

MSC 2020

International Scientific and Practical Conference «MAN. SOCIETY. COMMUNICATION»

POLICE-LAW THEORY ON THE REGULATION OF PUBLIC RELATIONS IN THE POLICE STATE

Nadezhda Nizhnik (a)*

*Corresponding author

(a) St. Petersburg University of the Ministry of Internal Affairs of Russia, Saint Petersburg, Russian Federation
n.nishnik@bk.ru

Abstract

The police state continues to be of interest not only in the historical aspect. As the role of the state in the modern world grows, public interest in the police state strengthens, and questions about new forms of the police state and the possibility of combining the features of the police and law-governed states moves to the center of public debate. The aim of the study was the problem-theoretical reconstruction and interpretation of the theoretical and legal heritage of Russian police scientists with an emphasis on the characteristics of the regulation of public relations in a police state. The selection of textual "facts" in the theoretical legacy of the police scientists and the interpretation of their texts were aimed at identifying the actual meaning of the ideas of Russian thinkers for the realities of our time. An analysis of the theoretical legacy of Russian police scientists made it possible to single out the evolutionary stages of the police legal theory, to determine the features of the relationship between the state, society and the individual in the police state, to characterize eudaimonism as the ideological basis of the police state, to determine the laws of the total regulation of public life in the police state, to characterize bureaucratization and forced unanimity as attributes of the police state governance.

2357-1330 © 2021 Published by European Publisher.

Keywords: Police, police state, police law, police law theory, police science, Russian police scientists



1. Introduction

In the mainstream of modern social science, problems related to the police state have significantly strengthened their positions. Together with questions: is the police state a myth or reality in the modern world? Which state is the most police in the world? Can a law-governed state become a police one? in political rhetoric of the XXI century the slogan “Down with the police state!” was entrenched, and questions about ways of fixing power in the social space, about the possibilities of turning the police state into a law-governed one and vice versa returned to the circle of research interests of the scientific community. Problems regarding the role of institutions of state violence in social development (Babaev & Pudovochkin, 2016; Tarasov, 2019), the place of police in the regulation of social relations (Egorov, 2020) are included in the agenda not only of scientists (Kildyushov, 2014), but also of statesmen in different countries.

In the public consciousness of contemporaries, the police state most often takes on the image of the political antipode of the rule of law, a repressive state that widely uses police arbitrariness and uses violence against political opponents (Kildyushov, 2013). Such an interpretation of the concepts of “police state” and “police” testifies to their semantic content that is not identical to the original: the concepts have lost, if not all of their previous normative meaning, then at least its important part, reflecting the essence of the police and the police state for several previous centuries. Despite this, consideration of the experience of the functioning of the police state as a streamlining mechanism, and the police as a technology for managed development, can be a valuable heuristic tool that can significantly enrich the notion of the penetration of power practices in everyday life and help determine the prospects for attempts to establish imposed social orders.

2. Problem Statement

The political and legal phenomenon “police state” attracts the attention of scientists of various scientific specialties (Dergileva, 2019; Lutsenko et al., 2019; Medvedev, 2019; Popov, 2014). At the same time, the traditions of studying the police state in foreign and Russian science are developing separately enough. In Russia, the nature of police activity in a state-organized society and the history of the police today began to be discussed anew and, perhaps, more deeply than in previous decades. This is facilitated by the reforms of the Russian police, which were enshrined in the Federal Law “On the Police” (2011), and the preparations for the 300th anniversary of the Russian police, the date of official formation of which is considered 1718, and steps to systematically build a law-governed state in the Russian Federation requiring a clear consolidation of the tasks and competencies of the police. In modern Russia, an independent research area has taken shape - police science. But its important part, the police-legal theory, has still not been adequately comprehended.

3. Research Questions

Police law theory is an important page in the history of thought about the state and law. Understanding the theoretical heritage of police scientists can help to understand the laws governing the establishment of a police-type state and its development into its opposite - the rule of law, mechanisms for

replacing the power relations prevailing in the police state, legal relations between the authorities and the population in the law-governed state.

Despite the attention of domestic and foreign historiography to certain aspects of domestic police science, to date, the problem-theoretical reconstruction and interpretation of the theoretical and legal heritage of Russian police officers on issues relating to:

- prerequisites for the formulation of police law theory;
- highlighting the evolutionary stages of police law theory in Western Europe and Russia;
- identifying the characteristics of the relationship between the state, society and the individual in the police state;
- characteristics of the eudemonistic theory as the ideological basis of the police state;
- identifying the laws of total regulation of public life in a police state;
- definitions of the determinants of power hypertrophy and bureaucracy in a police state;
- characteristics of forced unanimity as an attribute of a police state.

These issues became the objectives of this study, conducted using a wide range of sources, the main of which were the works of Russian police scientists.

4. Purpose of the Study

The purpose of the study was the problem-theoretical reconstruction and interpretation of the theoretical and legal heritage of Russian police scientists with an emphasis on the characteristics of the regulation of public relations in a police state.

5. Research Methods

The methodological basis of the study was dialectical materialistic, general scientific (historical, systemic, functional, theoretical modeling, hypothesis construction) and special (formal legal, historical legal, comparative legal, interpretation of legal ideas and regulatory legal acts) methods of legal research. To identify the dynamics and historical prospects for the development of the ideas of police scientists about the state and law, the historical method was applied, which was used in the study to identify the stages of development of the police-legal theory, to compare the various stages of the development of the teachings on law and the state in the context of the evolution of the state-legal system of Russia. Of particular importance was the hermeneutic method of problem-theoretical reconstruction, based on ideas about the text as the primary reality of the humanities, about the text having ontological properties in relation to the cognizing subject. The selection of textual "facts" in the theoretical legacy of the police scientists and the interpretation of their texts were aimed at identifying the actual meaning of the ideas of Russian thinkers for the realities of our time.

6. Findings

6.1. On the prerequisites for the formulation of police theory

The emergence of police-legal theory is associated with the era of the formation of absolutism in Europe. When characterizing the management of urban life, they used the word "police", which meant "the art of city management." The notions of skillful management were inextricably linked with the right to solve problems concerning common interests - the issues of ensuring security, maintaining public order, maintaining morality, and ensuring well-being. The whole set of measures that the authorities used to strengthen order, welfare, public morality and various aspects of philistine life, also began to be called the police. Management required the use of various means, including measures of state coercion. The activities of the state apparatus in the legislative, administrative, and judicial spheres, aimed at regulating public relations and allowing the use of measures of state coercion, was called the police. For its implementation, a system of specialized state bodies began to take shape, also called the "police". The transformation of the police into the cornerstone of state government contributed to the consolidation of the name of the police state for the state of this period.

The desire to determine effective methods for solving problems of government and specific issues relating to relations between government and society, contributed to the isolation of knowledge in these areas, the emergence of the science of police law and the development of police law theory. The question of how to call this science remained open for a long time: it was called the police science, the science of the police, the police law, the doctrine of internal governance, the science of governance, the science of public administration, public law, administrative law. The multiplicity of approaches to the name was due to the difficulties in defining the subject of science and various assessments of the role of the police in public life: some considered the police a "virtuous genius" designed to promote social welfare, others gave the police a characterization as an enemy of personal freedom and social initiative. There was no consensus among scientists in determining the place of the police in the public administration system and the mechanism for the implementation of public functions. The development of views on the police and police activity was reflected in the identification of the stages of development of the science of police law - the police law theory, which became the conceptual basis of police activity. The set of ideas related to police activity and reflected in the writings of thinkers of the XVII - early XX centuries, in the scientific literature began to be called police science, and the scientists who developed these ideas, as police scientists.

6.2. On the stages of the evolution of police law theory

The formation and development of police theory in Western Europe went in several stages:

1) end of the 17th century - mid-18th century: formulation of the concept of "police", definition of the tasks of the police and the content of police activities of the state;

2) mid 18th century - end of the 18th century: definition of the subject, purpose, tasks and system of police science;

3) beginning of the 19th century - mid-19th century: attempts to legalize police law, to develop police legislation; clarification of the subject of police activity, determination of the method of police law;

4) mid 19th century - beginning of the 20th century: systematic development of problems in the field of internal governance (Nizhnik & Dergileva, 2017).

The separation of police law into an independent science was greatly facilitated by the works of N. Delamar, I.G. von Justi, J. von Sonnenfels, G. von Berg, R. von Moll, L. von Stein (as cited in Dergileva, 2019).

The formulation of the methodological problems of police law and the development of the theory of the functioning of the police organs (V. Y. Ber, J. von Pözl, G. Zimmermann, F. K. B. Ave-Lalman, T. Ferstemann) contributed to the legalization of police law and the development of police legislation, and expanding the boundaries of the use of the principle of separation of powers in public administration (O. Mayer) - the development of a theory of the functioning of administrative bodies and administrative justice (as cited in Nizhnik & Dergileva, 2017).

An analysis of the theoretical heritage of Russian scientists led to the conclusion that the police law theory in Russia developed under the influence of Western European. The stages of its evolution were as follows:

1) the 17th – 18th centuries: the formulation and development of certain issues related to internal governance and the activities of police institutions (the first policemen in the history of Russian political and legal thought - Yu. Krizhanich, I.T. Pososhkov - in their works the words "police", "police activity", "police law" was not used, but, speaking in favor of coercive state interference in all spheres of public life, they formulated proposals for optimizing state governance that met the conditions of state legal development of Russia in the 17th – 18th centuries);

2) beginning of the 19th century - mid-19th century: analysis of the basic concepts of the science of police law, the identification of the main stages of the formation and development of the science of police law and approaches to the consideration of the subject, method and systematization of police law, the development of certain issues of the organization and operation of the police, the rights and duties of the police and the population (to At the beginning of the 19th century, Russian science did not yet have independent research on the police, and the Russian scientific community got acquainted with the police-legal theory from the translations of the works of Western European scientists I. G. G. von Justi, I. von Sonnenfels, R. von Moll, L. von Stein (as cited in Pirozhok, 2020). The universities of the Russian Empire established the departments of the laws of improvement and deanery (1835), which since 1863 became known as the departments of police law (as cited in Nizhnik & Dergileva, 2017). Teachers of the departments of police law introduced students to Western European police science, translated the works of foreign authors, compiled a selection of regulatory acts confirming their theoretical constructions, and conducted independent research. An important role in the development of the Russian police-legal theory was played by the works of P. N. Gulyaev and I.V. Platonov;

3) mid 19th century - beginning of the 20th century: the definition of the subject of police law by Russian scientists, the systematic scientific development of problems of police law, the definition of the role of the police in the exercise of state power and the place of police activity in the implementation of the functions of the state, the characterization of the police as a state institution, the definition of the boundaries of the use of coercive measures by the administration and the police (police law has developed into an independent national legal science. This period was the heyday of Russian police and legal thought

associated with the work of police scientists, including I.E. Andreyevsky, A.Ya. Antonovich, N.N. Belyavsky, E.N. Berendts, N.Kh. Bunge, S.V. Vedrov, V.M. Gessen, N.A. Griftsov, V.F. Deryuzhinsky, A.I. Elistratov, V.V. Ivanovsky, V.G. Joseph, V.N. Leshkov, V.F. Levitsky, A.E. Nazimov, G.F. Simonenko, Ya.S. Stepanov, I.T. Tarasov, A.A. Trifonov, A.I. Chuprov, P.N. Sheimin, M.M. Shpilevsky, N.D. Yavorsky, I.I. Yanzhul. The analysis of legislation and the systematization of normative legal acts in the field of organization and activity of the police were carried out by I.P. Vysotsky, M.I. Dobrolensky, F.F. Dreving, V.V. Lukin, V.I. Methodin, N.N. Zylov).

Domestic police science took into account the peculiarities of the police state performing its functions at different stages of the historical development of Russia (Filippov, 2013), in different regions (Konovalov, 2018) and in different spheres of public life (Biktasheva, 2015).

At the beginning of the 20th century police law in the public consciousness of Russians began to be associated only with the compulsory activity of the state to ensure public safety and public order, as well as with the police authorities. The term "police law" acquired extremely negative connotations. The science of police law gave way to the science of administrative law; the discipline "Police Law" was removed from the educational process of universities and replaced by the discipline "Administrative Law". October 1917 consolidated the negative attitude towards police science and police scientists. Since that time, the work of most police scientists has been forgotten. To date, the theoretical legacy of Russian police scientists is not properly understood. But their works today allow us to characterize the mechanisms of relations between the state, society and the individual in a police state, an interest in which, given the increasing role of the state in regulating public relations in the 21st century has significantly increased.

6.3. Russian police science about the features of the relationship between the state, society and the individual in the police state

6.3.1. On universal happiness as the goal of a police state

The ideological basis of the theory and practice of the police state was the philosophy of eudaimonism, which explains the behavior of a person by his desire for happiness. The main goal of the state was determined by universal happiness, and the main goal of the police was to achieve the well-being, convenience, peace and happiness of its inhabitants (Justi, 1782). The eudaimonistic-utilitarian philosophy, which was substantiated in the treatises of H. Tomasius, H. von Wolf, I.G. von Justi, in the era of Enlightened absolutism turned into the ideological basis of the management system, became a theoretical justification for the unlimited expansion of the sphere of state activity, securing the status of a classical theories of absolutism and the police state.

6.3.2. On the total regulation of public life as an attribute of the police state

It seemed that the goal of the state - the achievement of the common good, can only be achieved through comprehensive regulation of public life. The "benefactor" monarch, in relation to his subjects, took the position of a guardian, confident in the impossibility of the guardians to understand the content of their own happiness and to determine the due. This position was expressed in the eloquent maxim of Frederick the Great: "People, as a sick child, must be indicated what it should eat and drink."

What a national good is, and what cannot be considered it, was decided by the monarch, not the people. The concept of prosperity of the people was so broad and vague that a reference to universal happiness could justify any encroachment on the most important and highest benefits of individual life. Under the pretext of achieving the common good, any intrusion into the sphere of individual rights was recognized as legitimate, and the regulation of public life was justified.

In practice, the regulation of the smallest details of the life of society acquired a total character. The state made attempts to take care of everything: of the availability of means of life for each citizen, of the level of prices for consumer goods, of entertainment and public festivities, of what the average person should eat, what to wear, in what kind of clothes to go out, what virtues to have, how to raise children, what to think about, what kind of facial expressions to have. The multidisciplinary nature of administrative activity was an attribute of the state.

The invasion into all spheres of public life and their total regulation in the police state actually suppressed personal initiative and initiative of the population.

Despite the prevalence of ideas about the regularity and inevitability of the total regulation of public life, these ideas did not remain without criticism. Russian researcher E.Kozinnikova notes that G. Jellinek paid attention to the absence of any measure, any internal boundaries in the eudemonistic theory, and V. M. Gessen emphasized the harmfulness of the unlimited expansion of the sphere of state activity (as cited in Kozinnikova, 2016). Only by “dissecting the specific tasks of the state” could progressive development be achieved under conditions of total regulation of social life, G. Jellinek believed, however, he stated that the founders and followers of the abstract theory of eudaimonism could not solve this problem (as cited in Nizhnik, & Dergileva, 2017).

6.3.3. On the patterns of bureaucratization of control in a police state

An important characteristic of the police state was ruling hypertrophy: only the interests of the authorities are pursued, the interests of subjects are completely ignored; it all boils down to dominion, obedience, and the demand for unquestioning obedience. The justification of power hypertrophy was the idea that the government should protect citizens even from their own actions, for God himself handed her protection of both private and common interests (Nizhnik & Dergileva, 2017). From here, according to the conclusion of Gessen (1908), “the omnipotence of state power flowed, in which any boundary between the sphere of individual freedom and state interference is erased, what is important for the state is sacrificed, which is necessary for the individual” (p. 6).

State power was undifferentiated: in the hands of the monarch concentrated legislative, administrative and judicial activities, which acquired a supernatural character, and administrative bodies were freed from various legal restrictions and wide discretion (Kozinnikova, 2016). The publication of any norm that could hamper the activity of a government identified with the monarch led to the fact that the monarch could replace this rule with an individual order issued by ad hoc (Gessen, 1908).

Only a special class of people standing outside the class hierarchy, carrying out public service, divorced from society and obliged by their position exclusively to the monarch could become social support for such a power. These persons formed a cohesive class - the bureaucracy and turned into an obedient instrument in his hands. Recognizing the regularity of the development of the bureaucracy in the rule of

law, Russian police scientists drew attention to the paradox: with the support of the bureaucracy, the monarch's autocracy turned into fiction, since in reality the monarch's unlimited power was exercised by those who were the rapporteurs of the monarch, or those who had the right to declare his will.

The regulation of relations between officials and ordinary people in the police state was carried out through numerous laws, which were drawn up, as a rule, in the form of instructions and, not intended for general information, often remained unpublished. Therefore, when the governing body exceeded its authority or was inactive, it did not violate obligations towards the townsfolk, as the townsfolk had no rights with respect to the governing bodies. It turned out that, despite the existence of administrative laws and detailed regulation of the activities of the governing bodies by articles of the written laws, the functioning of the administration in the police state remained unlimited by any legislative framework.

This situation created administrative arbitrariness and police violence. The prospects for the achievement of the common good and the plans for the formation of a society that does not know poverty and super-wealth were not combined with the provision of an individual with the right of initiative and the possibility of self-organization, which contributed to the desacralization of power and the loss of political monopoly. And although idleness was not allowed in the police state, everyone was given the duty to work, including "all the poor and idle," the prospect of achieving universal happiness remained illusive, leading to the creation of not a welfare society, but a collective poverty society.

6.3.4. On forced unanimity as a characteristic of a police state

The police state was supposed to be a union whose solidity was based on the psychology of unity: each person knew his responsibilities to the state and was ready to confirm the priority of common interests by practical actions. Freedom of speech and belief was sacrificed for "political stability," an unanimity of a coercive nature became an attribute of the police state. The establishment of "unanimity" was promoted by the institution of censorship, which is widespread in all police states (Kozinnikova, 2020). The charter on censorship and the press, operating in the Russian Empire at the end of the 19th century, demanded from the competent authorities to distinguish "well-meaning judgments and conclusions based on knowledge of God, man and nature, from impudent and violent philosophies that are contrary to true faith and true wisdom" in Russia (Article 94). Criticism was not theoretically forbidden, but its practical implementation it was possible only on condition that "in the discussion of the shortcomings and abuses of the administration and judicial places it is not allowed to print the names of persons and the names of places and institutions" (Article 98).

The tasks of the struggle for stability and unanimity in the police state were often carried out through denunciation, which in the everyday reality of fear and suspicion took the form of civic virtue.

Despite the proclamation of honest work, decency, peace and harmony as the life guidelines of the population, the political elite of the police state chose other rules for themselves. A characteristic feature of the police state was life in a system of double standards.

7. Conclusion

In the history of a state-organized society, an important place belongs to the police state, which, in the conditions of overcoming feudal fragmentation, managed to establish the dominant of a unified state power and create conditions for the formation of a law-governed state.

The formation in the public mind of the image of the police state as a form of the modern dictatorship of a totalitarian type is due to the establishment in the 20th century of fascist (in Italy), Nazi (in Germany), communist (in the USSR) dictatorships, a wide use of the concept of “police state” with negative connotations attached to it when describing the state of national socialists established in Germany. But the study of police-legal theory as a discursive phenomenon of the New Age and the institutional history of the police state as a political and legal technique for maintaining law and order continues to be heuristically useful for understanding the practices of domination in modern societies. Under the rule of law, the police continue to be the subject of the mechanism of applying state coercion (Amelchakov, 2017; Romanovsky & Romanovsky, 2019), implementing state functions in legal forms.

Belief in the pacifying effect of progress, the perception of violence in modern societies as a remnant of social archaic do not contribute to the research of public institutions related to the implementation of the state monopoly on violence. But elucidation of problem fields in this area will allow us to determine the optimal models for solving the problems of the formation of the law-governed state.

References

- Amelchakov, I. F. (2017). Conception of Administrative and Legal Status of Police Forces in Modern Russia. *Pravo. Zhurnal Vysshey shkoly ekonomiki*, 2, 130–141.
- Babaev, M. M., & Pudovochkin, Yu. Ye. (2016). Repressive solutions of social problems: causes and consequences. *Russian Journal of Criminology*, 10(3), 419–430. [https://doi.org/10.17150/2500-4255.2016.10\(3\).419-430](https://doi.org/10.17150/2500-4255.2016.10(3).419-430)
- Biktasheva, A. N. (2015). Gendarmes and the modernization of local rule in Russia (research experience and prospects). *Quaestio Rossica*, 2, 132–143.
- Dergileva, S. Yu. (2019). On the question of social nature of police state. *Works of the Academy of the Ministry of Internal Affairs of the Republic of Tajikistan*, 1(41), 31–38.
- Egorov, N. Yu. (2020). Administrative justice as a way of ensuring an individual's rights and freedoms (experience in analyzing of the Ivan T. Tarasov's theoretical heritage). *Vestnik of St. Petersburg University of the Ministry of Internal Affairs of Russia*, 1(85), 10–17.
- Filippov, A. (2013). Toward a historical situation of police in Russia. *The Russian Sociological Review*, 12(2), 41–42.
- Gessen, V. M. (1908). *Lectures on police law*. Saint Petersburg.
- Justi, J. H. G., von. (1782). *Die Grundidee zu der Macht und Gluckseligkeit der Staalen oder ausführliche Vorstellung der gesamten Polizey-Wissen-schaft, I*. Gottingen.
- Kildyushov, O. (2014). Michel Foucault as a Researcher of “Police State”: A Program, Heuristic Problems, and Prospects of Study. *The Russian Sociological Review*, 13(3), 9–32.
- Kildyushov, O. (2013). Police as Science and Politics: On the Birth of Contemporary Order from Philosophy and Political Practice. *The Russian Sociological Review*, 3, 9–40.
- Konovalov, I. A. (2018). Crisis of the System of Local Governance in Siberia before the Fall of Autocracy. *Vestnik of Saint Petersburg University. History*, 63(3), 771–782. <https://doi.org/10.21638/11701/spbu02.2018.307>
- Kozinnikova, E. N. (2016). Russian police science in faces: Vladimir Matveevich Gessen. *Genesis: historical researches*, 6, 96–107.

- Kozinnikova, E. N. (2020). Censorship as a subject of police and legal theory in the Russian Empire of the late XIX - early XX century. *Vestnik of St. Petersburg University of the Ministry of Internal Affairs of Russia*, 1(85), 18–23.
- Lutsenko, Yu. V., Kravchuk, O. V., Tsyganyuk, Yu. V., & Klymenko, S. V. (2019). Legal regulation of state security: a review of modern trends in foreign legislation. *Russian Journal of Criminology*, 13(4), 680–690. [https://doi.org/10.17150/2500-4255.2019.13\(4\).680-690](https://doi.org/10.17150/2500-4255.2019.13(4).680-690)
- Medvedev, V. V. (2019). Political and legal values of police statehood (historical and legal foreshortening). *Historical-Legal Problems: the New Viewpoint*, 1, 38–57.
- Nizhnik, N. S., & Dergileva, S. Yu. (2017). *State and law in the theoretical and legal views of A. I. Elistratov*. Yurlitinform.
- Pirozhok, S. S. (2020). Theoretical and methodological determinants of the Robert von Mol's concept of the social state. *Vestnik of St. Petersburg University of the Ministry of Internal Affairs of Russia*, 1(85), 37-45. <https://doi.org/10.35750/2071-8284-2020-1-37-45>
- Popov, V. (2014). The Police Order at the Era of Absolutism in Russia, and the Causes of Its Collapse during the February Revolution of 1917. *The Russian Sociological Review*, 13(1), 52-97.
- Romanovsky, G. B., & Romanovsky, V. G. (2019). The scope of limiting human rights in terrorism prevention in Russia and other countries. *Russian Journal of Criminology*, 13(1), 41–50. [https://doi.org/10.17150/2500-4255.2019.13\(1\).41-50](https://doi.org/10.17150/2500-4255.2019.13(1).41-50)
- Tarasov, N. K. (2019). Russian police science of the late XIX-early XX century - about the grounds and limits of application measures of state coercion. *Vestnik of St. Petersburg University of the Ministry of Internal Affairs of Russia*, 4(84), 51–60.