

РОЗДІЛ І. АКТУАЛЬНІ ПИТАННЯ ТЕОРІЇ ТА ІСТОРІЇ ДЕРЖАВИ І ПРАВА

УДК 342.22 (091)

METHOD OF PERIODIZATION IN THE METHODOLOGYS TOOL OF THE HISTORY OF STATE AND LAW

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In this article there is grounded the meaning of the periodization method in the process of cognition of state legal phenomena. On the basis of synthesis of the basic regulations of formational, civilizational and world-systematic approaches the author suggests his conceptual understanding of periodization of state legal process

Key words: periodization, historical type of state and law, formational approach, civilizational approach, world-systematic approach.

Бостан Л.Н. МЕТОД ПЕРИОДИЗАЦИИ В МЕТОДОЛОГИЧЕСКОМ ИНСТРУМЕНТАРИИ ИСТОРИИ ГОСУДАРСТВА И ПРАВА/ Запорожский национальный университет, Украина

В статье обосновывается значение метода периодизации в процессе познания государственно-правовых явлений, рассмотрены основные подходы относительно периодизации истории государства и права. На основе синтеза основных положений формационного, цивилизационного и мир-системного подходов предложено концептуально новое видение периодизации государственно-правового процесса.

Ключевые слова: периодизация, исторический тип государства и права, формационный подход, цивилизационный подход, мир-системный подход.

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У статті обґрунтовується значення метода періодизації у процесі пізнання державно-правових явищ. Зокрема зазначено, що будучи ефективним інструментом у процесі впорядкування і аналізу досліджуваного матеріалу, він дозволяє глибше показати співвідношення розвитку історичного процесу загалом і окремих його проявів, виокремити в часовому вимірі більш характерні його періоди; наголошено, що періодизація, володіючи значним евристичним потенціалом, здатна додати стрункості теорії, але в той же час, маючи справу зі складними соціальними явищами, що розвиваються, вона ж і неминуче спрощує історичний процес. Тому в пізнанні досліджуваних історико-правових явищ і інститутів особливо важливого значення набуває методологічний інструментарій.

У сучасній історико-правовій науці сьогодні в періодизації історико-правового процесу переважно використовуються такі основні підходи, як формаційний і цивілізаційний. Поділяючи точку зору про доцільність їх використання в системі, обґрунтовується думка щодо введення в науковий обіг історії держави і права марксового поняття “суспільна формація” як цілісної соціальної системи, що характеризується певними, історично визначеними, соціоекономічними, соціополітичними та соціокультурними відносинами.

Спираючись на існуючі наукові розробки, взявши як вихідну ідею російського теоретика права О. Лейста щодо виокремлення в історії державно організованого суспільства двох епох, якісно відмінних одна від одної: епохи кастово-станового суспільства та епохи громадянського суспільства, які зумовлюють відповідну сутність, зміст і призначення держави і права, запропоновано їх визнання як критерію для виокремлення відповідного історичного типу держави і права: держава і право епохи станово-кастового суспільства; держава і право епохи громадянського суспільства.

Отже, беручи за критерії сутнісні (типологічні) характеристики державно-правових явищ, за якими визначаються історичні (генетичні) типи держави, можна «оновити» знання про хід розвитку держави і права. Подальшим же напрямком наукових розробок цієї проблеми має стати визначення на основі концептуальної (загальної) періодизації історії держави і права хронологічної періодизації (етапізації), котра сприятиме з'ясуванню поетапного розвитку державно-правових інститутів і явищ у рамках певних цивілізацій, інших локальних соціальних систем, окремих країн тощо.

Ключові слова: періодизація, історичний тип держави та права, формаційний підхід, цивілізаційний підхід, світ-системний підхід.

Contemporary law education is not designed to form narrow national philosophy, but new global legal mindset, which enhances the role of basic general law disciplines, including the international History of state and law. It aims to provide a scientific basis, methodological framework and professional tool to create legal philosophy of future lawyers. Therefore, the search for effective cognitive tools that contemporary science carries out, and formation of an "updated" History of state and law methodology appear completely justified.

The method of periodization plays an important role in the method system of historical cognition of state and law phenomena. Its effectiveness mostly depends on the methodological tools, selected by a researcher for reflecting of the development stages of the historical process.

The analysis of new sources on this problem affords ground to assert that special attention is primarily paid to the general aspects of the historical process periodization, as it is mostly reflected in the works of Russian scientists [1-4]. The Ukrainian scholars M. Damirli, N. Krestovskaya, A. Kryvoruchko, L. Maymeskulov, P. Muzichenko, M. Strakhov, B. Tyshchuk and especially A. Reznik studied more specified problems of the periodization method usage, particularly within the framework of the problem that we have outlined [5; 6].

Since the obtained results do not cover the potential of further work on the methodological problems of the periodization, we set the goal to define the essence of the periodization method as one of the tools of the historical cognition of state and law phenomena and show some of its capabilities through the prism of the History of state and law, without claiming to full coverage of the defined problem.

Despite the fact that the concept of “periodization” is used in the various areas of knowledge (physics, chemistry, mathematics, geology, sports, etc.), its essence as a cognitive method even in historical studies is not fully explored. Some difficulties with its identification are associated with multi-valued interpretation of the term and the concept of “period” from which comes the term “periodization”. In some cases, the “period” is considered as a complete concept, which consists of a number of “stages” that characterize the development milestones, while in other cases, on the contrary, it is considered as the notion in progress, in the third ones, the “period” is equal to the “stage”. Indeed, at a first glance, “period” (Greek περίοδος – a detour, a revolution, a circle of time) and “stage” (French etape – a separate part of the road, a time segment) is a time interval during which some events happen or some processes are carried out. But if deeper insight into the nature of these concepts, it comes out that the “period” is a notion which means a longer interval of time and, therefore, more voluminous in its content than the “stage”. The following is in favor for the above: a) “period” is a revolution, a certain circle of time, “stage” is just a part of the road, distance, and b) “period” is an interval of time during which some processes are carried out, “stage” is just a separate phase of a certain process. Taking the above into account, we can determine a hierarchy of time intervals in a particular historical timeline: period → stage → phase, where period is a chronological unit, that is divided into stages and stages are divided into phases.

If relying upon the above, we identify the periodization as a procedure that divides intervals of time into periods and stages, the historical periodization method will appear as a cognition

method that provides the separation of relevant periods, stages, phases on the scale of history with the help of specific criteria.

Depending on the level of the main chronological units of this range (periods and stages) there are two structural levels of the periodization. A higher level constitutes the so-called semantic (conceptual) periodization, which provides the definition of certain historical periods upon the major, essential features of the phenomena, developing in a socially conditioned process. A lower level is the chronological periodization, which represents a defined succession of certain stages within the above mentioned periods. Since the latter is the basic chronological unit of this periodization level, it could be provisionally defined as “stage division”.

The criteria of these time intervals selection play the key role in this cognition method. The most significant typological characteristics of the phenomenon that develops in a certain historical context, are used to determine periods and less important features that reflect not essential, but as a rule, the formal properties of the phenomenon, determine stages. Relying upon the above we will try to make the semantic periodization of historical events such as state and law.

The content versatility of state and law, their connection to other social institutions requires an integrated approach to understanding of the state and law process, and to construction of the corresponding periodization. It cannot be performed without the approaches available nowadays which explain the motion of complex social systems on the history scale. Among the main approaches there is the formational one, consisting of a number of unilinear theories (Marxism, neo evolutionism, modernization theories, etc.) upon which mankind goes through several successive stages in its development and the civilizational one, which scholars (O. Spengler, M. Danilevsky, A. Toynbee etc.) take as the periodization basis certain time intervals related to the existence of such social and cultural communities as civilizations. The multilinear theories hold an intermediate position between unilinear (vertical) and civilizational (horizontal) interpretations of the historical process. These theories reflect different dimensions of the world history that unfolds in several planes (K. Wytffohel, L. Vasylyev, A. Korotaev, Y. Pavlenko, etc.) There is a strong theoretical approach, existing for several decades that is called the world-system (F. Braudel, V. Zarin, G. Zavalko, A. Fursov). It synthesizes a multi-stage vision of history and a vision of history as a combination of local systems of different levels, especially according to their economic development, the so-called “centers of nuclei”, “semi-peripheries” and “peripheries”.

Each of these theories is valuable and important, but not sufficient to explain the multiplicity of the state and law process. Despite a particularly critical attitude to the formational approach, we should mention that its potential has not been fully realized. Thus, the theoretical content of the idea of the multi-stage formational approach to the history of state and law analysis brings out the essential unity of the specific histories of different states. The usage of the society category as a logical abstraction of high level unity, developed in the formational theory, promotes the idea of the historical development of some society elements, in particular, of state and law as having a general nature, as it reveals the essential evolution unity of different societies. Therefore, in our opinion, some scholars' proposition to include Marx's concept of “social order” as an integrated social system that is characterized by certain historically determined, socio-economic, socio-political and socio-cultural relations in the History of state and law, appears appropriate [7, p. 189].

The consideration of such a factor as “human dimension” of society requires the civilizational approach. According to M. Danilevsky those parts of its content, which define any civilization as a particular period of the spiritual opening of the people (nation) potentialities in all directions of expression of spiritual nature, not only regarding science and art, but also regarding practical realization of their ideals of truth, freedom, social accomplishment and

personal well-being [8, p. 270] certainly also impact on the essence and content of the state and law of a particular historical stage of the society development.

So using these two approaches allows us to see that there are special phenomena, studied by the civilizational theory of the historical process that are located between the logic of the world history of human society, reflected in the division of the historical process into formational stages and the logic of a particular society history, i.e., between general and individual phenomena. It reveals the complexity and variety of the historical ways to implement the logic of the society development in all its forms, including state and law, while identifying the particularities of each society, country or state.

Basing on the fact that primitive societies and state-organized societies are well-known in the history of mankind, in the late 90s of the last century the prominent Russian law theorist O. Leyst expressed an idea regarding the separation of two periods in the history of state-organized society, qualitatively different from one another: the era of caste society and the era of civil society [9, p. 36-62], which determine the appropriate essence, content and purpose of state and law. In its turn the logic of this approach allows to distinguish specific types of society in each of them: there are slave and feudal ones in the caste society, and there are bourgeois and socialist ones in the civil society which correspond to the certain historic periods of human society development within a particular historical area.

However, it is to be noted that this approach is not quite new, because it certain elements were used in the past. In particular, Marx upheld the view that the history of human society is divided into "primary" (initial) and "secondary" (class antagonistic) structures, which should be changed by the third formation – communism. He divided the "secondary" formation into the stage of "personal" dependence (Asiatic, ancient and feudal mode of production) and the stage of "proprietary" dependence – capitalism. In other words Marx brought together slave and feudal formation in a single structure. Some Russian scholars, leading specialists in the periodization of historical process, maintain the same view. In particular, Y. Kobischanov defines these societies as a "great feudal formation", L. Hrynin considers them as "the second formation" and V. Ilyushechkyn determines them as the united pre-capitalist formation or "caste and class society"

We consider the expressed idea about the existence of a caste-class (cast) formation in terms of the history and theory of state and law quite reasonable, since those two principles (the class and societal one), combined within the essence of state and law, as S. Komarov said: the class principle comes to the fore at this time [10, p. 37-38]. As I is shown in our studies [11], the state of this period is a political institution of the caste society that represents the interests of its privileged elite, in one case the interests of the slaveholders, in the other the interests of the feudalists, and the law is the system of legal rules that establishes the dominant position of the privileged social groups or castes above slaves, peasants, artisans etc. Since the state and law of slave and feudal societies, in our opinion, do not differ much regarding their social essence, they can be considered as the separate types of state and law of the caste society.

The second historical type of state and law, which replaces the caste one, is the type of state and law of the civil society, the existence of which was in the interval from the first bourgeois-democratic revolutions to the present day. In this historical period, the state aimed to become a major society political institution that expressed not narrow class interests, but societal interests, and the law aimed to consolidate the social equality of people, the citizens who were legally recognized society equal participants regardless of their social status and origin for the first time in the long history of mankind. The historical type of state and law of the civil society in its ideal model is an institution of social compromise, where the societal principle dominates the narrow class principle.

According to the Marxist formational pattern that prevailed in the Soviet historiography, in this period of time there were two socio-economic formations: the capitalist (bourgeois)

formation, the new time and the socialist (modern times) ones. In the late 80's of the twentieth century this division looked enough reasonable, as it had a socialist camp, powerful enough in its size, population and military power as a confirmation. However, social and political events of the late twentieth century showed that this new type of state and law was not viable and consequently short. The former socialist countries, with few exceptions, returned to the state and law guidelines which had been laid down by the first Western European bourgeois revolutions. Therefore, the distinguishing of four historical periods in the History of state and law, in our opinion, is appropriate for the "internal" periodization for the countries like the Soviet Union and some others that had gone through the stage of the existence of the "socialist type" state. There is no good reason to spread this approach to other countries, and, especially, to the developed West ones, which defined key global trends of state and law.

Historical experience shows that the state and law development in Western countries proceeded evolutionarily, and it should be considered as a single, but simultaneously uneven process. This unevenness is due to the specifics of the country development of certain regions of the world and to their level of maturity for transition to a qualitatively new stage of social relations. Western countries were the first to take this direction, then, Eastern countries with some lag (for example, in Japan the "revolutionary" era of Meiji came more than 200 years later than in England).

Although in the new era the Eastern world experienced a strong Western influence "Westernization" in general, the state, and especially the law retained traditional features of their development. Namely the usage of the multilinear schemes along with the formational unilinear ones allows us to explore the state and law phenomena taking into account the specificity of their development in the countries belonging to two macro civilizations (Eastern and Western ones). In other words, the capabilities of the formational, multilinear, civilizational and world-system approaches need to be considered in the transition from the semantic, conceptual periodization to the chronological one.

In light of the above, the History of state and law can be represented with the help of the following periodization:

- a) Eastern civilization: I period – 4 millennium BC – the end of 19th century – the beginning of 20th century; II period – the end of 19th century – the beginning of 20th century – up to the present day.
- b) Western Civilization: I period – 1 millennium BC – the middle of 17th and 18th century, II period – the middle of 17th and 18th century – Up to the present day.

In its turn, within these great civilizations we can distinguish so-called "local" civilization, such as Oriental, Far Eastern, Arabic (Muslim) in Eastern civilization and ancient (Southern European), Eastern European, Western European, American ones in Western civilization. For example, the History of state and law of Western civilization countries, which were and still remain major countries regarding socio-economic and political (but not spiritual – L.B.) development, can be divided into the following periods.

The first period (the caste society state and law): Stage 1.1. State and Law of the Ancient World – 1 millennium BC – the middle of 1 millennium AD (the slave state and law), Stage 1.2. State and Law of the Middle Ages – the middle of 1 millennium AD – 17th-18th centuries (the feudal state and law).

The second period (the civil society state and law): Stage 2.1. State and law of the time of laying of the foundations of civil society – the middle of 17th century. – the middle of 20th century. 2.2. State and law of the period of the civil society – the middle of 20th century – up to the present day.

Thus, the above is just one of the options of using the method of periodization that can “upgrade” the knowledge of the course of the development of state and law. Taking as criteria the essential (typological) features of state and law phenomena, which determine historical (genetic) types of state, we offer to use the binomial scheme of the typology of state and law and its corresponding periods instead of traditional quadrinomial typology of state and law according to the socio-economic formations (slave, feudal, bourgeois and socialist states). The future direction of scientific researches of this problem should become a determination on the basis of the conceptual (general) periodization of the History of state and law of the chronological periodization (stage division) that will contribute to the elucidation of the stage development of the state and law institutions and phenomena within certain civilizations, other local social systems, different countries etc.

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