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The transformation of State and Law institutions in the information society

A transformação do Estado e das instituições jurídicas na sociedade de informação

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Abstract: The current article deals with the problems of scientific and academic study of the transformation of state and legal institutions within the framework of the information society of the 21st century. The objective reasons for the changes in the meaning of the concepts "state" and "law" are being examined, as well as governance problems on a national and global scale; transformation of governance processes due to the use of ICT in the development of state and law systems; the significance of the obtained results for the legal support of information security.

Keywords: Internet. State. System of power. Law. Civil society.

Resumo: O artigo trata dos problemas do estudo científico e acadêmico da transformação das instituições estatais e jurídicas no âmbito da sociedade da informação do século XXI. As razões objetivas das mudanças no sentido dos conceitos "Estado" e "direito" estão sendo examinadas, bem como problemas de governança em escala nacional e global; transformação dos processos de governança em razão do uso

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das TIC no desenvolvimento dos sistemas estatais e jurídicos; o significado dos resultados do suporte legal da segurança da informação.

Palavras-chave: Internet. Estado. Sistema de poder. Direito. Sociedade civil.

Summary: **1** Introduction – **2** Objective reasons for the transformation of state and legal institutions – **3** Objective challenges to the streamlining of governance. The problems of state and legal institutions – **4** A look at the problem through the prism of the Russian information law – References

1   Introduction

The issues of formation and development of the information society while reaching the stage of the «digital civilization» have become a reality. These issues require constant attention of scientific, political and legal community both on the national and global scale. During the last hundred years the term "information" and its innumerable derivatives entered the lexicon and became common words in scientific literature and everyday life. The historical stage of the development of society in the late 20th and early 21st centuries was defined as the "information society". This stage was marked by the rapid development of information and communication technologies. It is not easy to define what changes have taken place in the society and in the life of an individual due to these factors.

The challenges of the information society have been highlighted at national and international conferences, summits, forums, textbooks on information law, in scientific research and publications.[1] This article focuses on objective and subjective factors as defining points of scientific and practical examination of legal problems that require special attention and determine the vectors of development of the society at present.

2   Objective reasons for the transformation of state and legal institutions

Objective factors are formed by three constants: *space, time, masses*. These constants are subject to changes in conditions of global application of information and communication technologies, information being regarded as knowledge about the past and the future of the main organizational and legal institutions of the society and their present state.

Space and time as properties of the material world are inextricably linked. Time is a successive change of the state of the world and the change of phenomena,

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[1]   BACHILO, Illaria *et al*. On the main directions of the development of the information society for 2000-2015. *State and Law*, p. 71-80, 2017.

processes, events. Space is not a linear, but a three-dimensional parameter of the material world. Time is considered irreversible and eternal. It has at least three dimensions: the past, the present, the future, inevitably connected course of existence of the material and intellectual forms of the development of the world. Space is an immeasurable phenomenon and category the sphere of the universe. The *information space* is now defined through the Internet network system and space communication facilities. The specific definition of the information space today is given in Russian basic political and legal documents: Russian National Security Strategy, Information Society Development Strategy of the Russian Federation, the Russian Information Security Doctrine and the laws of the Russian Federation.

The third constant of the society development which is represented by the terms "masses", "people", "humanity" is the substance that forms and determines the filling of space and time which is constant, continuous and at the same time variable. The task of defining the concept of "masses" as applied to the human population as a whole has no solution. Ancient philosophers studied this question within the boundaries of its social regime. As a rule, slaves, people of the lower classes, plebs were not included in this category. Through the term "optimates" Aristotle considered the category of "the best" – the elite. Cicero introduced the term "aristocrats of the spirit". When considering the institutions of power, modern educational literature on ancient history stresses three forms of power, namely the power of one, or group, or the whole mass according to the rules of real democracy, but without defining the population strata. The modern philosophical dictionary defines "masses" as "different segments of the population, people. The masses are opposed to the elite. The masses are not a crowd".

Hegel spoke about the spirit of the people, embodied in consciousness, culture and language. Feuerbach regarded the class as a carrier of material interests. And yet the nineteenth century's historical research and literature drew attention to the theme of "mass society", "popular masses", "mass revolt", focused on a class and classes, strata of population, a nation. The issue of masses as a social and political subject was raised. The issue of mass movement and mass consciousness was examined by E. Durkheim, the classic of the French sociological school. The stratification of the population has received the greatest attention in Russian historical studies and in literature. The estates system of the state received registration at the beginning of the 18th century - division into privileged and subordinate classes. In the social strata nobility, lords and serfs were distinguished. For example, in a review of Radishchev's book "Journey from St. Petersburg to Moscow," Catherine the Great wrote "[...] [the author] is trying to do everything possible to [...] make *people* angry with their authorities and superiors".[2]

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[2]   BABKIN, D. *Radishchev's case*. Moscow: USSR Academy of Science, 1952. p. 158.

The most complete structure of the population was presented by M. M. Speransky in his works on the organization of governance in Russia. Gradually, such terms as townspeople, Cossacks, peasants were used. Today, when talking about the structure of a society, the key categories of the "mass" phenomenon are "people", "population", "nation," "ethnos," "social group", "individual" (person, subject), "association" in the information space, society, civil society, public opinion.

The problem of social stratification was resolved in a fragmentary manner in the course of the history of governance and science and was applied to the conditions of a certain time and situation. At present, this problem with regard to a particular state and the entire population remains open-ended. Masses can be defined as the entire population of the planet, differentiated according to various characteristics, but at the same time united as terrestrial human population. Mass is a dynamic substance that determines the essence of space and time.

Thus, the reviewed constants are objective factors that determine the inevitable transformation of state and legal institutions on a national and global scale. The information space has a tendency for expansion, while time is shrinking dramatically and accelerating decision-making and implementation processes. The third constant "masses" demonstrates activity of the population, which changes the concepts and essence of democracy, civil society, personality, human and citizen rights.

3   Objective challenges to the streamlining of governance. The problems of state and legal institutions

Since the beginning of the 20th century the organization of the present and future world order has been the subject of science and science-fiction owing to the achievements in mathematics, computer science, cybernetics, information technologies. Philosophers, political scientists, politicians, sociologists and specialists of technical, natural and humanitarian sciences are concerned with the changes taking place in geopolitical and national systems, personal life and self-identification.

The problem of governing the world and the fate of state institutions is reflected in the publications of geopoliticians, sociologists, politicians and legal scholars. To name just a few of them: Alvin Toffler, Henry Kissinger, Francis Fukuyama, John Lockland. It is interesting to follow the changes in views on the problem of governing the world and the fate of state institutions for the past ten or fifteen years. It should be noted that the attention of Western European experts is attracted by Marx's thesis about the withering away of the state. It should be mentioned that during the 19th century and the beginning of the 20th century, the scholars focused on withering-away of the state not as a whole, but the state as an instrument of the power of capital and bourgeois policy.

The fate of the modern state can be traced in the works of the American researcher Francis Fukuyama. His book "State-Building: Governance and World Order in the 21st century", published in 2004, and "Political Order and Political Decay: From the Industrial Revolution to the Present Day", published in 2014, reveal a shift in emphasis in the study of the substance of institutes of democracy and state power. In his book "State-Building: Governance and World Order in the 21st century" the author came to a conclusion that there is a lack of a fundamental concept and a link with economics.[3] In "Political Order and Political Decay: From the Industrial Revolution to the Present Day" the author explores such institutions as the state, law, democracy.[4]

Through the prism of "political order and decay" F. Fukuyama studies the models and the scale of modernization, taking into account such parameters as economics, social mobilization, ideas, legality, the state, the rule of law, democracy; the model of modernization without development; complementarity and tension between the political aspects of development. The author emphasizes that with the development of modern communication technologies, ideological diffusion has become more intense. At the same time the author notes that "one of the tragic aspects of human history is that violence is an integral part of political development and manifests itself in various forms: especially in the creation of modern states".[5] He writes that violence, other than competition, is necessary to overcome institutional rigidity and political decay. The latter option comes when political actors "grow in" politically and block the possibilities for institutional changes.[6]

F. Fukuyama reminds us that in the USA the model "law-state-democracy" (Great Britain, France, Germany) was implemented differently, namely, "democracy-state-law". He also argues that the attempts to build in the US an administrative state of a European type failed during the "new course", however, by the middle of the 20th century "compliant" courts have changed their position towards a growing administrative state. The author believes that the Americans are still very suspicious of the "big government" and federal agencies.

Noting the "colossal expansion of the regulatory framework of the state in the second half of the 20th century", Fukuyama points out that "Congress decided to create a collection of abbreviations (federal agencies such as the Employment Equity Commission, the Environmental Protection Agency, the Department of Labor Protection and Safety, etc.). But the Congress was not willing to delegate to the new bodies the

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[3]   FUKUYAMA, F. *State-building*: governance and world order in the 21st century. Moscow: AST, 2006.
[4]   FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 704.
[5]   FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 601.
[6]   FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 603.

powers of rulemaking and the right to enforce laws similar to those of European and Japanese state institutions".[7] Fukuyama, citing the political scientist R. Shep Melik, argues that the federal court has reviewed the section on the Civil Rights Act (1964) that "has turned a weak law, aimed primarily at deliberate discrimination, into a rigid set of rules for compensation for discrimination in the past".[8]

Further he emphasizes that "instead of providing the federal bureaucracy with the proper right to act," the Republicans in the Senate "took the decisive step [...] of privatizing, in fact, the prosecutor's functions", which has increased the number of private claims dramatically and lawyers charges six-fold.[9]

Addressing the issue of subjective human rights, Fukuyama says that "Individual rights - freedom of speech, freedom of assembly, freedom of criticism and the right to participate in politics - mean recognition of the dignity of its citizens by the state". Talking about the "model of the future" Fukuyama asks the question, "Does the presence of traces of political decay in modern democracies mean that a model of balanced governance, which "balances" the state, law and representation is inherently flawed?". His answer is negative. All authoritarian and democratic societies are subject to decay over time. The real problem lies in their ability to adapt and, ultimately, to correct the situation.

> I do not believe in a systemic "management crisis" in liberal democracies [...] The democratic political system often reacts more slowly to increasing difficulties than the authoritarian one, but when this happens, it often acts more resolutely, on the basis of broad consensus.[10]

The author argues that the United States suffer from the lack of effective governance. His book "Political Order and Political Decay: From the Industrial Revolution to the Present Day" is important for understanding the overall global process of transforming governance institutions: the state, the law, the representations in the twenty-first century.

The study of the British scientist and journalist John Lockland deals with the same problems – assessment of the process of transforming governance institutions on the European continent. The author reveals the ailments and acuteness of information wars, considering the state as the main factor in peacekeeping activity, the problem

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[7] FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 509.

[8] FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 524.

[9] FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 531-532.

[10] FUKUYAMA, F. *Political order and political decay*: from the Industrial Revolution to the present day. Moscow: AST, 2017. p. 612.

of human rights and national sovereignty, giving a critical analysis of the actions of the European Court of Human Rights, setting the slogan of "a unified information space" where there will be no space for the state.[11] The author comes to a conclusion that the state is the most important institution and rejects the idea of forming supranational governance structures.

To study the processes of transformation of state institutions, law, democracy (the behavior of masses, civil society, citizens), it is necessary to highlight two aspects: attention to the concept of "time" – assessment of the state of society and its institutions from the point of view of the history of states and the evolution of legal mechanisms; attention to terminology and the disclosure of the meaning of concepts in the light of new challenges.

We observe the transformation of both the scientific and political conceptual apparatus ("the human rights industry", "state building," "strength and power" in relation to state power, "civil society and civic responsibility", "clientelism" etc.). An important issue is the assessment of the factors of change in the society, how the institutions of the state and law manifest themselves in relation to Internet technologies and how they influence the formation of a new governance order. Most researchers take into account the state of mass communications. However, the work of G. Kissinger remains the only one that poses the question of information technologies as a factor that influences the paradigms of the development of the society and its institutions.[12]

Assessing the research of foreign and Russian scholars on the current topic, it can be said that the institution of the "state" is affected by two historically determined causes – natural evolution under the influence of technological development, changing types of production, scientific potential, on the one hand, and geopolitical shifts on the other. These processes require that the influence of many factors and often a revolutionary change of the system of political power.

In modern reality, the change of governance systems and organization of power are implemented synchronously. However, their change is often considered without taking into account the concept of time and the challenges of the digital age. The problem is that the system of governance institutions exists in the regime of the previously formed geopolitical system of states, the system of their interaction on the basis of international law. Decision-making processes at the international and national level are not keeping pace with the changes in processes and events in scientific and technological development.

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[11] LOCKLAND, J. *Deformed Europe*. Moscow: The Fund of Historical Perspective, 2016. p. 172-179.

[12] BACHILO, Illaria. Reading Henry Kissinger: the information society, the internet as factors of the formation of the world order. *Eurasian Law Journal*, v. 7, p. 232-235, 2015; KISSINGER, H. *World order*. Moscow: AST, 2015. p. 512.

4 A look at the problem through the prism of the Russian information law

Transformation of the institutions of state and law is a global problem; hence, finding approaches to its solution is a task for the whole system of knowledge and special humanitarian disciplines. Information law studies the processes of development of the information society and its legal system. The globalization of information processes changes not only the parameters for evaluating the life of the society and its institutions, but also creates threats to legal science and practice: unjustified haste leads to the violation of historical principles, neglect of the diversity of cultural traditions of countries, peoples and states. Therefore, the central idea of the Strategy for the Development of the Information Society in Russia until 2030 is the formation of the KNOWLEDGE society. While trying to keep up with the new, it is crucial not to forget in the process of lawmaking the core of the "law" phenomenon, the importance of legal consciousness and principles of justice.

The Institute of State and Law of the Russian Academy of Sciences studies the development of the information society and information legislation. The outcomes of their research are being implemented in the development of the Information Security Doctrine of the Russian Federation and the Information Society Development Strategy. At this new stage of the development of the information society it is necessary to integrate information resources and find rational application, namely the use of the resource of KNOWLEDGE integration.

Currently, the following areas of activity require attention:

1. Intensification of the use of information technology in the development of the domestic system of programming information processes and relations, taking into account the paradigms of state development and the needs of public institutions and people; the use of information resources, taking into account the goals and functions in the public administration system and the needs of civil society institutions.

2. Informatization of the state and public authority's infrastructure on the basis of the classification of the state functions and the system of authorities at all levels, balancing the powers of the functional activities of all management and control structures; clarification of the legal nature of the institution of e-government (governance) and the rules of interaction between state authorities and local governments on the basis of public administration policy, including the creation of a technological basis in economics and social sphere.

3. Ensuring a new level of security of a society, state and individual and improving legislation relevant to information security.

4. Transition to strategic planning under supervision of supreme bodies of state power.

5. Introduction of laws, ensuring information security with regard to the National Security Strategy of the Russian Federation, is a key area of activity. In the foreground there are such problems as the development of legal basis for the use of IT information resources; recognition of Russia's sovereign right to regulate its information space independently on the Internet; prohibition of the Internet use for military purposes and as a means of destruction of the individual's mind; development of norms of international legal regulation of safe and stable cooperation between the states, development of partnership models.

The Institute of State and Law of the Russian Academy of Sciences deals with the issues of legal provision of information security as a basis for the development of a modern information society. The importance of this topic both for legal and information science and practice is highlighted by the activities of INFOFORUM, the work of university faculties, annual international conferences on information security.

Research carried out in the field of information law is based on the definition of an information society as a civil, social, democratic, legal society. It has to be emphasized that significant progress has been made in the development of information law. However, within the framework of the developing information society legal regulation has not been developed properly. This fact draws specialists' attention to streamlining the laws of the Russian Federation in this area. Since 2013 the Institute of State and Law of the Russian Academy of Sciences has been working on the development of the concept of the Information Code. The institutional approach forms the basis for systematization and codification of legislation.

The structure of the Code involves the following institutions: objectives and principles of legal regulation; legal status of the participants; conceptual apparatus of the information law. A special part of the Code includes three (for the time being) superinstitutions, which are developed in specific institutions and sub-institutions. The following superinstitutions are distinguished: 1. information technologies and information resources; 2. realization of general and subjective rights of subjects in the information sphere, including the Internet; 3. legal support of information security. The initial version the Information Code was reflected in publications and conference materials on this issue.[13] At the Institute of State and Law of the Russian Academy of

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[13] INSTITUTE OF STATE AND LAW OF THE RUSSIAN ACADEMY OF SCIENCE. *Systematization and codification of information legislation*. Moscow: Kanon+, 2015. p. 215; INSTITUTE OF STATE AND LAW OF THE RUSSIAN ACADEMY OF SCIENCE. *The concept of the information code of the Russian Federation*. Moscow: Kanon+, 2014. p. 190.

Sciences, a great deal of work is being done to streamline the conceptual apparatus of the information law and to resolve information security problems.[14]

It is possible to predict the influence of information law on the legal system in general. From the perspective of information law as well as environmental and energy law, tendencies for changes of a larger scale can be observed. The formation of the super-branch of humanitarian law is being discussed. This shows that the legal system of the Russian Federation, which includes more than 30 branches of law, responds to changes that occur in the life of society. The branches of law and legislation are changing not only in terms of quantity but also according to the source of the needs of modern life (ecology, energy, economics, civil society institutions).

Owing to the emergence of new complex branches, changes in the roles and core branches of law, civil and administrative, are possible. The following new branches of law may appear: "Right of ownership and economic development" and "Right of public administration" (instead of Administrative law), the complex branch "Legal bases of the subjective rights and responsibilities of a person and a citizen". These new branches of law will significantly affect the structure of social and economic development as well as the development of administrative law.

The research methods applied in the study of information processes and the potential of legal regulation are of great importance.[15] The Institute of State and Law of the Russian Academy of Sciences is developing models for implementation of the "Instrumental-legal approach". This approach helps evaluate the efficiency of information and legal regulators taking into account increasing problems of information security. The research findings have been published, containing a number of organizational and legal recommendations.[16] The above-mentioned problems in the field of information technologies require further examination. Thus, it is vital to promote interbranch cooperation in the Russian legal system and inter-disciplinary cooperation, including such disciplines as philosophy, sociology and other human sciences.

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