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UNITY AND DIVERSITY IN "STATE" AS A CONCEPT IN POLITICAL-LEGAL THOUGHT

LA UNIDAD EN EL "ESTADO" COMO CONCEPTO DEL PENSAMIENTO POLÍTICO-LEGAL

				
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RESUMEN
El objetivo de esta investigación fue el análisis filosófico y legal de varias definiciones históricas del concepto de "estado", que analiza su esencialidad y relevancia para el sistema real de conocimiento. nuestro hallazgo muestra la evolución de las definiciones de "estado" que tienen lugar en la literatura legal; Se observa que esta dinámica refleja más o menos adecuadamente la evolución de un estado en sí. También mostraron una serie de variedades históricas concretas del "estado" que representan una organización específica del poder, es decir, una actividad legalmente estructurada e institucionalmente organizada para el ejercicio de los poderes de la autoridad suprema.
Palabras clave: Evolución de un estado, estado, sociedad política, resolución pública, poder estatal.

ABSTRACT
The aim of this research was the philosophical and legal analysis of various historical definitions of the "state" concept; iscusses their essentiality and relevance to the real system of knowledge. Our finding shows the evolution of the "state" definitions that takes place in the legal literature; it is noted that this dynamics more or less adequately reflects the evolution of a state itself. it also showed number of concrete-historical varieties of the "state" that represent a specific organization of power, that is, a legally structured and institutionally organized activity for the exercise of the supreme authority's powers.
Keywords: Evolution of a state, statehood, Political Society, Res Publica, state power.

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INTRODUCTION

In the last two centuries, a universal definition of a "state" has become widespread in theoretical and legal literature. According to the generally accepted definition, a state is not so much a people exercising political power in a given territory, and not so much a political organization of society, but the *organization of* this power, i.e., in the strict sense of the word, a *state apparatus*.

The conceptual prerequisites for this kind of interpretations were also laid by the West European political thought of the Early Modern period (16th-17th centuries), in which there were "representations of a state as a relatively autonomous apparatus of government separated both from the personality of a ruler and from the totality of the governed people" (Kharkhordin, 2002, p123).

Thus, a state began to be perceived, in fact, no longer as the power itself (which can belong to both the monarch and the people), but as a *form of organization of power*, with the process of formation of the state apparatus (the mechanism of any modern state) being identified more and more with the latter (Razuvaev, 2011, p259).

The main goal of the present article titled “Unity and Diversity in State as a Concept in Political –Legal Thought” is the analysis of various historical definitions of the “state” concept, is also discusses their essentiality and relevance to the real system of knowledge.

REVIEW OF LITERATURE

Humboldt(1985): a consistent supporter of the universal understanding of a state, first voiced it in its entirety, was W. von Humboldt, who very clearly pointed to the qualitative differences between the ancient and medieval states and the states of modern times (Sokolshchik, 2007).

> "A state," Humboldt wrote, "is such a complex and multifaceted machine that laws that must be simple, universal and few cannot exhaust all aspects of its activities... Therefore, the efforts of all those who have ever been involved in the state system had always been aimed at linking the good of the state with the interests of citizens and turning the state into a machine that would be driven by internal driving forces and would not need to be continuously influenced from outside. If the states of modern times can be proud of any advantage over the ancients, it is primarily because they have been able to realize this situation to a greater extent"(Sokolshchik, 2007, p111).

In the above quotation, two circumstances are taken care of. First, a state for W. Humboldt is not just a system of agencies, but a well-established machine operating according to inherent laws and principles, the scientist, qualitatively distinguishes it from the states of antiquity and the Middle Ages (i. e. traditional states) (Sokolshchik, 2007).

In this view, one cannot fail to see the influence of the mechanistic metaphor prevailing

in scientific thought XVII - XVIII centuries and originating in the classical ("Newtonian") natural science, and also in the works of the French philosophers-enlighteners.

Secondly, W. Humboldt does not see the existence of an essential link between a state and law ("laws"). The ideal state, in his opinion, is a machine that depends as little as possible on the law and is minimally controlled by it, functioning solely on the basis of inherent rational principles.

Hegel: Like Humboldt, Hegel also saw in a state, above all, the system of government, with the only difference is that, unlike Humboldt, Hegel thought a state not as a mechanism, but as an organism, and this makes him a vivid representative of the organic theories of a state (Humboldt, 1985; Hegel, 1990). At the same time, Hegel also underscores the essential differences between the ancient states and states of the Early Modern period. In particular, the philosopher notes one of the most important features inherent in the modern states, namely *de personification*, which fundamentally distinguishes it from the states of the Ancient World and the Middle Ages. In this de personification, Hegel sees the condition for manifestation of "universal freedom" in the state's activity which it is consistent with the notion of will (Hegel, 1990). And according to Hegel, this will not be at all the will of a sovereign monarch and not even the russoistically understood "common will" (la volontègènèrale), interpreted by the same Rousseau as the will of a simple arithmetic majority of citizens (Rousseau, 1969; Nurbekova, Odanova, Sabdenova, Adilbekova and Osmanova, 2018). The will of a state, according to Hegel, does not have its specific carrier; it belongs to the state precisely as such. This, in fact, makes the state's will universal and aimed at achieving that common good in which the philosopher saw the main goal of state activity.

Marxism-Leninism: The ideas of Humboldt and Hegel about a state received a peculiar continuation in the works of the founders of Marxism-Leninism. With all the differences in the political views of these authors, it is not difficult to see that they generally understood a state in a similar way only to the difference that if for Hegel and Humboldt the main purpose of the state's activity was service to the public good, then Marx, Engels and Lenin believed that a state is intended to suppress and oppress one class by others (Humboldt, 1985; Hegel, 1990). Nevertheless, Marxists equally unequivocally perceived a state as an administrative apparatus which is relatively isolated from civil society and even in some respects opposed to it.

Thus, in particular, Engels regards a state as a system of administrative bodies which are entrusted with monitoring the implementation of laws. According to him, a state (by which he meant, above all, a bourgeois "exploitative" state) "*is nothing but a machine* for suppressing one class by another, and a democratic republic is no less than a monarchy" (Engels, 1960, p200). Finally, Marx himself unambiguously asserted that a state is an organ that *stands above* society and, therefore, is *relatively isolated* from it (Marx and Marx, 1960).

Thus, in the Marxist understanding of a state, there are three main aspects that are of

great importance for the further development of legal and political theory. A state, in the view of the supporters of Marxism, is: a) an apparatus or mechanism, that is, a system of bodies exercising public political power; b) relatively separate from society due to the naturally formed division of labor; and c) exercising a monopoly of coercion and violence in the interests of economically dominant classes.

If we turn to legal science, including the theory of state and law, we will see that since the end of the XIX century, similar views were expressed here. At the same time, most of them also believed that a state is a system of bodies, an administrative apparatus. Soviet jurists of the 20-60-ies of XX century gave extremely rigid and one-sided definitions of a state which fully and completely identified it with a "machine of coercion" which carried out the dictatorship of the ruling class in society. Over time, however, the definition of a state given in the Soviet legal literature became more correct; a "coercion machine" was replaced in it by neutral formulations, such as, in particular, "the organization of power". This, however, did not affect the content, as a state, as before, was identified, first of all, with a relatively separate administrative apparatus, which is explicitly mentioned, for example, in the fundamental "Marxist-Leninist general theory of state and law", and also in a number of other works that appeared in the 1970s and 1980s years.

Although the idea of a state as a government apparatus was being developed within the framework of the Marxist-Leninist doctrine, it would be incorrect to consider that only scientists who stand on Marxist positions adhere to this concept in modern Russian jurisprudence. In fact, it is to a greater or lesser degree shared by legal theorists who are guided by the most diverse types of legal understanding and understanding of a state (Sokolshchik, 2007).

At the same time, it should be noted that the influence of Marxism on the modern definitions of a state was manifested in the fact that some authors still see a machinery of coercion, violence and domination in a state. This makes these definitions focused on a completely defined and, in addition, already passed stage of evolution of a state, what significantly reduces their cognitive value. So, according to O.E. Leist: "Being the centralized hierarchy of officials, the administration and coercion apparatus, a state acts as a force isolated from other social groups and has a monopoly in the power to make decisions and forces to implement them" (Leist, 2002, P98, Antúnez, 2016, P63).

At the same time, a number of scientists see the main goal of the activity of a modern state not only (and in some cases even less so) in the implementation of organized coercion, but in the performance of various general social tasks, as evidenced by the definitions of Baitin and Spiridonova. This position is close to the understanding of Chirkin, according to which:

> "in modern state studies, a state is usually understood as an *organization* which is *comprehensive* for the society of the country *and has* a special kind of *sovereign public authority* and a specialized *apparatus* for *regulating* public

relations and for legitimation (legal and reasonable) of coercion" (Chirkin, 2001, P39).

RESULTS

At present, researchers argue that in modern society the connection between a state and a collective of citizens on behalf of which it acts, is of a complex indirect nature that is not reduced entirely to a simple connection between form and content that does not allow us to identify a modern state with the corporation or with some other legal entity, as some researchers do.

PUBLIC-LEGAL ENTITIES

This connection is revealed by V. E. Chirkin who relates a state to the number of so-called *public-legal entities* - a special kind of subjects of law participating on behalf of territorial public collectives in various kinds of specific legal relations. At the same time, as V. E. Chirkin believes, a public-legal formation is not an association of members of the collective, but a system of bodies acting on its behalf (Chirkin, 2011).

Thus, in the opinion of V. E. Chirkin, with whom it is quite possible to agree, a modern state is characterized by the following features:

a) It is a form of organization of political power in society, that is, it acts primarily as a system of bodies and officials exercising power;

b) It has a public legal nature and

c)It is a territorial entity (Chirkin, 2011).

LEGAL NATURE A STATE

A similar idea is shared by the supporters of the libertarian-legal school (Nersesyants, 2014), whose critical attitude to the views of dogmatic jurisprudence is well-known. Nevertheless, in giving the definition of the state, Nersesyants uses rather widespread formulations, specifying and concretizing them in such a way that they more adequately reflect the legal nature of a state.

STATE, AS AN ADMINISTRATIVE APPARATUS

In particular, he draws special attention to the fact that a state, being considered by Nersesyants as an administrative apparatus, at the same time is not treated exclusively in the categories of coercion and violence, as do many other modern authors (Nersesyants, 2014). According to the quite equitable opinion of Nersesyants, bare violence is incompatible with the law, and hence with the concept of state and state power.

STATE, LEGAL INSTITUTION

In other words, every state, according to the scientist, is a *legal institution*, and therefore should be viewed not only from the sociological but also from the legal position as an

aspect of the existing legal order in the society, to what idea in due time an attention was drawn by such a scholar in all respects far from consonance to Nersesyants, as Kelsen (Kelsen, 1987). Thus, according to Nersesyants, a state both conceptually and essentially is connected with the law and should be regarded as the organization of political power of free and formally equal individuals.

THE SUPERMACY OF PEOPLS POWER

Such an understanding, at first glance being close to the interpretation of a state as a corporation, or as an *association of citizens*, in fact turns out to be opposite to it in a number of aspects. In fact, if we would consider a state as not any political structure that corresponds to known formal and substantial criteria, but as the only one that *essentially* embodies the freedom of formally equal individuals, then we must admit that this freedom cannot always be coordinated with the supremacy of people's power in general, especially in cases when this power is transformed into a dictatorship of a simple arithmetic majority. Attention to this circumstance was also drawn to by Rousseau, who gave unquestionable preference to the common people's will, in which he saw the sovereignty foundation of a state (Rousseau and Treatises, 1969). Meanwhile, as to V.S. Nersesyants and his followers, sovereignty belongs not to the people as a whole, but to separate individuals.

ADMINISTRATIVE APPARATUS

The understanding of a modern state as the administrative apparatus relatively separate from (civil) society, but at the same time subordinate and controlled by it, is most consistent with this interpretation of sovereignty. No wonder a state is "such a "mechanism" of political domination (that is, coercion up to organized violence) which is somehow mediated by law; it acts not arbitrarily, but within the framework of the powers" (Nersesyants, 2014, P563). And in this connection serious doubts arise as to the applicability to a modern state of those definitions according to which it represents a politically organized society (population, people).

PROGRESSIVENESS AND DEMOCRACY

For all the seeming "progressiveness" and "democracy" of such a position, in modern conditions it carries a serious danger. In fact, a modern (that is, industrial and post-industrial) society is a complex and internally differentiated system. Its most important feature is the increasingly deeper isolation of various specialized subsystems in the process of socio-historical evolution).

INTERNALL DIFFERENTATION

One of the aspects of this internal differentiation is the distinction in the modern society of the public law and private law aspects of the rule of law, which has found its direct expression in the emancipation of civil society as a set of institutions having a private legal nature and its separation from public legal institutions, among which the state holds the main place. Irreversibility of this emancipation was also noted by the classical evolutionists of the nineteenth century, who reasonably saw the most important result of

the historical evolution of society in it. This implies, among other things, also non-identity of a *modern state* as an organization which activities are aimed at satisfying *public and public interests,* and a *civil society*, within which self-satisfaction of *private interests of* citizens is carried out.

CIVIL SOCIENTY MODERN CONDITIONS

It is particularly important to emphasize that it is civil society in modern conditions that is the primary and initial form of self-organization of members of a socium acting primarily as personally free and self-sufficient individual owners who independently solve their affairs and satisfy their needs, and then are members of the political community associated with it by certain relationships (Neubert - 2014).

REALIZATION OF SUCH NEEDS TOTALITARIAN SYSTEM

The identification of a modern state and a population, a territorial collective of citizens, and equating one with the other entails, in purely practical terms, absorption of civil society by the state, their merging with each other up to complete indistinguishability, which, as practice shows, is the first sign of a totalitarian system characterized by undeveloped private property institutions and the minimum level of personal freedom of individuals

MODERN STATE AS AN APPARATUS

The understanding of a modern state as an apparatus placed at the service of civil society and acting under its strict control is much preferable to the notion of a "state of the whole people", including all its citizens, and therefore claiming total supervision not only for public, but also private and even intimate aspects of their lives.

REBULDING SOCIETY

That is why, from our point of view, we should agree with Leist, in the words of which in modern conditions the definition of a state as a political organization of society is "a definition not of a state but of a totalitarian party seeking to seize power over society, to become its guiding and directing force, rebuilding society in accordance with its intentions, corporate interests and ideology" (Leist, 2002, P82).

The situation does not fundamentally change the fact that, as we saw before, a traditional state was determined in this way. After all, the traditional states in their overwhelming majority though were not "totalitarian parties", but in any case, they also did not, as Hegel noted, embody freedom of members of society, what a modern state is or at least is called upon to be.

UNDERESTANDING OF A STATE

In conclusion, it should be noted that the understanding of a state as, first of all, the state apparatus (mechanism) is characteristic for representatives of a number of social sciences adjacent to jurisprudence: sociologists, economists, political scientists,

historians both in the west and in Russia.

Thus, according to F. Hayek, a state is not identical with society as a whole and is limited only by the government apparatus (Hayek, 1995). French scientists Bady and Birnbaum also come from close positions.

With the easy hand of Max Weber, the perception of a modern state as a bureaucratic machine has become almost universally accepted among historians in the West. This led to the formation of bureaucracy in the works of some of them (primarily Chabeau and Mounier) as a key moment in the process of formation of a modern state in Western Europe (Marvall, 1994).

Modern Western sociologists also proceed in their studies from the same definition; many of them propose to eliminate the term "state" as a kind of fiction from scientific use in general.

STATE APPARATUS OR MECHANISM

In particular, Kradin considers the main criterion of statehood is the existence of a specialized administrative apparatus, and, in his opinion, this feature should be present in any state, regardless of its historical type.

Thus, we can talk about historical dynamics, and evolution of the definitions of a state given in the legal literature, and this dynamics more or less adequately reflects the evolution of a state itself, which is their subject.

The analysis makes it possible to identify those features that are most often encountered in the definitions considered, claiming universality and universal validity for states of any historical types. This includes *territory, population, legal nature, existence of supreme (sovereign) political power and a state apparatus*. In addition, a number of scientists, following F. Engels, propose to consider *taxation* as an essential sign of a state.

Meanwhile, even in Marxism literature there is no common opinion on the question of whether this feature is inherent in all states or only more or less mature ones. As it will be shown below, taxes are a phenomenon that is not characteristic to all traditional states, which makes it impossible to consider them as a permanent feature of a state.

publication of laws and by-laws is an important feature of a modern state, but it was not inherent in some (especially early) traditional states (Astafurov, 2010, p172).

In general, it should be noted that the legislative activity of a state was developed much later than the latter had appeared. Therefore, there is every reason to say that transition from customary law to legislatively consolidated law was a result of a long struggle and effort, and in its meaning is quite comparable with the transition from pre-state forms of political power to a state.

Thus, there were justifiable doubts about the existence of written legislation in Athens before the publication of the Draconites laws (621 BC), in Rome before adoption of the Laws of the XII tables (450 BC), in the Kingdom of the Franks before the creation of the Salic law (about 481), in Kyven Rush until the creation of Yaroslav's Code (about 1050). In fact, in the above-mentioned legislative monuments, one should not see so much the result of the normative activities of the state, but a systematic recording of the customary law in the society that is very different from modern laws.

These circumstances cast doubt on the significance of this feature, at least for some of the states of the past. As for the other two features specified by Baitn, namely, the presence of the state law enforcement bodies and the armed forces, they are, in fact, nothing more than aspects of a more general characteristic that a state has an administrative apparatus, since both the army and law enforcement can be regarded as part of the state mechanism, using the well-known term "material appendages" (Astafurov, 2010).

CONCLUSION

in a broad sense, any *state* considered as a generic concept, including a set of specific historical varieties, is an organization of power, that is, a legally formalized and institutionally organized activity for the exercise of powers of the supreme authority aimed at satisfying such needs of members of society that they cannot fully satisfy with themselves in the order of a private initiative.

It seems that this definition reflects the social specifics of the state, its differences from other social institutions at any stage of evolution. In addition, it follows from this definition that the evolutionary specificity of states of different historical types is manifested primarily in those functions that belong to them at a given stage of evolution.

Accordingly, every state has:

1) A legal basis,

2) Territory,

3) Supremacy,

4) Existence of its power prerogatives, and

5) Its administrative apparatus.

At the same time, such an extremely broad ("generic") definition reflecting, from a formal point of view, the most significant features of a state, still does not say anything about their dynamics, since, as already noted, at different stages of the state's evolution these features may acquire various modifications.

In our opinion, recognition of the fact that the concept and attributes of a state, while

preserving its unchanging generic basis, possess the ability for species modifications, necessarily follows from this very generic concept.

In fact, if a state in its universal aspect is an institutionalized activity, that is, a *set of social interactions and rules regulating these interactions*, then any changes in the nature of such interactions in a historical retrospective result in a modification of the concept and attributes of a state.

Thus, there is a need, along with a comprehensive (general) definition of a state, to formulate a number of its special definitions which enable us to move from a state as a general concept to its specific historical varieties or types. At the same time, within the framework of this review, it seems superfluous to pay careful attention to comparing the concepts and attributes of all historical types of a state. To illustrate the provisions made earlier, it will be sufficient to consider only two such types, namely the traditional and modern states, which will be examined in more detail in the following chapters of this Analyze.

Already from this, to a large extent rather fleeting and preliminary comparison, it becomes clear that the features of a state are not something frozen and unchanged once and for all. Being basically universal characteristics of a state, distinguishing it from other social phenomena, these attributes are nevertheless modified depending on the system of relevance's based on which the constituting of the corresponding type of state takes place in the given socio-historical conditions.

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