

Artículo de investigación

Formal, informal and shadow power practices in the contemporary political space

Prácticas formales, informales y de poder oculto en el espacio político contemporáneo

Práticas formais, informais e de poder sombra no espaço político contemporâneo

Recibido: 20 de abril de 2018. Aceptado: 10 de mayo de 2018

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Abstract

The present paper considers various forms and practices of power-related interaction in the political system of modern society. It is noted that the institutional-normative and structural-functional aspects do not reflect the variety of forms and types of communication between public and power. The authors substantiate the methodological position according to which the activity of political subjects should not be considered in traditional theoretical and methodological coordinates, where attention is paid only to "positive phenomena", and power communication is not analyzed from the standpoint of "negative structures", i. e. those aspects which are not recognized as being fit into the dominant type of political and legal activity, into the framework of the emerging social order as a whole. The formal, informal, shadow and other power practices that exist in today's political space are considered in the work from this position.

Resumen

El presente trabajo considera diversas formas y prácticas de interacción relacionada con el poder en el sistema político de la sociedad moderna. Se observa que los aspectos institucional-normativos y estructural-funcionales no reflejan la variedad de formas y tipos de comunicación entre el público y el poder. Los autores corroboran la posición metodológica según la cual la actividad de los sujetos políticos no debe considerarse en las coordenadas teóricas y metodológicas tradicionales, donde la atención se centra únicamente en los "fenómenos positivos" y la comunicación de poder no se analiza desde el punto de vista de las "estructuras negativas", aquellos aspectos que no se reconocen como adecuados para el tipo dominante de actividad política y legal, en el marco del orden social emergente como un todo. Las prácticas formales, informales, de sombra y otras prácticas de poder que existen en el espacio político actual se consideran en el trabajo desde esta posición.

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Keywords: Power, state, institutions, law, political system, shadow relations, nonlegal interaction.

Palabras clave: Poder, estado, instituciones, ley, sistema político, relaciones ocultas, interacción no legal.

Resumo

O presente trabalho considera diversas formas e práticas de interação relacionadas ao poder no sistema político da sociedade moderna. Observa-se que os aspectos institucionais-normativos e estruturais-funcionais não refletem a variedade de formas e tipos de comunicação entre o público e o poder. Os autores confirmam a posição metodológica que a atividade de sujeitos políticos não deve ser considerada em coordenadas teóricas e metodológicas tradicionais, onde o foco é apenas sobre os "desenvolvimentos positivos" e comunicação de poder não é analisado do ponto de vista das "estruturas negativas", aqueles aspectos que não são reconhecidos como adequados ao tipo dominante de atividade política e legal, no contexto da ordem social emergente como um todo. As práticas formais, informais, sombra e outras práticas de poder que existem no espaço político atual são consideradas no trabalho a partir desta posição.

Palavras-chave: Poder, estado, instituições, direito, sistema político, relações ocultas, interação não legal.

Introduction

Power-related relations are a complex system of stable and situational social relations, which have both an obvious official expression and various forms of informal power activity. Obviously, the latter have their own specifics depending on specific historical, socio-cultural and contextual conditions [Solovyov, 2011; Ryvkina, 2001]. As a rule, *formal power-related relations* are understood as the relations that have already been institutionalized in the political life of society and legislatively regulated, and are under social control in the overwhelming majority of cases. Moreover, as P. Berger and T. Lukman noted, "it is important to emphasize that this controlling character is inherent in institutionalization as such, regardless of and even before any mechanisms of sanctions supporting the institution have been created. Of course, these mechanisms (the totality of which is what is usually called the system of social control) exist in many institutions and in all agglomerations of institutions that we call society. However, the effectiveness of their control is of a secondary, additional kind... the primary social control is determined by the existence of this institution as such. To say that a part of human activity has been institutionalized already means to say that this part of human activity has been subjected to social control. *Additional control mechanisms are required only if the processes of institutionalization are not quite successful (emphasis is ours - authors)*" [Roulen, 2005].

In turn, *informal power-related activity*, which is a type of relationship that are either developed and then institutionalized in the political space, complementing (enriching) the existing institutional and regulatory structure of governance (for example, due to the emergence of new sectors of social-power-related interaction, i. e. they are the result of development of a political system itself, and a response to emerging needs), or those relationships that cannot be institutionalized for various reasons.

It is necessary to relate to such reasons the following:

- **Firstly.** The fact that many relations do not become of a public character and remain in the private sphere, and only a narrow group of people participate in them (for example, the hidden nature of information, resource and other exchange in the functioning of the power apparatus);
- **Secondly.** Some relations may be evaluated as negative from the point of view of political and social development and will remain on the periphery being hidden from the official interaction of the subjects.

One way or another, the existence of formal and informal power-related relations in society is a *normal and natural phenomenon of a political system development*, the functioning of a social system itself and state-legal organization. In this case, the prevalence of the first or second power-related relations in the real political process is based, among other things, on certain socio-cultural development dominants,

traditions and customs of structuring social interaction, which form a "political corridor" for the admissibility and "normality" of certain government practices.

Methods and Materials

In modern research projects, power-related interaction in the political system of society is, as a rule, considered from the institutional, normative and structural-functional aspects [Raz, 1994; Radaev, 2001]. These are quite important "projections" of the analysis of power-related relations, since they express the main functions and tasks, the social purpose and the role of power in the political life of society [Parsons, 1997].

At the same time, this is not the single dimension and the form of power-related interaction between political actors. Usually, power-related interaction in the political system is investigated either in the context of official forms and models of interaction, usually between the state, political parties and other political actors [7], or as a system of institutional links and interactions [Mordovcev, 2017], specific organizational and legal forms of activity [Maliy, 2001] or the system of authoritative powers [Lyubashits, et al, 2016], and so on. In other words, if to systematize various specialized studies devoted to power-related relations in contemporary political space, it would not be difficult to see that it is the institutional, legal and structural-functional approaches that prevail in the interpretation of this phenomenon [Lyubashits, et. al, 1997].

At the same time, the analysis of power-related relations in the modern political process presupposes consideration of various forms of its functioning that are far from being exhausted by the above-mentioned aspects. There are a variety of power representation forms in the political life of society, which today are insufficiently investigated. First of all, they include "informal" and "shadow" power activities in the current political process. As A. I. Solov'ev has aptly noted in this respect, the place and role of public authority, the specifics of its functioning in the political system, are considered, "as a rule, through a list of its organizational principles and functions (dysfunctions), bureaucracy, institutional structure and its parameters, ultimately revealing the political and administrative-legal nature of this phenomenon. However, in such a generally legitimate

approach, a *legal space* of state administration was studied first of all, and *all its other manifestations almost automatically related to private deviations* and inclusions of the "birthmarks" that had been eliminated by its evolution "(italics is our - authors) [Lyubashits, 2017]. In general, as the well-known political analyst Stephen Lewks has aptly noted, it is quite important in analyzing the phenomenon of "power" and power-related relations developing in society "to take into account those aspects that are least observable, for power is undoubtedly more efficient the less noticeable it is" [Lyubashits, 2017, Maliy, 2001].

Many modern political process researchers state that such a traditional understanding of the forms of power-related activity based on the "subject-object" structure of the authority-legal imperative does not really exist [Lipset, 2001], but rather is a formal matrix of interpretation of this phenomenon which has been modeled and used to a greater extent for "public simulation" [Lewks, 2010]. Thus, in the context of the institutional and legal understanding of the power-related relations' nature, it sometimes seems that scientific analysis often "does not pay attention" to the social being surrounding it, but simply adjusts the latter to the content of the body of knowledge.

Such analysis (or a special type of political rationality) sets a limited "list" of possible objects of cognition, ignoring those socio-cultural forms, factors, and national spiritual and moral dominants of state power functioning that do not fit into the "discursive standard". This type imposes on a researcher a definite view on the real processes and phenomena of political reality, on the sources of various forms of state activity; it classifies knowledge into useful and meaningful for "true" science and political practice, and appropriately determines the areas and directions of the development of political research (investing knowledge), the intellectual position and function of the researcher in this field, etc.

Another perspective of the problem on the study of state power forms was proposed by a French analyst M. Foucault. From the point of view of his methodological position, the activity of a subject of a political system should not be viewed in traditional theoretical and methodological coordinates, in the context of which attention is paid only to "positive phenomena", but in the

context of "negative structures", or that is not recognized, does not fit into the dominant type of politico-legal thought activity, into the framework of the emerging social order as a whole [Kapelyushnikov, 2010].

Main Content

Relations between political actors always have an obvious external, official, technical form and unobvious and unofficial inner content. In one or another political environment, there are both components of power-related communication (communication) of the subjects [Ivannikov, 1995]. However, in the context of this or that environment, one of the foundations of political communication takes precedence over the others. So, political interaction, where the formal (formal-normative) principle prevails, can be called a formal, mechanical or explicit communication. This type of interaction is based on the domination of external tools and means of mutual understanding and interaction with the goal of achieving individual, collective or national goals and objectives. In turn, the power-political interaction based on internal goals and ideals can be designated as implicit communication. In those political cultures where the implicit model of political interaction predominates, the idea of synthesizing individual goals and needs with suprapersonal interests prevails, the internal connection of political subjects dominates, and secondary, auxiliary roles and significance are assigned to secondary means and mechanisms. So, if in Western European countries the transformation of the political system was associated primarily with institutional and legal changes, i. e. with reorganization of the external, institutional foundations of society, then as to Russian specificity, no change in legal and political institutions can undermine the established informal principle of political organization. At the same time, changes always had to go from internal, deontological and worldview changes and so on, and then made out in those or other institutions.

Generally speaking, the opposition between these two principles of social life arises only in crisis and transitional periods of development of society, when the convergence of the various principles of the social order, which are, on the one hand, traditional, stable, established and legitimized, and, on the other hand, new forms and methods that have not yet been approbated in the socio-legal and ethno-political experience of the nation, but necessary to respond to the

challenge of new, changed internal and external conditions of society as a whole.

In turn, *shadow relations* exist and develop in various sectors of political life, which, like informal relations, are characterized by information closeness of certain types and models of power-related relationships between subjects from external observation, from society, and from the state. However, their difference lies in the fact that if formal and informal power-related relations are organic processes of society development which are strengthening each other (of course, sometimes contradicting each other), the shadow relations that arise as a consequence of the functioning of these processes represent a conscious "*withdrawal*" from the existing official political models and forms of power-related relations in the economy, politics, legal life of society. In other words, *shadow power-related relations* are an interaction concerning achievement of certain social and political goals and satisfaction of need which are being carried out in the "shadow" spectrum of events where no information "outside" (beyond the boundaries of these interactions) is received and is given to official statistics and public control, i.e. within the sphere of information closeness [Gomerov, 200]. Due to the factor of the shadowing of relations and their closeness, a special world is created that opposes to the official institutional system. Within this special "closed world" of power-related interaction, a situation is formed where shadow forms of interaction stimulate the final exit of officials and politicians "from the legal space and create centers of redistributing resources that are beyond the control of the law; as a result, shadow forms of state regulation are formed in the structures of power and administration" [Lyubashits, 2012].

As a part of the state apparatus functioning, there are secret forms of network shadow interaction with various hidden forms and rules. Moreover, "private life of this system is dynamic and diverse, the "bureaucratic moles" of various breeds have dug up a multitude of underground passages through which the "sectors" intensely communicate and exchange classified information; human resources continuously flow from a dominant apparatus to non-state bureaucracies and back... Today, these facts are so widespread that they cause not only surprise, but even some noticeable public interest. The mediocrity of what is happening, obviously, has dulled public vigilance against any bureaucracies

that are not legally state, but in fact constitute a single whole, supporting the state administration which constantly exchange personnel, information, and technologies with it" [Lyubashits, 2017, p. 47].

This opposition to the official order of legal power-related interaction in modern political systems has, first of all, the nature of not an open confrontation, but, on the contrary, a hidden one, i. e. "invisible" (for official statistics) practice of "circumventing" institutional and regulatory rules. As was noted by the famous French anthropologist N. Roulen, today "an outright violation of the law carries a danger (and in fact, is an ineffective form of implementing their interests and needs - *author*). In most cases, they try to circumvent the law" [Friedman, 1996, p. 199].

Consequently, the development and expansion of shadow relations undermine and ultimately destroy the official political and legal foundations of society; they are a factor in the destabilization and chaos of the order of power-related interaction in all spheres of public life. For example, it is noted in modern studies on post-Soviet realities that the transition period in politics, economics, law, and the state is more closely connected with the dominance of informal, shadow forms and modes of power-related interaction over formal norms, political institutions and procedures [Foucault, 2002].

In this context, we should agree with the position of V. Ispravnikov and V. Kulikov that the *shadow power forms of relations* are any social and political activity not registered officially by the authorized bodies and forming a certain way of public order of interaction that develops contrary to laws and formal rules of legal, political, economic and other life of society. As a rule, shadow relations arise where there are urgent problems for society that do not find normal (official) forms and ways to solve them, where official methods conflict with established practices of interaction shared by most political actors, and also where official methods establish rather complex or unknown (unapproved by public interaction) procedures for the implementation of subjective and collective interests and needs.

From the point of view of V. Radaev, in this situation, processes of continuous deformation of rules and norms are started, during which formal rules and relations are largely replaced by

shadow ones and eventually integrated into a stable system of informal relations. At the same time, the majority of political subjects do not execute, or execute sporadically the formal rules and procedures, but this does not lead to their complete rejection, "rather, they are embedded in a more complex system of restrictions, much of which has an informal character", and formal rules and relations are in this case the method and language of public substantiation, and acamouflage for shadow relations [Foucault, 2002, p. 61]. As for such concepts as "shadow law" and "non-legal practices", they are a kind of shadow relations in the political life of society. It is obvious that the political and legal life of society is a complex concept reflecting the whole set of forms and methods of the political and legal existence of a nation. At the same time, these spheres of life of the subjects contain a complex of all political and legal phenomena, including both positive and negative components; they reflect not only ordered, but also disordered (accidental, spontaneous, etc.) beginnings of processes taking place in society.

Nonlegal practices of power-related interaction owe with its origins to diverse and multi-vector processes (socio-cultural, legal, political, economic, and so on) existing in society, that develop in parallel, are sometimes identical, but in other cases, are contrary to each other, forming between them an insurmountable conflict-space, in the context of which the subjects interact. For example, L. Friedman is convinced that the emergence of non-legal practices and private informal systems (the shadow law) in the political life of society is associated with the formation of "emptiness" or the manifestation of "weakness" in the official system of publicly-authoritative regulation / management of social processes. In most cases, private systems that conflict with the official system arise from the power vacuum, the lack of proper or adequate regulation of a certain sector of social interaction. For example, this "means that there were certain groups of people who believed that official law was too weak or fell into the wrong hands" [Berger, 1995, p. 27].

In general, according to L. Fridman, society does not tolerate emptiness, like nature, and the violation of consent, the destruction of the authority system creates a vacuum. In such conditions, there are two ethnopolitical processes: *positive* - the formation of a vacuum in resolving a conflict situation requires abandoning

informal norms and forming a formal system that can cope with the situation, and *negative* - the emergence of a vacuum in the official system or its inadequacy to socially and politically challenged tasks, conflicts and contradictions forced the society to form shadow structures and mechanisms in circumvention of the official system.

In this regard, the process of unofficial practices and structures formation is the society's response to the emerging problems in social interaction, which have not been appropriately authorized through an official system. However, this process takes negative properties in those cases when informal practices are transformed into non-legal ones, i. e. opposing to the official legal system. In these cases, the existing formal institutional system loses its legitimacy, credibility and effectiveness; it is replaced by spontaneous processes of informal justice, informal procedures and conflict resolution tools, etc. Pointing to this, L. Friedman notes that people's justice, which has escaped the control of official structures, can take on a variety of forms, reaching blind and ruthless practice of Lynch's courts, the French people's tribunals, and so on. Formation and development of non-legal practices, taken as a single socio-cultural space, is a shadow law. In other words, shadow practices, like the established stable and reproducible system of shadow relations, form a shadow law. In turn, *non-legal space* can be defined as a set of non-legal practices and established customs of interaction, different ways of perceiving the world of law and politics unreflected in objectified (positive) law and the official political order of interaction or contradicting them.

A characteristic feature of informal practices is the short-term nature of the emerging power-related relationships. For example, when pursuing a well-defined goal, an official, a citizen or an entrepreneur can use a non-legal channel of power-related communication to achieve the specific goal to be sought. At the same time, upon systematic or long-term contacts between the participants in the shadow relations, sufficiently strong / stable links appear between them, taking the form of a clan union that is almost independent of the external political conjuncture or personal preferences of members of the shadow relations. At the same time, such *local interpersonal formations are capable of proliferation, self-organization,*

hierarchization and formation of protective mechanisms.

Any consideration of informal law begins with the recognition of the principle that state power does not have an exclusive monopoly on the law in society, and also the recognition of that, unlike the official rules of the relationship of subjects, there is still a fairly large array of rules and norms governing social and political relations which resolve conflicts and contradictions arising in society. Nevertheless, it must be remembered that the term "law" can be applied to all sorts of processes, even fairly informal, very far from the official legal system. For example, L. Friedman points out: "There are a large number of informal courts of all kinds, which are scattered throughout the country. Some of them are administered by the apparatus of religious organizations. Orthodox Judaists, for example, can bring a contentious issue to the rabbinic court for settlement. The Catholic Church has a developed system of canon law. Church courts decide for themselves whether marriage can be annulled "[Baranov, 2002, p. 23].

As V.M. Baranov notes, "Shadow right as a negative manifestation of legal pluralism is a dangerous form of negative informal law; a set of antisocial rules has become widespread" [Baranov, 2002, p. 46]. Meanwhile, the mere fact of existence of such a phenomenon as the shadow law indicates the processes of shadow power-related relations institutionalization, giving them contours of a clear, coherent antisystem of law and official state policy. At the same time, it should be noted that the shadow law, like official law, arises in order to regulate a complex but not legal, and shadow hierarchical system that provides a common need for management of society. However, unlike the official right, the shadow norms express the interests of individual social groups; they contradict the public interest creating gaps in the social fabric of society. Being hidden from the public, shadow norms are not corrected publicly, that allows politically and economically strong shadow subjects to formulate criminal rules of social interaction that are contrary to morality, social justice, and public interest.

Due to specifics of the legal and regulatory system, when translating the various power-related relations existing in society into the law language, relations are not only corrected, generalized and narrowed, but, in principle, for such a short time cannot encode in the rule of law the general modality of political management

and normative structuring of social processes. Therefore, modern legal regulation is often divorced from real practice and by and large is only a guide, a desired result, and not a real mechanism. From the theoretical and methodological point of view, the isolation and opposition of the two political and legal spaces are associated, as a rule, with the conflict nature of the officially existing institutional and governmental system, which establishes a certain order of relations, and the practical activity of subjects implemented at the level of everyday practices.

The reasons for the emergence of informal practices are different. *First*, these are the illegal (informal) relations arising from the impossibility of regulating a group of social relations through legal norms. *Secondly*, informal practices may be the result of inadequate institutionalization of public forms of political management, their inconsistency with the types of public-power relations that have developed in society. *Thirdly*, shadow practices can arise as a reaction of society to the inefficiency of legal public-power institutions. *Fourthly*, according to A. I. Solovyov, development of the latter stimulates "weakness of formal institutions, increase in the costs of normative orientation for professional activities of civil servants involved in solving complex, especially - weakly structured problems; impossibility of exact coordination of all state strategies and projects (which gives rise to constant backlashes, clearances between decisions), as well as existence of informal, patron-client relations between representatives of various structures of power and government" [Lyubashits, 2017, p. 88].

In addition, the development of informal and shadow forms of power-related interaction is affected by weakness of civil society institutions, which manifests itself as a low level of civic engagement, undeveloped forms of social control over the functioning of the state apparatus, and inability (due to either objective, institutional and legal reasons, or subjective ones: lack of proper skills, traditions of political participation, etc.) of public institutions and structures to participate in the adoption of generally valid management decisions, strategic national programs and projects, in monitoring the implementation of the past at various stages of their implementation.

A typical feature of informal practices is a short-term emerging of social and power-related relationships. Consequently, the most difficult and at the same time topical political problem in the modern Russian state is the existence of shadow regulators of social relations alongside with legal mechanisms of public management. In this regard, many theorists of law and political science recognize not only the very existence of mirror mechanisms of social management, including shadow law, politics, economics, etc., but often make a mixed assessment of such phenomena. So, typical negative aspects of informal practices include: 1) reproduction by the public authorities of shadow antisocial acts; 2) their competition to legal institutions of public authority, and, accordingly, the delegitimization of the latter; 3) information closeness of shadow relations, the consequence of which is the inability of society to influence the process of their institutionalization; 4) deformation of basic political and legal institutions, related to institutional distortions of the forms, functions and social purpose of the latter.

Accordingly, the positive aspects of nonlegal channels of power-related communication, as a rule, include, *firstly*, the efficiency and flexibility of informal practices that substitute for the ineffective functioning of official institutions of public authority; *secondly*, close interconnection of informal practices with the national political and legal mentality, i. e. ethno-political and legal-cultural adaptation to external institutional borrowings.

Conclusions

Within the framework of a comprehensive analysis of public authority as a socio-political phenomenon, it is of fundamental importance to analyze various forms of its functioning that are far from being exhausted by institutional and regulatory and structural-functional characteristics. Public power is realized both in legal and non-legal forms of activity, and also formal, informal and shadow practices of political interaction. The extralegal form of public power-related activity is a more complex concept in relation to such forms as "informal", "shadow", and "non-legal" activity. The development of the latter in the political process of modern Russia is associated with a whole interrelated set of factors:

1. The extralegal activity is connected with crisis, emergency and other non-standard situations. Moreover, for the Russian political culture, extra-legal forms of activities and practices, creation of temporary, emergency and other public institutions of power to solve emerging problems, risks, threats are quite traditional;
2. In a relatively stable mode of functioning of the political system, there are situations of "extralegal consent" about the strategy of socio-political development, priority policy objectives, etc., forming a "political corridor of opportunities" based on civil confidence and recognition of the political agenda. At the same time, domination of an ideocratic element in the domestic political culture significantly expands the scope of the extra-legal activity of power;
3. Dynamism, and sometimes the uniqueness of social relations form the situations in which not every socio-political phenomenon and process is predetermined by a legal norm and requires mobile extra-legal activity;
4. The development is also associated with the emerging deformations in the political and legal thinking of citizens, with low efficiency and legitimacy of the activities of government institutions and structures, as well as with the effects of political anomy and dysnomy which are characteristic for transitional periods.

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