, 1917).

A similar picture is observed with works in the field of the history of scientific legal and political thought, which was also publicly defended as dissertations on State Law. Among the latter, one can point to the master's and doctoral studies of N.N. Voroshilov (master's thesis: Critical review of the doctrine of the separation of powers., Yaroslavl, 1871, Moscow University), A.S. Alekseev (master's thesis: Machiavelli as a political thinker, Moscow, 1880, Moscow University), K.N. Jarosh (doctoral thesis: Jeremiah Bentham, his attitude to the doctrine of natural law., Kharkov, 1886, Kiev University), A.S. Alekseev (doctoral dissertation: Etudes Zh.Z. Rousseau T. 2. Connection of the political doctrine of Zh.Z. Rousseau with the state life of Geneva, Moscow, 1887, Moscow University), V.N. Rennenkampf (master's thesis: Constitutional principles and political views of Prince Bismarck, Kiev, 1890, Novorossiysk University (in Odessa)), I.M. Sobestiansky (Doctoral Thesis: Teachings on the National Characteristics of the Character and Legal Life of the Ancient Slavs: A Historical Critical Study - Kharkov, 1892, Kharkov University) P.I. Novgorodtsev (master's thesis: Historical School of Lawyers, its origin, and fate, the experience of characterizing the foundations of the Savigny School in their consistent development.) Moscow, 1896, Moscow University. V.E. Waldenberg (master's thesis: Law and Right in the Philosophy of Gobble, St. Petersburg, 1900, St. Petersburg University), P.I. Novgorodtsev (doctoral thesis: Kant and Hegel in their doctrines on law and the state, Two typical constructions in the field of the philosophy of law., Moscow, 1901, St. Petersburg University), A.N. Fateev (Master's thesis: An Essay on the Development of an Individualist Direction in the History of State Philosophy (The Idea of a Political Individual), pp. 1-2 Kharkov, 1904-1907, Kharkov University), K.A. Kuznetsov (Master's thesis: Experiments in the History of Political Ideas in England (XV-XVII century.) Vladivostok, 1913, Moscow University), A.A. Rozhdestvensky (master's thesis: The Theory of Subjective Public Rights: A Critical-Systematic Study, Moscow, 1913, Moscow University), B.P. Vysheslavtsev (master's thesis: Ethics of Fichte, Fundamentals of Law and Morality in the Transcendental Philosophy System - Moscow, 1914, Moscow University).

Finally, many historical works were also defended in the field of "State Law"; The most famous of them is M. Kovalevsky's master's work. "The history of the police administration (the security police) and the police court in the English counties from the earliest times until the death of Edward III. On the issue of the emergence of local government in England" (1877, Moscow University), a doctoral study of M.M. Kovalevsky "The social structure of England at the end of the Middle Ages" (1880, Moscow University), the master's thesis of A.E. Nazimov "The Reaction in Prussia (1848-1858)" (1886, Kiev University), V.M. Gribovsky "The people and

power in the Byzantine state.” The experience of historical and dogmatic research “(1897, St. Petersburg University), Ph.D. Kuznetsov “English House of Commons at Tudors and Stuarts” (1915, Kharkov University).

## CONCLUSION

Many state-legal dissertations defended in Imperial Russian universities, the subject of which were questions of the general theory of law and the state, as well as History of Russian Law, indicates that in fact, the science of state law in pre-revolutionary Russia included elements of the general theory and history of law and the state. The fact that the science of the theory of law and the state has not formed into an independent branch of knowledge is conditioned, in our opinion, by state policy in the field of science, by actions (and more often by inaction) of the Ministry of Education and its officials. And since in the normative legal acts the corresponding categories of sciences were not fixed, the candidates for master’s and doctoral degrees had no opportunity to defend the thesis on the specialty “History of Russian Law”, although such discipline was taught, and at law faculties there was a post of professor of the history of Russian law. The general theory of law and the state was not at all in the “nomenclature of scientific specialties.”

Thus, the policy of officials of the Ministry of Public Education was an indirect reason for the dominance in the state and legal studies of the historical-legal and theoretical-legal direction (to the detriment of dogmatic jurisprudence). This led to the dissertations, the subject of research in which were urgent issues of the history of Russian law and the general theory of law and state, defended by the so-called related specialties.

The fruitless calls of the scholarly community in the Ministry of Education to normatively fix the history of Russian law as a scientific specialty for the preparation and defense of master’s and doctoral dissertations in jurisprudence clearly demonstrate the negative effect of a lack of dialogue between officials and representatives of science. Our task today is to understand the mistakes and build up a lively and effective interaction of Power and Society.

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