

## ПОЛИТИЧЕСКИЕ ИНСТИТУТЫ, ПРОЦЕССЫ И ТЕХНОЛОГИИ

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### Взаимодействие институтов государства и гражданского общества в политических доктринах Нового времени

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*Аннотация.* Осознание общности целей и задач, стоящих перед народом и государством, приводит к увеличению числа областей общественных отношений, в которых деятельность социума и государства сочетаются. При этом современная политическая обстановка требует консолидации всех наличествующих ресурсов для совместного достойного ответа на поставленные перед обществом и государством вызовы, что обуславливает обращение, в том числе к теории. Изложенное обосновывает и делает актуальной необходимость поиска решений злободневных для современного общественного развития проблем в идеях классиков мировой мысли.

Роль гражданского общества в политической мысли такова, что позволяет утверждать о его влиянии на институты государства. Гражданское общество позволяет конституировать неформальные институты, в результате чего происходит упорядочивание общественных отношений.

С учетом этого в настоящей статье проводится анализ процесса взаимодействия институтов государства и гражданского общества в политических учениях Нового времени.

По итогам проведенного анализа представляется возможным отметить, что правовое государство как властный институт должно признавать существование гражданского общества и взаимодействовать с ним. Гражданское общество же выступает неким посредником между государством и членами общества, контролирует реализацию прав и свобод граждан, способствует формированию открытых политических систем. При этом неформальные правила гражданского общества обнаруживает более тесную, чем формальные институты, связь с естественным правом.

**Ключевые слова:** гражданское общество; государство; неформальные институты; неформальные правила; демократия; общественный договор; институциональный анализ; институты

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## POLITICAL INSTITUTIONS, PROCESSES AND TECHNOLOGIES

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Original article

### Interaction of state institutions and civil society in the political doctrines of the Modern era

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**Abstract.** Awareness of the common goals and tasks facing the people and the state leads to an increase in the number of areas of social relations that combine public and state activities. At that, the current political situation requires consolidation of all available resources for a joint decent response to the challenges posed to society and the state, which leads to an appeal, among other things, to theory.

Civil society in political thought, especially within the framework of modern theories, has an impact on the institutions of the state and on people's lives. Thus, institutions of civil society create rules in the structure of informal institutions. As a result, there is an ordering of social relations.

In view of this and taking into account that many modern thoughts receive classical ideas, this article analyses the interaction between institutions of state and civil society in the context of the political doctrines of the Modern Era.

Thus, the state of law should recognise the existence of civil society and interact with it. As for civil society, it serves as a mediator between the state and members of society, ensures their conflict-free interaction, controls the implementation of citizens' rights and freedoms, and contributes to the formation of open political systems. At that, the informal rules of civil society reveal a closer connection with natural law than with formal institutions, while the role of such informal rules in the actual impact on society is greater than that of the formal ones.

**Key words:** civil society; state; informal institutions; informal rules; democracy; social contract; institutional analysis; institutions

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### Introduction

In conditions when the important issue for society is building a legal and democratic state and developing a state policy that meets the needs of the society and satisfies the ideals of humanism, the problem of interaction between state and civil society institutions remains invariably relevant for political science and practice. One of the key points of principle for solving this problem is to understand the relationship that exists between the state and civil society.

The question of the nature of this relationship is extremely complex. On the one hand, the mechanisms used by the state to influence society have been studied in detail in political scientific literature. On the other hand, the instruments used by civil society to influence state activities have not yet been considered in such detail.

Political practice is always based on ideas. Therefore, the lack of knowledge of such tools is partly explained by the lack of in-depth theoretical studies that could contribute to social and state development. The lack of a clear understanding of such ideas entails for political theory a lack of perception of the essence and meanings of political institutions and social processes.

### Literature Review

The question of the relationship between state and civil society institutions has been of interest to philoso-

phers, political scientists, sociologists and jurists for many centuries and has thus been reflected in the works of many thinkers. Of course, just as the state cannot exist without a civil society, the civil society is unthinkable without the state. The conceptual expressions of Hegelian philosophy allow one to believe that civil society and the state represent a unity and struggle of opposites: «in civil society, each member is his own end, everything else is nothing to him <...> civil society is a battlefield of individual private interests, a war of all against all» [Hegel, 1990, pp. 228, 330].

The first attempts to substantiate society's ability to independently organise its life and reproduce the mechanisms by which it could influence the activities of the state were made by ancient thinkers such as Plato [2021], Aristotle [2009] and others. That is, despite the obvious fact that the concept of civil society as such is absent in ancient writings.

As far as the problems of the relationship between the state and civil society are concerned, they have been actively raised in the Modern Era within the framework of the classical theory of civil society. In this regard, it is important first of all to note the works of Grotius [2012], G. W.F. Hegel [1990], P. A. Holbach [2016], W.von Humboldt [1993], J. Locke [2010], Montesquieu [1999] and J.-J. Rousseau [1998].

A significant contribution has also been made by Russian thinkers, such as S. E. Desnitsky, Ya. P. Kozelsky, V. F. Malinovsky, P. I. Pestel, A. N. Radishchev and M. M. Speransky [Mironov, 2009].

In the Modern Era, having undergone a significant transformation, ideas about the relationship between state and civil institutions have been revived. First, they are developed in the works of such internationally recognised researchers as S. Berman [1997], J. Dryzek [1996], J. Habermas [2000] and J. Hall [1995]. At that, within the framework of institutional analysis, including new institutional economics, studies on the problems of civil society have been conducted by such authors as E. Giddens [1984], W. Ch. Mills [2000], G. O'Donnell [1994] and T. Parsons [1937].

A special place is also occupied by such Russian researchers as L. Yu. Grudtsyna [2010], M.-P. R. Kuliev [1997], G. M. Lanovaya [2014], V. P. Malakhov [2002], N. F. Medushevskaya [2015], V. S. Nersesyants [1980], K. E. Sigalov [2014; 2016], Yu. A. Tikhomirov [2013] and others.

#### Research methods

The methodological basis of this article, along with the use of general scientific methods of cognition, is a set of several interrelated methodological approaches.

Among other studies for analysing political doctrines, this article is unique in its use, within the section

devoted to the rules of civil society and the state regulating social relations in the L- and M-traditions, of the methodology of institutional economics that have rethought the idea of the role of non-economic factors related to politics, society and law, including informal institutions in the economy, which is interconnected taking into account such categories as completeness of information, stability of preferences, transaction costs and others.

At that, a systematic approach allowed identifying, within the framework of political doctrines, the components of civil society and establishing how these components relate with each other and with state institutions.

A system-dynamic approach was used to analyse the evolution of ideas about the relationship between state and civil society institutions, including the complexity of the factors accompanying this process.

System-functional analysis was used to study philosophical views on the mechanisms of the functioning and reproduction of the civil society system in conjunction with the social contract theory, self-regulation, internal orderliness and the construction of a hierarchy of system elements, taking into account the influence of state institutions on it (and vice versa).

The analysis employed a value-normative approach (in assessing the doctrines on the functioning of certain political institutions of civil society), critical discourse analysis (analysis of political concepts, linguistic and ideological analysis of political discourse),

a dialectical method of cognition of socio-political phenomena and processes and a historical method that allowed considering state and civil society institutions, as well as relevant political doctrines in the development and interrelation of all individual manifestations, including interactions with related phenomena, all to varying degrees.

**Theoretical and methodological prerequisites for the interaction of state and civil society institutions**

To study the problems related to the relationship between the state and civil society, there is a need to identify conceptual ideas that form the theoretical framework and make it possible to understand the essence of civil society and its relationship with the state. We will look at these ideas and reveal their content.

*First. A significant conceptual idea is the idea of discrepancy, non-identity of society and the state.*

In antiquity, the concepts of «state» and «society» were generally perceived as identical. N. Machiavelli was one of the first to raise the question of the difference between the state and society, although he did not identify the essential features of these concepts in order to make an unambiguous distinction [Martyshin, 2018].

The actual formation of civil society as institutions existing outside the state apparatus begins in the Modern Era. The initial stage (16th-17th centuries) sees the formation of political and economic prerequisites for the separate existence of civil society. As

a result of the emergence of bourgeois ethics, political and social ideologies undergo a revolution, and civil society ceases to be perceived as a state institution. The subsequent stage (18th-19th centuries) is characterised by the formation of a developed civil society in the most economically powerful European states and the USA. The principles and values of liberalism are asserted as the basis of political life.

The concept of civil society in its fullest form was developed by the German philosopher G. W.F. Hegel [Hegel, 1990]. Hegel defined civil society as a connection (communication) of individuals through a system of needs and the division of labour, justice, external order (police, etc.) definitively marking the separation of civil society institutions from the state.

Recognition of the discrepancy between the state and society determines the possibility of distinguishing the state and civil society as two relatively independent components of one social integrity. It also allows raising the question of the rules of conduct constructed by a subject other than the state.

Awareness of the non-identity of society and the state presupposes the recognition that in the social sphere, it is always possible to detect extra-state relations, institutions, norms, etc., and this idea is somehow voiced in the Modern Era.

*Second. The idea of the primacy of society in relation to the state requires disclosure.*

As Yu.A. Tikhomirov rightly notes, the basic principle of the pri-

macy of society and the secondary nature of the state «has long been proven in scientific and political literature and confirmed by historical practice» [Tikhomirov, 2013, p. 8]. The emergence of human society is traditionally regarded as a stage historically preceding the emergence (establishment) of the state.

At that, this understanding was not always presented in political thought. In the 17th and 18th centuries, the Hobbesian opposition of the natural to the civilised persisted as a condition for the emergence of civil society. J. Locke supported and developed the idea of this society developed by T. Hobbes: «Those who are united into one body, and have a common established Law and Judicature to appeal to, with Authority to decide controversies between them, and punish Offenders, *are in Civil Society* one with another: but those who have no such common Appeal, <...> are still in the state of Nature» [Locke, 1988, p. 320]. It is necessary to «... move from the state of Nature <...> to Civil Society» was later I. Kant [Kant, 1965, p. 232] agrees with J. Locke.

A statehood formed in this way (the absolutist concept of statehood by T. Hobbes and the legal one by J. Locke) and capable of curbing natural, antisocial urges and desires and guaranteeing public order, was recognised as political. As a follow-up to this logic by G. W.F. Hegel [Hegel, 1990, p. 95, 282-288], the transition from civil society to the state takes place when individual parts of society unite into an

organic whole, that is, a state. If the state unites with civil society, then the highest goal is achieved, the goal for which people are united.

*Third. The institution of private property, the specification of rights to which is provided by the state, is the basis for the emergence of civil society.*

«Leviathan» by T. Hobbes, in which he determines the emergence of the state by the social contract theory, has changed the paradigm of European philosophical and political thought, reorienting its basis from religion to human nature. Since human nature has endowed him with the desire to satisfy natural passions that are stronger than the «good» ones, the «bellum omnium contra omnes» (the war of all against all) begins. And as far as there is no force capable of ending this war, it will destroy the human race. The desire for peace leads to the need to conclude a social contract that means a waiver of claims to the property of others and attempts on their life and well-being. In return, certain benefits and freedoms are guaranteed [Hobbes, 1936, p. 143].

However, without coercion, all good aspirations for an agreement will not be fulfilled, and as such, it is necessary to ensure a system of rules and norms, «This done, the multitude so united in one person is called a 'commonwealth', in Latin, *civitas*» [Hobbes, 1936, p. 140]. At that, such restrictions on the part of state institutions should not lead to an excessive, unreasonably large impact on everyone's freedoms and life, and here, civil

society institutions should balance the state's impact.

Coercive paternal authority was already opposed in the time of T. Hobbes. This was due to the success of the Reformation, which placed the individual in a situation of personal responsibility for his actions and for his level of well-being. «The idea of the individual's utilitarian autonomy points to a new paradigm of legality unknown to traditional (pre-capitalist) societies. One starts thinking about law as a system of regulations that free the individual from preventive regulation of his behaviour... This refers to legality that opens up space for action at his own risk» [Soloviev, 1983, p. 237].

Although there is a change in the social purpose of law, it becomes more focused on capitalist relations; nevertheless, the process of their development is slow since property continues to be distributed by the sovereign – «the Sovereign Power is annexed to the Sovereignty, the whole power of prescribing the Rules, whereby every man may know, what Goods he may enjoy, and what Actions he may doe, without being molested by any of his fellow Subjects. And this is it men call Propriety» [Hobbes, 1936, p. 151]. Therefore, the hobbesian intellectual individual is a subject of property rights rather nominally. In paragraph 7, chapter 12 of Hobbes's «On the Citizen», private property is regarded as a rebellious and destructive institution for the state.

With this in mind, in the concept of T. Hobbes, everything is prepared for

everyone to acquire property and the related rights, but so far, it is only about opportunity. To fully realise it, a political doctrine must proceed from the fact that the state exists not for the sake of ending the war of all against all, but for the sake of other, more cooperative goals. To do so, it is necessary to look at each member of society not as a being obsessed by bad passions, but as a subject ready to cooperate for the joint realisation of certain interests. This becomes a prerequisite for the formation of civil society institutions that are separate from the state.

This doctrine was later developed thanks to the works of J.-J. Rousseau. Along with the previously known social contract where society members transfer the rights to dispose of them to the Sovereign, he points out a different type of social contract that is aimed not at dominating the crowd, but at managing society. J.-J. Rousseau suggests that people have now reached a state where each person, by uniting with all, nevertheless obeys only himself and remains as free as before.

This agreement is implemented when all people voluntarily unite and everyone is part of the whole. Everyone transfers a certain part to the common heritage and puts himself under the supreme guidance of the common will, and as a result, for all together, each member turns into an inseparable part of the whole. The foregoing is a conceptually new paradigm – an agreement that is generally a prototype of civil society based on

the equality of its members, while the independence and position of each member is based on the right to private property.

The work «A Discourse on Political Economy» [Rousseau, 1998] describes the right to property as the most sacred of all citizens' rights, and in some respects more important than freedom itself. Property, especially means of production and land, gives more income and, consequently, organises labour in the most useful way.

Private property for those who have it provides greater guarantees of freedom and independence, increases economic security, guarantees greater opportunities due to the disposal of their property. As a result, property owners are interested in preserving and multiplying what legally belongs to them. The desire to ensure the inviolability of their property, to extract useful properties from it, leads people to the need to unite in civil society in order to guarantee the realisation of their own interests using its tools, influencing the state where necessary. That is why, as noted by J.-J. Rousseau, «the first man to fence in a piece of land, saying “This is mine”, and who found people simple enough to believe him, was the real founder of civil society» [Rousseau, 1970, p. 562].

*Fourth. Throughout the history of the development of political thought, a multiplicity of scientific interpretations of the «civil society» category has always been observed. Modern scientific literature contains no single definition of civil society.*

An understanding of the essence of civil society within the framework of its relationship with state institutions is not the same in various political doctrines. J.-J. Rousseau and J. Locke see the main function of civil society as a counterbalance to the state. T. Hobbes deduces a different interaction between them and believes that the state is intended to organise the chaotic relations of civil society. G. W.F. Hegel sees the role of civil society in the fact that it mediates between family relations and the state, and is a kind of «step of transition» between them.

Representatives of the natural law school begin to conceptualise civil society through opposition to the state of nature (which each of them interprets in their own way: as the lost paradise and «the golden age» (J.-J. Rousseau [1998, pp. 151-256], as «the war of all against all» (T. Hobbes). The state, on the other hand, appears to them as a kind of artificial institution that has replaced the state of nature, a result of a social contract created to organise social relations.

If we adhere to these concepts about the relationship between state and civil society institutions, then it is necessary to believe that civil society is a product of the establishment (starting from the 18th century) of qualitatively new bourgeois relations that were focused on the «non-political» aspect of the relationship between private capital and hired labour. It becomes the sphere where there is an intersection of production, distribution and exchange of



goods, mutual collision, competition and connection of private interests and rights.

*Fifth. The idea of the opposition of civil society to the state requires disclosure.*

The idea of distinguishing civil society and the state was proposed by G. W.F. Hegel. According to this interpretation, society is a complex dynamic system in which the state and civil society institutions interact. In other words, civil society is a non-state part of society that is based on the autonomy of individuals.

As a follow-up to the ideas of J.-J. Rousseau and J. Locke, a convincing point of view is that civil society «emerges as a “counterbalance” to the state, to exert some influence on it in order to bring its functioning into a legal framework» [Lanovaya, 2014, p. 8], although the classics of political thought did not oppose the concept of «civil society» to the concept of «state», often using them as a synonym for the concept of «political community».

*Sixth. The correlation between the idea of civil society and those of social contract, natural rights, democracy and state of law requires disclosure.*

Initially, the value of civil society stems from the idea of a social contract. The fact that the state is established by people means, firstly, the primacy of human interests in comparison with the state's interests, secondly, the limitation of the state's rights by the powers recognised by citizens, and thirdly, the justice of a

legal restriction of despotic power that violates the terms of a social contract in order to protect private interests.

The result is the idea that a social contract is an open and endless process of searching and finding forms of consent between all members of society. The value of natural rights is also supported within the framework of the social contract theory.

After becoming one of the ideological foundations of the struggle against the feudal absolutist system, the idea of natural human rights remains relevant in the context of modern political and legal thought, since it brings an understanding of the importance of each individual for all social perspectives to the interpretation of the relations arising between individuals, civil society and the state. At that, its modern interpretations take into account the dynamism of social life, the evolution of ideas about rights that inherently belong to everyone, along with the development of society.

The process of developing ideas that substantiate the justice of restricted despotic power, including through a social contract, is followed by two areas of the civil society doctrine arising in European political thought. The first area is associated primarily with the name of Montesquieu (M-tradition) where civil society appears as a political society, its activities are associated with solving problems directly related to the governance of the state. The second approach, pioneered by J. Locke (L-tradition), regards civil society as a network of associations reflecting the private

(mainly economic) interests of legally connected individuals.

Despite some differences in the understanding of civil society, both areas have made a significant contribution to substantiating the idea of the possibility and feasibility of building a new social order. Ultimately, civil society began to be associated with the idea of democracy and with the processes of formation of the state of law. In the context of the ideas regarded during the Modern Era as spiritual dominants, democracy appears to be an ideal model of political structure. This model suggests that a state-organised society ensures human freedom, independent thinking and actions, legal norms that meet human and social interests and protect these interests against abuses by the state. As a consequence, democracy begins to be steadily associated with the same things that civil society is associated with: self-government, political parties, state of law, protection of human rights and freedoms, etc.

This gives rise to the idea that the effective functioning of civil society is impossible without democracy, and the establishment of a democratic political regime depends on the development of civil society and is a step towards the establishment of the state of law.

#### **Correlation between the rules of civil society and the state governing social relations in the L- and M-traditions**

Historically, the Modern Era is associated with the final collapse of feudal structures and the transition to bourgeois relations. Individualism and

humanism, on the one hand, and rationalism and politicality, on the other hand, were finally confirmed as the fundamental values of Western European culture. The issues relevant to humans were gradually transferred from the relationship between society and the state to that between the state and the individual.

Ideologically, the historical period under consideration is characterised by an extremely relevant search for legitimate grounds for natural rights and liberties so that they can be opposed to the legal grounds of law-abiding behaviour and unconditional obedience to the sovereign's will. At that, two traditions were laid in the understanding of civil society. Their founders are J. Locke and Montesquieu. C. Taylor [Taylor, 1995], followed by other researchers, sees them as L- and M-traditions named after the first letters of the surnames of their creators.

The L-tradition considers civil society as a kind of ethical community living according to natural laws before and outside politics. In the L-tradition, the concept of the state of nature is important, as it already has all the characteristics of what was later called «civil society». In the modern interpretation, within the framework of this tradition, civil society may be described as a special social structure.

Montesquieu established a tradition of interpreting civil society as a special sphere of society that is represented by non-governmental institutions. The M-tradition represents civil

society as a set of independent associations that mediate relations between the individual and the state and, where necessary, protect the individual's freedom against state interference and persecution. The M-tradition understands civil society as some «intermediate bodies» (authorities) that mediate relations between the individual and the state. It is this tradition that gives rise to the modern interpretation of civil society as a system represented by institutions that exist independently of the state and beyond its control, self-organising in order to protect private interests against state and government arbitrariness.

It should be noted that the difference between L- and M-traditions is somewhat nominal. Because the understanding of the state supported by J. Locke significantly differs from the modern one, the concepts of civil society by J. Locke and Montesquieu actually have much more in common than they do fundamental differences, and only focusing on the latter allows us to differentiate the L- and M-traditions.

Rules are important when comparing state and civil institutions. For example, Montesquieu emphasises that the establishment of rules should not be associated exclusively with the activities of the state [Montesquieu, 1999, p. 15]. As interpreted by Montesquieu [Montesquieu, 1999, p. 407], the rules of conduct dictated by civil society institutions actually represent one of the types of non-state social regulators. These ideas about the institutionalisation of civil and political

freedoms are in line with the doctrines on popular sovereignty by J. Milton, on natural, divine and civil law as the basis of society by B. Spinoza, and on citizenship, society structure and popular sovereignty by J.-J. Rousseau [Rutkevich, 1999].

J.-J. Rousseau calls morals, customs and «especially» public opinion a special «kind of laws», the most important one of all, emphasising that these rules «form the real constitution of the State, take on every day new powers, when other laws decay or die out, restore them or take their place, keep a people in the ways in which it was meant to go, and insensibly replaces authority by the force of habit» [Rousseau, 1938, p. 47]. The context in which J.-J. Rousseau talks about the «laws» of the kind in question shows that it implies informal rules.

J. Locke does not distinguish between informal rules that are actually created from civil society activities and public law as a «political community», but at the same time he separates them from law that is public law in the modern sense. Informal rules and laws of the state considered as a «political community» quite clearly differ from those established by the «rulers» [Locke, 1988, pp. 310-317], i.e. from formal institutions.

The idea of the primacy of society and the secondary nature of the state characteristic of the period under consideration in the development of Western European political doctrines determines that informal rules created by civil society institutions are con-

sidered as primary in relation to public law. Thus, J. Locke writes particularly about civil society, and not about the «rulers» as about to whom a man delegates the power to «create laws», voluntarily limiting his natural freedom – «where every one of the members hath quitted this natural power, resigned it up into the hands of the community <...> the community comes to be umpire, by settled standing rules, indifferent, and the same to all parties» [Locke, 1988, p. 311]. The modern institutional economics also attaches greater importance to informal institutions in terms of influencing economic growth and development by establishing a structural framework for daily activities and thereby reducing uncertainty [North, 1997, p. 125].

The significance lies in informal rules of conduct reveal a closer connection with natural law than public law. Due to this connection, informal rules of conduct are endowed with a deep social meaning, are considered as something reasonable, fair and, most importantly, socially useful. The synthesis of formal and informal rules in the regulation of social relations is based on the ideas of social contract. The underlying contract is indissoluble and, consequently, people cannot refuse to fulfil their obligations: «and for every man who has entered into civil society, no exception can be made to the laws of this society» [Locke, 1988, pp. 316-317]. The main role in this case is to reduce the uncertainty of social life by establishing a

structure of interaction. In addition, different risks are reduced, interests of the subjects that determine the space of institutional equilibrium are balanced. As a result, institutions, although they limit a set of alternative behaviours available to each member of society, make compliance with formal and informal rules beneficial for the majority of subjects entering into social relations by reducing institutional costs in general.

At that, if laws created by the state are enforced through the power of state coercion, then compliance with informal rules, voluntary submission to them within civil society is because the implementation of informal requirements develops in the interaction of many people pursuing their own interests, and at the same time is not only socially useful, but also beneficial for the individual. According to J.-J. Rousseau, «the undertakings that bind us to the social body are obligatory only because they go both ways; and their nature is such that in fulfilling them we can't work for others without working for ourselves» [Rousseau, 1938, p. 26]. The advantageous nature of submission to informal civil society rules is predetermined by the fact that reaching consensus turns out to be a way for a man to satisfy his inherent egoistic interests as a private owner.

The emergence of consonant ideas about the rules governing social relations within the framework of civil society among various representatives of western european political thought

of the 17th-18th centuries is determined by the ideological context common to their reasoning about informal civil society rules. It is formed, first of all, by ideas that are systematically important for western legal culture, namely the ideas of law, freedom, civil society and natural human rights [Malakhov, 2002, p. 408].

In general, with a certain degree of conditionality, a social contract can historically be spoken of as one of the first acts of reproduction of informal rules. In this case, an agreement turns out to be not only the basis of interaction generally useful in its orientation and positive in its results, but also the normative basis of mutual rights and obligations, and, therefore, contractual relations that are established, developed and protected without state participation.

The connection of the idea of informal civil society rules with the idea of property is because such rules are focused, among other things, on protecting the right of ownership of acquired property that has no guarantees in its natural state. J.-J. Rousseau, for example, writes in this regard: «... the right of the first occupier, which in the state of nature is so weak, claims the respect of every man in civil society» [Rousseau, 1969, p. 165], which characterises the fact that property rights are guaranteed not only by state laws prohibiting their violation and secured by the force of state coercion, but also by informal institutions.

Separately, it should be noted that unlike the new institutional economic

theory, the western european political thought of the Modern Era does not practically analyse informal rules in terms of their functionality. Nevertheless, the M-tradition separates informal civil society rules from public law.

Montesquieu suggests a fundamental difference between the rules created by civil society institutions and public law from the point of view of their purpose. He writes that what is dependent on the principles of civil law should not be subordinated to the principles of public law [Montesquieu, 1999, pp. 420-421]. A similar idea is expressed by W.von Humboldt: «any state interference in private affairs, where there is no immediate reference to violence done to individual rights, should be absolutely condemned» [Humboldt, 2003, p. 19].

Contrasting informal civil society rules with public law, representatives of western european political thought of the 17th-18th centuries practically did not pay attention to studying not only functional, but also structural and content properties of such rules. This was because they did not consider informal civil society rules as an independent subject of research, as the idea of such rules arose in the context of developing more relevant topics at that time, in particular, resolving the question of the ideal form of government, the nature of the relationship between the individual and society in states with different forms of government, the factors determining the content of the existing law, the principles

on which the applicable legislation should be based, etc.

The last quarter of the 18th century is a transitional period in the history of the development of informal civil society rules as a regulator of social relations. On the one hand, the essence of such rules in its interpretation by individual thinkers reveals the same ideas as in the classical works of the L- and M-traditions. On the other hand, the moments characteristic of the interpretation of civil society rules in a later period, namely in the 19th – 20th centuries, are introduced into the content of this idea.

The analysis suggests that the basis of the modern understanding of informal civil society rules has been laid in the western european political thought of the Modern Era, the totality of which is actually transformed into informal institutions in the understanding of the new institutional economic theory.

From the analysis, we formulate the following conclusions:

1. In the L- and M-traditions, the role of civil society undergoes certain changes. The initially exclusively political concept is also supplemented by a legal aspect related to the activities of civil society institutions in the creation of rules of conduct governing social relations.

2. The idea of informal civil society rules in the period under consideration is contextual, not conceptual. Its content is determined by its inextricable connection with the ideas of law, freedom,

civil society, natural human rights, social contract, justice and property.

3. According to the L-tradition, a citizen is a full member of society whose activities are aimed at achieving the common good. According to the M-tradition, when a citizen joins an association and gains the right to participate in its management, he has the freedom (as part of general freedom) to do everything that is allowed by the established rules of civil society and the state.

Analysis of the two classical traditions of civil society shows that they have more similarities than differences. Their main similarities include the fact that the social contract determines the limits of everyone's freedom, while both traditions focus on inalienable human rights and a special role is assigned to the institution of private property.

4. The fact that informal rules created by civil society institutions have specific functions in comparison with public law does not seem fundamentally significant to thinkers. Due to the peculiarities of their nature and a special mechanism of reproduction, the focus is on the fact that informal civil society rules can be no less reasonable and fair than public law, and, as a result, be effective in solving problems that are significant for society and related to the regulation of social relations.

#### **Interaction of state and civil society institutions in russian political thought**

There is an understanding that the idea of civil society originated in russian political thought in the 18th cen-

tury and that it is found in works by Russian educators such as I. T. Pososhkov, F. Prokopovich, V. N. Tatishchev [Solyanik, 2006, p. 195]. There is also a point of view according to which the emergence of the idea of civil society in Russian public thought dates back to the beginning of the 18th century.

In deciding what political doctrines in Russia are associated with the emergence of the idea of civil society, it is important to consider that this idea is not immanent in Russian culture. It arises precisely in Western legal consciousness and it is in it that it takes root as one of the sense-making and mental ideas [Malakhov, 2002, p. 409]. When the idea of civil society is discussed in relation to Russian society, the term «civil society» is often used nominally to denote any non-governmental way of organising public life.

The identified issues were considered not through the prism of the relationship between the state and civil society, but in connection with the problem of the relationship between the state and the community. In this context, public law, that is, formal institutions, has traditionally been opposed not to informal institutions, but to customary law.

Since the idea of civil society is not traditional for the Russian consciousness, we should not talk about its deep historical roots, but about the peculiarities of its interpretation, primarily due to the mental characteristics of Russian society.

On the one hand, there is a widespread idea that freedom and autocracy can be combined and that the supreme power is the only source of power in society. In addition, civil society is often viewed not as a force capable of exerting pressure on the state, but as something that itself needs to be controlled by the state.

On the other hand, liberal-minded thinkers associate the formation of civil society with the hope of modernising the Russian political and legal system and solving existing political and socio-economic problems. It is assumed that the means of such modernisation should be political. For example, A. P. Kunitsyn, speaking about civil society, writes: «A defensive society, not limited by time and having the goal of securing all rights and protecting them against dangers of all kinds, is called civil» [Kunitsyn, 1951, p. 605].

Over time, the ideas of civil society were increasingly comprehended by those philosophers and public figures who believe that freedom is not combined with unlimited autocracy, and the supreme power is not the only source of norms and rules; however, within the framework of existing doctrines, the idea that someone other than state institutions may become a subject of social regulation still remains peripheral.

We believe that such a peripheral idea is reflected for the first time in the work «Journey from St. Petersburg to Moscow» by A. N. Radishchev. The author touches

upon a number of problems related to self-organisation carried out by citizens through the law: here, we find arguments about «people's law» [Radishchev, 1988, pp. 63-64], reflections on «community rules» [Radishchev, 1988, pp. 92-93] and the question of «civil law» [Radishchev, 1988, pp. 113-114]. In fact, raising the question of the rules of conduct established by civil society, A. N. Radishchev does not recognise informal institutions as a regulator of social relations.

It is noteworthy that, generally, the opposition of the state to civil society is not typical for the thinkers of the period under consideration. For example, M. M. Speransky associates rules created by civil society with the pre-state stage of development of society [Speransky, 1881, p. 351]. Russian thinkers related to the L-tradition actually «merge» civil society with the state. This understanding of civil society is typical, for example, for P. I. Pestel. In his opinion, civil societies «being organised and put into order receive the name of the State» [Pestel, 2016, p. 2]. V. F. Malinovsky also does not actually distinguish between civil society and a state-organised society. He considers civil society as a state of society intermediate between familial kinship and the society that arises between different independent peoples to establish civil welfare [Malinovsky, 1958, pp. 92-93].

Without actually distinguishing between civil society and the state, such russian thinkers, however, do not identify them with the bodies exercising the

powers of public authority, in particular with the government. For example, P. I. Pestel points out that «when Civil Society receives the name of the State, then those who command receive the name of the government, and those who obey receive the name of the people. That understood, the main or initial component of each state is: the government and the people» [Pestel, 2016, p. 3].

Therefore, if western european political and legal thought considers civil society in the historical period under consideration primarily as a sphere that is free from the direct control of the state, then russian thinkers actually understand civil society as the people together with the public authorities organising their life. Realising the demand for associations voluntarily created and functioning on the basis of the principle of self-government, russian thinkers of the period under review, however, do not see their task in protecting people's lives against arbitrary state interference and do not associate their effective functioning with the reproduction of their rights.

Despite the fact that the idea of civil society turns out to be linked to the same ideas as in the western european political and legal thought of the 17th – 18th centuries, the connection with them, except perhaps the ideas of justice and the common good, becomes weaker. At that, the idea of civil society turns out to be associated with a number of ideas that are specific to russian society. First, these are



the ideas of the national spirit, truth and general welfare.

Traditional ideas for russian views are formed «within» Orthodoxy, just like political and legal consciousness is formed within its environment. The connectedness of the idea of civil society to that of general welfare is explained by the significance of the idea of spiritual commonality for the russian legal consciousness. Spiritual commonality is inextricably linked with the denial of the value of individual freedom and the cultivation of communal traditions. As a result, civil society as a political ideal in the russian understanding turns out not to be a society in which the interests and needs of a private owner are in the centre of attention, but a society of general welfare.

In this context, civil society institutions in russian political thought are focused on achieving and maintaining general welfare, and are not an instrument for ensuring and protecting private property.

Summing up the analysis, the following conclusions can be drawn.

1. The idea of civil society is secondary to political thought in the sense that its emergence is not the result of the development of the ideological system of russian society, but the consequence of the rethinking of western european ideas.

2. The connection of Russian doctrines on civil society with the ideas determining its meaning and content in western european political thought becomes weaker. At that,

there is a connection with the ideas inherent in russian society.

3. In general, the idea of rules of conduct created by civil society institutions is peripheral for the russian political thought of the period under consideration. This is explained, on the one hand, by the fact that property and individualism are traditionally not as important for russian society as for western european society and, on the other, by the fact that the solution of problems relevant to russian society is associated by thinkers with the use of exclusively political, not social, instruments.

### **Research results and conclusion**

Analysis of the works of western european and russian thinkers of the Modern Era that reflected the relationship between the state and civil society, as well as modern scientific historical-political, theoretical-political, sociological and legal pieces of literature, allowed determining the logic of the formation and meaningful transformation of this relationship.

In summarising the results obtained, the following conclusions can be drawn:

1. Civil society, both in idea and in reality, is characterised by axiological, functional and content-structural features. In essence, it is fundamentally different from the state as a special apparatus exercising power.

2. In the 17th – 18th centuries, informal civil society rules appear as a social regulator that is capable, due to its nature and a special mechanism of reproduction, of being no less reason-

able and fair than public law and, as a consequence, being effective in solving significant social tasks related to the governing of relations between private owners.

This meaningful content of informal civil society rules is due to their reproduction in the context formed by the ideas of law, freedom, civil society and natural human rights, social contract, justice and property.

3. Informal civil society rules reveal a closer connection with natural law than with formal institutions. In this regard, and based on the social contract, there is the synthesis of formal and informal rules in the regulation of social relations. The main role in this case is to reduce the uncertainty of social life by establishing a structure of interaction. In addition, various risks are reduced and the interests of the subjects that determine the space of institutional equilibrium are balanced.

4. The L-tradition proceeds from the fact that as a result of the creation of the state through a social contract, members of society delegate the power to create rules of conduct primarily to civil society, and only secondarily to the state. In this respect, the L-tradition is similar to the views of the

modern new institutional economic theory that attaches more importance to informal institutions than to formal ones in establishing the structural framework of daily activities for everyone.

5. The idea of civil society is «secondary» for russian political thought. It is not genetically related to the ideological and value structure of russian society, and the beginning of its theoretical understanding is laid by the reception of western european political thought.

6. Among russian thinkers, the idea of civil society is much less widely recognised than it is in western european political doctrines. The specified idea does not acquire conceptual meaning, but invariably remains contextual and peripheral.

7. In the 18th – first half of the 19th centuries, insights into the concept of civil society in russian political thought concentrate the ideas of combining two opposite principles – the people's spirit and the will of power, as a condition of general welfare. Harmonising these two principles is seen as possible in conditions where there is unity between the people and the state.

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