

ISSN: 0025-1569

# MAN IN INDIA

Volume 97

Number 23

2017



**Serials** Publications Pvt. Ltd.

Publishers & Distributors

Man in India  
© Serials Publications

ISSN: 0025-1569

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## PARADIGMATIC GUIDELINES FOR INTERPRETING THE INSTITUTIONAL AND FUNCTIONAL CHARACTERISTICS OF PUBLIC POWER: “DIFFERENTIAL” AND “SUBSTANTIAL” APPROACHES

Valentin Lyubashits<sup>\*</sup>, Alexey Mamychev<sup>\*\*</sup>, Andrey Mordovtsev<sup>\*\*\*</sup>, Yulia Zueva<sup>\*\*\*\*</sup> and Alla Timofeeva<sup>\*\*\*\*\*</sup>

**Abstract:** The object of this study is the political and legal doctrines in their historical evolution, while its subject is the theoretical and conceptual guidelines for an interpretation of the institutional and functional characteristics of state power. Particular attention is paid to the analysis of the “differential” approach, which develops within the framework of theocratic, ideological and monarchical teachings, as well as the substantial approach, characteristic for sociological and ethical theories of public power. The authors show the specifics of the interpretation of the relationship between functions and institutions of public power, the role and importance of state power, depending on the paradigm. Universal, general scientific and special methods are used in the work. Among the universal methods, systemic approach, dialectical-materialistic methodology, as well as anthropological approach are used. The special methods include historical legal and comparative legal. The authors propose a problematic approach to the systematization of political and legal doctrines, concepts and theories within which the institutional and functional properties of public power are analyzed and interpreted, and a description of the role and purpose of state power in society is given.

**Keywords:** Power, state, law, politics, state power, institute, doctrines, functions, evolution, society.

### INTRODUCTION

The challenges and threats of today’s political and legal reality hinder the development of modern society and increase the role and importance of public power in managing and stabilizing various processes. Today, we can state that the processes of global political standardization and legal unification have activated the opposite regionalization processes, and drawn special attention to the sociocultural strategies of sustainable development in the 21st century (Mamychev, 2017). Distribution of

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global risks, unusual situations, unforeseen threats, atypical crises, etc., create non-standard (atypical, mixed, convergent) ways of power communication and forms of institutional and functional activity of public power, as well as technologies and methods of public administration, and legal regimes for regulating social relations (Lyubashits, 2004).

All this increases the role and significance of the institutions of state power in contemporary political processes. However, in today's specialized literature it is difficult to find a clear definition of "state power", as well as comprehensive studies of its qualitative characteristics (legitimacy, institutionality, functionality, sociocultural adequacy, etc.) that would not be reduced to or derived from the notion of the state. At present, authors, as a rule, analyze various approaches to the generic concept of "power" by distinguishing features that distinguish the former from the latter (Gomerov, 2002). Alternatively, they analyze the concept of state and derive from it all the signs and functional features of state power or attempt to prove that state power has no other "reality" except for the system of power authorities fixed in the current system (Maliy, 2001). Hence, there is a "conceptual imbalance" in research practice, connected with the fact that the nature of power, state, law, social purpose and specificity of power and legal relations are studied in a broad theoretical and methodological context, whilst in relation to state power such conceptual diversity is not observed in monographs and dissertations.

## **MATERIALS AND METHODS**

In the history of political and legal doctrines, there is a variety of approaches and concepts that offer different interpretations of the institutional and functional characteristics of state power. In this article, we propose our typology of the basic conceptual and political attitudes based on the classification of the main political science paradigms that represent non-coinciding logical models for the formulation and solution of cognitive tasks (Soloviev, 2006). These paradigmatic attitudes interpret the nature and essence of politics, the sources of formation and development of the political organization of society, the most essential features and properties of political reality, presenting all these ideas about political sphere as a holistic theoretical and conceptual model of thinking developing (reproducing) theories and doctrines in relatively similar (in its theoretical and methodological orientation, the style of political thinking, the ways of staging and solving political problems, etc.) (Chirkin, 1996).

With this in mind, we can provisionally identify five basic (generic) and fourteen specific conceptual political concepts for the interpretation of institutional and functional characteristics. These concepts conceptualize theoretical and methodological notions about the essence of the institutions of state power, their purpose and role, which serve as a theoretical foundation for analyzing institutional,

political, structural and functional characteristics of power, the principles of its organization and activity in the society.

In this article, two key theoretical fundamental concepts will be analyzed. As its “ideological core”, the first one has the disunity of political wills, and the main issue is the integration of differentiated political wills/forces and the “assembly” of a single political space. By contrast, the second theoretical concept as its starting position presumes the existence of the original ruling will, the existence of a “substantial unity” of public power, which ensures the political integrity and development of the state-legal organization of society. Due to the limited scope of the article, the three remaining fundamental theoretical concepts will be analyzed in the subsequent works of the authors.

## DISCUSSION

1. Institutional differentiation of political wills, within the framework of which it is argued that public power represents specific relationships between different institutionalized political wills. At the same time, the “highest”, supreme will of either the ruler or the spiritual leader gives the institutional integrity to the various political wills that comprise the political process. The unity of power, and, more generally, the political unity itself was viewed as a public fiction, i.e. deliberately false theoretical and methodological notion of their institutional unity. For example, the Russian state scientist N.N. Alekseev characterizes this approach to understanding the institutional configuration of state power in the following way: “The personality of the state was understood here as a fiction, behind which there always stood really many concrete relationships” (Alekseev, 2008).

This fundamental concept of political thinking towards power and its institutional configuration is represented by theocratic and monarchical teachings. It should, however, be noted that this type of political thinking is inherent in the theological worldview and monarchical views in particular. In the history of political and legal thought, there were also rationalistic doctrines that justified the institutional structure of the public power system based on the above theoretical hypothesis, i.e. on the paradigm of separation of the ruling wills (Alekseev, 2001). For example, the doctrine of T. Hobbes, which makes a “transition” from the divine understanding of the political system to the rational one, is a convergence doctrine, i.e. combining the medieval logic of substantiation of political phenomena, and first of all the state power, with the natural philosophical hypotheses of the social order. For instance, Hobbes insisted on the idea that state power is a specific social whole, forming a single will from the multitude of wills of political atoms. The state unity itself is “*persona artificialis*” or “*corpus fictitium*”. It is noteworthy that the classical theories of the “social contract” also used

this formula – “*corpus fictitium*” to argue that the state as a political union and state power are the products of a treaty, but not natural, independently “grown organisms” having an independent political essence.

The first political and legal teachings and doctrines focus on the importance of religious, normative and imperious theological principles that dominate the political organization of society, since they ensure the institutional and political unity of different wills, and organize them into a proper hierarchical order. As E.N. Salygin notes, “political leadership of the clergy in this case already acts as a derivative of the religious regulation attribute ... The main thing in such a state is a religious teaching that contains the idea of a person’s relationship to God and the world, moral norms and legal principles for the state and society. Thus, theocracy as a system of religious and political power relations ... is characterized not so much by the power of religious leaders, as mentioned in all definitions of theocracy, but rather by the supremacy of religious norms” (Salygin, 1999).

Theocracy as a political idea involves an active participation of various “spiritual wills” in the implementation of any public-legal, and often private, power. It should be borne in mind that “a theocratic idea receives a real meaning if it is considered as based on faith in a truly existing God. In this case, it expresses the direct control of a human society by God, namely by God, and not by any class of oracles, clergy or priesthood (*italics added*)” (Tikhomirov, 1998).

That is why the idea of God occupies a dominant position in any theocratic political regime, while state power itself, both as an idea and as a political and legal institution, is relegated to the background, perceived as an instrumental, subordinate (conditioned by the goal). The theocratic political concept is crowned with the notion of transcendental reality, in other words, theocracy is aimed precisely at the realization of the transcendental ideal, unlike other secular forms of organization; state institutions and power relationships in the society go (or at least aspire to go) beyond the rational world.

At the same time, for a theocratic state, in principle, not only absolute absence of control and infallibility of power are unnecessary, but also the fulfillment by religious leaders of religious functions is not required. Religious-political power relations can exist without the supreme political leadership of the clergy. It is sufficient to have religious and legal norms that will be implemented in the life of society by the institutions of public authority.

The exercise of power by these public institutions is exclusively service-oriented, which ensures the institutional unity of theocratic political regime.

For example, according to the historian and political scientist Bertrand de Jouvenel, power in the Middle Ages, “shows us the power that is the least free and the least absolute - as far as we can imagine. For it is bound simultaneously by human law, custom and Divine law. And in no way it relies only on its sense of duty.” The general medieval political discourse is aimed at ensuring that the Power remains “a zealous servant of the heavenly monarchy, the instructions of which it must follow in absolutely everything” (Jouvenel, 2011).

In turn, the monarchical conceptual political setting proceeds from the hypothesis of the separation of public power into two main types: the single, indivisible supreme power and the power of “divided wills” - the governing state power. The supreme power is antinomic in nature. It is, on the one hand, the center of a political organization that legitimizes and legalizes the actions of divided wills, expressing the unity and integrity of public power in the state, and on the other hand, it is power outside the political organization, since its source is outside the political process.

This political concept is remarkably persistent in modern political and legal thinking, having received a peculiar institutional and legal formulation at the constitutional level. Thus, the current Constitution of the Russian Federation, defining the basis of the political organization of state power in Article 10, establishes that the latter is divided into executive, legislative and judicial powers. However, Article 11 (which describes the principles of the implementation of public power in the state, i.e. which bodies actually exercise state power), states that power is actually exercised by the President of the Russian Federation, the Federal Assembly of the Russian Federation, the Government of the Russian Federation and the courts. At the same time, it is obvious from the text of the Constitution that the power of the Russian President is central, symbolically expressing the unity of the system of public authority and the integrity of the political regime (Lyubashits et. al., 2012).

However, let us return to the content characteristics of this concept in political thinking. L.A. Tikhomirov argues that the institution of supreme power is one and undivided, acting as the center, in which the idea and the meaning of monarchical statehood are concentrated. In turn, the governmental power or, more precisely, the administrative power, organized on the principle of separation of powers into legislative, executive and judicial, on the contrary, is based on the division of political wills and specialization. Moreover, this institution, according to him, is simple in its unity, since the supreme power “is always simple and based on one of three eternal principles: monarchy, aristocracy or democracy. Conversely, neither of these principles is ever exercised alone; there is always simultaneous



presence of all of them, somehow organized by the Supreme power” (italics added) (Tikhomirov, 1998). The separation of the administrative powers is absolutely inevitable in his opinion, since in the political life of society, the realization of state power necessarily requires specialization, and the more divided the administrative power is, the more perfect it is.

The unification of various political wills is, of course, embodied in the supreme power, which directs their activities for the public good and the unity of the nation. The need for administrative powers, according to Tikhomirov, consists in the limited action of the supreme power, as the complex state system requires delegation of authority to administrative agencies. Therefore, being legally unlimited, the supreme power is actually limited by its quantitative content. By delegating its “centralized force” to the administrative authorities, the institution of supreme power has the opportunity to act far beyond its physical capabilities (Smolin, 2007). At the same time, Tikhomirov notes that the modern theory of the state and political practice do not, in fact, represent anything fundamentally new and exclusive in this context. They only reproduce, in various combinations, the “eternal law of the political structure of society”, and many errors are made only by forgetting that “the organization of supreme power and the organization of government are not at all the same, and by their very nature they are unequally composed” (Tikhomirov, 2007).

Another well-known statesman and theoretician of the state P.E. Kazansky points out that in the autocratic political organization, there are both the supreme power and the administrative power, which should not be confused, since the former can delegate it to various state bodies, dividing their authority. At the same time, the supreme power always and exclusively exercises the law-making, constituent and extraordinary power, i.e. it is the power of “major decisions” in the affairs of the state and people’s life and consists in establishing common rules and solving emergency situations: “To His Majesty the Emperor belongs, first, the power of law-making (decrees and laws in the formal sense of the word), including, on the one hand, the constituent, and on the other, extreme and extraordinary. Secondly, He also owns the right to make decisions on all major issues of State life, such as war and peace, appointment of the main State posts, etc., which cannot be regulated in advance” (Kazansky, 2007). In turn, the current administration is carried out by public authorities, divided by their powers, i.e. on the one hand, it is vertical division – according to the territory; on the other hand, - horizontal division - the separation of powers into legislative, judicial and executive.

However, from the point of view of P.E. Kazansky, it is only an institutional and normative dimension of the supreme power; here it is not limited and



autocratic, since every power in the state derives its legality and legitimacy from the supreme power. Another dimension of this institution has socio-psychological foundations, which limit the supreme power everywhere. It is here that “the limits of the Imperial Power, which it finds in the field, so to speak, psychological, or spiritual: in the national aspirations of the Russian people and their religious and moral ideals ... Power is the creation of the national life of the people and is close to the religious and moral regulations. National, religious and moral aspects of Tsar’s omnipotence are constantly mixed even with the norms of law and are considered legal restrictions of the Supreme Power. We assume that there are some grounds for such a confusion of concepts of different nature, because our legislation ... establishes ways to maintain national and religious unity of the Tsar and the people.” Nevertheless, according to Kazansky, these phenomena must be distinguished, since they are of different orders. He notes, “It would be a big mistake if we, being carried away by legal formulas, overlooked the fact that the main foundation and motive of life is not the Law, but national consciousness, religion and morality” (Kazansky, 2007).

2. Theoretical fundamental concept of the “substantial unity” of public power. Within the framework of this concept of political thinking, the institutional and functional description of public power is based on the hypothesis of the “substantial unity” of the will, which in a real state-legal process is expressed by specific political institutions. The meaning and characteristics of these institutions are directly related to the specificity of this substantial unity. In this aspect, the essence and purpose of the institutions of state power are interpreted on a new qualitative level, where their origin and meaning have not historical, but logically abstract, rationalistically constructed character.

Thus, the political discourse of state power is not connected with concrete historical configurations of institutions that organize power interaction in the society, but with abstract formalistic constructions in the context of which a hypothesis is formulated about the substantial institutional and functional unity of the power’s will. In other words, all actual public power institutions have with their own internal will, “like the will that lives inside every acting and reasonable human personality, governed in its actions by the internal, autonomous law of conscience (or more precisely, in accordance with its substantial political rationality - authors). It is such autonomous will in the state that constitutes its power,” states N.N. Alekseev (Alekseev, 2008).

In general, the view of public power as a special substantial whole and its institutional features, is characteristic of all natural philosophical political concepts of the New Time. For example, characterizing the institutional properties of state power as a political will aimed at expressing the public

good, protecting private property, maintaining order, etc. (Lock, 1988). J.-J. Rousseau noted, “each of us transfers his personality to the common heritage and puts it under the highest supremacy of the common will,” and “the social agreement gives the political organism unlimited power over all its members.” Therefore, according to Rousseau, the state power and its decisions have a universal character, they “form laws expressing the common will,” etc. (Rousseau, 1969).

The well-known state scientist Lorentz Stein forms one of the most famous and fundamental theories of state power of his time, in which he argues that the state power expresses the unity of the political organism through its institutions. The essence of this organic substantive will, expressed in the state power organization is that it finds its own highest development not in the development of one part, not in the coordination of various political wills, but only in the development of all its elements.

At the same time, the measure and degree of development of this single will “is determined by the measure and degree of development of its individual elements.” According to Stein, in the social organization, there is always a lack of such an organism that would express and protect the interests of all and every individual, which functions in the interests of all individuals and as the dominant of political thinking and the realization of power, has the interests of common, not individual political will. In the system form, this organism, he concludes, are state authorities, which are “absolutely necessary for human well-being” (Blok, 1880).

In their most complete and systematic form, the substantive characteristics of the institutions of state power are presented in the works of O. Gierke, who argued that state power is the willed power of the moral organism conceived as a personality. It is not the result of the artificial and mechanical accumulation of many individual wills; rather there is a moral common force possessing the self-consciousness of a people. Its existence and nature stem not from arbitrary establishment and conscious creativity, but are the products of the natural power originally contained in the state (Dakhin, 2003).

In our time, such substantial political attitude to the interpretation of the institutional characteristics of state power is presented in the sociological and ethical concepts of the state. In the sociological approach, the state power appears as a collective subject, which is distinguished by its ability to “thinking activity”. Thus, proceeding from the fact that state power, even totalitarian or monarchical, is exercised by a more or less institutionalized collective of people, A.V. Dahin notes that both state thinking is of a collective nature, while the thinking process within the system of state

power is built approximately in the same way as in other anthropomorphous megastructures (Nora, 1989).

According to this approach, state power as a single social and political subject has the opportunity not only to act, but also to perceive, think, remember collectively (Yeats, 1997). The thought process within the system of state power consists of a set of interactions related to the reception, processing and storage of information (Foucault, 2005).

The state power is represented by the idea of a single social organism, collectively thinking, making decisions and using institutional resources for the realization of the set goals. The fundamental basis of the state organism is the collective professional formalized thinking, based on legal norms or traditions, having a well-established system of institutions, using the creative potential of group and individual thinking, and public, partially formalized thinking, which is a sphere of joint reflection of society and power.

The famous French political philosopher M. Foucault fundamentally explored this style of political thinking and the conceptual logical scheme of interpreting the essence and functional purpose of state power. From his point of view, this trend of analysis was formed during the Enlightenment, which was characterized, first of all, by the processes of de-theologization of thinking and desecrating of the politics. It was since that time, that we started to believe that “the art of ruling should not seek a justification in transcendental laws, in a cosmological model or in a certain philosophical or moral ideal; it must derive the principles of its rationality from what constitutes a special reality of the state. Such are the fundamental moments of the foremost state rationality” (Foucault, 2002).

The system of state power in political treatises begins to be interpreted as “something that exists for itself,” as a special rational entity. In this case, it represents a certain order of things and a specific area of political knowledge. Moreover, Foucault insists, this political knowledge about public power “deals not with the rights of the people and not with human or divine laws, but with the nature of the state, which must be controlled.” In its turn, “the mind of the state does not refer either to the wisdom of God, nor to the mind or strategies of the Sovereign. It is related to the state, to its own nature and its own rationality.” State rationality in this context is regarded as a certain “art”, “that is, as a certain technique, consistent with specific rational rules. These rules relate not just to customs or traditions, they concern a certain reasonable cognition” (Foucault, 2006).

At the same time, the dominant functional principle of the development of public power “is the principle of state interest. In a way, it is “absolutely natural”, that it deals with the problems of the population, which should be

as large and active as possible to strengthen the state power; consequently, health, fertility and hygiene without problems acquire their important place in “police science” (Nora, 1999).

The institutional development of the system of state power, like any social organism, must be carried out on the principles of historical continuity, reproduction, reconstruction and preservation (effective, adequate, useful, etc.) of political, legal and social institutions. In other words, socio-political development should be based primarily on historical memory, providing a high degree of continuity, as “places of memory are remains, the extreme form, in which the commemorative consciousness exists in history ... This is what ... creates, decrees, supports, through art and will, a community deeply involved in the process of transformation and renewal” (Alekseev, 1998).

In the ethical approach to the analysis of the state power, institutional, regulatory, organizational, administrative and material structures of public power are considered to be tools for creating and preserving the spiritual and moral culture of the society. According to the famous theorist of the state N.N. Alekseev, the functional characteristics of state power, are connected with the ethical service to this power, i.e. It should “maximally serve the manifestation of national, tribal and local characteristics of the population of the Eurasian cultural world” (Shemshuk, 2001).

The ethical dimension of state power in the most complete and detailed form is presented in the concept of “guaranteeing state”, developed by N.N. Alekseev. From the point of view of the researcher, the functional responsibility of state power is expressed in its ability to create “the maximum amount of cultural and spiritual goods, the preference and choice of which is given to the freedom of each and every one.”

The ethical concept of state power is also developed by the Russian researcher V.A. Shemshuk (Dugin, 2004). Basing on historical materials and modern ideas, the author shows the direction of evolution, gives examples of living social constructs and makes a forecast of the future development of Russia. Ethical principles, which come from folk philosophy and national morality, help to restore the faith of Russians with which Russia has lived for thousands of years. Moral principles of the institutional organization and functioning of state power “transform” it from an amorphous mass into a living organism; they are inherent in the communal way of life. The author lists seven principles of the ethical structure of state power, the implementation of which in lawmaking and in life spiritualizes the state and gives it strength. Among them are tolerance, respect, prestige, conformity, commensurability, and cooperation. These principles contribute to the

survival of the state in crisis conditions and are a source of internal power and evolutionary transformations.

At the same time, the difference between the rightful state and the ethical form of the organization of state power, in the opinion of this political scientist, is that the laws adopted in the rule-of-law state are enforced by the police, while in the ethical system of the organization there are no laws, but principles of morality that coincide with public morality and are enforced by public opinion. The functional purpose of the ethical state is the creation of a society with conditions adapted to solve any social contradictions, and which enable a person to self-actualize and evolve, i.e. contribute to the achievement of the Common Good. Looking at the institutional principles of organization of state power, the author notes that in the state, there should be functionally separated centers of all types of power, and each should have its own functional role (which, of course, is treated ethically).

## CONCLUSION

The analysis of the institutional and functional characteristics of state power has obvious theoretical and practical value, as they not only specify social essence, role and purpose of state power, the nature of the mechanism of the state (the system of bodies and structures), but also reflect its various directions, priorities, and its various activities. In this aspect, an institution and its function are inseparable, interrelated with each other; the institutional and functionality of state power are the necessary characteristics of its existence and the indispensable conditions for its functioning in the political process, conditioned by socio-cultural and political-legal forms.

Summarizing the existing approaches to substantial interpretation of institutional and functional properties of public power in the framework of political and legal doctrines, the authors propose systematization of conceptual and political attitudes to the interpretation of institutional and functional features of state power. The concepts singled out by the authors conceptualize the theoretical and methodological notions about the nature of the institutions of state power, their purpose and role, and also serve as a theoretical foundation for analyzing the institutional, political, structural and functional characteristics of power, the principles of its organization and functioning in society.

Within the framework of this article, two fundamental political concepts were thoroughly considered: (1) the institutional differentiation of political wills represented by theocratic, ideological and monarchical doctrines; (2) “substantial unity” of public power, being developed within sociological and ethical approaches. In the subsequent article the authors intend to analyze the following theoretical and conceptual approaches:

- the rational and technological political doctrine, represented by institutional-technological, instrumental-technological, institutional-procedural and formal-bureaucratic approaches;
- the biopolitical doctrine developed in modern individualistic (behaviorist), collective (biologizational, ethnonational, psychologic) and institutional-psychological approaches;
- the socio-cultural political and legal paradigm, which is represented in anthropological, neoinstitutional, structural and procedural approaches.

It should be noted that the dominance of certain conceptual and political attitudes in the institutionalization and functioning of the system of state power depends on concrete historical and civilizational conditions.

### Acknowledgement

The work was carried out with the financial support of the grant of the President of the Russian Federation No. MD-6669.2016.6.

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