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**Nadiya LEVYTSKA**

Associate Professor-Trainee University of Białystok (Białystok, Poland), PhD (Law), Associate Professor of Department of Fundamentals of law of Ukraine, Ivan Franko National University of Lviv, 1 Universitska Street, Lviv, Ukraine, postal code 79000 (nlevytska67@gmail.com)

**ORCID:** 0000-0002-2865-5194

**Lyudmyla LUTS**

PhD hab. (Law), Professor of Department of Theory and Philosophy of Law, Ivan Franko National University of Lviv, 1 Universitska Street, Lviv, Ukraine, postal code 79000 (lutz.ludmyla@gmail.com)

**ORCID:** 0000-0002-8182-2449

**Bohdan YAKYMOVYCH**

PhD hab. (History), Professor, Honored Worker of Culture of Ukraine, Professor of the Department of Historical Local Lore; Department of Library Science and Bibliography Ivan Franko National University of Lviv, 1 Universitska Street, Lviv, Ukraine, postal code 79000 (b.yakymovych@gmail.com)

**ORCID:** 0000-0003-1597-1128

**Надія ЛЕВИЦЬКА**

доцентка-стажистка Білостоцького університету (м. Білосток, Польща), кандидатка юридичних наук, доцентка кафедри основ права України Львівського національного університету імені Івана Франка, вул. Університетська, 1, м. Львів, Україна, індекс 79000 (nlevytska67@gmail.com)

**Людмила ЛУЦЬ**

докторка юридичних наук, професорка, професорка кафедри теорії та філософії права Львівського національного університету імені Івана Франка, вул. Університетська, 1, м. Львів, Україна, індекс 79000 (lutz.ludmyla@gmail.com)

**Богдан ЯКИМОВИЧ**

доктор історичних наук, професор, заслужений працівник культури України, професор кафедри історичного краєзнавства, професор кафедри бібліотекознавства і бібліографії Львівського національного університету імені Івана Франка вул. Університетська, 1, м. Львів, Україна, індекс 79000 (b.yakymovych@gmail.com)

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## MODERN SCIENTIFIC APPROACHES TO HISTORICAL, HISTORICAL AND LEGAL METHODOLOGY: COINCIDENCES AND PARALLELS

**Abstract.** *The purpose of the research* is to determine the characteristics of the methodology of modern historical science, the history of state and law, to increase the level of methodological effectiveness of scientific studies, in particular, on the history of state and law. The basis of **the research methodology** is the idea of historical science as a system of knowledge about the laws of a human development in the past, and the historical methodology – as a system of cognitive approaches, principles, methods aimed at identifying historical patterns. At the same time, legal science is understood as a system of knowledge about legal laws, methods and means of constructing legal reality organized by means of cognitive methodology, and its method – as a way (system of techniques) of knowledge with the help of which, the legal laws are revealed. Owing to methodological basis that allowed characterizing the historical and legal method, defining it, establishing the basic techniques that are part of it. **The scientific novelty** consists in the fact that for the first time in Ukraine through the prism of modern understanding of historical science and legal science, scientific methodology the composition of historical and legal method has been singled out, its definition has been formulated, problems of modern historical and legal methodology have been revealed and possible ways of their solution have been offered. **The Conclusions.** The analysis of scientific works on historical issues allows us to state that in historical science there has been formed an understanding of its essence and content, determined the methodology of historical research. But there are no clear ideas about the science of history of state and law, its methodology, historical and legal method of knowledge. The nature of this science, which has a cross-sectoral nature, its methodology, as well as its relationship with historical science has not been determined. This can lead to a number of problems, such as: identification of methods: historical and historical and legal; substitution of concepts; creation of “methodological catalogs” in legal studies, which do not allow to obtain objective knowledge about state and legal phenomena. And it, in turn, can generate a simplified understanding of historical and legal laws, their substitution, the fragmentary nature of their justification, the subjective interpretation of historical sources. The article focuses on the recognition of the leading role of the historical and legal method in retrospective studies of state and legal phenomena. The historical legal method is considered as a system of methods of cognition of state and legal phenomena of the past, identification of patterns of their functioning and development under specific conditions of the reconstructed period. First of all, the following methods should be included: collection and analysis of data on state and legal phenomena, in particular; criticism of sources (including analysis of documents, interpretation of their content, description); generalization; universal hypothesis; inductive, evolutionary; teleological; methods of reconstruction. Such kind of step will help to avoid the identification between the methods that are the part of the historical legal method and its varieties (historical legal, comparative, typological, etc.), substitution of the historical legal method by other general or special legal methods, as well as “terminological revision” of the conceptual apparatus (means of cognition). Owing to the point of view, which makes it possible to form a clearer idea of the suitability and limits of application of the conceptual historical and legal apparatus to the specific conditions of the reconstructed period, enrich the science of state history and law with effective methodological achievements.

**Key words:** historical science, methodology of historical science, science of history of state and law, history of state and law of Ukraine, historical and legal method.

## СУЧАСНІ НАУКОВІ ПІДХОДИ ДО ІСТОРИЧНОЇ ТА ІСТОРИКО-ПРАВОВОЇ МЕТОДОЛОГІЇ: ЗБИГИ І ПАРАЛЕЛІ

**Анотація.** *Мета дослідження* – виявити характерні риси методології сучасної історичної науки, науки історії держави та права, підвищити рівень методологічної ефективності наукових студій, зокрема, з історії держави та права. В основі **методологічного дослідження** – уявлення про історичну науку як систему знань про закономірності розвитку людства в минулому, а історичну методологію – як систему пізнавальних підходів, принципів, методів, які спрямовані виявити історичні закономірності. Водночас правова наука розуміється як

організована за допомогою пізнавальної методології система знань про правові закономірності, способи та засоби конструювання правової дійсності, а її метод – як спосіб (система прийомів) пізнання, завдяки яким виявляються правові закономірності. Таке методологічне підґрунтя дало можливість охарактеризувати історико-правовий метод, дати його визначення, встановити основні прийоми, які входять до його складу. **Наукова новизна** статті полягає у тому, що в ній уперше в Україні крізь призму сучасного розуміння історичної науки та правової науки, наукової методології виокремлено склад історико-правового методу, сформульовано його дефініцію, виявлено проблеми сучасної історико-правової методології та запропоновано можливі способи їх розв'язання. **Висновки.** Аналіз наукової літератури на історичну тематику дає підставу констатувати, що в історичній науці сформовано розуміння її сутності та змісту, визначено методологію історичних досліджень. Але відсутні чіткі уявлення про науку історії держави та права, її методологію, історико-правовий метод пізнання. Не визначено природу цієї науки, яка має міжгалузевий характер, її методологію, а також її співвідношення з історичною наукою. Це може спричинити появу низки проблем, як-от: ототожнення прийомів історичного методу та історико-правового; підміна понять; створення «методологічних каталогів» у правових студіях, які не дозволяють отримати об'єктивні знання про державно-правові явища. А це, своєю чергою, може породжувати спрощене розуміння історико-правових закономірностей, їх підміну, фрагментарний характер їх обґрунтування, суб'єктивне тлумачення історичних джерел. У статті акцентується увага на визнанні провідної ролі історико-правового методу в ретроспективних дослідженнях державно-правових явищ. Історико-правовий метод розглядається як система прийомів пізнання державно-правових явищ минулого, виявлення закономірностей їх функціонування та розвитку в конкретних умовах реконструйованого періоду. До його складу слід зарахувати насамперед такі прийоми: збору та аналізу даних щодо державно-правових явищ, зокрема, критики джерел (що охоплює аналіз документів, інтерпретацію їх змісту, опис); узагальнення; універсальної гіпотези; індуктивні; еволюційні; телеологічні; прийоми реконструкції. Це допоможе уникнути ототожнення між прийомами, що входять до складу історико-правового методу та його різновидів (історико-правового, порівняльного, типологізаційного тощо), підміни історико-правового методу іншими загальнонауковими чи спеціально-юридичними методами, а також провести “термінологічну ревізію” поняттєвого апарату (засобів пізнання). Такий кут зору дає можливість формувати чіткіші уявлення про придатність та межі застосування поняттєвого історико-правового апарату до конкретних умов реконструйованого періоду, збагатить науку історії держави і права ефективними методологічними надбаннями.

**Ключові слова:** історична наука, методологія історичної науки, наука історії держави та права, історія держави та права України, історико-правовий метод.

**The Problem Statement.** At the beginning of the XXIst century, due to globalization challenges, humanity had to face diverse new problems, the solution of which, led to increased interest in scientific developments in the field of social sciences and humanities. The social sciences and humanities include historical science, as well as the science of the history of state and law. In general, humanity is the object of research for historical science, while the history of the state and law has a specific object of research – the state and legal phenomena. The correlation between these sciences always provoked heated discussions, in particular, the representatives of historical science considered the science of history of state and law as its variety or subsystem, and the representatives of the science of history of state and law (mostly) – a subsystem of legal science. Nowadays, the science of the history of the state and law can be convincingly described as intersectoral.

First of all, among the modern historical and legal methodology issues, the following issues should be singled out: the historical science issues, which are inherent in the science of history of state and law, such as identification of approaches, methods and techniques of cognition; terminological differences (the names of the same methods are different); scarcity

of the idea concerning the basic parameters of the historical method (its composition, set of techniques); lack of scientific criteria that would clearly reflect the true historical patterns and distinguish them from subjective research interpretation. Solving these issues would make it possible to obtain more objective results of historical studies, which will be an important methodological basis for the science of history of state and law.

As far as we are concerned, the previous stage of development of this science was determined by formal and strict ideological boundaries. They tried to solve the above-mentioned problem by proclaiming methodological pluralism, civilizational, and later integrative approaches, which, among other things, significantly led to methodological incomprehensibility and rejection of scientific criteria that formed identification requirements for objectively scientific results in legal research.

The current state of historical and legal methodology is characterized by a significant number of its own issues, for instance: the lack of monotonous understanding of the science of state history and law; the identification of this science with the academic discipline; the lack of vision to apply primarily specific historical approaches in historical and legal studies; the lack of clear ideas about the historical and legal methodology, in particular, the historical and legal method; the lack of understanding of its composition (methods of cognition); the replacement of the historical and legal method with “methodological catalogs” (philosophical, general scientific, special legal methods), which do not always allow to obtain objective scientific knowledge about historical and legal laws; the use of largely descriptive techniques that can only indicate the empirical level of knowledge. It should be mentioned that the above-mentioned issues can generate a subjective interpretation of historical sources, a simplified understanding of historical and legal laws, their substitution, the fragmentary nature of the justification.

Owing to the identification of these issues and analysis of scientific sources on the history, and history of state and law, allowed to formulate definitions of science of history of state and law, historical and legal method, to distinguish in its composition objectively necessary for the above-mentioned method some methods of cognition, to pay specific attention to the possibilities and limits of application of the conceptual historical and legal apparatus in the studies of state and legal phenomena of the reconstructed period (which would prevent the transfer of modern knowledge to the object of research of the reconstructed period and vice versa – because it plummets the objectivity of the results). The above-mentioned and other ways to solve the identified issues will increase the level of methodological effectiveness of the science of history of state and law, to obtain objective results of historical and legal research.

**The analysis of research sources** allowed obtaining information and analyzing the real methodological state of historical science, the history of state and law. First of all, specific attention should be paid to the works of researchers, who dealt with the development of the methodology of historical science, written by L. Zashkilnyak, N. Yakovenko, S. Stelmakh, I. Kolesnyk. In S. Stelmakh’s articles there was formulated the understanding of historical science as a system of knowledge about the past human experience, characterized the stages of development and evolution of basic historical theories, highlighted the specific historical approach, described the historical methodology and methods of cognition (empirical, theoretical, logical, special historical). V. Kovalchuk and M. Farion emphasized the features of special historical methods in economic research, and O. Drach – in research on the history of education. In the monographs, published by R. Lukych, V. Syrykh, V. Malakhov, in the article, written by L. Luts the attempt was made to generalize the methodology of legal science, and in the articles, written by V. Kyrychenko, V. Kovalchuk, M. Farion,

H. Kryvchyk, I. Kovalchenko, N. Krestovska, O. Hetman – the issues of historical, historical and legal, integrative and other approaches, historical, historical and legal method, general scientific and special legal methods, which were used in historical and legal research; in the articles, written by M. Kovalevskiyi, O. Kresin, S. Kudin, M. Maksymeyko, I. Nastasyak – the issues of historical legal, historical legal comparative, historical typological methodology were covered. The issues of the science of history of state and law of Ukraine were reflected in the textbooks, published by A. Shevchenko, I. Terliuk, the articles, written by B. Tyshchuk, and issues of the science of foreign history of state and law – in the textbooks, published by L. Bostan, S. Bostan. The empirical basis of the studies became the abstracts of dissertations for the degree of Doctor of Philosophy and Doctor of Law in Specialty 12.00.01 – Theory and History of State and Law, History of Political and Legal Studies in the period 2015 – 2020.

The analysis of scientific literature was conducted in order to identify the historical science issues, as well as the science of history of state and law issues, to find objectively necessary ways to solve them, to increase the level of methodological effectiveness of research in historical science and history of state and law.

**The Main Material Statement.** Historical science is understood as a dynamic system of knowledge about the past human experience (*Entsyklopediia istorii Ukrainy*, 2003 – 2021). And the explanatory dictionary of the Ukrainian language provides the following interpretation of history: the natural consistent development of reality, changes in reality, in the process of life; a set of facts and events that belongs to the past; the science of the general development of a nation, country or society as a whole; the science that studies the course of development, successive changes in any field of nature, culture, knowledge, etc. (*Slovnnyk ukrainskoi movy*, 1970 – 1980).

Historical knowledge is the result of researchers' cognitive activity, establishing the laws of the past human experience in the process of analyzing available historical sources, creating new methodological approaches and research methods. Modern history is interpreted as a set of various subsystems of historical knowledge, interconnected areas of knowledge, among which the theory and methodology of history are also distinguished. All this knowledge is usually structured by epoch into two subsystems: national and foreign history (Antiquity, the Middle Ages, early modern period, modern times, the modern era – the XXth century). According to the development of historical thought, there are two stages of it: pre-scientific and scientific, in particular, the beginning of the second stage in Europe started in the XIXth century. Among the features that are inherent in it, the following are distinguished: awareness of the differences between history as an objective reality in the past and history as knowledge about them; the change of the principle of description to the principle of research of events; professionalization of historical knowledge; institutionalization of organizational forms of historical studies (Stelmakh, 2005).

Modern historical science underwent special changes at the beginning of the XXth century, new directions of its research were initiated, and its methodology was reconsidered. It should be mentioned that in the process of development of historical science not only new directions were formed, but also new concepts and methods of cognition were singled out (Veber, 1998).

The methodology of historical science is interpreted as a system of cognitive rules, principles, operations and methods, which are used in order to reconstruct the past truthfully (Stelmakh, 2009). According to L. Zashkilnyak, "The methodology of history approaches history as one of the sciences, with measures and principles adopted in science, trying to build a system of concepts, categories and principles that should help the historian move

consciously from sources to scientific historical knowledge, understand the role and functions of historical knowledge in society” (Zashkilniak, 1999, p. 7).

According to I. Kolesnyk, the methodology of history was ambivalent because historical knowledge “includes ontological and epistemological aspects: reflection on the process of history and reflection on the process of knowledge of history”. Consequently, the methodology of history “appears to be both as a theory of historical process and as a theory of historical knowledge” (Kolesnyk, 2013, pp. 71–72). Although the researcher considered the concept of “methodology of history” to be somewhat behind the times and preferred to use the concept of “historical style” as a set of ideological and theoretical principles and axiological guidelines.

A crucial issue for historical knowledge, which needs to be solved urgently, is the contradiction between real history and its interpretation by researchers, and, therefore, adherence to appropriate methodological principles should be a prerequisite for the objectivity of historical research results. For the Ukrainian historians and the humanities in general, the problem is more or less alienation from world science, due to primarily unfavourable for the development of national science events of the XXth century. Back in 2000, N. Yakovenko stated the unfortunate fact that “the technique of scientific discourse of the Ukrainian historians froze at the end of the XIXth – the beginning of XXth century – like a clock, the hands of which stopped at the moment of catastrophe” (Yakovenko, 2000). It should be mentioned that the issue was impossible to overcome in the two decades of the XXIst century, although changes for the better can be seen and some interesting and modern from a methodological point of view publications appear periodically.

Specific attention should be paid to the position of a historian and political scholar I. Monolatii, who noted the following concerning the Ukrainian historical science, “if it really wants to go beyond the national methodology of interpretation of political phenomena in their historical retrospect, it cannot but use the “extravagant” at first glance theories proposed by the Western intellectuals” and in one of his last articles he applied the theory of the “black swan” of the American mathematician of Lebanese origin N. N. Taleb successfully (Monolatii, 2020, p. 121).

In the foreign literature, we can come across that the historical methods of studies are understood as the instructions on how to study the past events systematically, describe them, interpret, compare to identify common and special (Manu Kumar, 2013). I. Kolesnyk enumerated (according to I. Kovalchenko) the following special historical or general historical methods: historical genetic, historical comparative, historical typological, historical systemic. During their use, general scientific methods were used (analysis, synthesis, induction, deduction, explanation, etc.) (Kolesnyk, 2013, pp. 70–71). In addition, the main methods of historical research include the method of periodization, sociological, hermeneutic, anthropological and the others.

In scientific publications there was emphasized the importance of historical methods for the study of information systems, the importance of characterizing their temporal and contextual parameters (Janet Toland Pak Yoong, 2011); international economic relations, the importance of temporal, spatial and comparative characteristics, in particular, the choice of alternatives, etc. (Buchley P. J., 2016). Some authors, while analyzing the possibilities of the historical method of economic research, stated that it denied the existence of general laws of economic development and focused on its national specifics, which limited the description of specific historical forms of economic development of individual countries (Kovalchuk & Farion, 2013).

Although there are no unanimous ideas concerning the historical method as a system of methods for understanding the objects of research and identifying its properties in a particular historical period of its development. What kind of techniques form up the historical method? Apart from the main requirement to combine empirical, theoretical and logical methods of cognition, in historical science a system of special methods of historical research is formed: ideographic (descriptive), which is considered to be used the most; comparison; biographical; mathematical statistics; criticism of sources; rational reconstruction (Drach, 2014), historical genetic, comparative, typological (Ogneviuk & Andreyeva, 2021, p. 69).

It should be mentioned that numerous techniques, which should be part of the historical method, some researchers identify as independent methods. First of all, there is a specific historical approach, which involves the study of the object in the environment that affects its formation (specific historical conditions when it emerges, functions, develops); taking into consideration the spatio-temporal parameters of its existence and development. Such kind of approach makes it possible to prevent the unjustified transfer of modern knowledge to the object of study and vice versa – to establish the limits of application of the modern conceptual apparatus.

According to the methods of cognition, the following ones are distinguished: the inductive method, which allows establishing causal links between the object of study and other phenomena, the causes of its occurrence (genetic techniques); the methods of universal hypothesis – the formation of a general hypothesis, which is confirmed by empirical (historical) facts; the methods of reconstruction of events, situations; the evolutionary (chronological) methods; the space-time methods; the comparative methods; the systemic methods; the methods of criticism of sources; the teleological methods; the descriptive methods, etc.

Although there is no structure of these techniques within the historical method, which plunges the level of its methodological effectiveness. And it is vital, as the formation of special historical methods for specific areas of scientific knowledge should be based on the generic concept, for example, the concept of historical method. It should be paramount for its varieties because it allows us to define their relationship clearly. Among such variety, the historical legal method is used, which should provide knowledge of state and legal phenomena in specific historical periods of their development.

N. Yakovenko proved the importance of the above-mentioned statement on the example of an incorrect understanding of the concept of “state” by researchers. The researcher spotted that in many modern works “that Kievan Rus’, the Hetmanate, and even the Zaporozka Sich function as analogs of modern states of a coherent political body with a bureaucratic apparatus of government, a coherent fiscal system, unified legislation, established borders, etc.” (Yakovenko, 2000). Such points of view were peculiar to the researchers of the XIXth century, but in the XXth century, especially in the second half of the Western historical science overcame these shortcomings of the classical historiography discourse.

Historical and legal methodology is interpreted differently in the legal literature, however, quite often the above-mentioned issues are ignored.

In the 80s of the XXth century, among the diverse ideas R. Lukych’s position stood out, who singled out the historical legal method among the classification varieties and included it in the non-independent legal methods (Lukych, 1981).

The domestic history of law, as well as all legal science, was characterized by the search for a methodological basis, which was called methodological pluralism and an integrative approach in historical and legal research after the 1990s (Kyrychenko, 2011, pp. 48–56).

Historical and legal studies are aimed at analyzing the processes of formation and development of state and legal phenomena that no longer exist at that time, and, therefore, their subject is the historical process of origin and development of law as a social phenomenon in its specific historical form. The legal literature is usually a set of philosophical, general and special legal methods that are part of historical and legal methodology, or a system of general and special principles and methods of organizing and building cognitive activity in the field of research state and legal reality in historical retrospect, which form the basis of historical and legal methodological approach. According to some authors, the characteristic features of the approach, are the polycentric scientific paradigm of historical and legal reality, the unity of the theory of history and legal theory as structural elements of such an approach; integrative principles and methods of studies; retrospective study of the object of knowledge. Hence, the structural elements of the historical legal methodological approach are historical legal theory, principles and methods of special historical and legal methodology (laws and conceptual apparatus, special principles and special methods).

Special methods often include: historical legal, comparative legal, historical legal comparative, special legal, method of structural diachronic analysis, content-analysis of historical and legal sources, etc. (Dolhoruchenko, 2019).

According to some modern authors, an integrative approach to the formation of methodological basis research allows combining the principles of pluralism and unity of subject and method. Numerous researchers share the above-mentioned position (Kyrychenko, 2011, pp. 52–53), in particular, I. Kovalchenko historical genetic, historical typological and historical systemic (Kovalchenko, 2003, p. 169). At the same time, it is stated that there is point of view that historical science should use a single method that combines individual techniques of knowledge of law (Shevchenko, 2003).

In addition, there are other considerations: the need to use techniques such as induction, deduction, analysis and synthesis (which the authors include in general scientific methods, not logical methods), as well as other general scientific methods: empirical (experiment, measurement, observation, modeling, questionnaires, surveys, testing, interviews, etc.) and theoretical (mathematical modeling, system structural, comparative, logical linguistic, abstraction, idealization, historical, etc.) (Kryvchyk, 2017, p. 59).

It should be mentioned that the following list of methods of monographic studies is also offered: the method of philosophical dialectics; general methods (analysis and synthesis, method of critical analysis, abstraction, deduction and induction); general and specific scientific methods (comparative, comparative historical and comparative legal, hermeneutic, systemic, synergetic, special legal (which, according to the author, aims to describe, generalize and systematize the views of domestic scholars on the essence of the comparative history of law) (Kudin, 2019, pp. 44–58) The principle of objectivity and historicism, special scientific and formal logical, bibliographic, chronological, portrait, thematic approaches, comparative law method, critical approach, update method were mentioned in the context of the methodology of dissertations (Hetman, 2006).

The analysis of abstracts of dissertations of historical and legal research, as well as any other, showed a formal approach to methodology, lack of relevant knowledge and skills to understand the essence and content, methods of using appropriate methods and obtain and justify appropriate scientific results.

Among the main approaches, which are used the following should be enumerated: anthropological, dialectical, civilizational, globalization (Luts, Nastasiak, Karmazina &

Kovbasiuk, 2021, p. 233), hermeneutic, urban, phenomenological, communicative, axiological, spatial, etc. And among the general scientific methods the following should be highlighted: historical, systemic, structural functional, logical, and comparative, typology, methods of history of law (evolutionary, periodization), history and sociology (institutional, formalization), history of political and legal doctrines (continuity), modeling method, statistical etc. As for special legal, it is: historical legal, formal legal, legal anthropological (Luts, Zozulia, Zozulia, Melnychuk, Kromivets & Karmazina, 2020, p. 803), hermeneutic legal, comparative legal, method of interpretation of legal prescriptions, historical legal reconstruction and periodization, dogmatic, legal semiotics, theoretical legal forecasting, etc. The attempt was also made in order to use philosophical methods: dialectical, metaphysical, hermeneutic, and etc.

Only in a few papers there is mentioned the descriptive method, which allowed the description, however, the vast majority of historical and legal studies are characterized by the description of the objects of study, rather than the results of the application of the methodology and its justification. Although some authors considered this method to be always fundamental in historical and legal science and even named the main cognitive techniques that were part of it: observation, verbalization, generalization and classification, temporal-spatial binding (establishing temporal and spatial framework of research), integration (Krestovska, 2011, pp. 110–113).

Although it should be mentioned that the description in the sociological methodology is the final stage in the application of certain techniques that are part of it. It is understood as the stage of fixing the results (initial data about the object) of sociological research with the help of natural or artificial language. The description is characteristic of the empirical level of general scientific methodology. The interpretation of the descriptive method corresponds to the position expressed at the time by R. Lukych to use historical and legal studies primarily sociological method (including description) (Lukych, 1981, p. 198).

And almost exceptional is the statement that the historical legal method is the main one for historical research of the state and law. The above-mentioned principle gives reason to ask: whether the history of the state and law is a system of scientific knowledge; and if so, is it formed in accordance with the scientific criteria: the subject and method of scientific knowledge?

It should be highlighted that the methodological requirements and scientific criteria are the basis for the formation of historical and legal science, as well as legal science and methodology – to form an idea of historical and legal methodology, historical and legal method.

Analyzing the Ukrainian scientific publications on the history of state and law, it should be mentioned that the subject, method of historical and legal science and its concepts are not thoroughly studied in them, and we can only record some attempts to do so. At the same time, the lack of definition of the concept of the “history of state and law” and its relationship with the science of history and legal science (Tyshchuk, 2017), ideas about the historical legal method does not create appropriate conditions to obtain well-founded results.

The lack of a similar understanding of the history of state and law as a system of knowledge about the patterns of origin and functioning of state and legal phenomena in the relevant historical periods does not allow to form a clear idea of the subject of this science and its method. Hence, it gives grounds for criticism of the methodology of history: the danger of a simplified understanding of historical and legal reality; large volume and mosaic of material that is difficult to rationalize; bias in the interpretation of empirical material; the narrative illustrative basis of historical and legal knowledge, which can be the basis for arbitrary analogies in the construction of historical processes; the danger of superseding historical patterns with situationality and uniformity of factual material (Malakhov, 2012, p. 59).

It should be highlighted that there are still no special monographs on historical and legal methodology. As a result, the criticism is being stirred, not only about how to present the place of history of state and law clearly in the system of scientific knowledge, to define the concept of the “history of state and law”, to clarify the subject methods of this science, but also about the descriptive nature of research, fragmentary historical explanations; use in historical and legal studies of techniques inherent in the historical method in general; lack of boundaries within which the modern historical and legal apparatus should be applied in studies of the reconstructed period.

In addition, as it was noted in the legal literature, quite often there are statements concerning the use of new methods or the replacement of names of known approaches and methods that are not traced in scientific works, there is no argumentation of scientific results, data on when to use these methods (Krestovska, 2011, p. 109). In particular, we are talking about synergetic, hermeneutic, cybernetic and other methods in historical and legal research. Although some of the types of historical and legal methods are developing under modern conditions quite intensively and in the context of the current patterns of a human development, we can predict their need. First of all, the historical legal comparative method (or the comparative legal method of the history of the state and law) should be mentioned.

Actualization of scientific focus on the problems of comparative legal methodology in domestic legal science happened at the end of the XXth – the beginning of the XXIst century, in particular, on the comparative typological approach (Nastasiak, 2015), the theory of comparative law, its structure and methodology comparative legal research (Shemshuchenko, 2006), methodological possibilities of typology (Kresin, 2017).

Special attention was also paid to historical and legal comparative studies. Historical and legal comparative studies appeared, including the works written by O. Kresin (Kresin, 2017), S. Kudin (Kudin, 2019). Nevertheless, the characteristics of the types of historical and legal methodology should correspond, first of all, to the idea of what is the historical science and its methodology, as well as the concepts of the “history of state and law”, “history of state and law of Ukraine”, “foreign history of state and law”, “methodology of historical and legal research”, “historical and legal method”.

The tendencies in the development of historical and legal methodology indicate the focus of historical and legal science on the “development” of new areas and methods in their research. However, it seems that for the domestic history of law it is time to reconsider some conceptual approaches, the conceptual apparatus, the idea of historical and legal research, their methodology.

**The Conclusions.** Analysis of scientific historical sources allows us to draw a number of conclusions: at the present stage of development historical science is interpreted as a system of knowledge formed by historical methodology, which means a system of cognitive approaches, principles, methods aimed at revealing historical patterns. The historical method should consist of a set of methods of cognition, which are aimed at elucidating the patterns of human development in the reconstructed periods of the past. Historical methodology is closely related to the concrete historical approach, although it is observed in different periods of development of historical science the use of other approaches, such as: formation, civilization, etc. Scientific publications contain the references on the use of methods of periodization, historical genetic, historical comparative, historical typological, systemic, sociological, hermeneutic, anthropological, etc.; methods of cognition: evolutionary, descriptive, biographical, statistical, critique of sources, inductive, genetic, universal

hypothesis, rational reconstruction, etc. There is an identification of approaches, methods and techniques; the same methods are called differently (terminological differences); undefined composition of the historical method; there are no clear criteria for scholars to resolve the contradiction between real history and its subjective interpretation. Hence, it requires to create the objective methodological parameters that researchers must adhere to in order to obtain reliable scientific results of historical studies; revise terminology and conceptual apparatus; to form the structure of the historical method (a set of objectively necessary research methods: inductive, universal hypothesis, reconstruction, etc.).

The study of scientific works on the history of state and law (both domestic and foreign) allows us to state that the efforts of the Ukrainian historical and legal science to move away from the formational approach and proclaim the so-called methodological pluralism, civilizational and later integrative approach ended in methodological incomprehensibility and violations criteria, identification requirements for scientific results (objectivity of scientific knowledge, their validity, scientific novelty, etc.)

It should be noted that there is still no stable idea of the relationship between historical science and the history of state and law: mostly there are opinions that the history of state and law is part of legal science (because its object is state and legal phenomena). Although the position of stable interaction with historical science in general is not rejected. However, this question is crucial not only to identify the place of the science of state history and law in the system of social sciences and humanities, but also to determine its subject, content, basic parameters, methodology. Otherwise, there would be problems of both research and the organization of knowledge in the appropriate system (scientific field).

There is no unanimous understanding of what is the science of the history of state and law, in particular Ukrainian and foreign, which can be its subsystems. Apparently, the intersectoral nature of the science of state history and law should be recognized, which will allow it to be understood as a system of knowledge about the laws of state and legal phenomena (setting boundaries for research in the history of state and law of Ukraine and foreign history of state and law). At the same time, the science of the history of the state and law should be distinguished by a cognitive discipline.

Understanding the cross-sectoral nature of the science of state history and law will show a closer connection with historical science in general, which will influence the choice of the main conceptual approach – specific historical. And it should be basic for scientific studies, even if you use other approaches inherent in legal science. After all, this approach is crucial for understanding state and legal phenomena. All this is important to understand the methodology of the history of the state and law, in particular the historical and legal method

It should be noted that today there is no clear understanding of the historical and legal method, there is its identification with historical methods in general or their varieties; use of techniques that are part of the historical method. Also created “methodological catalogs” (lists of methods: philosophical, general scientific, special legal), and real research have a descriptive nature (which should be inherent only in the empirical level). And it is not clear how the results of such research can be considered scientific or innovative. It can give rise to the fragmentary nature of historical explanations, simplified understanding of historical patterns, their substitution, subjective interpretation of historical sources.

Taking into consideration the methodological principles in research on the history of state and law, the leading principles should be always the historical legal method, and other methods (general, special legal) – optional, which would help to obtain objective results.

Based on this, the historical legal method should be understood as a system of methods of cognition of state and legal phenomena of the past and identification of patterns, how they function and develop under specific conditions of the reconstructed approach. It should include: methods of collecting and analyzing historical and legal facts: criticism of historical sources: (analysis of documents, interpretation of their content, description), generalizations, inductive (genetic), evolutionary (including periodization), universal hypothesis (coverage of individual events, general laws), reconstructions, as well as teleological techniques. This composition is due to the peculiarities of the object of knowledge – state and legal phenomena, as well as the subject – their historical patterns.

The following understanding of the historical and legal method will distinguish its varieties: comparative, typological, etc.; to find out the relationship between the historical legal and comparative legal method, or the possibility to apply certain techniques of the comparative legal method within historical legal studies. It will also make it possible to review and rethink the conceptual apparatus of the science of the history of state and law, will allow to distinguish its concepts with the concepts of historical science.

Taking into consideration the above-mentioned, it will help to form a clear idea concerning the possibilities and limits of application of the conceptual historical and legal apparatus in the study of state and legal phenomena of the reconstructed period. The above-mentioned and other ways of solving problems will increase the level of methodological effectiveness of research in the history of state and law.

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