

# THEORY AND HISTORY OF STATE AND LAW

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## THE ESSENTIAL CHARACTERISTICS OF STATE POWER

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*The essence of power shows up in its functional displays which are probed by system-structural and system-functional methods. The ideal of power must become the result of unity of the valued and cognitive attitude toward reality. In all the public ideal of power reflects interests of social subjects and progress of public relations trend foremost. Such tendency is forming of the new view-valued doctrine of organization of state power and otgranichenie from current necessities authorities due to which sometimes this doctrine can be the mechanism of the spiritual enslaving of society. From the side of state power the change of going is needed near organization of imperious activity, increase in it of humanism, moral and responsibility.*

***Power, society, state, sovereignty, state power, division of authorities.***

The concept of power is interpreted differently in scientific literature. These interpretations derive from the complexity and versatility of this phenomenon, which concerns practically all spheres of human activity. Therefore the problem of power has been investigated by many sciences but interpreted differently. Thus, the philosophy deals with the power over objective laws of a society, sociology – with social power, economic theory

– with economic power, political science – with political power. Law deals with state power.

The problem of power has occupied the thoughts of people throughout history – since the time when man began to realize himself as he was. Social power manifested itself in different ways. Some people define power as the real ability of one of the elements of an existing system to realize its own interests within its framework. In this sense, power is the realization of these influences on processes occurring within the system. Others understand power as results, as the product of a certain purposeful influence. A third group believes that power represents mutual relations between people or groups of people, the essence of which is in the influence and intention to achieve balance [1, p. 35].

Many scientists approach the problem of the origins of social power differently. Thus, within the framework of a biological interpretation, power is considered the vehicle for curbing and binding human aggression which is rooted in the deepest fundamental instincts of man as a biological and social being. Aggression itself, as A. Silin states, is considered the instinct of struggle, med against brothers, and which is peculiar to both animals and men [2, p. 34].

Representatives of S. Freud's tradition speak of the instinctive and psychological nature of the ambition of power and subjection. They find their - purees in the structure of the unconscious that is formed under the influence of social conditions connected with early childhood; sexual suppression, education that cultivates fear, complacence and subjection [3, p. 133].

In science the most widespread notion of power is that it is «one of the main functions of a society's social organization and authoritative force, possessing a real ability to run people's activity by reconciling contradictory individual or group interests, and subjugating them to one will by means of persuasion or enforcement» [4, p. 53].

Today the approach to power as to a substance (a belonging, a thing in possession by a certain subject – a person, a union, a state body, etc.) is still applied. Such an approach is also peculiar to legal investigations. It is efficient in analysing the powers of state bodies, though other approaches are also popular. Power is considered to be a relationship between subjects, as a phenomenon, that has its own sources, including social ones. From a functional point of view, power is seen as the function that originates from a complex choice of actions in an interactive system. In such a way power can be understood from the point of view of its purpose. British investigator B. Russell calls power the realization of stated purposes. Power can be considered a particular type of behaviour [5, p. 25]. Thus the American scientist G. Lasswell points out that the power ambition of an individual is his or her means of 'improving life' [6, p. 83]. Spanish philosopher X. Ortega-and-Lasset wrote that «power means dominance of thoughts and ideas, that is, of spirit» [7, p. 119]. French author M. Foucault thinks that power has a great number of relations of force, but it has no subject: everybody has a certain portion of power [8, p. 367]. A psychological understanding of power has been determined by some western investigators. Thus the author of the theory 'of reduction of hierarchical distances', M. Mulder, does not consider the advantages of power as the main psychological mechanism of power but the ambition to achieve it as it is [9, p.192].

One of the methods of investigating power is a systematic approach, which does not consider it as individual relations peculiar to a behavioural and psychological view of power, but as a social system which is manifested in the interrelations of the parts and the whole. Such an approach is illustrated in the works of T. Parsons, D. Iston and others [10, p. 7].

Summarizing the different approaches, Russian scientist K. Gadzhiev stresses particularly that power has innumerable sources and supports and represents a many-sided phenomenon [11, p. 110].

Social power, like any power, first of all must have certain potential, the ability to self-realization. It cannot be realized if it is not necessary, but power must always be ready to realize such ability. If it cannot, it ceases to be power. One of the most important attributes of social power is its psychological and forceful character. M. Weber stated that power is «the ability to pursue one's own will despite opposition» [12, p. 53].

But pointing out potential and forceful relationships is not enough to define social power. Power is an essential element of any social organization in social life or life in a society. That is why English author I. P. Simon characterizes power as «the result of collective efforts», stressing its collective origin [13, p. 19].

Any power, state power included, seeks self-expansion, subordinating everything it can, and the bodies created by it often change their initial functions. Created under common purposes, they exert substantial effort and resources to ensure its self-preservation. Efficiency and economy are the most important problems of any state power [14, p. 41].

L. Petrazhitsky understood state power as a legal relationship and said that power is the rights of some in connection with the duties of others. «Under special power one should understand corresponding special, which is limited by a certain sphere of behaviour, the duties of some and rights of others. At the same time, the subjects of a supreme power exercise these functions of passing laws (legislative power), both judicial and executive. As can be seen, the investigator did not set out to provide a clear definition of state power. On the one hand he speaks about power as a legal relationship, and on the other about functions» [15, p. 204].

B. Hvostov approaches the definition of state power differently, saying «the supreme power of a state is generally as indivisible as the state itself. It does not represent the sum total of the separate powers, in between which there are gaps, but the integral whole». It is interesting to consider the author's approach to understanding the functions of power, among which are «legislature, justice and governance». What's more, power is not identified with function, but the functions (trends of activity) of state power are mentioned [16, p. 15].

One of the most popular conceptions of power is its understanding as that of enforcement. According to M. Bitin, power, irrespective of its outward manifestation, is in nature always enforcing because it is directed at subordinating the will of all the members of a society to a common guiding will [17, p. 112]. Indeed, social power of a public nature is public power that operates in a state organized society on the whole. Public power has a political character, as it is connected with the existence of asymmetrical society, and modern society is asymmetrical in all countries [18, p. 111]. A particular type of a public political power is state power. Only this power is legally authorized on behalf of the whole society to apply legalized and legitimate enforcement. Enforcement is a feature of power, but «a common mistake is to identify power with enforcement, which is only the most conspicuous of its instruments» [13, p. 7]. So, to speak about power only as enforcement is incorrect. Power is not complete if a subject does not achieve its goals. If the desired results are not achieved then great difficulties occur in overcoming the opposition of other people, therefore not showing the triumph of power, but rather its decline. Besides, it is not clear why the mobilization of people to achieve socially meaningful goals must be done through enforcement and violation. There are numerous other influential methods.

State power acts as a guarantor to the general integrity of a society, which is necessary for its existence. It is integrity that characterizes all that

is steadfast, stable and deep – everything peculiar to power as a system; it stipulates its unity, its dynamics, the coordination of its constituents and elements, and it removes society's antagonism.

Integral state power is an inwardly uniform power that has one source and relies on the general compulsory fundamentals of system formation: social equality, humanism, stability of social relations, economic unity and political, legal and territorial environment [19, p. 354].

Russian author M. Korkunov wrote that «State power as a power stipulated by people's realization of their dependence on the state, brings forth certain phenomena of a double nature. Firstly, it encourages people to do what they think is necessary for the state upon which they feel themselves dependent. Secondly, citizens are subject to the orders of certain persons appointed by state bodies» [20, p. 246].

The characteristics of state power as a power capable of subordination is true because the organizing influence of a state cannot be exercised based only on conviction. The realization of power admits the activity of specially authorized persons (organs) which is done by issuing commonly obligatory orders.

The ability of state power to exercise its organizational functions in a new fashion is considered today both in our national and in foreign scientific literature. According to Ukrainian scientists, society today is the unity of democracy, social state and principles of humanism. Only on this basis is it possible to create a sensibly organized society [21, p. 458]. At the same time American authors call such a society an 'administrative state', stressing its regulatory function [22, p. 46–50]. However, it is necessary today to consider a pattern of state power which is based on interrelationships and the specification of the priorities of a person's stable development, a person who appears to be the source of a state power. The organization, as it is known, does not limit freedom but on the contrary creates additional possibilities for its realization. The latter is known as 'the

paradox of freedom', first analysed by Platon. Unlimited freedom, wrote Platon, leads to the contrary – anarchy and self-will because without state (legal) protection and limitations it is possible for the mighty to tyrannise the weak. The analysis of this paradox was developed by J. J. Russo and I. Kant: the freedom of every person must be restricted but not above the limits necessary to provide the equality of freedom for everybody. 'Organized society' is seen by scientists as a certain form of restriction (and emancipation) of a person's individual freedom for the purpose of providing equality to all citizens in socially just, guaranteed, protected and financially healthy social and historical environments [21, p. 461]. We believe it is necessary today to provide a new organization of state power based on the priorities of steady and organized human development.

No society can exist normally if everybody is given the right to behave as he likes. As one Russian investigator V. Solovyov noted: «The demand for personal freedom already allows the restriction of this freedom to the degree in which it, in the given state of human society, is incompatible with the existence of a society or its well-being. These two concerns, which are equally morally obligatory, actually meet. This meeting brings forth the law». He therefore stresses that power inevitably appears to be the consequence of the social nature of a person himself. But as soon as the manifestation of power acquires a social character its main purpose becomes the creation and maintenance of public order, whose main instrument is power itself. What follows from this understanding is that people needn't create power. What they must do is to accept it and become subjected to it, therefore allowing order to be instituted. The search for order, as a rule, is accompanied by a search for power. Yes, power requires subordination. But the people subjected to it must not sacrifice their freedom [23, p. 457].

The investigation of the essence of power raises the question of the values of power orientation. Today humane values are gaining importance

for a society concerned with the most important goals of life, and organizing vital goals in a hierarchy at the top of which are phenomena reflected in the categories of the legal rights of people: freedom, dignity, equality, and justice. These values form the essential motivations of state power, determining the vital sensory pivots in different spheres: political and legal, social and economic, spiritual and cultural. We believe the ideal of power must be the result of the unity of a value-oriented and cognitive attitude and the existing reality. Generally the public ideal of power reflects first of all the concerns of social subjects and its tendency in the development of public relations.

The essence of power is manifested in its functional activity, which is studied within system-structural and system-functional methods. Considering state power as an integral system, it is recommended while analyzing it that the essence of power with the functions in which it is manifested be correlated.

Thus, Y. Kubko draws our attention to the fact that within the framework of a system of concepts of power, two independent approaches were developed: system-structural and system-functional [24, p. 32]. The systematic approach to understanding state power encourages authorized organs and executive bodies to exercise socially important functions, enhancing the weight of all branches of power, and evoking respect to them on the part of citizens. Finally, this leads to the optimization of power structures and the maintenance of their balance.

The above definitions of state power allowed A. Maly to distinguish four approaches to understanding it: as a forceful attitude; as an organ of the state; as a function; as a complex of authorities. The author is quite right to state that each of the approaches helps define the social function of state power and its role in regulating social relations. However such an understanding does not help to decide the nature of state power as a legal concept [25, p. 95].



These interpretations of state power have a political rather than institutional character. However, state power is not only a political concept but also a legal institution.

A state as an integral system of organs and structures which use various resources at present, takes a central place in the system of the social relations of power. Only separate state organs are entitled to violate and enforce adopted decisions. A state, in its nature, is the organization of an entire society that in one way or another reflects different interests. State power is extended to all citizens living on the given territory irrespective of religion, political views, or social status.

At the same time state power does not necessarily use force to achieve its goals. Ideological, economic and other methods of influence can be used. State power has a monopoly to force the members of society to accomplish its goals. The structure of power or the division of power is actually the division of the right to use it. When it is said that one person has more power than others, it should be understood that this person has greater freedom of action [26, p. 143].

The state as a system has great potential for self-preservation and restoring its sub-systems. It must be strong, which is to say well-organized, have a reliable budget with steady and real revenue, an efficient administration, and sufficient structures of enforcement. A state can exercise its functions if it has developed a system in which some state organs exert an influence on others and junior officials are subordinated to senior ones. This is ensured by the principle of sovereignty, which is to say the recognition of a state as the mechanism of the maintenance of public order and the cessation of anarchy; independence of state structures from any non-state organization and individuals; the leadership of law in regulating all relations and the self-sufficiency of the state's foreign policy.

At first, sovereignty was identified with the unity of power, its unlimited legal right. The modern content and meaning of 'sovereignty'

have changed under the influence of humanistic and democratic ideas. With the introduction of the principles of republican order, the division of power, federalism and the representation of sovereignty that is no longer understood as only one separate organ of state. With the introduction in political practice of the idea of a legal state, the principle of sovereignty is limited by man's inalienable rights and freedoms. Power has no right to ignore the law. At present unlimited power is no longer considered a feature of a democratic state's sovereignty. Sometimes the sovereignty of state power is objected to because pressure is exerted on it. French professor K. Reeper writes that the sovereignty of power is only theoretical as a variety of social forces, their representatives in parliament, trade unions and others influence it. Today sovereignty is recognized in a strong state power as working only within the limits of the law, recognizing political pluralism, and not creating obstacles to the legal rights and freedoms of individuals [27, p. 98].

«We must, finally, accept an unusual idea – wrote F. Hiyek – that in a society of free people the highest power in normal conditions must not have any positive-authoritative function, its function can only be prohibition; power must 'function' based on the existing rules so that its superior position is explained by its loyalty to the established general principles» [28, p. 193].

To sum up, new trends and tendencies of the evolution of modern state power should be elucidated.

In the modern social and political climate a significant change in values of power is occurring. Today it is necessary to provide a new organization of state power based on the priorities of steadily organized human development with the purpose of ensuring equality for all people in a socially just, guaranteed, protected and materially secured social and historical environment. That is why it is necessary, firstly, to study power as an integral system from the point of view of quality indices of its

organization; and secondly, to analyse it more boldly and perhaps balance the priorities of state power with regard to individuals.

Integral state power is an inwardly uniform power that has one source and is based on the general, compulsory fundamentals of the system's formation: social equality, humanism, the stability of social relations, and the unity of economic, political, legal and territorial considerations.

The unity and integrity of state power are ensured by steady relationships between the elements of its system. On this path, the social unity of power as the unity of the principle ideas and values of a society is of paramount importance.

The essence of power is manifested in its functional activity, which is analysed using the system-structural and system-functional methods. When considering state power as an integral system, the essence of power must be correlated with the functions in which it is manifested. The ideal of power must become the result of the unity of value oriented and a cognitive attitude to reality. Generally, the public ideal of power reflects firstly the concerns of social subjects and secondly the tendency of public relations to develop. This tendency results in the formation of a new doctrine of a value-oriented perspective of looking at the organization of state power and its dissociation from the current needs of authorities; as a result, this doctrine can become the mechanism of the spiritual enslavement of a society. On the part of a state power it is necessary to change the approaches to the organization of power activity, to increase its humanism, morality and responsibility.

State power is efficient when it develops organs of power with the ability to influence the other elements of the system, and subordinates junior officials to senior ones. This is provided by the principles of sovereignty and the unity of a state, and optimal patterns of interaction with society.

The sovereignty of state power in modern conditions is peculiar to strong state power that is based on law and recognizes political pluralism but does not create obstacles to the legal rights and freedoms of citizens. Under such conditions the organization of state power must take into account not only a vertically or horizontally divided system of organs, but also the interrelations of power and individuals, as well as the level of intellectual, cultural and moral characteristics of citizens.

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