

THE SCIENTIFIC AND THEORETICAL BASIS OF LOCAL SELF-GOVERNMENT

Abstract. In the article, taking into account the historical and legal aspect, the main scientific origin theories and social ideas of the local self-government institution establishment have been analyzed.

Key words: local self-government, origin theory, free community, democratic institutions.

The importance of local self-government as a basis for democracy does not cast any doubt to anyone. The main disputes among scholars are among the following issues as whether the self-government is a state power or a separate authority of territorial communities; as to who is the primary subject of local self-government; as the community right of local residents to self-government to be derived from the state or it is the natural right of the territorial team. Of particular importance, in the authors' opinion, is the last question, the answer to which not only determines the place and role of the community in the local self-government system, but also reveals the very essence of self-government as a public power, clarifies its nature.

Scientific and theoretical reflection on local self-government begins in Western European countries from a modern age and was intended to justify the emergence of a new local government institution. There was a need to answer numerous questions about this phenomenon, namely: the place of self-government in the state system, its role in the political, economic, social and cultural state functions implementation, etc.

However, social ideas about this institute began to appear in public consciousness much earlier. As O. Kurochkin noted, local self-government was a form of the social system fundamental property manifestation, that was, the objective result of social evolution [1]. Actually, local self-government acts as one of the democracy forms. Its historical origins can be considered as a custom that existed in humankind in the distant past, to jointly solve issues concerning common interests in meetings, riots, gatherings, and etc. It is believed that the first legal

registration of local self-government took place in Ancient Rome in 45 BC with the "Lex municipalis" law adoption, which introduced a unified local government built on the self-government principle [2].

It is worth agreeing with those researchers who support the idea [3] that the ideological origin of local self-government is associated with the doctrine of natural law, a phenomenon known to ancient philosophers since the pre-Socrates era. It is the philosophy of natural law, with its paradigm of justice, which is based on universal human principles of equality; it explains and positions a person not only in the natural environment but also in society. Actually Aristotle noted that justice and equality lie at the heart of the civil community and regulate the desired relationship [4, p. 378]. In turn, M. Cicero, by understanding the nature of the civic community, determined that the people were not any accumulation of crowd gathered together, but the unification of people connected with each other by consent in matters of law and commonality of interests. Thus, to the idea of the commonality of interests inherent in the Greek philosophical thought, the Roman thinker added an agreed legal communication of those members i.e. "common law and order" [5].

The ancient understanding of equality, justice and freedom was perceived by the medieval European scientific thought and evolved in the theory of popular sovereignty. The legal practice embodiment of the natural law ideas enriched the theoretical ground of self-government with the concept of participation in the administrative function implementation of all citizens. Initially, the idea of local self-government was aimed at forming a sense of belonging to one community among citizens, but in the future it acquired the form of individual's personal and political freedoms.

The seventeenth century opened a new era in understanding the natural law phenomenon. The old concept of "natural" begins to be perceived in a new context: first, as free from supernatural; and secondly, as rational, based on pure reason; and thirdly, as possibly more coincided with the latest advances in the natural sciences of that time. Accordingly, the new natural law was exempted from supernatural justification.

The German philosopher-Calvinist Johannes Althusius, known to the scientific community by his work *Politica Methodice Digesta, Atque Exemplis Sacris et Profanis Illustrata* (1603) [6] and the launch of the federal theory of popular sovereignty, first proposed the principle of subsidiarity in the local self-government implementation. J. Althusius freed the political thought of his time from theological sources, depriving the "natural law" concept of religious content. An outstanding humanist insisted that the source of the state is the natural property of people to unite, which he called natural law. The law was not derived from theological preconditions, but from empirical observations of human behaviour. The state consisted of associations of people and was a union of associations. Each association was based on consent, which was executed by a contract (explicit or imaginary), which contained at least two aspects: the definition of the nature of membership in the contract and the establishment of the power limit (*majestas*) of the governing body. Thus, the state power was higher than the power of private associations, however, that power was not absolute in relation to those associations. The hierarchical system of socio-political structures was understood as a system of federative entities and unions, created and acting on a contractual basis. In a decentralized political unit of a lower level, there was significant autonomy in the rights realization. Only when the communities were not able to fulfil their tasks, their competence passed to the corresponding higher political association [7, p. 5-6].

It is necessary to recall the domestic experience of the contractual registration of the association consent, namely: the Zaporizhzhya Army with its head, and the limits establishment to Hetman power, as the governing body of the association. The mentioned document fully illustrates the practical implementation of the theory proposed by J. Althusius. On the other hand, some domestic researchers prefer the populist-mythological perception of this law calling it "the first Ukrainian constitution" [8, p. 2; 9, p. 32; 10;11;12]. Judging by the names given to the document in these "scientific" researches, the authors hardly saw the monument itself, or at least read its original name: "The Constitution of Pylyp Orlyk or Pacts and Constitutions of Rights and Freedoms of the Zaporizhian Host [13]."

In France, the ideas of local self-government were born in a confrontation between the Physiocrats and absolutists for introducing the liberalism principle regarding the non-interference of the police state in the economy, taking into account the economic life of the community as well. Physiocrats in their concepts defended the natural rights of the individual and society [14, 15]. It was precisely on the economic independence of the community that it was based on its economic independence from the central government, which determined the political struggle for the resources allocation [16, P. 29-30.]. Thus, for example, R. de Argenson (Fr. Von René Louis de Voyer d'Argenson), who was not only a theoretical scientist but also a French foreign minister under Louis XV, proposed the local self-government development on an electoral basis under control conditions by the king's intendant. In the opinion of the Physiocrats, municipal communities - public corporations – had to have the right to elect government bodies, as well as certain fiscal opportunities to ensure their activities [17, P. 340–357; 18].

The concept of local self-government was influenced by the socialism doctrines and utopian communism. The works of such founders of utopia as Thomas More and others [19; 20; 21; 22; 23] became not only one source of Marxist doctrine, but also proposed and developed the basic principles of human dignity, and most of the theoretical discourses devoted to self-management were subjected to the socialist ideas influence [24]. The quintessence of the self-government idea, which was interpreted by educators, socialists, anarchists, and other trends, were the works of K. Marx, who considered the social being of citizens as their participation in public affairs. Noting that in a society that was built on the basis of collectivism and was an "association of producers," the management of the people was confirmed by the people themselves [25, p. 350].

Recognition and introduction of the legal categories of "freedom", "equality" and "justice" into different national legal systems entailed the universal suffrage legalization. The reform of the electoral process that took place in Western European countries during the XVIII and XIX centuries also had an impact on local self-government, which was noticed by the renowned Austrian professor, a professor of

English self-government Joseph Redlich, who studied the self-government's dependence on democratization, the liberalism and socialism ideas development [26]. Although centuries have passed, the liberal-democratic concepts remain the prerequisites for the local self-government development.

The French Revolution created conditions for which not only wealthy towns, but also citizens joined the municipal elections. The same happened with the electoral system of England at the end of the nineteenth century. The general, equal, direct suffrage by secret ballot doubled the number of voters in local elections. In England at that time the idea of municipal socialism [27] was being created to establish "centres of socialism" in a capitalist society and to ensure the complete democratization of local life. The idea was also found in the Austro-Hungarian Empire and influenced Vienna's municipality practice [28].

Currently the consensus scientific perception of local self-government does not exist anymore. It is due to the fact that self-government develops in strict accordance with the laws of society development as a whole. Each historical democracy type corresponds to concrete historical models of self-government and is connected with the different views existence on the local self-government phenomenon nature. Actually, the issue is contained in the answer to the question whether the community is different from the state power, being independent of the state by a public-law corporation, or involved in a state body and serves as the state body [29]. This division has led to the emergence in the political and legal views the two local self-government concepts: "communal" and "state" [30, S. 24, 29]. The first, the communist paradigm, was rightly built up with the idea of giving the inhabitants of a certain community the right to independently solve cultural-economic issues at the local level within the limits of the current legislation and under the state supervision over the enforcement. In Europe, for a long time, self-government was understood not in the sense of a general paradigm capable of transforming all state administration, but as a principle according to which only certain economic and public functions were freed from the state's guardianship.

However, there were also those who considered local self-government as an independent entity different from the state.

Gradually, from a variety of ideas and practices, several theoretical models of self-management evolved that changed each other by demonstrating a certain historical and logical graduality. With the self-government historical forms change and development in general, and at the local level, in particular, in conditions of democracy development as a non-permanent process, continuity was natural and necessary, when there was a certain adaptation of the old forms to new conditions, attempts to develop traditions and use the experiences of past generations [31, p. 5-6].

Traditionally, there is no consensus among scholars on the number of local self-government theories and their classification as each attempt of differentiation uses various criteria and approaches. In the article the most general division of the theory into communal and state-owned ones has already been mentioned. In turn, the Soviet lawyer G. Mikhailov singled out three varieties of self-governing theories: communal, economic, state and political ones [32, P.14]. Professor M. Lazarevsky depicted four self-government theories: the communist-economic and political, theory of a free community, the theory of a self-governing unit as a legal entity [33, p. 1-61; 34, P. 182.]. Professor L. Velikhov distinguished five theories, namely: a free community, economic, legal, political and state, and even mentioned the organic theory of self-government, although he noted its non-existence [35, P. 234-239]. Contemporary constitutionalists did not add clarity on the classification issue. There were supporters who had three types of theories: state, communist, and the theory of municipal dualism [36, P. 495-496; 37, P. 99-106]. However, there were extremes when the consideration of nuances made it possible to distinguish some peculiarities and to substantiate the existence of nine theories, namely, the theory of a free community, communal, state, sociological, municipal socialism, organic, social clan, social services and municipal dualism [38, P. 12-55]. It is worth agreeing with N. Kondratska that today the greatest influence on the municipal-legal theory and practice have public (communal), state (state), and dualistic theories. The formation

of these local self-government concepts at their initial stage was influenced by: the theory of natural human rights; the idea of a social contract; the concept of powers separation; the theory of civil society; the theory of the rule of law; the ideology of bourgeois liberalism; the idea of protecting private property; the postulates of the bourgeois "representative government" [39, P. 194-195].

Therefore, in the diversity of judgments, the authors will try to go through the historical path of the local self-government concepts emergence and to trace their influence and embodiment in the legislation of the two empires.

The main ideas of local self-government, which were addressed earlier, have their origins from England, Belgium and France. Actually at the legislative level, the concept of local self-government was filed on September 29, 1789 in the report of Jacques-Guillaume Thouret [40] during National Constituent Assembly on the decentralization of France. According to the author of the legislative initiative, decentralization involves a system of local self-government, in which representatives of the local population are involved in management and a certain number of cases are given from the centre to the places. In addition, two problematic aspects were emphasized: firstly, the own public affairs concept which was inherent in municipal governance; secondly, the state affairs concept which was delegated by the state to local self-government bodies. Consequently, the essence of self-governance was seen in the fact that the local community itself determined the tasks that were within its competence and solved them by itself, for which the local authorities had to be withdrawn from the state power system [41].

These French concepts are embodied in the Constitution of the Kingdom of Belgium in 1831, the Article 31 which proclaims that interests solely communal or provincial are governed by communal or provincial councils on the grounds established by the constitution [42, P. 74]. The article contained in the third section of the constitution that is devoted to the authorities gives the ground to certain researchers to assert that along with the traditional division of power into three branches, the main law of the kingdom foresees a special the fourth government branch (municipal [43, P. 42], communal [44, P. 18], community [45, P. 19]). In

evaluating such a statement, one must agree with those scholars who regard it as exaggeration, because the text of the constitution does not mention the fourth government branch (whether is it municipal, communal or community one) [39, P. 49].

The constitution uses the idea expressed by John Locke that the community is older than the state; the law finds it, but does not create it [46, P. 131]. The work of the Belgians points out the following: if it is recognized that the community is independent and may have its own specific tasks, then self-government bodies have to be elected by the community itself, because the existence of its own competence determines the formation of bodies for its implementation. As for the control over local government activities by the state, it is limited to two aspects, namely: ensuring that local authorities do not go beyond their own competencies and that this activity does not harm national interests. [42]

Consequently, the achievements of Belgian constitutionalism have become exemplary for German specialists and led them to the scientific and theoretical elaboration of these legal norms and their critical analysis. It was in the studies of German specialists that those ideas acquired scientific value [33, P. 1-2].

The German authors of the first half of the nineteenth century based their own discourses on self-government exclusively on communal self-government - urban and rural - and thus the beginning of scientific and theoretical reflection was laid on the communal self-governance theory which was the concept of a "free community" ("die freie Gemeinde"), or theory of the community basic natural rights. According to P. Gronsky without studying the main points of the doctrine that fathered the numerous interpreters and defenders among the liberal school supporters of the first half of the nineteenth century, it would have been hard to understand the individual sides of the newest self-government [47].

However, it should be noted that the discourse of a free community had occurred in Germany, before the Belgians, at the constitutional level, introduced it. Belgian achievements gave German scholarly thought only an additional impetus, in practice confirming the right search vector. One can say that in the German legal thought,

the theory of a free community was a kind of response to the manifestation of French centralism. Together with the Napoleonic army, the French orders entered into numerous German states that introduced the conquest of local authorities to the central authorities aimed at replacing the various privileges and freedoms that at that time German cities had already had. As noted by the American historian Albert Shaw the German doctrine fought French weapons against Napoleonic centralism, fought by borrowing ideas of the French Revolution [48, P. 380].

Based on old German orders restoration, at the beginning of the nineteenth century, a paradigm of a free community was born, which, under the influence of Belgian constitutional ideas, received the final formulation in the German theories writings [49, P. 6-7].

However, the German experts relied on the natural-legal views of the English philosophers (localists, "local government"), primarily J. Locke, who perceived the community as a "natural" administrative-territorial unit that historically originated from the state and had imprescriptible rights to an independent decision over local issues and their own affairs management.

Regarding the state definition, he considered it as the guarantor of ensuring the natural, innate and inalienable rights and freedoms of the person, who performed only guard functions [50]. The primary source of power, in accordance with the localist paradigm, was people who independently managed own affairs through voluntary association with other people on the basis of innate and inalienable rights and freedoms that could not be compromised by the government if it acted within the law and in a legal democratic state.

Another British scholar John Stuart Mill emphasized that local self-government bodies had to be formed in the same way as the central authorities, but unconditionally, given the local interests. Since the population, in each separate area, had its own specific circle of interests, then each constituency had to have its own parliament, which was aimed at solving local issues. However, local self-government was also a special educational institution that prompts but did not force people to perceive not only their own interests but also to recognize the fair demands

of others. Only when the individual himself participated in the management, he/she understood the result. Stuart Mill considered the central government as a restraining fuse, which was addressed when overcoming the social contradictions that had arisen in the local community and was not possible to be dealt with on-the-spot [51].

The founders of localism, perceived the state and self-government as two spheres that did not intersect, because they had different interests: national and local. The actual existence of local self-government was conditioned by the need for power distribution in the state not only horizontally, but also vertically. It, at the same time, led to a significant number of the local community members' involvement in the democratic adoption and implementation of political and managerial decisions. Thus, local self-government acted as a political institution that guaranteed, by its very existence, the expression of freedom in society, that was, the freedom of local communities to live and develop in accordance with their own priorities [52, P. 45-46].

Localists saw the value of local self-government as a genuine democratic institution, in the emergence of freedom of political creativity, through the local government improvement. Because within the boundaries of municipalities, where freedom promotes civic initiative, various experiments were possible, then local authorities, interested in the practical experience of neighbours, could use the best ways to meet the public interests of their community. The significant influence of local self-government on the bureaucratic apparatus of the municipal government was noted, as the municipal administration was characterized by a local character, which was a guarantee of apparatus rapid response to the population needs. The initiators lived in the immediate proximity of the people on whom the decisions were directed, and from the areas that they form [53, P. 45].

However, even under the conditions of a broad pluralistic approach of localists to the understanding of the state, they failed to avoid a certain idealization of local self-government. Having been convinced that it was precisely at the local level that the necessary qualities for a civil society were formed, local self-government was perceived as the main democratic institution. However, the implementation of the

localists theoretical views on local self-government was not carried out, as it was hampered by the social tension that intensified in English society in the middle of the nineteenth century, as well as the failure of the English bourgeoisie, in whose hands at that time, practically the political power was concentrated, to perceive those ideas, because they seemed enough radical. However, these considerations led to the next stage in the communal theory development of local self-government, associated with the search for ways to apply social tension in society and achieve consensus. In the nineteenth century self-government became a popular idea to a large number of political parties, which set themselves the goal of reorganizing the governance system in cities on a democratic and autonomous basis.

Among those who, one of the first, drew the attention of society to that problem, formulating the concept of "self-governing society", was the French statesman A. de Tocqueville (Fr. Alexis-Charles-Henri Clérel de Tocqueville). In his well-known work "On Democracy in America," an outstanding social scientist wrote that the power of people's freedom lay in the community. Public institutes opened the way for people to freedom and taught it to enjoy that freedom, to conquer its peaceful character. Without public institutions, a nation could form free space, but it would never acquire the real spirit of freedom [54, P. 54].

A. de Tocqueville insisted that the community was the union which was so well suited to the very nature of man, for everywhere, no matter where people gathered together, the community appeared by itself. Consequently, the social order was in all nations, regardless of their customs and laws. There were kingdoms and republics that a person created; the community seemed to be created by hands of the Lord. Although the community had existed since people's appearance, public freedom remained as something rare and fragile [54, P. 64-65].

Through the efforts of A. de Tocquillus and German lawyers Romeo Maurenbrecher [55] Heinrich Ahrens [56], Paul Laband [57] the theory of free community natural rights was formulated. According to which, along with the three well-known branches of government, the fourth was the public branch (i.e. municipal) was depicted. It was the community, as the territorial community of

people living together, advocated the social basis of local self-government with its customary right. The community was equal to state formation, because in essence the state was a "federation of communities". In that federation, the territorial community had a natural and inalienable right (like natural human rights) to resolve issues of local households without state interference. J. Locke positioned local self-government as a public authority of the territorial community autonomous from the state; the state had to respect the freedom of the community and its self-government and act as the guarantor of its natural rights.

Providing arguments in support of freedom and autonomy, the founders of the free community theory referred to the medieval history of free places that, during their existence, fought for independence from the feudal state. They formulated a few key provisions of their paradigm, namely that community and state affairs differed significantly among themselves; and any interference in the affairs of the community by the state was a violation of its rights; local self-government bodies were not formed by the state, but elected by the community members; local government officials present a community rather than a state.

Another supporter of the free community theory, Baden theorist and law historian Carl Wenzeslaus Rodeckher von Rotteck, distinguished the state power, the right to freedom and the community self-government. He perceived the community as an equal state institution [58]. Professor C. von Rotten was concerned with that problem, along with his colleague and co-author Johann Christoph von Aretin, after the death of the latter he completed the joint work "State Law of the Constitutional Monarchy" [30], in which the free community theory acquired profound scientific interpretation.

Analyzing the nature of the community's origin, C. von Rotten, as an apologist for the "free community" theory, insisted that the communities appeared before the state; they were older than it and arose without it, due to the natural needs and free will of their members, forming the natural structural parts of the state body. Communities gave each of their members own independent and shared life, a common law, uniting free communities in order to achieve common life goals. While

studying any big city, it could be understood that it was based on a federation of communities. They were related to other similar communities or individuals to the state. That is why the communities related to the state as a state belonged to the alliance of states, which in its relation with a higher level was a union [30]. That view was shared by the well-known professor at the University of Göttingen, Mr. Heinrich Albert Zachariä, who noted that most of the cities consisted of free communities based on their own common unlimited will [59].

Communities had to have all the completeness of autonomy and freedom, which couldn't be transformed into state power, because that freedom was, by its origin, the right that belonged to the communities that they had brought to the state together. The state that had acquired its rights from communities was thus limited in its actions with regard to the community. The state, in turn, could use the community in the common interest, delegating to it a part of its own power [30, s. 24].

However, there was also the opposite point of view according to which the community was perceived as a state institution. That was a certain number of citizens who, for the sake of more convenient management, were united in narrow associations and, for the sake of public administration, had more or less rights, responsibilities delegated by the state. Where there was the power, there was the state to which it belonged. By passing part of the rights to subordinate spheres of society, the state could find itself in them.

Consequently, according to the second vision, all communities without exception had no right to control other than was granted to them by the state. Communities were state institutions, namely, constitutional establishments or additional means to better achieve the state power goals. The community was called upon to do only what was burdensome for the state, whether it was not peculiar to the state authorities.

Strongly disregarding that paradigm, with concerning the community nature, C. von Rottek noted that among its supporters (along with "the ideal architects of the state", whose studies were of little importance outside the student audience and representatives of certain political views), were "defenders of despotism", who were

afraid of any independent life in the state, and they would like to see the government power almighty [30, s. 25].

The origin of the community was natural, it was a free association of its members and it was inappropriate to mention the state power there, because united by the state order the community would be only an occasional assemblage. The community could only be true if, during a long life together, a shared spirit and common will were created in it. Similar communities, as C. von Rottek insisted, whose natural connection was based on a common interest, were nothing less than a small state, which collectively created a large state. However, if so, what did the relationship between the individual and the community have to be? C. von Rotten insisted that if the community was capable of solving all issues of its existence state intervention could only be detrimental. Intervention in public affairs was justified only in some cases. First, when such an intervention was aimed at supporting the community and protecting its rights. Secondly, when it concerned the interests of the state itself, namely, state national legislation, governance, authority. Finally, thirdly, the state could use the community to regulate the administration as it used families, the church, and trade unions, without afflicting damage to their autonomy. It used the type of subordination, the boundaries of which were defined by law, and which followed the principle of communities association in a large state: if necessary, by virtue of natural causes, as an inevitable condition for the independence preservation [30, s. 31-39].

It is necessary to mention a scientific school founded by C. von Rotten and his colleague J. von Aretin. In essence, the theory of "free society" tried to scientifically substantiate the requirements for limiting the state bureaucracy interference in all manifestations of public life, limiting the omnipotence of state power. The liberal ideas of that school gained popularity first in the Germanic lands (the German Imperial Constitution adopted by the Frankfurt National Assembly in 1849), and later in the Austrian Empire, where the powerful movements demanded the communities liberation from state oppression and their recognition as free subjects of law.

The idea of the theory had a direct impact on the constitutional process that took place in the Hapsburg Empire during the revolution of 1848-1849. Thus, on April 25, 1848, Minister of the Interior Franz Xaver Freiherr von Pillersdorf published a draft constitution, which was designed like a Belgian. The proposition guaranteed the basic rights of the community, its organization, competence, and openness in the conduct of cases. The next project, which was developed by the parliament, which worked in those unstable times in the small Moravian city of Kremnica, was estimated by experts to be the best of the ones proposed in Austria. Equality of all nationalities was ensured by the broad autonomy accorded to communes and districts, which, if possible, had to have been formed from one nationality. However, Parliament was not destined to implement it, because the new emperor Franz Josef I granted to his subjects the Constitution of the Austrian Empire on March 4th, 1849, which was inferior to the Kremnitsky draft. However, the quintessence of the legal principles embodiment of the "free community" theory had to be considered the Imperial patent on the municipality of March 17th, 1849, which recognized the community two areas of activity: its own sphere (*eigener Wirkungskreis*), in which it adhered to existing laws through free self-determination, in relation to everything that affected the interests of the community and could be carried out independently within its borders; as well as the delegated sphere (*uebertragener Wirkungskreis*), which held the community responsibilities established by law for cooperation with the state for the public administration purpose [60 s. 282].

It is worth paying attention to Russian scientific thought where the theory of a free community was realized and was quite in demand. The theory was completely divided by Slavophiles [61; 62; 63; 64; 65, P. 202; 66], who insisted on the special way and the messianic role of "holy Rus" and referred to the natural rights of the community. In turn, representatives of the Populism, relying on the peasant community phenomenon, predicted a special variant of the empire social development. Russian philosopher and publicist O. Herzen noted that the Russian people lived only public life, understood their rights and responsibilities only in

relation to the community. Beyond it, community did not admit its duties and recognized only violence [67, P. 261].

The Russian philosopher and historian A. Shchapov, having researched and systematized numerical chronicle materials, working in the archives of the Ministry of Internal Affairs, drew attention, first of all, to Alexander II, to the millennial aspiration to Zemsky territorial isolation and originality. To His High Excellency two notes were sent containing a program of all-Russian reforms, which called for the regional authority creation i.e. regional Zemsky councils [68, P. 209].

An outstanding researcher in Siberia and public figure M. Yardintsev was convinced that the life of the state and society was nothing more than the life of its parts - communities. Social progress, insisted the researcher, was contained in the whole life differentiation, in the functions separation, in the individual improvement of each separate part of the state i.e. the community. Only the development of those individual parts could be a condition for the development of the whole. The provinces had to have as much autonomy that would enable them to solve "local issues", ensure their development and serve the benefit of the entire state. M. Yardintsev convinced that without the local life development, autonomy and self-development, the free and true state development was impossible [69; 70].

Actually, the comprehension of the free community theory in the Russian Empire, as well as a certain response to the negative aspects of centralized state administration (since at the beginning of the nineteenth century public affairs were exclusively directed by state officials that brought them to complete decline), led to the emergence of a local variation of that concept, called "the theory of free arable land". In the theory, as well as in the theory of a free community, the independence and community independence from the state was emphasized due to its natural origin. The state did not create a community; therefore, it had to recognize its existence and even defend it. M. Lazarevsky, describing the theory of free arable land, states that the community, indeed, is historically older than the state. The community is a natural and necessary, by virtue of things, alliance that is not created by the state, and consequently the does not interfere in its affairs [33, P. 7].

Thus, the Belgian, Frankfurt, Austrian experience of constitutional regime, as well as the Russian scientific thought of the middle of the nineteenth century proves the demand for the ideological achievements of the free community concept and confirms its progressive democratic character. Currently, scholars with idealistic enthusiasm perceive the ideas of this paradigm, insisting that for democratic states, in the medium and long-term periods of development, and the constitution of a free community theory with its understanding of community non-state nature are necessary [71, P. 207].

At the same time, some researchers [See.: 72; 73] noted that the apologists of that theory did not avoid the excessive idealization of the community and the contradiction of ideas about the inalienability and inviolability of its rights. Being advocates for maximum community segregation, in practice they faced with the fact that the absolute independence of the community was impossible, since it was inadmissible to isolate one local community from another, as it was unallowable to exercise the powers delegated by the state, remaining independent of it. One of the key provisions of the free community theory, namely the inalienability and inviolability of community rights, did not hold up against criticism when any supra-civil society body was considered along with communities. The founder of the Russian Constitutional Science B. Chicherin remarked that the community was a private association, which became independent solely as a result of a statehood society absence. With the emergence of the state absolute independence the free community independence disappeared [74, P. 118].

The political appeal of that theory was in the best conditions creation for attracting people to manage community affairs and educate them in the spirit of civic activity. Moreover, it became clear that the community, as a self-governing body, had the aim to be an intermediary between members of the community and state bodies, provided that certain autonomy of local self-government was preserved.

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