Western European Journal of Historical Events and Social Science
Volume 2, Issue 6, June, 2024
https://westerneuropeanstudies.com/index.php/4
ISSN (E): 2942-1926 Open Access| Peer Reviewed

MODERN THEORY OF STATE AND LAW AS METHODOLOGICAL LEGAL THE SCIENCE

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Introduction. The relevance of this scientific article is justified by the ambiguous assessment of the modern general theory of state in the system of legal sciences, attempts at both the theoretical and practical levels to downgrade its high status.
Target. The purpose of the article is to substantiate the position according to which the general theory of state and law, both in the past and in the present, acts as a fundamental, methodological science in the system of other legal sciences.
Methodology. The methodology includes the following methods: general philosophical (dialectical-materialistic); general scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.); private scientific (formal legal, interpretation of law, etc.).
Results. Noting the continuity of Marxist-Leninist theories states And rights, containing some provisions, Not lost relevance and for today, and the modern theory of state and law, which is a fundamental, methodological science, the commonality of the methodology of scientific research is emphasized. And at present, domestic theoreticians, as a general philosophical, universal, ideological method in their research, use the potential of the dialectical and historical materialism.
Conclusion. It is summarized that the downgrading of the status of the general theory of state and law at the theoretical level, which impoverishes the education of modern lawyers, leads to the collapse of domestic legal science, which recognized at all stages of its development (pre-revolutionary, Soviet, post-Soviet) fundamental, methodological character first. Moreover attacks on theory states and rights gradually moved into the practical plane: the abolition of the state exam in this discipline, the reduction of teaching hours, the refusal of some legal journals to publish scientific articles on general theoretical issues, etc.
Key words: theory of state and law; methodological science; downgrading the status of science; ideology of Marxism-Leninism; legal education.

1. Introduction

Relevance this scientific The article is justified by an ambiguous assessment of the modern general theory of state in the system of legal sciences.

2. Methodology

The methodology includes the following methods: general philosophical (dialectical-materialistic); general scientific (analysis and synthesis, logical and historical, comparisons, abstractions, etc.); private scientific (formal legal, interpretation of law, **etc.).**

1. Downgrading of the status of the general theory of state and law

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A team of fairly authoritative scientific theorists, showing inconsistency, because previously they substantiated a completely different position when considering the question of the place of the theory of state and law V system not of social sciences, as the authors believe, but of legal sciences, they write that "story states And rights is basic By attitude To theories states and rights" [1, p. 13].

Negative grade theories states and rights, belittling its status for jurisprudence It has place And V positions another a group of scientists who note that the theory of state and law in modern conditions performs the function of serving the official ideology, and the concepts of "human rights", "rule of law" represent the same ideological cliches that previously were the "state of the whole people" or "socialist democracy", And What "the traditional methodological and partly futurological function for the theory of state and law is now performed by branch sciences, and therefore the theory loses its significance as a fundamental, generalizing legal science" [2, p. 244].

One of the authors of this very unfounded point of view is R. A. Romashov - emphasizes that "the theory of state and law is a fundamental legal science", A then, again emphasizing What "this science occupies an important place in the system of domestic legal education" [3, p. 4], backs down, saying, that there are different points of view on this issue, often contradictory, and sometimes mutually exclusive, and believes the following: "This circumstance, on the one hand, indicates the pluralism of modern Russian jurisprudence, and on the other, is an indicator of the uncertainty of the goals that guide the representatives of their activities domestic legal science and education" [3, p. 5].

2. De-ideologization of modern theory of state and law

Scientists stubbornly do not want to see the process of the so-called de-ideologization of the modern theory of state and law, which analyzes E. AND. Temnov . IN in particular, the author believes that "the problem of methodological updating, standing up before political and legal science, requires the educational process to be strictly creative And realistic approach, critical assessment of what has been achieved, attentive and responsible perception of the new. The rejection of dogmatism and the revision of existing theoretical baggage presuppose the constructiveness of the methodological ones themselves. prerequisites interaction V a number of rays with the theoretical constructions of opponents" [4, p. 22].

It is difficult to agree with scientists who downgrade the status of the general theory of state And rights, which, By their opinion, performs "the function of serving the official ideology." This at volume, What is our society, To big unfortunately, Not It has clear and meaningful national state-legal ideology , ignoring such unwritten law: consciousness, V volume number and legal, does not tolerate a vacuum, some, often far from the best, system of views is always will fill in T. IN. Sinyukova , developing these provisions, emphasizes that as a result of mechanical de-ideologization, a most dangerous situation has arisen, even in comparison with the consequences of the economic crisis: an increasing feeling of spiritual emptiness, meaninglessness, futility, and the temporary nature of everything that is happening, which is visibly affecting more and more new layers of the population. From the author's position, "in our " de-ideologized " consciousness there is an increasing tendency towards social primitivism, mass aberrations (i.e. e. delusions), loss of already weak immunities from charismatic, nationalistic populism" [5, With. 615]. IN yours time D. Granin wrote the following: "Recently, the intelligentsia had the idea of confronting the regime, the monstrous Soviet ideology. There is no ideology – and there is no one to resist" [6, p. 174].

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I think it is very appropriate to emphasize here that the ideal is like a beacon that guides individual and social movement V true direction. This concerns and legal ideals. In legal life, the latter are an obligatory component. Now in modern Russia, perhaps, the highest legal ideal is the rule of law. This is reflected in Art. 1 of the Constitution of the Russian Federation, where, however, we are not talking about an ideal, but an already accomplished fact of Russian reality. But it is quite obvious that the rule of law is only an ideal that expresses the official legal ideological position of our states. What same concerns question about Russian legal ideal, then here, as emphasized R. WITH. Bainiyazov , legal the state , as life shows, has not become a national ideal (not to mention practice) For Russian citizens. On the contrary, in There is disbelief, skepticism, and apathy in people's minds about this. The spiritual situation in Russia is such that the communist myth already for a long time debunked old "ideals" are thrown out, new ones are actually no, and if there are, then they are those that are far away Not Always adequate popular spirit [7, p. 19].

attention to varying degrees legal scholars. So, A. AND. Ekimov , highlighting two points vision V context this problem, emphasizes that according to the first position it is necessary to strive everywhere for the de-ideologization of scientific knowledge; there is a pure legal truth, independent of political interests, reflecting universal human values (recognized in a particular historical era or, on the contrary, unchanged at all times). According to the second, only properly ideologized knowledge can carry the truth; everything legal is in its political basis, and the law itself is a political measure. The concept of "ideology" is understood and assessed differently: if the essence of ideology is that it is a set of certain paradigms, or an ideologist , that serves the interests of a narrow circle of the elite, then indeed legal science should how much it is possible to distance yourself from her; if ideology is a set of different kinds of ideas that reflect the essence of what is happening with more or less accuracy, then a different situation arises [8, p. 3–4].

2. Marxist-Leninist general theory of state and law

Indeed, after 1917 d. jurisprudence was put at the service of class interests, which, however, on practice were interpreted exclusively from the position of the administrative-command elite. Entire sections of the theory of state and law (O the concept of state and law, functions of the state and T. d.) were subjected to radical revision. Instead of the ideological pluralism characteristic of the pre-revolutionary eras, on many decades the monopoly on truth is asserted exclusively for Marxism-Leninism. Accordingly, the theory of state and law began to be called nothing less than Marxist- Leninist .

At that time, only the views of pre-Marxian theoretical thought or concepts based on the ideas of K. were considered in a positive way. Marx and V. AND. Lenin. Non-Marxist and anti-Marxist thought was either ignored or served as a target for attacks, because nothing positive was found in it. Modern Western state-legal systems were presented as hostile to the interests of the masses and incapable of ensuring the rights and interests of broad sections of the population.

Legal science itself was proclaimed party science , serving the interests of the proletariat. At the same time, it was argued that the interests of the proletariat are the true interests society. Therefore, everything what do they need contradicts, objectively contradicts and the interests of society.

A very common thesis in legal literature was that the state and law are subordinated to class interests , and as the class division society will lose meaning, state And the right will die

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out. In the post-October period, Soviet philosophical and legal thought in its views on the state was unchanged: it was mainly focused on a more in-depth disclosure of the class character of the state in all its manifestations, V volume number And socialist. IN philosophical dictionary of that time stated that "the state is a political organization economically ruling class, which aims to protect the existing economic order and suppress the resistance of other classes" [9, With. 47].

It was recommended to look everywhere for the class meaning of specific legal norms, specific state decisions. As a result of the "party" approach, legal the science lost objective approach to the analysis of state and legal phenomena. Before Total This expressed And V theories, And in practice, in disregard of the interests of the individual, his rights. Denied independent status and meaning an individual, an individual as a subject of economics, law and politics. The radical rejection of the individual in favor of the universal (social, collective) led to the comprehensive transformation of man into a living instrument And auxiliary means universal the whole V simple performer corresponding functions of proletarian organized collectivity and socialist community, in a word, into an impersonal, ordinary, powerless "cog" of a single huge machine of collective suppression, violence, power-centralized production, distribution And consumption. IN In this connection, it seems very appropriate to cite the thoughts of D. in terms of criticism of Soviet science. Granina: "Artificially stop move Sciences it is forbidden. But the humanization of science is necessary. It became clear What rational-logical development of science showed my failure" [6, p. 14].

Gradually, Marxist dogma took hold in Russian legal science. The dominance of the dogmatic concept, its monopoly position that emerged in the 1930s gg. and partially preserved to this day, has become a true tragedy of our jurisprudence. Soviet legal science turned into an ideological superstructure over the basis of the command - administrative system, for which legislation served as a weapon in the fight against the "internal and external" enemy, provision his dominant position, achieving one's own goals. The main responsibilities of legal science have been reduced to analysis, commentary and apologetics law. Domestic the law school gradually transformed into a school scolding And deaf dogmatism:

"Pseudoscience was supposed to show everyone that ideology is higher than truth, that the interests of politics higher interests Sciences" [6, With. 241]. This characteristic can be fully used in an objective assessment of the Marxist-Leninist general theory of state and law.

In this regard, E. AND. Temnov very reasonably notes that " the researcher's ideologically driven positions did not allow him to fully trace the historical trajectory, involvement To spiritual orientations of the past. Monopoly, one-dimensionality and unidirectionality funds analysis Not took into account the contradictory, dual essence observed phenomena – rights and states. The content of the class approach gradually became ideological intolerance and closedness. ... The degree of democracy of the theories was determined by the role that the thinker assigned to the working strata of the civil population, the potential for the superiority of the tendencies and goals of the oppressed class over the manifestation of universal human tendencies and goals" [4, p. 23–24].

The scheme of the Marxist-Leninist approach was based on economic determinism: the state and law arise as a result of the emergence of private property, property A its consequence is the split of society into antagonistic classes, reconciliation between which Maybe through state and law. Marxism was entirely based on a formational approach; doctrines about the legal and social state fell out of sight .

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3. Constructive-critical approach to Marxist-Leninist doctrine

Now, on the contrary, there is militant rejection and merciless criticism of this approach. At the same time, it must be taken into account that any theory, using its methods of cognition, brings grains of knowledge to the common treasury, allows deeper And fuller understand certain facets of the phenomena being studied. Apparently, today the most acceptable for jurisprudence is the so-called constructive-critical an approach To assessment And analysis of past and present state legal doctrines. The above fully applies to the Marxist-Leninist doctrine, which was subjected to the most severe criticism And even slander, V including its former "ardent" supporters. A protracted systemic crisis in many countries that were called socialist, life need his overcoming determined sharp negative attitude To Marxism-Leninism as a doctrine and socialism as a socio-political system. Noting that "more recently, any study of legal reality was "normatively" determined by methodological principles Marxist philosophy ", which in the theory of knowledge at the present time by some researchers pushed aside on rear plan, A. AND. Bryzgalov believes that "...at present, such guidelines are also, to a certain extent, lost in legal science" [10, p. 17].

However, science cannot go to extremes. Dispute No, V Marxism a lot utopian and outdated, but it contains provisions and conclusions that have lasting significance (for example, ideas about collectivism, social justice, etc.).

By the way, domestic theoreticians paid attention to this aspect of the problem. Yes, E. AND. Temnov believes that for research complex periods history or the confrontation of ideological views, it is quite acceptable to take into account class interest, And emphasizes that "...such an approach should not turn into an exclusive and self-sufficient approach (as was the case in the Marxist-Leninist general theories state and law. - *IN. K.*) in the methodological arsenal of research." Reflecting on the methodology of cognition of state-legal reality, the author argues that "to see behind partisanship and classism is more than one of the methods of cognition, specific methodological an approach And to elevate it to a universal principle means to ideologize the means of scientific analysis and, ultimately, its results" [11, p. 75].

ABOUT. IN. Martyshin, reflecting on the concept of state, notes What before 90s gg. XX V. V our country was completely dominated by the Marxist-Leninist concept class nature state, but then she began to be replaced by ideas about the state as a benefit of civilization, serving not class, but general interests. The author identifies the following trend in domestic legal science: one extreme (the Marxist interpretation of the state in the Soviet version) is replaced by another - a one-sided assertion that the state serves the common good and only it, at the same time, the differences between what is and what should be are erased [12, p. 66]. For example, in. A. Chetvernin believes that "state power serves society in whole and therefore expresses the universal interest – security integrity and stability of the social system. But state power, in addition to the general interest, also expresses the general interests of private individuals - ensuring freedom, security and property" [13, p. 111].

Taking into account the spread, including in the West, of a more moderate and flexible approach, which boils down to the fact that social content states multifaceted, that in the activities and nature of each state the interests of the rulers, the interests of some social groups and the common good are combined in different proportions, O. V. Martyshin argues, justifying the so-called realistic approach to the characteristics of each state, Not excluding modern Russian, What

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"much smarter Not fall into V extreme, not get involved neither absolutization, neither uncompromising denial of Marxism, and try to analyze the relationship between three groups of interests (rulers, classes, the whole society) in the activities of each state" [12, p. 67].

It is easy to notice, and this is important in the context of this work, that despite criticism of Marxism-Leninism, the overwhelming majority of modern theoretical scientists prefer the method of dialectical dialectics as a general philosophical (universal, worldview) method. It seems that this method Not lost his relevance in legal studies. Other scientists agree with this statement. For example, the authors of a textbook on the philosophy of law believe that "the basis of the synthesizing qualities of the philosophy of law is that the core of philosophy as a methodological science is the unity of dialectics, logic and theory of knowledge. This means in a generalized form that the same system of laws and categories in dialectics acts as principles of knowledge of the objective world, in the theory of knowledge - as a means of solving specific cognitive problems, and in logic - as a form of scientific thinking" [14, p. 3].

V. M. Korelsky V categorically states that "our domestic science is characterized by an orientation towards materialistic an approach, according to to whom deep essential sides states and rights are ultimately predetermined by the economy and existing forms of ownership. The materialistic approach allows trace connection states And rights with real processes and explore their possibilities for strengthening the material foundations and increasing the economic potential of society." According to the scientist, "the philosophical basis of the theory of state and law is the dialectical method, i.e. the doctrine of the most general natural connections development being And consciousness" [15, With. 12–13]. Recognizing that the method of dialectical and historical materialism has made a huge contribution to the knowledge of political and legal reality, V. N. Zhukov in his scientific work, which for some unknown reason he called a textbook, writes that "at present, to consider the state and law in development, historically , in the unity of the political, spiritual and economic life of society, based on social practice as a criterion of truth, has become characteristic of the methodology of theoretical and legal science" [16, p. 39].

In the variety of approaches used in modern science, dialectical-materialistic methodology, With points vision IN. P. Kokhanovsky , plays All increasing role [17, p. 127–128].

Domestic scientists, in our opinion, quite rightly state that there are no convincing arguments against the use of materialist dialectics as one of options theoretical There is no understanding of the world and elements of the methodology of scientific research today. As the authors say, "in the modern philosophical market she quite competitive" [18, With. 10]. IN. M. Raw, being a supporter of the Marxist theory of law, writes that in the history of political and legal thought for the last hundred years, it was the Marxist doctrine that was the undisputed leader and has not lost its leading position V present time, "for there is no other theory capable of fully and consistently answering complex questions of jurisprudence that other theories Not can to uncover" [19, With. 478].

IN another his work scientist, addressing To characteristics methodological functions of dialectical (and historical) materialism, emphasizes that it "... is expressed in the orientation of the knowing subject towards obtaining objectively true knowledge, towards disclosing ways and means of obtaining such knowledge and forms of its objectification and presentation. As the universal laws of scientific knowledge, the principles of dialectical logic constitute the initial methodological basis for the knowledge of any special, concrete science, and show what the path to comprehend objectively true knowledge should be" [20, p. 188].

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It seems that a convincing confirmation of the significance of the analyzed method is the position of the American professor L. R. Graham : "If We we admit legality of production fundamental questions O nature of things, then the dialectical-materialistic approach - scientifically oriented, realistic, materialistic - claims superiority over existing and competing universal systems of thinking, and these claims can be quite justified" [21, p. 15].

ABOUT. A. Puchkov, calling And characterizing the main properties theories states And rights in the era of the dominance of communist doctrine - mythological , autocentrism , speculativeness, utopianism and orthodoxy [22, p. 5–6], nevertheless, he further writes O that "...despite the heavy burden of decades of imposed archaic political and legal provisions... the science O state and law are now developing. It frees itself from those scientific constructs that do not allow one to explain the complex phenomena of political and legal reality, and seeks new approaches" [22, p. 7].

A. is more skeptical about the process of development of domestic theoretical science. AND. Demidov, speaking about the retardation of its methodology, striving to preserve the familiar and really explanatory Marxist paradigm of interpretation of legal reality which "...explains legal validity with using categories such as How classism, formationality , economic determination state -legal phenomena, their superstructural nature and development according to the "laws of dialectics", identification of revolutionism with fundamentality, depth of transformations." Moreover, this methodology "...is adjacent With visible recognition necessity changes, but within the framework of the usual style of thinking" [23, p. 16].

4. The dialectical method as the main general philosophical method of domestic jurisprudence

It is the dialectical method, as the main method that makes it possible to reveal the patterns of development of a particular legal phenomenon, that is used by scientists when preparing dissertations for the academic degrees of candidate (doctor) of legal sciences.

In any case, many authors draw attention to the fact that the so-called metaphysical methods of studying state legal reality Badly "fit" into the system of other methods, methodology as a whole.

According to V. N. Zhukov, the experience of the 19th and especially the 20th V. showed that not all philosophical schools turned out to be methodologically fruitful for the philosophy of law. He argues that "often lawyers artificially, very arbitrarily tried to combine philosophy and jurisprudence and thereby proved not so much the capabilities of philosophy in the knowledge of law, but their own capabilities V design speculative schemes", having in kind of "strained, invented concepts built on the basis of phenomenology and existentialism" [16, p. 37].

Regarding our attitude towards opportunities use potential another method - hermeneutics in jurisprudence, then, like a number of scientists, it is quite critical [24, p. 8]. For example, in. M. Raw, on our sight, earnestly showed futility of hermeneutics as a method of knowledge V law [25, With. 193–235]. Apparently And quicker Total, this circumstance This is due to the fact that this method is very rarely included in the system of methods for studying law.

Let us note that even scientists who assigned certain principles to legal hermeneutics hope V research plan, V Currently, they began to doubt its potential. For example, I. L. Chestnov, having analyzed phenomonology , hermeneutics , synergetics and T. D., came to the conclusion that "these approaches to right as independent more Not took place" [26, With. 272]. In this regard, I. YU. Kozlikhin quite rightly notes that the last decade has been characterized by the search for a new paradigm. Increasingly, they are trying to find it outside of law, to bring

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knowledge developed in the bosom of other sciences into the study of law. This is most clearly manifested in the general theory. The scientist believes that such attempts should be welcomed, but only if If They deepen is our knowledge about law, and not about the subject of those sciences to which we address [27, p. 31].

5. Conclusion

In conclusion, we note that the downgrading of the status general theories states And rights to theoretical level, which impoverishes education modern lawyers, leads To the collapse of domestic legal science, which recognized the fundamental, methodological character at all stages of its development (pre-revolutionary, Soviet, post-Soviet) first [28, With. 72–79; 29, With. 155–156]. Moreover attacks on theory states And rights gradually moved into practice: cancellation state exam in this discipline, reducing teaching hours, refusal some legal journals (For example, "Modern right", "Bulletin of St. Petersburg University" and etc.) publish scientific articles on general theoretical issues, etc.

We believe that this situation needs to be corrected, focusing on the statements of the founder of the theory of state and law N. M. Korkunov that “the general theory of law (and the theory of state. - *V. K.*) is... the cornerstone of the legal system" [30, p. 217].

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