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CONTENTS

POLITICAL PROCESS IN RUSSIA

Zhuravlev O. V., Tushkov A. A. National Maritime Policy of Russia on the Pacific and Indian Ocean Regional Routes	5
Kononov L. A., Chebotarev A. V. Development of Theoretical Positions about the Perspective State Policy of the Russian Federation on Anti-Immigration Extremism	12
Rumyantsev O. G. On Some Political Science Aspects of the 2020 Constitutional Reform in the Russian Federation	19
Nazarov V. P. On the Question of the Evolution of the Concept of National Security	27
Pohozhaev V. I. Some Priorities of the Modern State National Policy of the Russian Federation	34
Yang Chunlei Influence of Confucianism on the Political and Cultural Elite of the Russian Society	41

PROBLEMS OF EURASIAN AND POST-SOVIET COOPERATION

Mikhailenko A. N. How to Disclose Russia's Foreign Policy Potential?	49
Zalysin I. Yu. Features of Modern Terrorism	63
Emirov R. M. On the Prospects of Islam as a System-Forming Factor in the Caucasus	68
Pliev S. M. The Role of Information Warfare on the Example of the 2008 Armed Conflict in South Ossetia	75

INTERNATIONAL RELATIONS AND WORLD POLITICS

Pyzh V. V. Geopolitical Picture of the World on the Eve of the Second World War: Lessons of Victory for the Geopolitics of the XXI Century	82
Nazarov A. D., Nazarova E. A. Phenomenon of Import EXPO: New Approaches in the State Policy of Regulating Exhibition Activities in the PRC	104
Lantsov S. A. Ethnic Terrorism and Ethnic and Political Conflicts of the XIX-XX Centuries: Analysis of Socio-Political and Ideological Factors	114
Rodionova M. E. Specifics of Foreign and Russian Experience in Financing Political Parties	123
Temeryuk A. S. Analysis of the Distribution of Election Results to the Finnish Parliament in the Course of Four Electoral Cycles	132
Zhambaeva U. B. Tibet Buddhism in the Yuan Dynasty Political Context	142

REFLECTIONS ON THE READ

Slizovskiy D. E., Medvedev N. P. Afterword to the Article by O. G. Rumyantsev "On Some Political Science Aspects of the 2020 Constitutional Reform in the Russian Federation"	148
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OUR AUTHORS	156
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AUTHORS' GUIDELINES	158
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ON SOME POLITICAL SCIENCE ASPECTS OF THE 2020 CONSTITUTIONAL REFORM IN THE RUSSIAN FEDERATION

Prior to the 2020 reform, the Constitution, with certain flaws in its content and adoption procedure, was perceived by many as the basis for consensus and further development. The constitutional reform changed the text of the Constitution by a third, and its spirit and public perception almost completely. It is necessary to analyze the status and prospects of reformatting relations between the state and society, as well as the correspondence of the undertaken swing to the growing challenges and clearly increasing public demand for the socio-political development of Russia as a renewed advanced nation. With the adoption of the new version of the Constitution, it is unlikely that the reasons for the objective aggravation of contradictions, acute political differentiation in society and subjective difficulties in managing the process of increasing division will disappear. The potential of a mid-decade consensus is coming to an end. We need deep incentives for a new and long-term consolidation of the society and the state.

Key words: *civil society, constitutional system, constitutional reform, amendments to the Constitution of the Russian Federation, unified system of state and public power, political institutional engineering, Constitutional Commission.*

Prior to the 2020 reform, the Constitution, with certain flaws in its content and adoption procedure, was perceived by many as the basis for consensus and further development. The constitutional reform changed the text of the Constitution by a third, and its spirit and public perception almost completely.

The present situation requires analysis of the status and prospects of reformatting relations between the state and society, as well as the correspondence of the undertaken swing to the growing challenges and clearly increasing public demand for the socio-political development of Russia as a renewed advanced nation.

It is no less difficult than the chosen way to save the corporate system, which had developed in the concrete historical conditions of the end of 1993 as a temporary

one. It is quite possible that the bet is made on the powerful self-growing authoritarian potential of the inner core of the Constitution laid down by Yeltsin's team in order to strengthen specific Russian constitutionalism and overcome the crisis.

The Constitution has become a means of solving an operational problem, demonstrating in whose hands the initiative is and will remain. For the main law tug of war between the *"attractiveness of the initiative and the constitutional amendments themselves"* does not look fundamental enough, and tactical benefits are obtained with the strategically unpleasant addition of a deepening split in the society, also on the constitutional issue.

The amendments – after all the stages of a fleeting campaign – tried to provide an answer to the urgent needs of the constitutional system. At the same time, the long-needed turn to democracy, the return to society of the right to vote and a variety of forms of public participation, popular and constitutionally regulated parliamentary control over the actions of public authorities, the development of political institutions, including guarantees of free elections and the reform of the party-political system, were avoided in eloquent silence.

It is the institutions and organizations of the civil society that are accumulators, representatives and participants in the processes of reconciliation of diverse interests, self-regulation of public relations, initiation, discussion and participation in monitoring the implementation of adopted legal acts at various levels.

We need a holistic eco-environment and architecture of diverse, integrated decision-making non-profit organizations that represent the interests of the regions and territorial communities, producers and consumers, entrepreneurs and employees, experts and practitioners, the entire political spectrum capable of replacing millions of officials and civil servants.

In principle, the 2020 constitutional amendments have two groups of positive innovations that move us in the right direction. In terms of changes in the organization and functioning of the power mechanism, a step forward has been made; however, the analysis of the changes in the form of government is the subject for a separate article.

By the time of the second reading, the Administration of the President added the first portion of amendments with extensive normative material dedicated to supporting various aspects of life and civil society institutions. There are important and mostly necessary norms about the conditions of economic growth, labor, social partnership, culture, upbringing of youth and children, family, children, marriage, education, language, etc.

It seems that after 28 years, its contents were partially rehabilitated. In this part, I do not share the "taste" criticism of the accepted norms from a number of my colleagues. Many of the amendments are substantially in line with the proposals we published earlier, which means that the work of the Constitutional Commission and, later, of independent constitutionalists was partly not in vain. Unfortunately, there was not enough spirit to support the civil society structurally – in the form

of an independent landmark Chapter 2 (4) “Civil society,” as we proposed to do in 1990-1993 (4) and in 2013 (1) [2. P. 108-134; 3. P. 10-22; 4. P. 244-251].

Curtseys towards the society, however, pale against the background of maintaining the same system itself, which requires not just tuning, but system changes. There is a fatal subordination of the superstructure to the basis, as predetermined by the classics of historical materialism.

In modern Russia, economic and political monopolism, not controlled by the society, definitely rules; the egoism of the ruling narrow class firmly determines the superstructure, including its legal patterns. It requires strict pragmatic actions in the interests of the actual beneficiaries of the existing system of production relations, appropriation and distribution, rather than observation of the principles of the constitutional system.

The basis determines the preservation of the authoritarian decision-making mechanism, the indispensable cult of power, the absence of institutional mechanisms for identifying, representing and coordinating group and class, and now also caste (we should ever live to see!) interests.

Political and economic dimension of the constitutional process is reflected in the “power” part of the amendments made through the prism of main political and economic objectives: to avoid any risks in the consolidation of the results of privatization and subsequent redistribution of property, to ensure inheritance of the acquired statuses and fortunes.

It is clear that the key trend of the 2020 amendments was further concentration of the supreme power. For the constitutional principle of horizontal separation of powers and vertical separation of authority the forecast may be negative. Within the framework of the “unified system of state and public power” being built, the power vertical created in recent years is supplemented by a single power horizontal.

The updated system of supreme monarchy looks almost like a system of autocracy. The presidential power has been extended to all state bodies, and the power of the head of state has actually been extended at the expense of the powers of other branches of government, which are coming under a single beginning as if getting in line. The space for competitive joint dialogue, mutual search and implementation of the balance of branches of power is being reduced.

In my opinion, the main future contradictions in the relations between the society and the state, as well as the prospects for the development of the constitutional system itself, will be connected with the acceptance or rejection of this amendment.

The conflict of the supreme power with a significant part of the educated class is growing. As a result of a hasty and rather one sided campaign it became obvious that the number of skeptics and pessimists among the educated class has increased several times.

A very likely consequence of the current campaign may be the devaluation of the Constitution and the deepening crisis of public confidence in the state power.

First of all, the Constitution is threatened with a kind of desacralization in the eyes of those who do not agree to perceive it as a means to achieve applied goals of political expediency, other than the high task of building a truly constitutional system.

As it was in the 1980s, a significant part of the educated society (and not at all the marginalized part of it) is moving into the latent sphere, forming a “second” society parallel to the official world. This phenomenon once served as the basis and driving force, the social base of the perestroika in the USSR and a series of power transformations in the countries of state socialism in the late 1980s. [5; 6. P. 6-31].

To the correlation between the notions of “society and “people.” The Constitution gives preference to the concept of “people,” which opens the Preamble and occurs in various meanings 11 times (of which 6 times in the sense of the people of all Russia and 5 times in the sense of peoples living on the territory of the state). The people as a historical and cultural community of people with a single language, history, territory and ideally as a political nation is enshrined in the Constitution as the bearer of sovereignty and the only source of state power (Part 1. Art. 3).

But from the practice of constitutional, social, political and socio-economic processes of the long period from 1994 to 2020, it turned out that nothing depends on such a lofty and abstract understanding of the people. After the removal of the Chapter “Civil society” from the draft Constitution, which does not seem accidental today, the concept of “society” was affected most of all (it is not used in the Constitution at all, although 8 times there are combinations with the word “public” : “public associations” – 5 times, “public security” and “public order” – 3 times). Our concept of the Constitution, meanwhile, has always been based on an understanding of the society’s contract with the state as an official representative of the society (2).

It is society that is the social collective actor. As a social community and a set of institutions and organized interests, social relations, it should be considered as a starting platform, a key support and the main addressee of the constitutional system. It is society that is called upon to play the leading role of an equal partner, and if necessary, an opponent of the state (in the case of the latter’s usurpation of power). The state is accountable to the society and must, in turn, protect the democratic constitutional order, law and order, provide the necessary social, economic and political conditions and mechanisms for the normal reproduction and further self-development of institutions, members of society and the people as a whole.

A kind of political indicator of the effects of the 2020 reforms can be a narrowing and even exclusion of diversity, competition from a number of spheres of public life via some new “ideological” amendments to the Constitution (about the belief in God, prohibition on diminution of the value of the feat of the people in the defense of the Fatherland, etc.). Political plurality does not expand either because of the eloquent silence about the urgent and demanded constitutional guarantees of political self-organization of the society in the legal constitutional formats.

In the opinion of my colleague in the Constitutional Commission T. G. Morshakova, certain amendments with uncertainties contained in them, if they are

subsequently reflected in the norms of the Criminal code and the Administrative code of the Russian Federation, may result in further restrictions on freedom of speech, literary, artistic, and scientific creativity that are undesirable for the educated class.

Is the educated class a priority recipient of the messages of the supreme power in the new Russian conditions? Apparently, and this is confirmed by independent sociologists, during the 2020 campaign, the task of the Presidential Administration was not to convince people in the reasonableness of the amendments, but to suppress the apathy and distrust of the already loyal and conformist part of the population.

As if on purpose, some elements of constitutional reform are built on an almost Orwellian Newspeak, where words lose their original meaning and mean the opposite. Some actions differ significantly from the stated positions (3). There are symptoms of a growing gap in public consciousness between the law and truth, and the discrepancy between the actions of state authorities and the socio-cultural norms and public understanding of due process.

Finally, another serious problem of the weak legitimacy of the 1993 Constitution (5) could have been solved in the course of the Constitution updating, as the author of these lines has repeatedly suggested. But, no. The vote suggested in the Presidential Decree looks like a replica of the mechanism used by Boris Yeltsin to “force consent” in a virtual state of emergency during the adoption of the Constitution, which left a mark of dubious legitimacy on the Constitution. It can now go deeper despite the 14.8 billion rubles allocated for the preparation and conduct of the vote (according to E. A. Pamfilova, “legitimacy is expensive” (5)).

The level of political support for the supreme power is declining. In the run-up to the election season of various levels, up to the highest, there is no prospect of “political swings” (not to be confused with “carousels”), the critical threshold of discontent with restrictions on the rights and freedoms, deterioration of the conditions for self-development of society and growth of welfare may be exceeded.

When the recession of the overheated world economy, taking place now with the voluntary or involuntary assistance of the COVID-19 pandemic, comes to an end, there will be a new need for growth, creativity, creation and development on the basis of the new relations between the society and the state.

The political institutional engineering and PR of the “new decision-making system” involved in the reform reflect the desire to hedge the risks associated with the change of the supreme power, to preserve influence after the “big transfer” (to hedge against an “internal opponent”) and to close off from an “external opponent” (conditional nationalization of the elite, restriction of foreign influence, attempts to rally people around the personified state sovereignty).

With the adoption of the new version of the Constitution, the reasons for the objective aggravation of contradictions, acute political differentiation in the society, and subjective difficulties in managing the process of increasing division

are unlikely to disappear by themselves. The potential of a justified mid-decade consensus, in my view, is coming to an end. We need deep incentives for a new and long-term consolidation of the society and the state.

NOTES:

(1) Proposals of the Constitutional Club and the FCR (2013) Initiative drafts of new chapters of the Constitution of the Russian Federation: Chapter 2. Civil society; Chapter 2. Referendum and free elections. The electoral system; Chapter 5. Parliamentary control see: *Rumyantsev O. G. 20th anniversary of the Constitution of the Russian Federation: lessons of history, prospects for development // Modern constitutionalism: challenges and prospects: materials of the international scientific and practical conference dedicated to the 20th anniversary of the Constitution of the Russian Federation (Saint Petersburg, November 14-15 2013). M.: Norma; 2014. P. 108-134; as well as: Journal of constitutional justice. No. 2 (38). P. 10-22; Constitutional bulletin. No. 5 (23), April 2020. P. 244-251.*

(2) Here is a fragment from the draft Constitution of the Russian Federation (as of February 21, 1991):

«Article 113.

The state is the official representative of society and expresses its will within the framework of the Constitution. The state, its organs and officials serve the entire society, not any part of it. The state, its organs, institutions and officials are responsible to society and the citizen.

Article 114.

The state must:

1) protect and guarantee human and civil rights;
2) protect the democratic constitutional system, law and order;
3) protect the sovereignty, independence and territorial integrity of the Russian Federation;

4) Develop and implement policies aimed at the free development of economic initiative and effective social protection.” See: Rumyantsev O. G. Constitution of the 1993. History of the phenomenon. Documentary poem in seven parts from the Executive Secretary of the Constitutional Commission of 1990-1993. 3rd edition, amended and supplemented. M.: RG Publishing House; 2018.

(3) – The constitutional reform came against the background of repeated assurances from previous years that the Constitution is unchangeable;

– The 2020 amendment bill includes dozens of unrelated proposals and changes after expanding the subject of amendments, which hardly makes it possible to consider them as one “amendment,” as described in the title of the adopted “Law on Amendments to the Constitution,” contrary to the requirements of the relevant Federal Law;

– The Preamble agreed by the Constitutional Commission and accepted with minor changes by the Constitutional Conference in 1993, according to the RG

management, “can be changed according to the procedures that are provided for chapters 3 to 8,” the benefit of this was eventually abandoned after hearing criticism; but the appearance of a number of norms in Article 67 does not seem very appropriate;

– Against the background of the stated objectives of the reform: renewability and changeability of power, the key amendment and the crown of the reform becomes the personified amendment providing opportunity for the incumbent head of state to run for a third consecutive time, totally for the fifth and sixth presidential terms;

– The very method of approving changes to the Constitution by the all-Russian vote, which is not a referendum, but another, not the highest form of direct democracy in the course of which the supreme basic law is being changed.

(4) Since September 1990, our project originally had an important Chapter “Civil society,” immediately following Chapter 2 “Human and civil rights and freedoms.” At first, for being too bourgeois, it was attacked by the Communist faction in the Supreme Soviet of Russia during the article-by-article review of the draft Constitution at the spring (1992) session; and in the fall of the same year, the Mayor of St. Petersburg A. A. Sobchak, promoting the so-called “RDDR draft,” stressed the excessive verbosity of the draft and the non-legal nature of the norms on civil society. In 1993, the Chapter again found its place in the draft Constitution, but did not pass through the narrowed crucible of the Yeltsin Administration Constitutional Conference.

(5) RT. 2020. 4 March.

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