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THEORY OF STATE AND LAW METHODOLOGY

Abstract

The theory of the state and law stands as a foundational science essential for the proficient exploration of various legal branches of knowledge and for the effective undertaking of future practical endeavors.

This theory serves as a repository for the most profound and overarching insights into the nature and objectives of the state and law. It delves into the core aspects of their existence, functionality, and the patterns governing their emergence and development. Consequently, the theory of the state and law assumes a pivotal guiding and methodological role, occupying a paramount position within the framework of legal science. It serves as the bedrock of all jurisprudence and statecraft, functioning as the central theoretical hub that informs and shapes these disciplines.

Key words: methodology, exegetical, positive, deduction.

The methodology of the theory of state and law includes various methods of solving cognitive problems. First of all, it includes general methods of cognition that are characteristic of any mental activity in general. For example, analysis as a mental division of the object of study into separate components; synthesis, as a combination of properties of individual elements, etc.; deduction as a transition of reasoning from general to specific; induction as a generalization of the particular, etc.

"Legal methodology is a set of rules that the law-enforcer must take into account in the process of defining the norm. Legal methodology can be described as methods of applying law."[1]

By the way, these methods are not a special achievement of science. These are formal-logical methods of thinking. Nevertheless, they are specially developed, used by science and form the basis of its methodology.

The next group of methods is ideological. Their essence lies in the fact that the scientist always chooses the initial principle of obtaining knowledge: either it comes from existing theories as a result of their interpretation, interconnection, elimination of contradictions between mental structures; or knowledge-acquisition for the empirical determination of the real facts of the existence of a cognitive subject and their understanding. Thus, science uses two primary worldview methods of cognition: exegetical and positive.

Exegetical theory (from "exegesis" - interpretation) is always created as a result of the interpretation of certain ultimate truths. These can be:

1. Religious teachings. The divine revelations contained in them are the basis for constructing the scientific doctrines of all religious and legal systems, including canonical, Muslim law.

2. Political and philosophical teachings. For example, Soviet jurisprudence for many decades did not go beyond the narrow circle of Marxist dogmas.

3. The works of scientific authorities which serve as the object of apologetic commentaries of their followers. This approach was mainly followed in their studies by the representatives of the school of glossators, who grew up as a result of commenting on the works of Roman jurists.

4. Normative legal acts. In this case, the exegetical method acts as a legal-dogmatic one, when the

[1] G. Khubua, Theory of Law. Tb., 2004, p. 176.

concepts of the state, law and other legal phenomena are directly borrowed or obtained by formal-logical analysis from the text of a normative legal act. At the time, the dogmatic interpretation of the law led to the emergence of the normative school of law.

The cognitive capabilities of the exegetical method are very limited. The fact that the dogmas underlying the exegetical theory are not subject to criticism gives this theory the character of justifying what is already known. The theory does not explain qualitatively new knowledge. Under these conditions, scientific research usually consists of a selection of quotations from primary sources that reflect canonized dogmas, as well as periodic campaigns to cleanse the latter's provisions from "nervous" interpretation.

Finally, the development of the theory based on the exegetical method practically stops. Sooner or later it will be declared complete. This was the case in the 10th century, when several theologians from the city of Hira systematized works on Islamic law, after which its doctrine was declared complete and unaltered for the future. Almost a millennium later, Marxist jurisprudence, built on the foundations of a different worldview, but using an exegetical method of studying the state and law, reached a similar conclusion.

The peculiarity of exegetical theory is that it exists as long as the authority of its primary source is preserved. Moreover, the maintenance of this authority is less dependent on the science itself, which (religion, politics, etc.) is held hostage for no reason. In the 19th century, Berlin prosecutor Kirchmann's essay "The uselessness of jurisprudence as a science" in 1848 became widely known and enjoyed great popularity in many European countries. In it, the author argued that three words of the legislator can turn entire scientific libraries into waste paper. This assertion was largely legal in relation to the normative-dogmatic jurisprudence of that time.

An exegetical theory of the state and law may become internally consistent and logically complete, but it often fails the test of practice, which it diligently ignores in its research.

Opposite to the exegetical method of studying the state and law is the positive method. Scientists - supporters of the latter - solve cognitive tasks not by commenting on texts interpreted by someone else's authority, but by studying the real facts of the state-legal life of society. If for exegetes the object and subject of science literally coincide ("holy truth"), then for followers of the positive method the object of research is real social events and its subject - knowledge about these events is different.

The origin of the positive theory is always in empirical knowledge, however, the positive method does not exclude the formulation of theoretical considerations of a high level of abstraction and their transfer into a single system through logical agreement. It is another matter that theoretical propositions should be verified with the help of empirical data and, in any case, should not be accepted as unquestionable and complete truth if they do not allow to explain the results of such data.

The positive method of studying the state and law significantly replaced the exegetical method, especially at the turn of the XIX-XX centuries. This is due to the fact that formal dogmatic jurisprudence, which tried to find answers to all questions about jurisprudence in the law, could not explain the reasons for the emergence of a new state-legal way of life in society in America and in Europe. The new normative system, with the help of formal logical analysis, could not be derived from the old one.

The formation of a new state-legal order was pre-determined by the influence of non-legal factors, which were in no way provided for by the old laws, but even contradicted them.

At that time, many lawyers discovered that the knowledge of the essence of the law and the state, first of all, is carried out by supra-legal, supra-state methods. It was so clearly beyond the traditional legal scope that some scientists even felt that they were on the verge of creating not only a new state-legal theory, but also a fundamentally new legal science.

The choice of the two worldview methods of the above-mentioned research is given to the vector of the

conceptual model of the current events of the state and law theory movement. At the same time, in the course of this movement, the researcher is faced with a number of specific cognitive tasks, for the solution of which different specific methods and cognitive ways should be used.

The latter can be divided depending on whether they are used in all sciences, in some of their groups or in one specific science (in this case, the theory of the state and law), general scientific, interdisciplinary and private or special science.

Dialectical logic, systematic approach, structuralism, etc. have a special place among general scientific. According to Professor G. Lobzhanidze, "the general theory of the state and law uses the dialectical method, it is important for the interrelationship of knowledge of the world and current processes, the upward development of universal variability, contradictions and unity and other general worldview principles, which it is based on in the process of studying the research object. "[1]

Dialectical logic, for example, requires consideration of the state and law in their development, the source of which is social contradictions, which implies quantitative and qualitative changes of these events, etc. A systemic approach to the state and law involves understanding them as whole systems that are included as elements in a more complex system that is society. Structuralism, in the study of state-legal processes, focuses not on establishing the closest causal (causes) connections between events, but on their structural and functional characteristics and connections.

Interdisciplinary research methods are a special group. In particular, in the theory of the state and law, specific sociological studies of human behavior (surveys, observations, experiments) that are important in the state-legal relationship can be conducted and are actually being conducted, statistical information is collected and modeling of state-legal processes is carried out.

As for the private scientific or special research methods, according to the most common opinion in the literature, such methods of the theory of the state and law are: legal-dogmatic, method of comparative jurisprudence (Comparativistics) and legal hermeneutics. Professor M. Tsatsanashvili notes that "the historical-comparative method is a concrete method and the main basis of the general history of the state and law. The doctrine of this method was formed in the 70s of the 19th century. Its representatives were: in Germany - Joseph Kaller, in France - Rudolf Darest (he himself researched Vakhtang VI law), in England - E. Freeman."[2]

The first of them is the method of interpreting legal acts and determining their effect in the conditions of competition with each other.

Comparativistics is a comparative analysis of different state-legal systems. Legal hermeneutics is based on the study of the real content of legal acts and other actions.

When speaking about the legal-dogmatic method, comparativistics and legal hermeneutics as special methods of the theory of the state and law, it is necessary to see the conditionality of the well-known evidence. First of all, the same methods will be widely used by other legal sciences. Secondly, they are essentially only methods of general or interdisciplinary sciences.

The methodology of the theory of the state and law, in addition to the methods of state-legal research already described above, includes methods, as well as methods of building a scientific theory, i.e. Ways of arranging a chain of concepts that reveal the significance of the researcher's chosen category as central to his or her theory. Some researchers named hypothetical-deductive and content-genetic methods as the main methods of building the theory of the state and law.

The hypothetical-deductive method is based on the probable choice of the key concept, and the remaining concepts are formed as its derivatives, subordinate to it. For example, when building a theory of law,

[1] G. Lobzhanidze, General theory of the state and law. Tb. 2014, p.13

[2] M. Tsatsanashvili, General History of the State and Law, Tb. 2013, p.17

representatives of different schools of jurisprudence can selectively expand the concept of law - into the main category of norms (normativists), legal relations (sociological school of law), legal awareness (psychological school of law), etc. Accordingly. All other relevant categories that extend the content of the main one acquire their own meaning by depending on it.

The content-genetic method is also based on assumptions. Only here is the assumption that the concept genetically determines the initial stage of the formation of the studied state-legal phenomenon. The concept that characterizes the developed form of the latter is formed as a result of the development of the concept of the "first cell", which is not necessarily the main concept of the theory. There are many examples in the literature, when law in a developed form was derived from the actual relations of property, commodity exchange, which played the role of a legal "primary cell".

Both content-genetic and hypothetical-deductive methods of building the state-legal theory are based on assumption, hypothesis when selecting the initial concept of theory development. The choice itself in this case is difficult to justify by anything other than the worldview positions of the author and his cultural and scientific preferences. This fact has been observed in jurisprudence in the last century, which is why prominent lawyers such as R. Yering, G. Arens, G. F. Shershenevich noted the absence of a reliable research method in legal science. A paradox appears, the essence of which lies in the fact that the scientist, before he has yet begun to formulate the final definition of the object of his research, has already chosen the basic concept, which initially contains all the essential points of this definition. There seems to be no refutation of Hegel's thesis that jurisprudence must develop from the concept an idea which represents the mind of the subject. But the concept of law is formed outside of science, its derivation presupposes the existence of a given concept.

Indeed, the methodology of the theory of the state and law constitutes a sophisticated and multi-faceted framework. It encompasses not only the general techniques and methods of abstract thinking but also incorporates worldview approaches to address specific cognitive challenges. Moreover, within its purview are methods dedicated to the formulation and development of scientific theories.

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