

FEATURES OF THE HISTORICAL AND LEGAL CHARACTERISTICS OF THE BASIC SCIENTIFIC CONCEPTS OF THE EMERGENCE OF THE STATE

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ABSTRACT

The purpose of the research is historical and legal characteristics of main scientific concepts concerning origin of the state. Main content. The views of scientists were analyzed and a conclusion was made regarding the variety of concepts concerning emergence and formation of the state. It was proved that the main concepts (theories) of origin of the state include theological one, organic one, patriarchal one, psychological one, class one, theory of violence, oligarchic one, racial one, cosmic one, etc Methodology: The following methods were used in the research: analysis of biographical sources, synthesis, deduction, comparative analysis, meta-analysis, etc. Conclusions. It was concluded that in modern legal science, a variety of

theories explain the process of the state emergence from different positions. The list of scientific concepts considered by us is not exhaustive, but with the development of legal science it can be expanded and supplemented with new content. Having considered the main theories of the origin of the state, we can come to the conclusion that it is impossible to unequivocally state which of these theories is absolutely correct. Each of the theories deserves attention and affection, each of them has its positive, rational points, advantages, however, on the other hand, each theory has certain inaccuracies and therefore it can be at least partially refuted.

Keywords: history; the state; scientific concept; theory; origin; formation.

CARACTERÍSTICAS DAS CARACTERÍSTICAS HISTÓRICAS E LEGAIS DOS CONCEITOS CIENTÍFICOS BÁSICOS DE EMERGÊNCIA DO ESTADO

RESUMO

O objetivo da pesquisa são as características históricas e jurídicas dos principais conceitos científicos relativos à origem do Estado. Conteúdo principal. As opiniões dos cientistas foram analisadas e chegou-se a uma conclusão sobre a variedade de conceitos relativos ao surgimento e à formação do Estado. Ficou provado que os principais conceitos (teorias) de origem do Estado incluem o teológico, o orgânico, o patriarcal, o psicológico, o de classe, a teoria da violência, o oligárquico, o racial, o cósmico, etc. Metodologia: Os seguintes métodos foram utilizados na pesquisa: análise de fontes biográficas, síntese, dedução, análise comparativa, metanálise, etc. Conclusões. Concluiu-se que, na ciência jurídica moderna, uma variedade de teorias explica o processo de emergência do Estado a partir de diferentes posições. A lista de conceitos científicos que consideramos não é exaustiva, mas com o desenvolvimento da ciência jurídica pode ser ampliada e complementada com novos conteúdos. Tendo considerado as principais teorias sobre a origem do Estado, podemos chegar à conclusão que é impossível afirmar de forma inequívoca qual dessas teorias é absolutamente correta. Cada uma das teorias merece atenção e carinho, cada uma delas tem seus pontos positivos, racionais, vantagens, porém, por outro lado, cada teoria possui certas imprecisões e, portanto, pode ser, pelo menos, parcialmente refutada.

Palavras-chave: história; estado; conceito científico; teoria; origem; formação.

1 INTRODUCTION

To date, there is a plurality of theoretical views on the process of the emergence of the state, its concepts and its purposes. This diversity is conditioned first of all by historical features. Concepts of the origin of the state developed at different times are based on different amounts of accumulated knowledge, various philosophical preferences, they are oriented towards certain categories of the population, depend on geographical features, economic development, etc., and that is why they cannot be considered universal and unified.

Understanding of the modern state prompts to a general theoretical analysis of the scientific concepts of state origin presented in literature sources.

Emergence of the state is a historical, long process that took place over centuries and even millennia. The up-to-date literature presents a sufficiently large number of various concepts of state origin, which reflect the attitude, own imagination of their founders on formation and development of state organization.

Artists of different eras expressed their own opinions, substantiated their statements about the process of state emergence, and insisted that their theory was the best.

The purpose of the research is historical and legal characteristics of main scientific concepts concerning origin of the state.

2 METHODOLOGY

The research is based on the works of foreign and Ukrainian researchers on historical and legal characteristics of main scientific concepts concerning state origin etc.

With the help of the epistemological method, the historical-legal characteristics of the main scientific concepts of the state origin etc. were clarified, thanks to the logical-semantic method, the conceptual apparatus was deepened, the historical-legal characteristics of the main state origin concepts etc., were determined. Thanks to the existing methods of law, we managed to analyze the essence of historical and legal characteristics of the main scientific concepts concerning state origin etc.

3 LITERATURE REVIEW

Scientists has begun to deal with the issue of researching scientific theories of state emergence since long ago, however, this problem is still relevant in our time. Concepts of state origin were considered by such present day scientists as Halaburda Nadiia, Leheza Yevhen, Chalavan Viktor, Yefimov Volodymyr, Yefimova Inna etc. (Halaburda *et al.*, 2021).

Theories of state emergence are based on the generalization of the causes and consequences of the origin. As noted by O.M. Balynska, theory is abstract reasoning, a set of scientific propositions, which, however, arise from causes, explain their consequences, and even suggest the variability of consequences in the event of a change in one of the factors (Balynska, 2010).

The main reasons for emergence of the state are: the need to improve management of society which is related to the development of production and the division of labor; the need to maintain order in society; emergence of an objective possibility to financially support a class of people who are not engaged in physical labor; the need to protect the territory and conduct wars; the need to suppress socially heterogeneous groups of society; the need to organize large public works. (Katkova, 2014, p. 11)

Correlation between the causes and theories of the origin of states reveals mutual connection between these concepts, but it is inappropriate to talk about their mutual dependence (theories originate from the causes, are based on their analysis, and give an explanation of their consequences) (Balynska, 2010).

It is impossible to consider the state origin concept without paying attention to the modern definition of the concept of “state”. Thus, the state is understood as an organization of political power that exercises effective control over a certain territory and population, maintaining law and order and possessing the prerogative to use coercion (Petryshyn, 2014, p. 18).

According to I. M. Pohribnyi, state is a special form of organization of society’s life activities on a territory defined by borders, which is characterized by the presence of a system of management bodies, coercion and the ability to issue universally binding rules of behavior - legal norms (Pohribnyi, 2010, p. 23).

4 RESULTS AND DISCUSSION

The first concept of state origin is the Theological one, according to this concept state is a consequence of a divine will. Ideas of the divine origin of the state existed even in countries of the ancient world, but this theory became widespread in the 12th and 13th centuries in the countries of Western Europe.

In particular, in the laws of Hammurabi (the ancient Babylonian king 1792-1750 BC), he appears as the unlimited ruler of the peoples subject to him; he received power and laws from the gods (Rudyk, 2016).

The theological theory is most vividly expressed in works of the early Christian philosopher Augustine the Blessed (the 5th century) and works of the famous Catholic theologian Thomas Aquinas (the 13th century). (Krestovska, 2015). Relying on the Bible, F. Aquinas insisted on the eternity and inviolability of the divine will, and justified any

reactionary states. This theory justified the unlimited monarch power, it reflected some objective realities of the Middle Ages, but it was not of a scientific nature (Rudyk, 2016).

To date, the theological theory of state origin is not very common in European and American countries, but it is the official doctrine of the Vatican, as well as Islamic countries, where religion has a state nature and the main source of law is the holy book - the Koran.

In the 19th century H. Spencer gave a justification for the above theory and pointed out that the will of a state is expressed in laws, the government is identified with the brain, workers are defined as legs and arms, and movements and connections are presented as nerves (Rudyk, 2016).

The next theory presented by Aristotle, R. Filmer, M. K. Mykhaylovskiy, M. M. Pokrovsky and others, is the patriarchal theory.

According to T. G. Katkova, the patriarchal theory means that the state emerged from the patriarchal family as a result of its growth: family - a set of families (settlement) - a set of settlements (a state) (Katkova, 2014, p. 10).

The theory of violence founded by the ancient Chinese thinker Shang Yang, the Austrian jurist L. Humplovych, German economist K. Kautsky and the German philosopher E. Dühring is quite widespread among main theories of state origin.

The theory of violence includes the theory of internal violence, which states that the state arose as a result of violence of one social group against others, and the theory of external violence, which sees the main reason for state emergence as the conquest and enslavement of some tribes by others (Petryshyn, 2014). Thus, in order to consolidate its dominance over others, a tribe creates an apparatus of coercion, that is, a state.

When developing the theory of violence by taking into account the demographic factor the up-to-date American anthropologist Robert Carneiro determined the main cause of conflicts between communities - and this cause consists in limited resources. In the struggle for mastering resources, and therefore for survival, the victory belonged to administratively organized groups led by strong leaders [6, p. 56].

Considering the theory of violence, we can agree that violent conquests had a significant impact on emergence of states during certain historical periods. However, to date, one should also remember other factors (besides military ones) that led to the formation of modern states (for example, socio-economic factors, cultural factors, etc.).

The treaty theory of state origin also deserves attention. This theory is represented by Epicurus, T. Hobbs, J. Locke, B. Spinoza, J.J. Rousseau and others.

According to the treaty theory, emergence of a state is connected with conclusion of a contract between individuals as a result of their awareness of their urgent needs and interests.

In particular, the Greek philosopher Epicurus believed that the state and law are the result of an agreement concluded between people in order to ensure the common good, that is, mutual security (Rudyk, 2016).

However, the Treaty theory was substantiated in detail only in the 17th - 18th centuries. The state was defined as the result of a social contract, which is the product of a reasonable, conscious will of people to protect their interests, the public good, and ensure natural and inalienable human rights: property, freedom, security, etc. (Rudyk, 2016).

According to T. Hobbes, people are equal by nature, but on the basis of such equality, distrust arises. In addition, selfishness, greed, fear and ambition are inherent in humans. Therefore, the scientist concludes that as long as people live without a general authority that keeps them on the basis of fear, they are in a state of “war against all.” Therefore, natural rights give rise to contradictions, which excites people to search for ways to solve such contradictions (Villasmil Espinoza *et al.*, 2022).

In our opinion, concluding a contract alone is not enough for establishment of a state. This process requires taking into account other determinants that influence formation of a state, including namely economic, social, military determinants, etc. (Kobrusieva *et al.*, 2021).

The Psychological theory characterizes the state as a product of human psyche development. Since it is inherent in some people to control others (and, accordingly it is inherent in the latter to obey them, to be aware of dependence on other persons), social power arises. At the same time, there is always a category of people who, due to their psychological settings, take a social position opposing the authorities and are able to show an aggressive position towards the authorities. In order to restrain such mental principles of individuals, a state is created (Pohribnyi, 2010).

This theory originated in Europe at the end of the 1830s. It was the period when psychology began to form as an independent field of knowledge, experimental methods of research became widespread, and schools with different interpretations of the psyche appeared. Ideas of these schools were borrowed by representatives of legal science. Proponents of Psychological theory tried to find a universal cause that would make it possible to explain the process of emergence of the state and law. Such proponents include H. Tard, L. Y. Petrazhyskyi, F. F. Kokoshkin, M. M. Korkunov, O. Gierke and F. Shtir-Zomlo and others. (Zhukova *et al.*, 2023).

Of course, the Psychological theory has the right to exist, however, in our opinion, it is not a central theory in the process of state emergence, since solely psychological patterns of human activity are not enough for formation of a state (Matviichuk *et al.*, 2022).

Marx's (class) theory occupies a special place in the analysis of theories of the origin of the state. This theory is also called socio-economic, materialistic, historical-materialistic theory. Representatives of this theory are K. Marx, F. Engels, etc.

O. V. Petryshyn notes that the above-mentioned theory considers the state as a result of historical progress caused by economic transformations. A state arises as a result of social division of labor, emergence of a surplus product, and inevitable growth of social conflicts and contradictions. State formation is connected with the need to restrain the oppressed class, its exploitation by the ruling class (Petryshyn, 2014).

N. M. Krestovska notes that the state and law arose simultaneously due to emergence of private property and the resulting stratification of society into classes (Krestovska, 2015).

In the 20th century the Oligarchic theory became widespread; it was represented by the French political scientist Bernard Chateaubou. According to this theory, emergence of a state is associated with natural hierarchy / inequality in any social community (by physical strength, intellectual abilities, etc.) (Krestovska, 2015).

The positive side of this theory consists in separation of the ruling elite and creation of a certain management structure. However, the goal of state organization is to satisfy interests and needs of all strata of population, regardless of status, physical strength, intellectual abilities and any other characteristics (Leheza *et al.*, 2022).

As noted by T.G. Katkova the Patrimonial theory means that the state derives from the owner's right to the land (patrimony). From the right to own land, power automatically extends to the people who live on this land (Katkova, 2014, p. 10). This theory was represented by the Swiss thinker K. L. Haller.

The Patrimonial theory differs in its logic, but, nevertheless, it anchors the idea that power, just like land, belongs only to the ruler who owns, manages and uses practically everything that is on the territory of the country.

The Hydraulic (irrigation) theory connected emergence of the state with transition to irrigated agriculture. According to K. Wittfogel introduction of this type of agriculture alongside with the growth of agricultural production created necessary organizational conditions for an extensive state apparatus. Construction of irrigation facilities required strict centralized management and subordination. This led to formation of a "managerial-

bureaucratic” class that conquered society (Mesopotamia, Egypt, India, China, etc.) (Tylchyk *et al.*, 2022).

5 CONCLUSIONS

Thus, in modern legal science, a variety of theories explain the process of state emergence from different positions. The list of scientific concepts considered by us is not exhaustive, but with the development of legal science it can be expanded and supplemented with new content.

Having considered the main theories of the origin of the state, we can come to the conclusion that it is impossible to unequivocally state which of these theories is absolutely correct. Each of the theories deserves attention and affection, each of them has its positive, rational points, advantages, however, on the other hand, each theory has certain inaccuracies and therefore it can be at least partially refuted.

It has been established that the majority of present-day scientists believe that the Hydraulic (irrigation) theory has only a local character - in areas with a hot climate. But in fact, it can also be noted that construction of irrigation facilities was a parallel process of the state formation process, and even although formation of states was primary, the irrigation system was the basis of life of the society of that period of time.

In our opinion, this Theological theory has both positive and negative sides. On the one hand, the above-mentioned theory provides the state with an element of sanctity and spirituality, it contributes to establishment of order, stability, and harmony in the state and society, which contributes to increasing the level of legal awareness of the population and raises prestige of the state power. However, on the other hand, the theological theory is based on belief in God, and therefore it is impossible to reconstruct it in the absence of documentary evidence about the God.

It is emphasized that a positive feature of the Class theory is that the state emerges as a result of the natural development of society, and the most important factor in the emergence of the state consists in economic development. In our opinion, economic conditions are important and dominant in the process of state formation, however, one should not forget about national, psychological, religious and other factors of state formation.

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