## Aleksander Aleksandrovich Alekseev: A Distinguished Representative of Research in Financial Law in the Early 20th Century

This article deals with the undeservedly forgotten legal scholar and expert Aleksander Aleksandrovich Alekseev, who at the beginning of the 20th century made a serious contribution to the research of financial law in the Russian Empire. Born and educated in the Sloboda Region, Ukraine, he worked at the Dorpat and Warsaw universities.

The article presents the scientific biography of Professor Alekseev, and analyzes the place that he occupied in the scientific legacy of research into financial law in Ukraine at the beginning of the 20th century. The main characteristics of Alekseev's basic scientific research and the periodization of the life and work of this outstanding legal expert are also provided.

The article highlights that Alekseev's scientific work and the significant heritage he left in the field of budget law have not lost their relevance to this day. At present, there is an active ongoing debate among experts on the optimal form of participation of representative authorities in procedures for the budget preparation and approval. The problem remains the subject of heated scientific discussions and political conflicts. The relevance of Alekseev's scientific legacy is evidenced by reprints of his works and their appeal to modern researchers.

Aleksander Aleksandrovich Alekseev was born on January 11, 1876, in Kharkiv Governorate, Ukraine. He received his secondary education at the Second Kharkiv Gymnasium, graduating with a silver medal in 1895, and the same autumn entered the Faculty of Law of the Imperial Kharkiv University, where he studied various branches of law. As a student, he wrote the paper 'On the activity boundaries of the state', which attracted the attention of N. O. Kuplevasky, a professor of the Department of State Law, who saw in this work the student's aptitude for research. This played an important role in the fact that, after graduating in 1900, Alekseev stayed at the university to prepare for a fellowship as a professor of the Department of State Law. Alekseev worked under the guidance of professors N. O. Kuplevasky and V. A. Yastrzhembsky for about three years.

As a candidate for an academic title, Alekseev was invited by the Council of the Kharkiv Agricultural College to teach courses in jurisprudence. He taught there for six months, until a full-time teacher was found.

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In 1903, Alekseev defended his master's thesis in public law. In the autumn the same year, Alekseev gave two trial lectures to be granted the title of private docent at the Department of State Law. One lecture, the topic of which he chose on his own, was devoted to the issue 'On the legal study of the state'. The second lecture, on a topic suggested to him by the faculty, was called 'The State Council in Russia: Essays on its origin and current situation'. At the end of 1903, he was approved as a private docent at the Department of State Law, and in the spring of 1904, he began lecturing. In particular, he taught the course on the state law of European countries, and the French state law, and carried out practical classes on state law (*Yuridicheskii fakultet...*, 1908).

In 1905–1906, Alekseev took a business trip abroad to collect materials for his master's thesis. He worked in Berlin, Heidelberg, and Munich under the guidance of such outstanding scholars as Georg Jellinek and Otto von Gierke. He was also acquainted with Jellinek's pupil Julius Gatchek (Yalbulganov, 1998). Communication with these scientists had a significant impact on the formation of Alekseev's scientific interests. Therefore, it is worth dwelling briefly on the main features of their scientific views.

Georg Jellinek (1851–1911) was a German legal scholar, founder of the theory of non-sovereign states, most consistently stated in the work *Allgemeine Staatslehre*, or *The General Theory of State* (1900). The main thesis put forward by Jellinek was that only one sovereignty can exist on the entire territory of a single state. States that have joined a federation or empire, although they retain a certain amount of power, at the same time completely lose their sovereignty (Chernov, 2004).

Otto von Gierke (1841–1921) was a German lawyer. In the fundamental work of the famous Swedish scientist Erik Anners, *Den europeiska rättens historia* or *The History of European Law*, which traces the genesis of European law from ancient times to the present time, two articles are devoted to Otto von Gierke: 'The reform activity of Bismarck. The lawyer Otto von Gierke' and 'Otto Gierke and Anton Menger. Draft Civil Code and German Law'. (Anners, 1994)

The first article shows that during the nineteenth century, the view of social policy changed. It has become natural to perceive this sphere as a separate legal discipline—social law. The term 'social law' itself was proposed in 1868 by Otto von Gierke. With the creation of the best economic prerequisites and the general humanization of society, social policy became the sphere of activity of the state where the right to help and care was a fundamental human right.

The second article reveals that Otto von Gierke expressed the most important fundamental ideas regarding the publication in 1888 of the Draft Civil Code, which were set forth by him in the work 'Draft Civil Code and German Law»' (1888–1889). A conservative and Germanist, Gierke spoke out against giving the project the character of Roman law, which he considered absolutely incompatible with the need for a comprehensible and practically acceptable code based on the legal understanding of the German people.

Jellinek's student Julius Gatchek (1872–1926) was the progenitor of an approach according to which the reforms of 1905–1907 did not establish a constitutional monarchy in Russia. He put forward the thesis that Russia is an "autocracy" with popular representation. (Shulzhenko, 2018)

The Ukrainian researcher Igor Yatsenko (2016) considers Jellinek and Gatchek the most influential representatives of constitutionalism in modern Europe.

In 1908, Alekseev published a work titled *On the Doctrine of Parliamentarism* (Alekseev, 1908), in which he comes to the conclusion that wherever a named government system operates, it is regulated by the rule of law; parliamentarism everywhere passes from a factual state into a legal one, becoming a legal institution.

In 1910, Alekseev's study *Ministerial Power in a Constitutional State* (Alekseev, 1910) was published; it was devoted to studying the foundations of ministerial power and its role in a constitutional state. Within the preamble, the author writes that the purpose of this study was to clarify the foundations on which ministerial power rests in a constitutional state and the principles by which it is guided in its activity. Furthermore, the author hoped to show that in dual-constitutional or dual-monarchy states, despite the significant role of the monarch in public life and the fact that the principles of constitutionalism have not yet been sufficiently fully expressed for themselves, ministerial power performs its functions, although sometimes being far from perfect in form.

The first part deals with study titled 'The foundations of ministerial power and its role in a constitutional state'. The second part is devoted to the issue of 'The current position of ministerial power in a constitutional state.' In this work, Alekseev provides an analysis of the doctrines of Benjamin Constant, Montesquieu, Lorenz von Stein, A. S. Alekseev, Rafael Casanova and others, as well as the doctrine of the ministerial power of supporters of the monarchical principle. He studies the regularity of management in connection with the separation of powers theory, the importance and role of the ministry in a constitutional state,

the volume of countersigned acts of the head of state, and the current position of ministerial power in a constitutional state; he also examines parliamentary states, constitutionally dualistic states, American states, and Switzerland.

The author compares different perspectives on the concept and essence of executive power. He formulates his conclusions based on the works of domestic legal scholars of the late 19th and early 20th centuries, who conducted their research on the materials of contemporary constitutions and Russian reality. Here Alekseev analyzes the concept and the nature of the executive power in the views of foreign scientists and representatives of Russian political and legal thought of previous eras.

This work by Alekseev has not lost its significance even today. Indicative in this regard is the reprint of the work in 2021 in the series *Classics of Russian Jurisprudence* (Alekseev, 2021). In the preface to the publiction, the editor-in-chief of the series noted that the questions discussed by Alekseev are very complex: What is ministerial power as such and what is the role of ministers in the activities of the state? What exactly determines the strengthening of ministerial power and its weakening? This is an old argument about which of the powers actually governs the state more: the legislative or the executive? And what is the role and place of the head of state (monarch, president) within the system of separation of powers. Today, at the time of economic instability, when the gap in living standards between the poor and the rich is being measured dozens of times, when power, including the ministerial one, is cut off from the people and serves not them but itself, Alekseev's essay is very topical and instructive.

In 1911, the scientist was sent abroad for the summer to collect materials for the preparation of his doctoral thesis. In 1914, he received an invitation from Yuriev Imperial University (Tartu, Estonia) for the position of extraordinary professor of the history of the philosophy of law at the Department of Law. In the scientific field, he continued to explore problems at the intersection of state and financial law (Alekseev, 2011).

In 1914, Alekseev published the work *Financial Powers of the English Parliament* (Alekseev, 1914). In the introduction, the author emphasizes that the starting point in the development of the financial powers of the English Parliament is the rights granted to medieval estates to agree to taxes or refuse them. The medieval estates' legal consciousness assumed that a monarch would live on his own funds and from that repays the expenses of state administration.

In 1915, Alekseev wrote the work titled Essays on the Budget Law of Russian Legislative Chambers (Alekseev, 1915b). As he reasonably showed here, in 1906-1917, Russian budgetary legislation had granted the State Duma and the State Council limited powers, which significantly hampered their activities when considering and approving the budget. In this part, from the author's point of view, the government's distrust of the popular representation authorities and the viciousness of such a constitutional regime were most clearly manifested. Alekseev argued that it was necessary that the budget was adopted, both in revenue and expenditure parts, only by the representative authorities of people. The government should be empowered to levy taxes and make expenditures only if there is a law to do so. In his view, this vesting of financial management powers to the government is the whole point and significance of the requirement of establishing the budget exclusively in accordance with the constitutional procedure. An exception could only include certain types of income and expenses that did not need to be recognized in the budgetary order (for example, expenses for the maintenance of the Imperial Court). The existence of such articles of laws means that the authorities responsible for people's budgeting, at a minimum, were obliged to accept income and expenditures based on existing laws, regulations, staffing tables, etc.

In 1915, Alekseev wrote another major article, 'The budget law of the French Parliament', which was also published as a book volume (Alekseev, 1915a). Here, the author outlined the historical development of budgetary law in France. In the 1791 Constitution, Alekseev identified the main features of the early twentieth-century French budget law. He wrote that the budgetary right of people's representatives had not yet been put into practice in the late 18th and early 19th century and the practitioners of that era failed to apply the principles they proposed, but the foundations of budget law had been developed in France during the 1789 revolution. Furthermore, Alekseev presented a detailed analysis of the contemporary French budget law. He accompanied this analysis with assessments of the positions of scientists Gaston Jèze, Emmanuel Besson, Pierre Paul Leroy-Beaulieu, René Stourm, and statesmen, in particular, Léon Say, the French finance minister from 1872 to 1883.

Alekseev stressed that this was primarily the case with certain disputable issues: the principle of the annual operation of the budget, the components of the budget, the specialization of expenditures in the budget, and so on. Particular attention was paid to the consideration of the powers of the French Parliament when it discussed the budget, approved over-budget loans, adopted an interim

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budget until the final law is voted on, etc. In his study, Alekseev showed the importance of the budget law in France and noted that the principle of the yearly operation of revenue and expenditure laws had been implemented in French law so completely and consistently that not only revenues could be collected and expenditures could be made within one year entirely, but the laws underlying them lapsed along with the expiration of the budgetary period. And if, by the beginning of a next budgetary period, the Parliament had not adopted a law on the budget, then the laws on revenue and expenditure henceforth would not have had any validity, the government would have lost its right to collect income, at least a tax revenue, and to make expenses, so the financial management of the country, and together with it, the functioning of the state itself would have been suspended.

In this regard, the question arose whether the Chambers of Parliament could reject the budget or were they obliged to accept it, even if in a significantly modified and revised form. Alekseev believed that in solving this issue, two points of view should be distinguished: legal and political. From a legal point of view, the parliament cannot reject the entire budget. Thus, the French Parliament had no right to refuse to adopt it *en bloc*. In France, there were obligatory expenses for the Parliament when voting the budget, including expenses that were due to the operation of the Constitution, as well as some regular laws. Otherwise, according to the scientist, one had to decide when one should leave the field of law and look at the parliament's budgetary powers from a political perspective, and when a political interpretation of the budget issue should be put forward. Here he shared the point of view of Léon Duguit, who considered voting on the budget as

the most energetic means in the hands of Parliament to control and influence government power. Consequently, if, by refusing loans, the Chambers aims not to destroy this or that government position based on the law, but only to force the ministry it hates to resign [...] then the Parliament remains within the boundaries of constitutional correctness. (Alekseev, 1915a)

In 1918, Alekseev published his work *The Budget Law of the Popular Representation in Prussia and Germany* (Alekseev, 1918). Analyzing the history of budget law of the parliament in Germany, Alekseev pointed to the role of such an outstanding political figure as Otto von Bismarck. It was Bismarck who spoke out about the unification of Germany with "iron and blood", which was directly related to the Prussian Parliament's increasing stubbornness in approving new expenses and taxes, which were necessary for the implementation of the military reform

plan of Wilhelm I, King of Prussia. The parliament, which had refused to vote on the budget due to disagreement with the military reform, was dissolved in 1862. However, the newly-assembled representatives took the same position. The king did not dare, at the suggestion of the military, to simply disperse the parliament, perhaps remembering the unrest of 1848. An alternative step was taken—the appointment of a new head of government, who would settle the contradictions with the parliament. Otto von Bismarck was regarded as such a person. Bismarck's speech before the parliament after he had taken the office, contained the historic phrase that he did not plan reconciliation with the *Landtag*, and the great question of German unification would not be decided through speeches, and not achieved by voting with majority support—this had been a huge mistake in 1848—but with "iron and blood". (Alekseev, 1917) In general, Germany represented a country that had a parliament with budgetary powers, granted not even by the imperial power but by the government.

In the works discussed, Alekseev studied in detail the procedure for adopting the budget by the representative authorities of England, France, Belgium, Germany, and Prussia. As a result, he came to the conclusion that one of the characteristic features of the constitutional states of the early twentieth century was to involve the authorities of popular representation in the financial management of the country and their participation in the discussion and adoption of the budget. The participation of these authorities in the budgetary sphere was enshrined in the form of a law; this conclusion was subsequently included as an integral part in the book *The Budgetary Right of Popular Representation* (Alekseev, 1918).

In this work, Alekseev, using the comparative legal method, characterized the budget structure of England, France, Belgium, and Germany. The author noted that it was the right of the people to "agree to taxes" that became the reason for the creation of chambers of popular representation in many countries of Western Europe. And this was also the cause of clashes between the legislative and executive authorities, as well as the government's distrust towards popular representation (Alekseev, 1918). Thus, readers of Alekseev's works have the opportunity to compare the budgetary rights of the parliaments of different states. The work mentioned was digitized in 2009, which also makes it possible for a modern reader to get acquainted with this outstanding scientific work (Alekseev, 2009). Based on the results of the study, in 1918, Alekseev defended his doctoral dissertation, devoted to a comparative legal

analysis of the foundations of the budgetary prerogatives of the parliaments of England, France, and Germany.

In 1916, Alekseev moved to Rostov-on-Don, where the Faculty of Law of Warsaw University was located during this period.

Quite a lot has been written about the complex and, in many ways, very ambiguous process of transformation of the Faculty of Law of Warsaw University (Danilov, 2020; 2005; 2011). Among other papers, of interest is the work by Konstantin Krakovskii, *The Thread of Time. History of the Faculty of Law of the Warsaw–Don-Rostov–Southern Federal University, 1915–2015* (Krakovskii, 2015), written on the basis of documents held in central (Moscow, St. Petersburg, Warsaw) and local (Rostov-on-Don) archives, many of which have become available to the public for the first time. The book is not only a formal presentation of the law faculty's official history, but contains details of the daily life of its teachers and students, varied in content and form, throughout the whole century. The book contains dozens of biographies of teachers, including information about Professor Aleksander Aleksandrovich Alekseev.

Alekseev worked as a professor at the Department of State Law, and taught the basic course on state law and a "specially recommended" course on state self-government, autonomy, and federation.

His teaching activity was reflected in his scientific research. In particular, in 1924, his commentary on the newly adopted Constitution of the USSR was published (Alekseev, 1924a). In its chapter 'Essay on the origin of the Constitution', Alekseev emphasizes that one of the biggest achievements of the Soviet government in the field of state building was the formation of the Union of Soviet Socialist Republics, which was formalized in the agreement or the basic law adopted by the Central Executive Committee of the Union. Further, he considers the motives that made the formation of a federal state from the Soviet republics inevitable. Alekseev studies the competencies of the Union-wide authorities and notes that the federation, by its very idea, is a means of alliance; it integrates rather than differentiates the political organizations of people, so the federal state must have the appropriate authority to carry out the tasks assigned to it. It acts as a collective whole not only outside, in international communication, but also in the area of the internal life of its members, in the area of intrastate relations.

In the work, the author raises important and fundamental questions about the functioning of the federation. How is state power distributed in the current

federations? Which of its functions are within the competence of the center and which are assigned to the member states? Alekseev analyzed that on the example the Constitution of the North American United States. He also noted that the competences of the Union-wide power in the Swiss Constitution are much broader and less precisely defined. Considering the latest German Constitution, he came to the conclusion that, adopted in Weimar in 1919 and based on federalism, it is much more imbued with the principles of unity and unitarism.

In addition, Alekseev provided here an overview of the competences of the federal government in the conditions of the USSR. He noted that measures were taken to precisely define the powers of the Union and delimit them from the powers remaining with individual Soviet republics. He also examined the organization of the Union-wide power and the relationship of its authorities, the position of the Soviet republics in the Union. Alekseev argued that the federal government has limited powers necessary for those common goals and objectives that lead to the formation of a federation. In some federations they can be rather significant, in others they are relatively small. These powers are explicitly enumerated in the federal constitution. All other functions of power, which are not mentioned, belong to the individual states that are part of the federation. Each of them has its own constitution, as well as its own state authorities.

In conclusion, the author emphasizes that the Council of People's Commissars of the Union Republics no longer had Commissariats for Foreign Affairs, Military and Naval Affairs, Foreign Trade, Communications, Post and Telegraphs. The corresponding functions of power were strictly centralized and assigned to the exclusive competence of the Union-wide power.

One of the most important features that anticipated modern trends in science was Alekseev's widespread use of the comparative method in the study of various issues of jurisprudence.

In 1924, Alekseev published a small paper titled *Regional and Local Authorities* (Alekseev, 1924b), focusing on issues of local self-government. This work has not lost its significance to this day.

With the transformation of the Don University's Faculty of Law into the Department of Law of the Faculty of Social Sciences, Alekseev assumed the position of professor at the department and lectured courses on the general doctrine of the state and the state structure of the USSR, the state law of capitalist states, modern federations, and modern state and foreign policy. He was head

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of the Cabinet of Public Law and a member of several subject commissions of the Faculty of Law (on state law, international law, and socio-administrative law). In April 1922, Professor Alekseev was elected Dean of the Faculty of Social Sciences, replacing Professor S. F. Kechekyan in this position. He also taught and was a member of the Council of Regional Law Courses in the South-East of Russia named after Comrade Kursky. These courses were designed to train the judiciary in just one year with an academic load of 36 hours per week. After the Department of Law of the Faculty of Social Sciences was closed, Alekseev continued to work at its Department of Economy, teaching courses dedicated to the finance in the USSR and capitalist countries, until the liquidation of the university in 1931.

The Decree of the Council of People's Commissars of the RSFSR no. 54, dated August 8, 1924, made changes to the network of universities in the country, indicating, in particular:

The faculties of social sciences of Rostov and Saratov universities are being closed. Admission to the liquidated departments and faculties is terminated this year. Students of liquidated higher educational institutions and faculties are placed in other educational institutions, in accordance with the specialties chosen by each of them for study. (Dekret SNK RSFSR, 1924)

This resolution was signed by the Chairman of the Council of People's Commissars A. I. Rykov.

Modern scientists turn to the creative legacy of their predecessors, and Alekseev's works are thus also mentioned in studies about various branches of law. For example, in exploring the current problems of municipal legal responsibility in the Russian Federation, I. A. Alekseev emphasized that the conclusions and provisions substantiated in his dissertation are based on the methodological foundation laid by the works of scientists in the field of philosophy of law, the theory of state and law, the general theory of legal liability and sectoral types of legal liability, constitutional law, municipal law, as well as on the achievements of scientists who developed the fundamental categories of the general theory of law and legal systems in the field under study, including the works of Alekseev (Alekseev, I. A., 2014, p. 7).

O. V. Kharchenko, in the article 'The concept and essence of executive power in the works of Russian lawyers of the late 19th—early 20th century', discusses various perspectives on the concept and essence of executive power, formulated by domestic legal scholars, who conducted their research on the materials of contemporary constitutions and Russian reality, and analyses views on the concept and essence of the executive power of foreign scientists and representatives of Russian political and legal thought of previous eras (Kharchenko, 2008). D. L. Komyagin (2020), in the study *The Budget Law of Parliament: The Emergence and Evolution* also refers to the scientific heritage of Aleksander Alekseev. Yu. V. Ginzburg (2011), in the article 'The doctrine of the legal nature of the budget law in the works of A. A. Alekseev', assesses Alekseev's work *The Legal Nature of the Budget Law*.

The research of Alekseev's legacy is all the more important because some contemporary authors have not studied it very carefully, attributing to Alekseev works that he has not authored. In particular, Lushnikova and Lushnikov (2013, p. 587) in their monograph *The Russian School of Financial Law: Portraits Against the Background of Time*, refer to Alekseev's alleged work 'Georg Jellinek, his scientific heritage', which was published in the journal *Voprosy prava* ('Questions of law') in 1912. Instead, the article was written by the legal scholar Aleksander Semyonovich Alekseev (Alekseev, A.S., 1910–1912).

Most researchers do not indicate the date of death of Aleksander Aleksandrovich Alekseev. We have found the following information. In 2020, when clearing the Resurrection Cemetery in Saratov, volunteers discovered a monument with the inscription: "[Here lies] Professor of the Institute of Law, Aleksander Aleksandrovich Alekseev (01/24/1876 [New Style]—12/4/194?)" ('Gorozhan priglashaiut...', 2020).

Thus, we can propose the following periodization of the life and work of the outstanding legal scholar Aleksander Alekseev:

- The first period from the moment of birth until 1914 is connected with Ukraine. Here he was born, received primary and higher education and taught at Kharkiv University.
- The second, shorter term included his work at the University of Yuriev in 1914–1916. It was not only a time of intensive teaching activity, but also a very rich and creative period of scientific research.
- The last period of his life is associated with work at the Faculty of Law of Warsaw (later, Don) University (1916–1931). During this time, he not only taught at the Faculty of Law, but, after the closing of the Department of Law of the Faculty of Social Sciences, he continued to work at its Department of Economy, teaching courses on finance in the USSR and capitalist countries, until the liquidation of the university in 1931.

Alekseev's sphere of scientific interests covered state and financial law and budget law. The most important of his works were: *Ministerial Power of Constitutional States* (Kharkiv, 1910), *Constitutional State* (Rostov, 1917), 'The budget law of the French Parliament' (in *Journal of the Ministry of Justice*, 1915, November-December); *The Budgetary Right of Popular Representation* (Kharkiv, 1918).

Alekseev made a significant contribution to the study of issues of budget law. He examined the processes of the emergence of budgetary rights in some foreign countries (England, France, Germany, and the United States of America), and studied in detail the emergence and evolution of these rights in Russia during the imperial period. Specializing in public law, Alekseev was actively involved in issues related to the nature of financial legislation.

His scientific achievements have not lost their relevance even at the present time, since the question of the optimal form of participation of the representative authorities in the procedures for the formation and approval of the budget is still the subject of heated scientific debates and political conflicts.

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