

CORRELATION OF LEGAL REGULATION AND POLITICAL VIOLENCE IN THE SOCIAL CONCEPT OF GLOBAL CONSTITUTIONALISM

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ABSTRACT

Purpose: This paper is devoted to a conceptual analysis of the correlation of legal regulation and political violence in the social concept of global constitutionalism.

Methodology: From the position of socio-philosophical methods of cognition of social reality and ideas reflecting it, to analyse the relationship and interdependence of the categories of political violence and legal regulation in the framework of the social concept of global constitutionalism.

Results of the Research: It is shown the phenomenon of globalization of socio-political, state-legal and financial-economic development of national societies and states as a phenomenon of social reality, highlighted in the social concept of global constitutionalism.

Novelty: In the article, authors: (1) identifies the signs of power through the prism of analysis of various concepts of power: classical; consensus; relational (resistance theory; theory of resource exchange; theory of partition of zones of influence); (2) explores the main forms of political violence used in political relations: legalized and unlawful; (3) an analysis is made of the forms of opposition of society to unlawful forms of political violence. This research deals with the theoretical content and socio-historical manifestations of the correlation of legal regulation and political violence in the social concept of global constitutionalism.

Keywords: Global Constitutionalism, Political Violence, Legal Regulation, Social Concept, International, National.

LITERATURE REVIEW

Research questions on the correlation of political violence and legal regulation in the framework of modern interpretations of social reality in the context of globalization to the legal system are widely researched in the works of Arendt (1970), Betts (1994), Blau (1964), Georgiou (1977), Dahl (1968), Dmitriev (1994), Keshikova (2013), Ledyayev (2000), Lenin (1967), Marx (1967), Mokken & Stokman (1976), French & Raven (1959 & 1960), Yakunin (2014) and a number of other authors.

These works are of great importance in the process of analysing the correlation between political violence and legal regulation within the framework of the social concept of global constitutionalism. However, the share of the researches that sanctifying the correlation between political violence and legal regulation at the international and national levels in the philosophy of the main socio-philosophical approaches in the context of ensuring the comprehensive development of national societies and states, provided that a balance is reached between

international (global) and national (state) interests in all spheres of their life in connection with the planned expansion of Western interpretations of the social structure is extremely small.

METHODOLOGY

The main objective of this research is the analysis of the relationship and interdependence of the categories of political violence and legal regulation within the framework of the social concept of global constitutionalism, carried out from the perspective of social and philosophical methods of cognition of social reality and ideas reflecting it, and the subject of the study is the theoretical content and social-historical manifestations of the correlation of legal regulation and political violence in the social concept of global constitutionalism.

DISCUSSION/ANALYSIS

In modern social concepts, the problem of the correlation between legal regulation and political violence occupies an important place. It seems that this category is interconnected due to the fact that in the process of legal regulation and political violence by some subjects (governing), a certain power influence is exercised in relation to other subjects (subject). Thus, violence in the context of political relations is a manifestation of power, clothed in political form (that is, carried out about the management of the state and society at the national or international level). Moreover, legal regulation acts as a form of political violence carried out on behalf of the state and under the protection of its authority.

As a philosophical and general sociological category, power is generally inherent in any organized community of people to one degree or another, and acts both on the scale of the whole society and in each individual part of it (Dmitriev, 1994). The researches of the overwhelming majority of Soviet philosophers and lawyers devoted to the problem of power were based on the views of the classics of Marxism-Leninism, who considered power as a relationship, the two-fold content of which, on the one hand, means imposing the will of the dominant on the subject, and on the other, subordinating the subject to the will of the ruling (Marx & Engels, 1967). In this regard, it is not surprising that in almost all definitions of power given by Soviet scientists, the dominant idea is the dominance of one subject of power relations (dominant) over another (subject), the submission of the latter to the will and interests of the former, and the submission is violent, carried out by means of coercion.

It seems that an integral element of the content of any power is the possibility of coercion by the ruling subject. Social power is unthinkable without coercion, which, in accordance with the nature of power and the historical situation, takes on all kinds of content and form. So, according to Baitin (1972), "*relations about power or power relations are composed of domination-submission and leadership-submission*". However, the consideration of power from the angle of hypertrophied attention to the problems of class struggle and violence is not entirely true and objective. It is justified only in the era of various revolutionary transformations, in periods of a change in socio-economic formations, in the transition from one social system to another.

Power, being the product of a diverse interaction of people, their aspirations and aspirations to satisfy their own interests and needs and mitigate internal and external contradictions in achieving these goals, finding a possible compromise and a certain order of

existence and development, is a fundamental, objective and necessary condition for all members of society in the continuation of his life.

Thus, the power is a means of the normal functioning of any social community, manifested as a subordination of the people entering this society to a single head that leads it and subordinates everyone to the will.

Currently, in the foreign and domestic scientific literature, the definition of the concept of "power" is associated with the presence of a particular concept of power relations, created on the basis of a certain philosophical or general sociological doctrine (Sattarov, 1995). So, supporters of the classical theory of power, consider the latter as the end realissimum (real being-lat.) of politics, the highest level of political action and its root cause, which is a quantitatively and qualitatively measured material good that exists only in the field of potential conflict and manifests itself in a one-sided way-from causes (power) to action (forced change in the behaviour of the weak side). It seems that this point of view has a right to exist in connection with the huge role of the United States, dictating its will to the whole world and spreading its power by force.

Proponents of the consensus theory of power believe that power corresponds to the human ability to not only act and do something, but to unite with others and act in harmony with them (Arendt, 1970).

The relational approach in determining the concept of power currently includes three areas: the theory of resistance, the theory of exchange of resources and the theory of the division of zones of influence (Dahl, 1968; French & Raven, 1960). A common point of all three directions is that power relations are interpreted in them as the relations of two partners acting on each other in the process of interaction.

The theory of resistance explores power relations in which the subject of power suppresses the resistance of its object. Classifications of various degrees and forms of resistance are developed, the following bases for power are distinguished: remuneration or coercion on the part of the dominant in relation to the subject; the identification of the object of power of the legal right of its subject to prescribe him certain behaviour; identification of the object of power with its subject; knowledge possessed by the subject of power. Accordingly, five types of power stand out (French & Raven, 1959).

In the theory of resource exchange, situations are highlighted when there is an unequal distribution of resources between participants in social relations and, as a result, there is an acute need for them among those who are deprived of them. In this case, individuals with the resource can transform its surplus into power, yielding part of the surplus resources to those who are deprived of them, in exchange for the desired behaviour (Blau, 1964).

Proponents of the theory of the division of zones of influence focus on the totality of individual situations of social interaction of individuals, while emphasizing the moment of change in the positions of participants in power relations: if in one case one individual has power in relation to another, then with a change in the sphere of influence the roles of the participants are changing (Wrong, 1988).

Thus, power in a broad sense has several characteristics. Firstly, power relations are characterized by the presence of two subjects with unequal rights and obligations. In this context, power is an opportunity to satisfy the needs and interests of at least one of the subjects of power relations (with power), which in relation to society can be both relative, in which both sides are defined (by law, custom, precedent), and absolute, where only one party (dominant) is defined,

and the other can be any, however, the obligations of which are limited to the requirement not to violate the powers of the other party.

A number of researchers, starting from the middle of the 20th century, introduce such a criterion as the intent of the subject, excluding from the sphere of power relations situations where the subject does not know at all about the existence of the object; this differentiates power from random influence and social control, which includes normative regulation of the behaviour of individual participants in social relations (Wrong, 1988). As noted by Ledyayev, (2000)

"The traditional objection to the inclusion of intention in the definition of power is that it leads to an exaggeration of the role of rational (foreseeable) power and underestimation of the unintended consequences of exercising power"

The identification of power with all forms of influence, whether intentional or unintentional, actually implies that any social action is the result of power. In this case, power relations turn out to be identical to social relations as a whole, and the concept of power loses its specificity (Mokken & Stokman, 1976; Georgiou, 1977; Betts, 1994).

Secondly, in view of the fact that one of the subjects in the process of power relations realizes his will, it is assumed that he is endowed with individual or group consciousness, carries out planning and forecasting events in the name of achieving a specific result. Consequently, power is programmatic in nature, which fundamentally differs from anarchy.

Thirdly, power is a type and mechanism of regulation of those resources and needs, forces and opportunities that each particular society has.

Fourthly, power directly depends on the level of socio-cultural development of society.

Fifthly, power is political in nature, structured and hierarchized to the extent that social relations in this society are structured and hierarchized.

Sixthly, in view of the fact that the subjects of power relations are unequal, the ruling forces the subject to commit actions or to abstain from active actions (to inaction) to the extent that this satisfies his interests and needs, achieving the planned result, he uses all kinds of methods (imperious coercion, fear of the subject to the ruling, economic interest of the subject, voluntary consent of the latter to execute decisions of the ruling, threats, etc.). Power as a social phenomenon is absent in inanimate nature or in the animal world.

All of the above allows us to formulate a brief definition of power as a philosophical and general sociological category. Power is a mechanism for the existence and development of any social community, corresponding to the achieved character and level of social life, characterized by the subordination of the will of individual subjects of power relations and their associations (subordinate) to the will (power) in this community, reinforced by the possibility of its enforcement. Within the framework of the socio-philosophical concept of global constitutionalism, the legal system is an integral tool of political violence, which is applied at various levels of implementation of this concept, in particular, by the countries of the core of the world capitalist system to peripheral countries, the ruling classes (elites) in national states to the masses of the population (exploited classes) etc.

The state and law are forms of legitimization of violence and arbitrariness carried out on behalf of the state and sanctified by its authority. According to figurative statement Lenin:

"The state is a machine for oppressing one class by another, a machine to keep other subordinate classes in obedience to one class (1967); the state is an apparatus of violence in the hands of the ruling class".

According to Marx (1967):

"...the state, the spiritualistic essence of society: this is the private property of the bureaucracy"

In the process of managing national states and societies, the global governing class is based on a complex system of socio-political, state-legal and financial-economic institutions (state mechanisms, international governmental and non-governmental organizations, political parties, etc.), each of which implements in certain forms and certain methods, political violence against various subjects of political relations. So, according to Denisov (1975):

"Political violence consists of ... various forms, methods and means of direct or indirect coercion and suppression (political, economic, military, etc.) in relation to other groups, classes, states, social systems in order to ensure, capture and maintaining political power and economic domination, acquiring and maintaining independence and sovereignty, various rights and privileges, satisfying territorial and other claims, restricting the interests of the opposite side, imposing on anyone either of your own will".

A number of authors rightly see in political violence at the present stage of the historical development of mankind exclusively class nature and essence. So, Lipatov (1989) notes:

"Political violence is an ideologically determined and materially secure activity of classes, nations, social groups and social institutions that realize their goals, aimed at using coercive means in order to gain, maintain, use state power, and achieve political dominance in the international arena, management of social processes in the class interests".

Other authors draw their conclusions about the nature of political power based on the vector of power motivation. They believe that there is political power and non-political power. The second is power in a professional team, family and other social groups. Political power is directed outward (extrovert), it is motivated to overcome the resistance of the external environment-the people, the opposition, and external counterparties. The non-political is directed inside the sphere of its action, motivated by the self-organization of the object of its action, i.e. introvert (Ledyayev, 2000).

According to Nizhnikov (2008) correlation of violence and goals in politics can be grouped into three groups: a good political goal justifies any means; the political end justifies any means; a good political goal can only be achieved by good political means.

Thus, almost all authors note that the achievement of political goals is impossible, or difficult without the use of political violence (Krasnikhina, 2016), since it allows you to force certain subjects of political relations to the desired behaviour, expressed in the commission of certain actions, or inaction necessary for the subjects, applying measures of political violence. As the main forms of political violence used in political relations, the following groups can be distinguished: (1) legalized political violence in the form of mandatory power influence within the framework of legal requirements contained in legal norms; (2) political violence not mediated by legal regulation (unlawful political violence).

In some cases, political violence is legalized at the international level, for example, the possibility of using political violence in the framework of the activities of the United Nations

against individual UN member states on the basis of Article 50 of the UN Charter (in the form of preventive or enforcement measures against any state). On the basis of the UN Charter, dozens of other international legal acts have been adopted, within the framework of which various forms and methods of political violence are detailed, which can be applied to international organizations, states, various subjects of the political system of society.

After the end of World War II, beginning with the Nuremberg trials of 1945-1946 in the framework of the work of the International Military Tribunal, the international community (represented by the UN) regularly used various forms and methods of legalized political violence, which was also expressed in the water of a limited contingent of UN peacekeeping units in those or other states, and in the form of creating international judicial bodies for the international legal criminal prosecution of persons who have been accused by the international community of certain crimes against the security of humanity, genocide, etc.

In particular, the international (supranational) judicial body, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter referred to as the ICTY), has gained notoriety (Law, 2012; Mihailov, 2006). At the same time, according to a number of authoritative politicians, philosophers and statesmen, the legalized forms of political violence used after the collapse of the USSR at the international level with the participation of the UN absolutely do not meet the interests of any national states, peoples, the development of humanity as a whole, but are forms Western pressure in the face of the United States on the world community in order to defend its political, military and economic interests anywhere in the world.

Moreover, often forms of political violence legalized with the participation of the UN (for example, the introduction of a peacekeeping contingent) are used by transnational corporations to profit. So, in the territories controlled by the peacekeeping contingents, there were cases of using the bodies of victims of military conflicts with subsequent organ transplantation in Western countries. The Permanent Representative of Russia to the UN, on June 4, 2008, said:

"We consider the situation in the ICTY unsatisfactory. We expect from the Tribunal a detailed report on the measures taken to ... expose the former ICTY Prosecutor Carla del Ponte in relation to facts that until recently had been hushed up by the Tribunal. There is a feeling that serious accusations, such as the mass forcible removal of human organs, are simply ignored (Wayback Machine, 2019)"

The processes of globalization have significantly changed the forms and methods of applying political legal violence at the level of nation-states. Political violence is a mechanism for the functioning of political power in the modern world. At the same time, in any national state, the political power in the person of the state apparatus applies a legalized form of violence in the form of a legal regulation mechanism that involves the use of coercive measures against participants in legal relations, which may be their obligation to undergo certain adverse consequences, expressed, for example, in the form of certain measures of legal responsibility, up to criminal, contained in the sanctions of legal norms.

A number of scientists note that at the level of modern nation-states, political violence is the exclusive monopoly of the state itself (Myakinchenko, 2015), carried out in democratic states in forms and methods mediated by the legal system (Boyko, 2015), and in non-democratic states-in the form of unlawful political violence. However, the use of unlawful political violence at the level of national states is fraught with a negative reaction of the world community, including its

forceful influence. However, in practice, the measures of force influence of the world community after 1991 apply only to countries opposing the West, and even then, only to those who cannot give an adequate force response (such as DPRK).

At the international level, violence, according to several authors, is a prerequisite for the implementation of globalization processes (Krasikov, 2007; Zalesny et al., 2019; Zalesny & Goncharov, 2020).

Within the framework of the concept of global constitutionalism, the following can be distinguished as the main forms of unlawful political violence used at the international level, as well as at the level of nation-states:

Initiation in national states of a violent change of state power, political regimes, forms of government and state structure. Such political violence is carried out by various methods: by organizing and implementing the so-called "*color revolutions*" (Babaev, 2015); by discrediting and pressure on the national political elite, individual statesmen and politicians. So, Fayzrakhmanov, (2011) believes that the West is actively formatting the states of the periphery of the world capitalist system with the help of an "*insurgency*" using the institution of "*popular movements*".

Organization by the global governing class of a change of power in nation-states that oppose the processes of globalization, or that infringe on the economic interests of the West, through the formal use of legal norms and institutions provided for in the UN Charter, the Universal Declaration of Human Rights and a number of other international legal documents. For example, this concerns the right of nations to self-determination, enshrined in Article 1 of the UN Charter, developed and supplemented by the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights of December 16, 1966 (in both pacts-Article 1):

"All peoples have the right to self-determination. By virtue of this right, they freely establish their political status and freely ensure their economic, social and cultural development...All States Parties to the present Covenant...must, in accordance with the provisions of the UN Charter, promote the exercise of the right to self-determination and respect this right (International Covenant, 2019)"

This right was used by the global governing elites to destroy a single union Yugoslavia and form a number of puppet states on its basis, some of which have already entered the structures of the European Union and NATO. Thus, a number of international legal documents at the UN level, conceived as systemic means of counteracting political violence at the domestic and international levels (Krasikov, 2014), are actively used within the framework of the concept of global constitutionalism as a form of justification for various technologies of unlawful political violence.

Organization of a global managerial class of local wars with the aim of reformatting the territorial and state structure at the level of national states-opponents of the processes of globalization of the socio-political, state-legal and financial-economic structure. Moreover, according to some authors of the war, the era of globalization is the result of sociocultural adaptation of political violence (Prilepsky, 2006).

The use by the global governing class of unlawful forms of political violence, coupled with the manipulation of international law in the interests of the West against Russia, is, according to some authors, a great danger in terms of maintaining the stability of state power, the political regime and the progressive development of the Russian economy and its social sphere.

According to figurative expression Yakunin (2014) globalization is a new challenge to the state policy of Russia. In this regard, a number of authors note that only consistent democratization (Kovrizhnykh, 2015) and humanization (Keshikova, 2013; Krasikov, 2008) of the principles of the formation and functioning of the system of state power in Russia, appeal to the legitimate interests and aspirations of the broad masses of the population, and the active upholding of their rights and freedoms at the domestic and international levels will make it possible to avoid the use of modern forms of political violence both within the Russian Federation and from outside.

CONCLUSION

Power is a mechanism for the existence and development of any social community, corresponding to the achieved character and level of social life, characterized by the subordination of the will of individual subjects of power relations and their associations (subordinate) to the will (power) in this community, reinforced by the possibility of its enforcement.

Within the framework of the socio-philosophical concept of global constitutionalism, the legal system is an integral instrument of political violence, which is applied at various levels of implementation of this concept, in particular, by the countries of the core of the world capitalist system to peripheral countries, the ruling classes (elites) in national states to the masses of the population (exploited classes) etc.

Within the framework of the concept of global constitutionalism, as the main forms of unlawful political violence used at the international level, the following can be distinguished:

1. Initiation of forced change of state power, political regimes, form of government and state structure in national states;
2. The organization by the global governing class of a change of power in nation-states that oppose the processes of globalization, or infringe on the economic interests of the West, through the formal use of international legal norms and institutions;
3. The organization by the global managing class of local wars with the aim of reformatting the territorial and state structure at the level of national state opponents of the processes of globalization of the socio-political, state-legal and financial-economic structure.

The processes of globalization have significantly changed the forms and methods of applying political legal violence at the level of nation-states:

1. Political violence, carried out at the level of any modern state, is recognized as legalized subject to compliance not only with the norms of national legislation, but also with the norms of the international legal system;
2. The main forms of political and legal violence at the level of national States under the influence of globalization processes are increasingly used: total information propaganda (including the legitimization of state political and legal violence); creation of interethnic, interreligious, interclass, interethnic tensions (for example, with the aim of destroying spontaneously emerging centres of popular resistance to state power arbitrariness and lawlessness); targeted repressive measures against politicians who pose a threat to the ruling elites in the state (these repressions can also be of a preventive nature, when the government discredits non-systemic politicians in the eyes of society who can oppose the ruling elites); state terrorism (in particular, against certain ethnic and class groups of the population); war (as a form of diverting the attention of the masses to an external factor); the use of environmental policy as a means of pressure on certain regions;

3. Globalization spurred the use of technologies of social construction of reality as the main method of political and legal violence at the level of national states through a complex combination of methods of persuasion, coercion, information blockade, creation of false information arrays, compilation of expert assessments, exaggeration of certain social problems, creation of false social motivation among certain social classes and population groups, etc.

In general, political and legal violence at the level of national states, combining legal and non-legal forms of violence, allows national elites to influence all social classes and groups of the population in order to prevent social cataclysms in the form of revolutions and riots.

Forms of measuring the level of political and legal violence in individual nation states are becoming important. The main criteria for assessing the level of political and legal violence are: the presence of a non-systemic political opposition; level of freedom of speech; availability of independent mass media, their prevalence in the country; the existence of independent trade unions; the level of accessibility of education and social services (for example, health care, education); the number of persons sentenced to imprisonment on political charges; the level of rights of national, cultural and other minorities of the population.

It substantiates the position that, as a form of opposition to the use by the global governing class of unlawful forms of political violence, along with the manipulation of international law in the interests of the politically strongest countries against other countries, consistent democratization and humanization of the principles of the formation and functioning of the system of state power in different countries, appeal to the legitimate interests and the aspirations of the broad masses of the population, the active upholding of their rights and freedoms at the domestic and international level.

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