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Legal Etatism as a Modus Vivendi in Russia (A View through the Crisis)

The article speaks of the need and feasibility of transition to the legal and social state. State is the organization of society, the power of the same – its organizer. Justified by political scientists that Russia - the post-industrial nation, therefore, is participating in catch-up modernization, it is catching up with others in building a legal state. The latter acts as a modus vivendi, as a way of existence of the rest of the democratic peace. The problem, in this sense, the modernization act in regard the legal state – is to achieve the coincidence modus vivendi (way of life) with the modus operandi (mode of action). As a result of modernization, a new order of society, in which the legal law – a just law, legal state, legal state – a just state.

A new way of life which has appeared under the influence of crisis makes those in power to reconsider their positions about the role and functions of a state. Such an approach has been matured objectively as the peculiarities of authority in Russia are power over the fortunes of the people and country's destiny and so on. There solutions which have been formulated by political leaders today sound as paradigms: the responsibility of a state in front of its citizens is a state's task; a state was created by the people and its primary goal is to serve them and provide them with the right to adequate life; a contemporary state is, first and foremost, a democracy; state pragmatism must oust every unreasonable thing from the political sphere, etc. And again these solutions tell the political analysts to refer to the political problems, discussions of new standards of political establishment and democracy in the interdisciplinary context.

A state is an organization of social life whereas power is its organizer. The establishment of a legal state is a constitutional imperative in our times. It acts as a modus vivendi, that is, a way of life of every democratic country in the world. In this respect, the goal of modernization act in a legal state consists in the real coincidence achievement of modus vivendi (way of life) with modus operandi (way of action) which is especially relevant in the situation of crisis.

There is a common notion of crisis (Greek - krisis) as an emergency situation taking place as a result of a system's break in acceptable dysfunctional alternations within or under the unexpected external influence. In this regard, the crisis in Russia is felt as our own and the external factors have just worsened it. The society dominated by "consumer's ecstasies" has come to its end, the "parasitism crisis" does not presuppose a way out in parallel with Western countries but a set of single-handed means in accordance with other development patterns given the analysis of and taking into account the mistakes committed.

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The reformers of the 1990s, as it has reasonably been stated by Russian analysts, were oriented to the Western development pattern and minimized state's participation with the support of self-developing market and civil society. As a result of their voluntaristic aspirations to make a big leap from a "strong state" model into "weak state" model they committed a mistake. If during the transition period the "strong state" model remained, the development pattern could facilitate, inter alia, the administrative team's professionalism growth which means to approach it to the M. Weber's model with a gradual transition of its functions to the newly born civil society and the market forces in accordance with their institutionalization. The consequence of the "leap" was in the bureaucracy's quick adaptation to the realities which led to a "bureaucratic leash" shrink hampering the development process.²

In so doing, after 2008 crisis, the given political regime was trying to permanently formulate the contour of a new "strong" statehood in the image of "power chain of command". But the contour has remained as a form only: in quantitative terms, the state has enormously grown, though qualitatively it has relatively shrunk. It happened because the contour turned to be just a simulator, that is, in reality it was a political decoration determined by the loss of the main thing in a state – efficient economic substance.

As a consequence, those who often associate themselves with a state are far from being "state-minded helmsmen" but "those who are being helmed". It is a common fact that the infrastructural processes in Russia have, in recent years, become the world's place of a large-scale non-transparent distribution of wealth. Modernization suggests a tough government system – a real chain of command – with an ability to dictate the terms. It is successful if it is synchronized and it fails to do it if government officials act as businessmen. The latter is much more evident in Russia, and if the situation doesn't change, as a whole, a more modern infrastructure and modernization will be impossible in the country.³ In reality, Russia is undergoing a period of a quasi-centralized state with a corrupt economy where property rights are, in majority, ephemeral. The state, as critics say, actually possesses the economy and policies. It is for the first time in Russia, those who have the government monopoly are its only proprietors. Their task, according to the critics, is in the conservation of the government monopoly and a tough grip on the country. But it is not so easy.

The pathos of criticism is clear though it is not unequivocal. The straightforwardness of suggestions leaves uneasy feelings. Everything is much deeper, and so, complicated. The political regime fulfills its authorities though the state, power and diffuses with the state, its system, mechanisms and economy. But diffusion is various. Undoubtedly, the contemporary political regime holds the state tight in its "hands". And it is evident that the state, essentially, is a constant whereas the political regime is a changing predicate. Regimes change but states remains. According to T. Hobbs, it is the state which makes it possible

² Spiridonova V.I. The Democratic Perspective of the *Etatist* Modernization Pattern // *Etatist* Modernization Patterns. – M.2002. P.46.

³ Inozemtsev. V.L. What is Modernization and Is the Country Ready for It? // *The Modernization of Russia: The conditions, implications, chances.* – Vol. 1. 2009. P. 55.



to provide the formation of civil society, complete renovation of social relations and human measurements of politics. As A. Touraine pointed out, only public sphere can support the identities of social entity and their transition from the past into the future. H. Grotius interpreted a state as a perfect union of free people made to adhere to the law and common good and etc.

What are the reasons of the above mentioned political-etatist “clinch”? It happened not only because of the peculiarities of “a weak” or “strong” state but of the underdevelopment, or to be more precise, the loss of legal etatist frame modernization and legal state, though declared in the Constitution of Russia, which, in its essence, could have hampered the (and had to resist) the authoritarian tendencies in the country. The latter has some followers in Russia associating themselves with a “strong” state implementing modernization policies to compensate for the weakness of entrepreneurs thus becoming a development state. And it is clear. What is also clear is the strengthening of state’s role during modernization is followed by the establishment of distinctly authoritarian regimes (“development authoritarianisms”). It is stated that the modernization in Russia is possible only as authoritarian, especially in its beginning. Democratic modernization according to Brazilian and Chilean patterns is impossible because of the lack of social consent on the modernization project, egoism of political establishment, people’s sluggishness and civil society underdevelopment.⁴ In concert with there appeared a well-known sentence spoken out by V. Surkov saying that western democracies turn inapt to govern free persons; later he showed to the non-simultaneous development of the Russian democracy.

Meanwhile the bias to the “development authoritarianism” in Russia is fraught with modernization traps. It is referred to the social political eclectics of the acting state model: a) authoritarianism in politics; b) ultra-liberalism in the economy. There is a mixture of constituents at different levels of both a) “strong” and b) “weak” states which substantively lags the modernization start, harmonization of economic political and legal reforms. The proof is in the following selected comments. Firstly, from the very beginning the state formulates unequal economic conditions giving the priority to a special group of state companies having no difference from the rest of the market players. Secondly, as a real market player, the state “facilitates” the involvement of officials into business thus provoking a specific corruption, mixture and conflict of interests among the civil servants and entrepreneurs. Finally, there is an illusion growth about the only state’s task to support stability in the process of modernization. All this shows a states’ failure to bear responsibility for the events. Exemplary is the fight with corruption which has never been systematic in Russia. We agree with the statement saying that corruption nature is different from what it originally meant. Despite the fact that usual corruption is widely developed, it is not the source of the system risks, they are triggered by the officials’ activities setting and changing their own “rules of the game”. In such a situation, corruption income is made as a result of officials’ professional obligations implementation, and the corruption aims though distinctly seen

⁴ Krasilnikov V.A. Some Common Features of Catch-Up Modernizations // The Modernization of Russia: The conditions, implications, chances. – Vol. 1. 2009. P. 92.



have no proof positive and carry no punishment. It is this system, in addition to the uncontrollable state courts, which brings the impunity to the Russian bureaucracy.⁵

In significant degree, the eclecticism of the Russian state model makes it possible for the authorities to ignore their mistakes and failures and thus ambitious traits in the task setting are constantly reconsidered to weaken the previously set conditions.

The modernization traps in connection with the authoritarian limitations influencing the innovative development scenarios prove inapt to solve the problem of excessive social inequality, impede the social consolidation demanded to overcome the crisis. That is why “society needs flexible political system lowering the social political tensions instead of a sluggish, huge and clumsy authoritarianism. As a consequence, a set of social political contradictions grows and their up-to-date amortization, let alone its solution, is blocked, the inner political pressures are rocketing multiplying the risks of “insults” and “strokes” in the body of the social organism”.⁶

As a result the “development authoritarianism”, being an eclectic alliance of the “weak” and “strong” state, got stuck in the above said traps, and leaves no other outcome to say that the country is in a state of decay. On the other hand, the nouveau-riched establishment could find their interest in following the rules and procedures which is highly conducive to though the quasi-democratic but legal state.⁷

The development exclusively according either to the “strong” or “weak” state scenarios is impossible in Russia. Moreover, it is unacceptable nowadays. Why? The answer is in the cases of legal states where all the branches – judiciary, legislative and executive – comprising all levels of social economic relations – correspond to the rule of law and thus are found under the form of a legal state. Russia is only on its way to this.

Bringing the priority of the constitutional premises to the top, a set of fruitful attempts are made by the legal scientists and political philosophers to fundamentally investigate the phenomenon of a legal state as a modernization perspective in Russia. They both work, though independently, moving in one paradigmatic direction – a legal state is acknowledged as equal to a just state.

The arguments go as follows. Justice is considered according to J. Rawls’ interpretation - it is not the requirement of equality, it is a sharing by all the people of a common destiny. In Russia, two tendencies have existed. The first is peoples’ sense for justice and demand for equality. In practice it has become the premise for egalitarianism. The tendency covers the tasks of a traditional society and presupposes no modernization transit. The other tendency is etatist and has modernization determinations. Until now they both have been implemented through the sorting out of a western-minded social layer (such a modernization pattern has always been characterized by a catch-up process). This way prompted the extensive alienation of the traditional society in the country. Etatism has always been connected with the formulation of a common interest. In this sense, it corresponded to the tra-

⁵ Inozemtsev V.I. Op. Cit.

⁶ Krasin Yu.A.

⁷ Inozemtsev V.I. Op. Cit.



ditional society goals. But the philosophers put it that in Russia there is no other mechanism of traditional society transit to modern society than etatism. The modernization patterns change (westernization, catch-up model) for post-modernization pattern (based on their own traditions), could change the role of etatism in the post-modernization process. Through the law, the authorities could provide justice – that means “not the demand for equality but the sharing of a common destiny.” This would weaken the tension of everybody’s war against everybody. It leads to a justified outcome that nothing could change the existing set of things but a democratic legal state. And to do it there is no other equally important strength such as the strength of law. Mental and cultural premises could grow on the foundation of rational juridical consensus, rather than the other way round.⁸

Russian legal scholars went further by specifying philosophic schemes though abstract notions but having notional content. In this respect, contemporary jurisprudence characterizes a law state as a legal form of organization and public power activity and its interrelation with individuals as law subjects. There is a set of main peculiarities: the supremacy of (legal) law; reality and inalienability of rights and liberties, legal organization and functioning of the state power on the principles power distribution, reciprocity of individual rights and obligations, civil society and the state.

The jurists suggest that the essence of contemporary law is better described by the idea of justice. Withdrawing from the idea of equality and developing the formula of justice as “not the demand for equality but the sharing of people’s common destiny”, legal scholars in the formalization process have finally developed their notion and interpreted justice as a consent for a common morale and actual equality in front of the law. It gives the notion of law as a normatively fixed and realized justice. If a just idea acquires a normative establishment, it becomes an act thus transforming into law. But if an unjust idea is concerned, as a result of normative establishment, it turns into an act but not into law. The main idea is that the unjust act is not law. Such logic covers a legal state which is the same as a just state.

The above mentioned facts is about the following: the modernization way of development in Russia is possible as a transition from etatism with “authoritarian face” to the establishment of a “law face” state, that is to the rule of law tending both to static positioning and dynamically oppose authoritarianism. And why not? Finally, the opposition institute is not only about parties, movements and political ideas which specifically develop in the realities of Russia. We agree with C. Munday who characterized Russian opposition as cacophony of contradictory ideas including pseudo-communism and neo-fascism, anti-globalism and libertarianism (in A. Rand’s understanding). The multiplicity nature of opposition movements is a curse of the Russian history.⁹

Our approach is far from being hyperbole or law fetish on the verge of “legal cretinism” but is a real fact – in developed democracies, legal etatism is a significant impediment to the appearance or spread of authoritarian tendencies. For example, it is in this image there is an institutional domination of constantly acting political responsibility,¹⁰ both immanent,

⁸ Ibidem. P.4 – 9.

⁹ Munday K. Life after Putin // The Korea Times. 23 July 2009.

¹⁰ See: Zelenko B. Is Political Responsibility a Legal Liability?//Justitias Welt. 2016. №31. P. 1-5



attributive and basic foundation for its functioning. And the goal here is objectivized, that is, there is a formation of reliable protection for the society in a whole and its individual members as actual precondition for social choice. The most important thing is how a real indicator of the democratic state of any society, especially during the crisis periods. If we use the instruments of political responsibility, a legal state, acts as an ambivalence restraint of political life and political practices.

It is well-known that the distance between legitimate and shadowy policies can never be equal to zero. It tends to grow in all communities and change the social political crisis dynamics. The level of a legal state development and political responsibility influence the degree of the lags (from one to the other side) existing between the above mentioned political realities.

In legal states there is a system of political actors' activity evaluation, measures to counteract and impeach the presidents and governments failing to govern accordingly thus causing material or moral damage to the state, worsening the life of the people, fostering degradation of the country. It also goes for the withdrawal of parliament members, retirement procedures of the cabinet, the dissolution of parliaments and courts, bans for those who work for the media and were found guilty on accusations of lies, corruption and etc.¹¹

Traditional democracies have developed a political legal paradigm presupposing that the power is secondary and it is controlled by those who are the source of it, that is, the people. In Russia, the situation is more intricate and can be characterized by incomplete modernization processes – the lack of an etatist modernization which has the goal to develop, above all, a real legal state in Russia.

In so doing, there is a need to make the issue of country's modernization relevant as a national priority which was set both theoretically and methodologically in 2003. It was suggested that the state in Russia was not only a means to solve the problems, but the immediate source of them and the most important issue at the same time. The state in Russia determines the character of political life given the loss of ability to answer the challenges of time and failure to be in the forefront of development. If political establishment and society in Russia are willing to provide a solution to such a demand and continue modernization process thus multiplying country's competitiveness potential, the issue of inadequacy of the current state order must correspond the goals set and thus be fully acknowledged.

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¹¹ Serebryannikov V.V. Representative Power: Monitoring, Analysis, Information // The Responsibility of Power. 1996, Vol.6. P.10.



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