

V.V. Kochetkov

Philosophy of the Russian Constitution: Russian Values and Democracy

***Abstract.** This article discusses, for the first time in domestic scientific literature, the axiology of the Russian constitution in its connection to the Russian sense of justice. The author demonstrates that constitutionalism, as a public law ethic, streamlines the fundamental Russian values (such as the volya and pravda) so that these axial values of national justice become axiological bases of the constitutional model of private and public autonomy. On this basis, the article analyzes the causes of failure in the construction of the concepts of national identity in the form of the “Russian idea” in the past, and modern “political” interpretations of the Russian Constitution of 1993. The author does not agree with those who believe that its ideals are contrary to the national sense of justice and that it necessarily entails the issue of changing it. On the contrary, the contradictory constitutional practice of law enforcement has less to do with the inconsistent protection of the constitutional system, fixed in Chapters 1 and 2 of the Constitution of the Russian Federation and in the subsequent chapters of the text of the Basic Law, than it does with the ethos of the modern power elite and the peculiarities of its sense of justice, which, according to the author, are a major obstacle to the realization of ideals of the 1993 Russian Constitution.*

***Keywords:** philosophy, constitutionalism, the Russian constitution, volya, freedom, pravda, justice, elite, democracy, patriotism.*

Introduction

The most democratic constitution in the history of Russia was adopted twenty years ago. The distance we have travelled during this time, from a state bordering on anarchy to the regime of managed democracy, shows that the success of any reform of the public body, the probability of

its reversibility and its results primarily depend on the paradigm (worldview) of its initiators and the value guidelines of their sense of justice. As is known, all peaceful attempts to modernize Russia, beginning with the «era of great reforms» of Alexander II to the adoption of the Constitution of the Russian Federation in 1993, were associated with the formation of some new legal institutions that should have guaranteed the freedom of its

KOCHETKOV Vladimir Valeryevich — Doctor of Philosophy, Docent, Department of State and Municipal Management, Academy of Civil Defence of the Russian Ministry of Emergency Situations.
141435, Moscow region, Khimki, Novogorsk, Academy of Civil Defence of the Russian Ministry of Emergency Situations

citizens. However, in practice their inconsistency resulted in disappointing results and, as a consequence, in the revival of authoritarianism. It seems that such a result was predetermined by the initial world outlook of the ruling Russian elite of that time. This paper is devoted to the explanation of this puzzle in Russian history, based on philosophical and axiological explication of the 1993 Constitution and the fundamental values of Russian justice.

First, let us define the concepts. Some foreign and domestic scientists are trying to prove that Russians do not need democracy. Supposedly, to a Russian, democracy is a totally unfamiliar concept, therefore it is absolutely worthless. The current representatives of the ruling elite are in sympathy with this point of view. «For example, using its advantage, the Putin administration claims that due to a long tradition of arbitrary power, prolonged existence under autocracy and Soviet totalitarianism, Russian society has an extremely low level of civic awareness; liberal values are shared by a relatively small part of the population, etc. The conclusion, which follows from this statement, is that building of democracy and the rule of law is merely an «objective» of political development, rather than a «means» of state functioning; democracy cannot be characteristic to a real functioning state system...».¹ As a result of such interpretation of Russian history, the current leaders of the country automatically become indispensable rulers, or at least non-alternative ones, who can ensure the stability of society, and the absence of crises and turmoil, as well as preventing extremists and radicals from coming to power.

Oddly enough, even some opponents of the «managed democracy» viewpoint adhere to such views on Russian history. For example, a prominent political scientist, V.B. Pastukhov, sticks to this position. He believes it is national culture that determines the character of power, just as the human genome determines appearance. «Russian cultural code can be called European at a stretch,

still less is it similar to Asian. So, no matter how much European makeup you put on the Russian state, Eurasian cheekbones still protrude».² Based on this, he believes that in order to change the power foundation, Russia needs a cultural revolution. Moreover, «because of the traditional weakness of Russian civil society, today, there is no other force but the state that could initiate this cultural revolution».³

From our point of view, this position is too simplistic or extremely biased, typical of the Russian elite's sense of justice. Moreover, in order to justify its unlimited domination, it has even developed the ideology of the «*Russian national idea*», and if we follow the understanding of the Russian idea proposed by I.A. Ilyin as a set of concepts that express the historical identity and special vocation of the Russian people,⁴ it is safe to say that in a thousand years of the Russian history, there have been three serious attempts to develop and implement the concept of a «Russian national idea».⁵

Historically, the first *concept of the Russian national idea* accompanied the formation of the Russian state before the modern era. From the mid-15th century, the princes of Moscow became known as autocrats (from the Greek *autokrates*, i.e. sovereign) and tsars (an adaptation of the Latin *Caesar*) more and more insistently; this was formalized in 1547. Before that, those titles were used exclusively in relation to the Khan of the Golden Horde and the Holy Roman Emperor. Their very acceptance already suggested the world wide mission of the Russian ruler. Over the following century, those rulers began claiming imperial powers on the grounds that they were the only Orthodox sovereigns and, essentially, the only authentic Christian rulers in the world.

² Pastukhov V.B. Restoration Instead of Reformation: Twenty years that shook Russia. M.: OGI, 2012. P.7.

³ Pastukhov V.B. Restoration Instead of Reformation: Twenty years that shook Russia. M.: OGI, 2012. P.8.

⁴ Ilyin I.A. On the Russian idea // Russian idea. Compiled by M. A. Maslin. M.: Respublika, 1992. P. 437.

⁵ Outset that we will not have to deal with theories of certain Russian thinkers refined and detached from reality, but with those concepts that united the Russian elite at a certain historical stage and led to specific actions for their implementation.

¹ Gudkov L.D., Dubin B.V., Levada Yu.A. Problem of the «elite» in today's Russia: Reflections on the results of a sociological research. M.: Liberal Mission Fund, 2007, P. 53.

The idea of opposition to the hostile environment united the Russian people, and therefore an autocrat was endowed with power not limited by any laws (neither divine nor natural). Ivan III came up with the following formula: «The Emperor is not obligated to kissing the cross before his subjects».¹ Subjects of the Russian Tsar were literally his slaves, whom he was free to treat as he wanted. They had no rights, only duties.

Russian clergy strongly supported these claims, since, according to Orthodox doctrine, the church could not exist without the emperor. It was no coincidence that the first Russian national idea was formulated among the Orthodox clergy in the debate between the «non-possessors» (the brightest representatives of this line of thought were Nil of Sora and Maxim the Greek), and Joseph of Volokolamsk and his followers. It is among the Josephites that appeared the slogan «Holy Russia», which, for some reason, was in danger and thus could easily be corrupted by any foreign, including Greek (Orthodox!!!), influence.² It is significant that the Josephites rejected any logic and reasoning. In such a way, one of them, a monk called Filofei, author of the famous thesis, *Moscow is the «Third Rome»*, directly warned the Russian people against excessive «philosophising».³ As a result, «all classes of the nation, from the highest to the lowest, excluding slaves, were attached to public service».⁴

As we know, the consistent implementation of the first Russian national idea led to Oprichnina, and then to the Time of Troubles, when the fate of Russian ethnicity itself was questioned, as well as to the full economic and technical backwardness of Russia by the end of the 17th century, and as a

result, to the Petrine reforms, which were implemented in a violent way. During the former, the monarchy itself created a new institutional and social base in the form of officialdom (usually recruited from the serving nobility) and «entrepreneur» merchants, who were completely dependent on the needs of the royal treasury and the arbitrariness of bureaucrats. It should be understood that for the vast majority of the Russian nobility of the time, the policy as an institutional way of implementing the group interest had no value, as their material interests were protected by authority, and so they preferred not to get involved in politics. This became especially evident after the Manifesto on Freedom of the Nobility (1762), which guaranteed noblemen and peasants serfdom for the land, and freed them from the obligation of public service. From that moment, the Russian nobility began to lose its position and power as a social force, and bureaucrat statist came to the forefront.

It is no accident that the second Russian national idea was formulated among the officials. As one researcher accurately described the spirit of that era: «The government circles of that time were dominated by people who could not get used to the fact that society was exercising its own intellectual movement: autonomous, independent and not having anything to do with the official nature. They were accustomed not only to the fact that every action was taken with the permission of the authorities, but that they were taken by the authorities themselves; even an entrepreneur, who had not previously served, was made an officer due to his very enterprise».⁵

Another important factor in the emergence of a new Russian national idea was that it appeared as a response to «destructive» foreign ideas, which, in the opinion of the Emperor Nicholas I, underlay the revolt of the Decembrists. S. S. Uvarov, the Minister of Education and the chief ideologist of the reign of Nicholas I, advanced the doctrine of «*official nationality*», the essence of which was summarized in the following triad: *Orthodoxy*,

¹ Sergeevich V. I. Lectures and research on ancient history of the Russian law. M.: Zertsalo, 2004. P. 118.

² Message of Philotheus, a hegumen of Elizarovskaya desert, to the great Emperor of All Russia Vasily Ivanovich. Cited from: Sinitsina N. V. The Third Rome: The Origins and Evolution of Russian medieval concept (15th–16th century). M.: Indrik, 1998. P. 26.

³ Budovnits I. U. Russian Publicistics of the 16th century. M.: Gospolitizdat. 1947. P. 175.

⁴ Vernadsky V. G. Mongols and Kievan Rus». M.: AGRAF, 2004. P. 345.

⁵ Skabichevsky A. M. Essays on the history of Russian censorship (1700–1863). St. Petersburg: Obschestvennaya polza, 1892. P. 41.

Autocracy, Nationality.¹ He wrote: «... In the midst of a rapid fall of religious and civil institutions in Europe... we ought to strengthen the country on solid grounds on which rest the prosperity, strength and life of the people... Without love for the faith of our ancestors, both the people and every single person must die. A Russian, devoted to his fatherland, will not agree to surrender *Orthodoxy*... *Autocracy* is the main condition for the political existence of Russia. The Russian Colossus rests on it as on a corner stone of his greatness. Alongside these two national principles there is the third one, no less important, no less strong: *Nationality*».²

As in the case with the idea that *Moscow is the «Third Rome»*, we will not find a thorough justification of the «*official nationality*» in the works of the ideologists of the time. There is another similarity: «Russian character» and «nationality» are closely linked with Orthodox Confession and autocracy (authoritarian power) at the ontological level.³ In other words, both concepts suggest that specific features of the Russian life are, in Hegelian spirit, a manifestation of certain invariant ideas of Russian existence, which are *ex officio* explicated solely by the government officials. These ideas have become not only the ideological facade of the Russian government and justification of its foreign policy, but also a criterion of patriotism for Russian society.

The only difference was that the «*official nationality*» doctrine was implemented using a variety of bureaucratic (through the education system) and police (censorship, persecution of dis-

sidence) measures. At first glance, the authorities seemed to have succeeded in that: Russia avoided the revolutionary upheavals that struck Europe in 1830–1840. That convinced those who supported that concept in their faith in a special Russian way. The severity of authority, which prevented the formation of a civil society, was confused with a stable development of the nation, based on the people's vote of confidence to the elite and the solidarity of civil society.

It is no exaggeration that the doctrine of «*official nationality*» defined the activities of the Russian tsarist regime up until its break-up in 1917, which marked the collapse of the Russian Empire. For the next seventy long years, the fate of Russia and its multinational people fell into the hands of those who supported the destruction of all the old social and political institutions, as well as the construction of a new and just society according to the canons of the *communist ideology*.

What happened next? Up until the mid-1950s, the idea of *world revolution* dominated the minds of the Soviet elite; in this regard, the Russian people were considered as both the stoker and the fuel of this global fire. However, with the advent of weapons of mass destruction, it became apparent that ideologists of the process might also disappear in the fire of the world revolution. Then came the argument of «*the possibility of peaceful coexistence between socialism and capitalism*». And, since the war became impossible and pointless, there was a need to justify the hardships in the form of consumer and financial insecurity, political repressions and the like, experienced by Soviet citizens in anticipation of the global triumph of communism.

For this purpose, a new idea about the special role of the Soviet Union (Russia) in the world cropped up from intellectual reserves, disguised as communist ideology. The only difference was that now *the fate of our country consisted in becoming a stronghold of the world socialist system, building communism under the leadership of the Communist Party for the first time in history, and, therefore, becoming a beacon for the rest of «immature» humanity*. For those benefits, which included being the first country to reach outer

¹ It seems that this triad was consciously formulated as a response to the slogan of the French Revolution, i.e. «Liberty, Equality, Fraternity».

² Uvarov S.A. Decade of the Ministry of Education, 1833–1843.// Uvarov S.A. Selected Works. M.: POSSPEN, 2010. P. 347–348.

³ Maybe that is why a prominent dissident of the time, P. Ya. Chaadaev, believed that to change the Russian orders, it is necessary that our country adopted Catholicism. Later, the great domestic philosopher V.S. Soloviev, who was the author of the concept of «Russian idea», had the same reasoning (with the difference that he adhered to ecumenism). At the turn of the 19th — 20th century, dissatisfaction with the official Orthodoxy permeated all classes of the Russian society, which led to the God-seeking and God-building both among the elite and among the people. This, in turn, undermined the legitimacy of autocracy.

space, build communism and take the lead in the field of ballet and in other areas of competition with the ever-decaying West¹, *Soviet people* had to pay a heavy price; namely, to waive the right to any private and public autonomy. The bankruptcy of the Soviet Union and the Communist Party in 1991 drew a line under just such a national idea.

Thus, it is safe to say that the three best-known Russian attempts to construct a national idea had the following archetypal traits. *Firstly*, all of them were trying to implement the predication of individual dignity, which consisted in serving outside interests. *Secondly*, the right to private and public autonomy was sacrificed to the interests of the totality (the people), which embodied the state. *Thirdly*, at the ontological level, the interests of the totality (the people) and the state equated with the interests of the elite and its method of ruling. *Fourthly*, all the Russian national ideas were distinguished in dogmatism and, as a rule, were at odds with the development of the arts and sciences of the time at the gnoseological level. And *fifthly*, they primarily served the task of legitimizing the domination of specific individuals in the eyes of the world community, whereas within the country, based on the above archetypal traits, it was usually staked on violence used in one form or another.

It seems that the tragedy, which resulted from all the aforementioned concepts of the Russian national idea, as well as the attempts to liberalize and modernize a particular Russian political regime, was not accidental and was not so much due to the unfavourable external circumstances, but due to the insolvent government, be it under the rule of tsars or General Secretaries. Its main flaw, apart from the above, is that *these concepts of the national idea did not express the core values of the Russian people, namely the volya and pravda* whereas without these foundation values, the «Russian national idea» or a legal reform becomes a «fig leaf» for hiding the huge selfish ego of the Russian ruling elite.

Certainly, the history of the Russian state is not replete with examples of the successful

functioning of democratic institutions. However, it would be an obvious logical mistake to draw a global conclusion about the whole structure of national life on that basis. Following this logic, it turns out that, on the one hand, the state is completely identified with the people, when in fact, logically and historically, this is a phenomenon of a different order. The state is only a set of institutions and a group special people that implement the control function of the common national affairs in a certain area. In this regard, people are nothing but the material and spiritual foundation of the state. In the world, there are people without a state, but history knows no states without people, and since the state controls authority, it can have a singular corrupting effect on people. The reverse process — of the people corrupting public institutions- is unknown in history. Consequently, if the state and its elite degrade, such power cannot reform itself. And that is where the creative energy of the people is required for constructing a new state.

On the other hand, the history of every nation is constantly changing. The human species is distinguished from the animal world by the ability to only not adapt to the environment, but also actively change it into conformity with its needs, values and level of knowledge. Therefore, the fact that the Russian people were unfamiliar with the concept of democracy in the past, does not imply that they do not need it now or in the future.

Actually, if we consider this problem from the standpoint of Russian values, i.e. *volya* and *pravda*, we will get very different results. *Volya* and *pravda* are the core of the Russian national soul, which has been described in the best works of Russian literature with empirical certainty. The very formation and development of Russia as the largest Eurasian empire was an unforeseen consequence of the Russian people's desire to realize these ontological values. As noted by N. A. Berdyaev, the almost peaceful territorial expansion of our state until the middle of the 18th century was due to the escape of the Russian population from the tyranny of the landowners and royal officials at the centre, to the outskirts

¹ The juxtaposition of «Decadent West» and «Young Russia» is also quite common for the mentality of the Russian elite, which is reflected in all three concepts of the Russian idea.

and new lands in search of the opportunity to live according to the *volya* and *pravda*.¹

The main problem in comparing these basic national values with those of democracy is that the concepts of «*volya*» and «*pravda*» in Russian language are very multi-valued. Thus, in the dictionary of V.I. Dahl, «*volya*» is determined as freedom, spaciousness of actions and the absence of coercion; superiority; power or strength, right and desire.² The situation is similar to the concept of «*pravda*». V.I. Dahl gives the following definition: «*Pravda* means the verity of deeds, verity of image, verity of welfare; justice, fairness; righteousness, legality, absence of sin».³ In this case, we are dealing with a syncretic unity of objective and subjective characteristics of human existence. In other words, the main problem in developing the philosophy of the Russian constitution is overcoming the ambivalence of the ordinary understanding of the basic values of the Russian people and rationalizing them, which should determine the practice of state building. It seems that the most appropriate paradigm for the rationalization of ontological Russian values is constitutionalism, as a certain form of justice, which has developed an effective methodology for human dignity.

In a broad sense, *constitutionalism* should be understood as the ethics of public law, as well as the actual practice of state-building, deduced from its initial values, which considers it possible and necessary to build a governance system on a rational basis (the relationship between a citizen and the government), as well as between citizens and sovereign states. This form of justice is based on the recognition of the equal dignity of every freely definable (sovereign) subject of society (an individual, a group of citizens, the nation) or the international community (the state). The recognition of dignity is realized through the predication of natural and inalienable (which is the guarantee of freedom of mind and will under the rules of conduct of a given society) rights

(freedom to do/not to do something) of citizens (associations of citizens, nations, states) provided they are recognized by the latter, and the totality of rational rules of public, state and interstate life is honestly followed. In philosophical words, *constitutionalism is a certain theoretical paradigm of justice, which solves the task of developing certain principles of equitable social life organization that allow the realization of private and public autonomy for all social actors*. In constitutionalism, such categories as «freedom», «justice» and «human dignity» are fundamental values.

From this perspective, let us consider the following rationalization of basic Russian values: in Russian terms, a decent life is nothing but a consistent combination of freedom (*volya*) and justice (*pravda*). In this case, freedom should be understood as the private and public autonomy of a person, where private autonomy is the ability of citizens to realize their personal life project at their own risk, and public autonomy is a personal responsibility for the implementation of Russian values in society. In this context, justice can only mean one thing — it is everything that contributes to the private and public autonomy of citizens in our state. This also suggests that the search for justice is infinite and no historically accurate state of society can be regarded as ideal; only a fair policy justifies the fact that a particular politician is in charge of the State.

What is democracy then? After all, everyone, including the Communist party nomenclature, the «democratic» Boris Yeltsin and the statist Vladimir Putin, attempted and still attempt to fill this universal human ideal with its specific content, thereby justifying their unlimited power. The essence of their ideological manipulation can be expressed in these words: «Democracy is the unlimited power of the Democrats. I am a Democrat. Therefore, democracy means my unlimited power». It is difficult to actually consider periodic elections of the president or members of the Politburo, who have unlimited power, as a democracy. From the stand point of basic Russian values, **democracy is nothing but a set of public institutions that promote the rights of individuals to private and public autonomy,**

¹ Berdyaev N.A. Fate of Russia. M.: Mysl, 1990. P. 66.

² Dahl V. Explanatory Dictionary of the Living Great Russian Language in 4 volumes. vol. 1. M.: Russkiyazik, 1989. P. 238.

³ Dahl V. Explanatory Dictionary of the Living Great Russian Language in 4 volumes. vol. 3. M.: Russkiyazik, 1990. P. 378.

as well as a set of specific procedures aimed at promoting public managers able to implement a fair policy. Democratic ideals consist of the fact that only the Russian people, rather than national leaders, presidents or parties, are the foundation on which our state rests. That is why only the people are entitled to confer powers to a leader.

But how are we to ensure that the will of the people is not distorted and perverted by the authorities? As a world view, constitutionalism comes from the fact that the space of freedom only occurs outside the discretion of the authorities. For this form of justice, contraction of freedom and opposition to authority permeates the entire system and all levels of the social division of labour in any type of social circle (family, primary workplace, confessional union, tribe, modern state, etc.). Therefore, it is necessary to limit and divide power, because in its internal logic, this social institution tends towards universality. It should be clearly understood that any power has a tendency to self-expansion. This is due to the fact that, essentially, power is nothing but monopolization of a specific social function by some social subject, namely the function of rational goal-setting, organization and control (i.e., governance), which is the main characteristic of social life. In other words, the phenomenon of power in social being occurs as a function of leadership, but due to its structural features, it tends to dominate. To prevent this from happening, we need to limit the space of power and divide it. History clearly teaches that the greater the power, the less the freedom, and vice versa.¹

At first glance, in today's Russia the area of freedom is legally protected by the state recognition of the inalienable personal, civil, political and socio-economic human rights as a priority in its activities, which is fixed in Article 2 and in the text of Chapter 2 of the 1993 Constitution.

¹ An extreme inference from this theoretical assumption is anarchism, which calls for the complete elimination of the state as the organizing institute of people's lives. But unfortunately, a society without institutionalized management in the form of public authorities is doomed to degradation. This is connected not only with the level of consciousness of individual citizens, but also with the division of labour, which is essential for the development of such historical essence as the people.

However, the detailed mechanism of the Russian Democratic Federative Republic is described in Chapter 3 - "The Federal Structure", Chapter 4 - "The President of the Russian Federation", Chapter 5 - "Federal Assembly", Chapter 6 - "Government" and Chapter 7 - "The Judicial Power". As practice has shown, it is this unclear and non-substantial definition of the constitutional order that has created the opportunity to distort these principles to serve the selfish interests of the Russian ruling elite. For example, the principles of the legal state and the supremacy of law have been reformulated in the principle of «vertical of power», which has also violated the principle of federalism. The concept of «sovereign democracy» has completely emasculated political diversity and distorted the principal division of powers. Moreover, such «creative» interpretation of the constitutional foundations is supported by the Constitutional Court of the Russian Federation, whose decisions are based more on a literal interpretation of the text of the basic law, as in, «since something is not explicitly stated in the Constitution, anything that seems politically expedient is allowed».

We shall illustrate this situation by analysing Article 1, Article 10 and Article 11 of the Constitution in their logical connection with Articles 80–93, 94–109, 110–117 and 118–129, which describe the principles of the executive, legislative and judicial powers in the Russian Federation. In other words, we shall see the way our federal republic implements the principle of the division of powers.

Thus, according to Article 11 of the Constitution, the state power is implemented by the President, the Federal Assembly, the Government and the courts of the Russian Federation. Obviously, such a simple enumeration indicates that in our country, the number of sources of authority exceeds those three that are known worldwide. As follows from the text of Article 94, the Federal Assembly — i.e. Parliament — is a representative and legislative body, whereas, according to Article 110, part 1, executive power is exercised by the Government. What is the place of the President in this system

and how do we legitimize the individual branches of power in Russia?

According to Article 80, part 1, the President of the Russian Federation is the head of state. In this case, there is only one source of legitimation of the President, namely, nationwide elections on an alternative basis (Article 81, part 4). The Constitution does not imply that such legitimation may be the appointment of a «successor» of the President. Such a state of affairs turns democratic elections into an imitation. Moreover, this situation is contrary to the very essence of the constitutional status of the President as the head of state, who is supposed to be the guarantor of the Constitution and the rights and freedoms of a man and a citizen (see part 2 of Article 80 and 82), i. e. his/her constitutional and electoral rights.

What does it all mean? According to the position of the Constitutional Court: «... while remaining outside the three traditional branches of the uniform government — i. e. legislative, executive and judicial power — the President integrates the Russian state and, being endowed with considerable law-making powers by the Constitution, controlling the executive branch and performing certain quasi-judicial functions as an arbitrator in the disputes between public authorities, he is legally and practically «present» in all authorities, determining the efficiency and effectiveness of all government institutions in the Russian Federation».¹

In order to provide the Russian President with an opportunity unprecedented in modern world history, he has been endowed with a comprehensive staffing authority in the formation of the Government, the Presidential Administration, the federal body of judges and management of higher courts, heads of the executive authorities of the Russian Federation, the Prosecutor's Office, the Central Bank and many other government agencies. He appoints the key figures in the systems of defence, security and law enforcement. In addition, the President has the right to preside over meetings of the Government (Article 83), and, due

to his constitutional powers, effectively exercise leadership of the government.

Curiously, the Constitution does not contain a direct characteristic of the Government as the supreme executive power in the country, headed by the Prime Minister (Articles 10, 11, 110–117). The Prime Minister's task lies in defining the main activities and organizing the work of the government (Article 113), but there is not even a mention about the Prime Minister directing the Government. The determination of the main directions of domestic and foreign policy is the constitutional power of the President (Part 3 of Article 80 and 86). He realizes this authority through the addresses to the branches of the Russian Federation government, by signing/not signing the laws adopted by the Federal Assembly, and through publication of the direct orders and instructions.

For even greater «coordination» and «integration» of all branches of the government, the President, in addition to legal and human resource influence, has the so-called political reserve (Article 84) — i. e. the right to dissolve the State Duma (lower house of the Federal Assembly, the only body of state power in the Russian Federation formally independent from the President) in case of disobedience, as well as the right of unmotivated resignation of the Government and heads of the federal subjects. Thus, in terms of his powers, the President is a tsar whom we select once every 6 years. Moreover, it is a wide range of his powers enshrined in the Constitution that makes it possible, if the «tsar» would be unkind (selfish or power hungry), to implement any cynical perversion of the Russian spirit (freedom and justice) of our Constitution.

In this regard, how does the situation with the Federal Assembly of the Russian Federation look? According to Article 94 of the Constitution, the Federal Assembly is the parliament of the Russian Federation, i. e. a representative and legislative body. The only constitutional means of enforcement of the function representing the interests of the multinational people of Russia and the expression of their will in the form of a law by the Federal Assembly is the order of its election, as well as the control functions of the

¹ Commentary to the Constitution of the Russian Federation. / Edited by V. D. Zorkina, L. V. Lazareva. M.: Eksmo, 2009. P. 679.

parliament. Since the Federal Assembly of the Russian Federation is bicameral, the Constitution stipulates that the State Duma consists of 450 deputies elected for a term of 5 years, and the Federation Council is formed of the Federation representatives (one representative from the representative and executive body of the state power).

In fact, the fundamental question, namely the specific procedure for the formation of the Federal Assembly, was consigned to the political situation by the authors of the 1993 Constitution, which, strictly speaking, was reflected in subsequent events. The procedure for the formation of chambers of the Russian parliament was repeatedly revised until the so-called «vertical of power» was built, which, in fact, abolished the division of powers in our country. For example, the procedure for forming the Federation Council has been revised six times. First, its members were selected, then it included *ex officio* governors and heads of legislative assembly of the Federation, now it consists of representatives of the Federation, one from the executive and legislative powers; the residency requirement has been adopted and abolished several times. If we add that the head of the subject could be unreasonably (due to loss of confidence) dismissed from his post, the distortion in the mechanism of representation of people's interests and the principle of division of powers will become apparent, not to mention the fact that the principle of federalism merely remains valid on paper.

The formation order of the lower house of the Federal Assembly, i. e. the State Duma, is somewhat different. Since Article 96 clearly indicates that the State Duma is elected for five years, it turns out that Part 1 of this Article establishes an important principle of its operation, namely the periodic update of its membership. After all, when forming representative bodies, citizens exercise their right to participate in managing state affairs, but since the way of electing the deputies of the State Duma is not directly stated in the Constitution, the authorities determine it themselves. As candidly noted by the Russian Constitutional Court in the definition from 20.11.1995, No. 77-A: «The choice of a particular

option and its consolidation in the electoral law depends on the specific social and political conditions, and is a matter of political expediency».

Deputies of the State Duma of four convocations (1993–1995, 1995–1999, 1999–2003 and 2003–2007) were elected using a mixed system: 225 deputies were elected in single-member constituencies, formed in Russian regions (a so-called majority system); another 225 deputies were elected in the federal electoral district in proportion to the number of votes cast for federal lists of candidates nominated by electoral associations or blocks (proportional system). Under the Law on Election of Deputies of the State Duma, which came into force on 07.12.2006, the State Duma deputies are elected only in the federal electoral district in proportion to the number of votes cast for federal lists of candidates for the State Duma. Since the mass demonstrations of 2011/12, there have been plans to return elections in majority districts to the State Duma. This will lead to an increase in the number of athletes and cultural figures among deputies, oriented to serve the interests of the elite, but will not improve the quality of laws.

It is safe to say that it is through constant adjustments to the mechanism of formation of the Russian Federal Assembly that the elite, the bearer of the sense of «sovereign democracy», has managed to distort the principles of popular sovereignty and division of powers that are necessary to ensure *volya* and *pravda*. The absence of a clear constitutional regulation of this sphere of social relations significantly simplified this task. Basic constitutional democratic institutions face the challenge of limiting power and creating a situation where it is impossible to distort the will of the people. It seems that the true will of the people can be formed only in the discussions of the representative (legislative) bodies. It is there, and not in the act of voting — when people find themselves under the influence of the media and personal likes or dislikes towards party programmes that tend to be forgotten immediately after the election — that a rational discussion of possible solutions to the challenges faced by the State should take place. Only decent and honest deputies elected in free

elections, rather than appointed by the powers that be, will be able to articulate the will of the Russian people. Unfortunately, in today's Russia, Parliament does not have independent value as a legislative power. Its function is essentially reduced to giving the force of law to arbitrary officials from various ministries and departments. Even the concepts and texts of laws are produced mainly in the bowels of executive power, with only deputies voting for them, which fundamentally contradicts the principle of the separation of powers.

In a constitutional state, executive power must be accountable to the legislature. This is achieved not only in the discussion and in the annual adoption of the budget, but through the tools of parliamentary investigation and a vote of no confidence against a particular minister. The former mechanism allows the public representatives to directly, and in detail, understand the problems of governance, ignoring the bureaucratic barriers, and the latter allows the exertion of point wise influence on the current policy of the government through the possible resignation of a particular minister, disregarding the president's media image. In addition, the Russian Government must not form *de facto*, but be *de jure*, headed by the President, who must bear the full political and legal responsibility for his work. In the Russian Constitution, these mechanisms do not exist; the President rules everything while not being responsible for anything. The government is supposed to be an independent branch of authority, when it is, in fact, a collegial body without individual ministerial responsibility. It is obvious that in such a system of state administration, it is not the actual result of work of a particular politician that is important, but the loyalty to his patron who brought him to this position.

Thus, the constitutional problem of the representative (legislative) power control over the executive power in the Russian Constitution remains unsolved. Consequently, the overall balance of powers is severely distorted in favour of the President and the entire executive power that he builds and fully controls. It undermines the principles of freedom and justice at the heart of

Russia's political system and thus severely limits the rights of the Russian people.

In a situation where the text of the 1993 Constitution is logically incoherent, the third institution, i.e. judicial power, could play a crucial role. According to Article 118 of the Russian Constitution, in our country, justice is administered solely by the court. Moreover, «the administration of justice is a special kind of exercising of state power... By applying the general legal requirement (rule of law) to the specific circumstances of the case, the judge gives his own interpretation of the rules and makes a decision within his discretion». At this interpretation of justice, set out in the Decision of the Constitutional Court of the Russian Federation from 25.01.2001 No. 1-P, the role of a judge is critical to the functioning of a democratic system. That is why, perhaps, the appointment of heads of superior courts and their deputies is a career resource for the President, whereas the representative body only approves the proposed candidates. Although, according to Article 120 of the Constitution, judges are independent and subject only to the Constitution and the law, and the status of a judge is very high and well provided, the process of empowerment is not transparent and is completely dependent on the power vertical.

Moreover, unlike the executive and legislative power, the Russian judiciary is not consolidated and is divided into three mutually independent branches: constitutional, arbitral and general civil court justice. According to Article 126 and 127 of the Russian Constitution, the competence of the latter two branches partially overlaps, which creates a certain conflict of laws on jurisdictional matters. The specific character of the Constitutional Court lies in the fact that, according to Article 125 of the Constitution of the Russian Federation, its competence is determined first as consolidation of various kinds of legal acts subject to verification and official interpretation, and second as consolidation of certain competent entities appealing to the court. At the same time, the Constitutional Court itself may not consider cases on its own initiative. In other words, the activity of the Constitutional Court aimed at the

protection and interpretation of the provisions of the Constitution is reactive, i.e., consideration may begin either as a result of appeal from a certain authority, or in the case of final judgment of the court, because of infringement of the rights of a particular individual.

It is obvious that a major component of Russian justice is its personnel's dependence on the executive power. That is why the legal consciousness of the judiciary is based on equating the interests of people and those of the executive branch, although everyone knows that the interests of the government and people only overlap when the country is in trouble. In peacetime, however, the government's interest is in dominating the people, limiting their freedom and ignoring the principles of justice. Those who do not share the «state» ideology are not able to stay long in the ranks of the judiciary. Only the fear of losing their high material and social status can explain the fact that the Constitutional Court and other courts' members support the cancellation of governors' elections, change in the order of forming the Federal Assembly, elimination of unruly parties, removal of unwanted politicians from participation in elections as well as a de facto ban on referendums, meetings and demonstrations. That is why Russian citizens and even the oligarchs do not believe in a fair trial in their home country and often seek the truth in the European Court of Human Rights (the former) or in the High Court in London (the latter). The reason for this is clear. After all, a dependent judge cannot protect the citizen's right, be it an ordinary person or an oligarch, to private and public autonomy, that is, his right to freedom and justice.

Thus, the Russian Constitution of 1993 and the whole practice of its implementation to date strongly suggests a violation of the principle of separation of powers, both in terms of the balance of powers, and in terms of control over the executive authority. The situation is similar to other principles of constitutionalism (e.g., federalism, democracy, independence of local government, etc.). Without implementation of these principles, the last ones standing against the authorities' tendency to self-expansion, it would be impossible to

defend freedom and justice. The modern Russian elite delegitimizes itself primarily because its ethos¹ completely contradicts the fundamental Russian values and the public and legal ethics of constitutionalism, set out in Chapters 1 and 2 of the 1993 Constitution.

Thus, it is obvious that constitutional democracy itself is not contrary to the sense of justice of Russian citizens. Without it, we would not be able to exercise the fundamental values of the Russian people. It is also understood that the present ruling elite distorts its meaning for its own selfish purposes, resulting in uncontrolled power on the one hand, and citizens deprived of civil rights on the other. According to the apt definition of an academician, O. E. Kutafin, such a political system may be called an «imaginary constitutionalism». He uses this term to denote the theory and practice of constitutionalism, which «is fragile, may be reversed, with apparent transition probability of constitutional (by origin and political terminology) phenomena into their opposite, i.e. authoritarianism».² However, with this approach, we do not see how such distortion of the principles of constitutionalism is even possible. Therefore, from a legal point of view, the alleged constitutionalism should be defined as a situation in which the fundamental laws proclaim the rights and freedoms of citizens and form the main constituent bodies of state power, but in fact the people's right is not provided with any real guarantee of legal protection, and thus is reduced to a minimum. From a political perspective, the false constitutionalism is nothing but an attempt to extend the ruling elite's stay in power using constitutional state forms and terminology. It is this understanding of the nature of the «managed democracy» regime that allows us to explain the incredible cynicism and corruption of the current ruling elite.

Nevertheless, how do we make sure that the values of the Russian Constitution of 1993 are realized in running the state? Achieving this is

¹ In this paper, the ethos of a social group or class means the totality of value attitudes that are realized in mass behaviour.

² Kutafin O.E. Russian Constitutionalism. M.: Norma, 2008, P.7.

only possible by upgrading Russia's political system based on the principles set out in the first and second chapter of the Constitution, though not consistently disclosed in other chapters, as well as by changing the legal awareness and criteria of incorporation into the elite. Patriotism should be a leading value of the new Russian elite. From the freedom and justice point of view, patriotism is the love of the fatherland, in which the fundamental Russian values are implemented or must be implemented. However, this has nothing to do with the idyllic sympathy for Russian oddities and, of course, not a blind love of the modern injustice, corruption and immorality, which found its personification in the Russian ruling elite. **Based on the concept of *volya* and *pravda*, patriotism is a sense of personal responsibility for creating a space for private and public autonomy for all citizens of our country.** The current Russian elite, however, has replaced the concept of patriotism in order to implement their specific interests within the country and abroad. None of its members can explain what their actions contribute to the promotion of freedom and justice for Russian citizens. In fact, the modern elite imposes on people a passive patriotism as an uncritical assumption of their rightness; behind this lies a desire to maintain their power. Meanwhile, the modern Russian state can

exist and successfully develop only as an indivisible unity of territory and through people with common fundamental national values, as well as government institutions that implement them. The Russian Federation, as an organization of power on a certain territory with a shrinking population, does not fit the definition of an «established state». One can not remain sympathetic to wards such a state; it must be actively transformed, based on freedom and justice.

In this difficult situation, the explication of values of the Russian Constitution of 1993 and amendments to the text of Chapter 3 (regarding a clear division of authority between the federal centre and the subjects of the federation with the corresponding changes of the Budget Code of the Russian Federation), Chapters 4, 5, 6 and 7 (in terms of a clear separation of powers), as well as Chapter 8 (through the recognition of the principle of subsidiarity, which provides a real legal basis for the local government) will allow us to rationalize the basic Russian values, i.e. the *volya* and *pravda*, which will contribute to the implementation of public and legal ethics of constitutionalism, both in the legal awareness of citizens and in the ruling elite. It seems to be the only way to break the vicious circle of Russian constitutional reforms.

References

1. Kuvshinova 2008-Kuvshinova O. Thick-headed Citizens // *Vedomosti*.07.02.2013. P. 97–110.
2. Kutafin 2008-Kutafin O. E. Russian Constitutionalism. M.: Norma, 2008
3. Pastukhov 2012-Pastukhov V. B. Restoration Instead of Reformation: Twenty years that shook Russia. M.: OGI, 2012
4. Gligich-Zolotareva M. V. Fascination with “commonplaces’ and value component of constitutionalism // NB: Society and Politics.—2013.— no.3.— P. 296–317. URL: http://www.e-notabene.ru/pr/article_503.html.
5. Kodan S. V., Vladimirova G. E. Legal nature of the Basic State Laws of the Russian Empire of 1832–1892 in the assessment of Russian legal scholars // NB: Society and Politics.—2013.— no.6.— P. 218–253. URL: http://www.e-notabene.ru/pr/article_765.html.
6. Popov E. A. Concept of the State as a value-semantic system in the philosophy of law and statehood // NB: Law and Politics.—2013.— no.2.— P. 193–217. URL: http://www.e-notabene.ru/lr/article_454.html.
7. Ovsyannikova O. A., Kuznetsova A. A. Historical and contemporary socio-political foundations of Russian patriotism // NB: International Relations.—2013.— no.3.— P. 87–114. URL: http://www.e-notabene.ru/wi/article_9083.html.

8. Omelchenko N.A., Gimazova Yu.V. On democratic idolatry, chimeras of the Russian political liberalism and democracy in Russia // NB: Society and Politics.—2013.— no.9.— P. 153–182. URL: http://www.e-notabene.ru/pr/article_9254.html.
9. Gulyakhin V.N. Legal mentality of Russian citizens // NB: Law and Politics.—2012.— no.4.— P. 108–133. DOI: 10.7256/2305-9699.2012.4.310. URL: http://www.e-notabene.ru/lr/article_310.html.
10. Kodan S. V., Vladimirova G. E. Political and ideological, organizational and legal prerequisites for the establishment of the Fundamental Laws of the Russian Empire (18th century and the first quarter of the 19th century). // NB: Historical studies.—2013.— no.4.— P. 134–171. URL: http://www.e-notabene.ru/hr/article_745.html.
11. Khorina G. P. Democracy in modern Russian culture: Ideal versus Reality // NB: Culture and Art.—2013.— no.4.— P. 1–15. URL: http://www.e-notabene.ru/ca/article_6973.html.
12. Khorina, G. P. Power and Democracy in Russian Culture //.— 2012.— 12.— C. 64–70.
13. Sizemskaya, I. N. “Moscow is the Third Rome”: At the Origins of Russian Philosophy of History //.— 2013.— 1.— C. 60–68. DOI: 10.7256/1999-2793.2013.01.5.
14. Gurevich, P. S. World Perception Aspects of Russian Philosophy //.— 2012.— 6.— C. 128–132.
15. Koptseva, N. P., Luzan, V. S. Modelling of Culture and Cultural Policy in Russian Philosophy at the End of the 19th — First Quarter of the 20th Century //.— 2012.— 4.— C. 105–116.
16. Lazarev, V. V. Concerning Vasily Zenkovsky’s Understanding of the Evil in Russian Religious Philosophy //.— 2012.— 4.— C. 78–88.
17. Titlina, M. V. The Problems of Religious Freedom in Russian Philosophy, Theology and Law at the Turn of the 19th — 20th Centuries //.— 2011.— 8.— C. 157–165.