

ISSN: 0025-1569

# MAN IN INDIA

Volume 97

Number 23

2017



**Serials** Publications Pvt. Ltd.

Publishers & Distributors

Man in India  
© Serials Publications

ISSN: 0025-1569

***Editor***

R.M. Sarkar,  
Kolkata, India

Amit Kumar Mishra  
University of Hyderabad, India

***Editorial Board***

Brij Maharaj  
University of KwaZulu-Natal, South  
Africa

Pierre Gottschlich  
University of Rostock, Germany

K. Laxmi Narayan  
University of Hyderabad, India

Dr. Mihir Kumar Mallick  
Professor and Head, School of  
Education  
Lovely Professional University,  
Phagwara, Punjab, India

Jonathan Miles-Watson  
University of Manchester, UK

Luighi Yao, LU,  
Professor,  
Department of Medicine,  
McGill University,  
845 Rue Sherbrooke O, Montréal, QC  
H3A 0G4

Peter Seele  
Institute for Advanced Study in the  
Humanities, Germany

Dave Sangha  
University of Northern British  
Columbia, Canada

***Abstracted/Indexed/Reviewed***

Indexing and Reviews: Mathematical Reviews, MathSciNet, IndexCopernicus  
Zentralblatt fur Mathematik, EBSCOhost, SCOPUS, Elsevier's bibliographic  
database, Ei databases index, EMBASE, EMCare, CAP International, Indian  
Sciences Abstract and Indian Citation Index (ICI).

## ELITES AND THE FORMATION OF CONSTITUTIONALISM: THE SOCIO-CULTURAL VECTOR OF DEVELOPMENT

Pavel Baranov<sup>\*</sup>, Aleksey Ovchinnikov<sup>\*\*</sup>, Aleksey Mamychev<sup>\*\*\*</sup> and  
Andrey Plotnikov<sup>\*\*\*\*</sup>

---

**Abstract:** Stable development, prosperity and sustainability of the state result from the unification of the interests of the political elite and the population. The paper analyses the development of the political elite in the Russian state-legal structure. It studies the interaction between the society and the political elite in the light of the geopolitical and political-economic aspects of the constitutional policy of the state. It shows the mechanisms of influence of political elites both on legislative activity and on the development of long- and short-term strategic decisions. It stresses the necessity of forming a constitutional and legal policy, which, firstly, must provide for the legal framework for the development of society established by the Basic Law; secondly, must take into account the socio-cultural requirements; thirdly, should be aimed at increasing the level of interaction between the political elite and the population of the country, thus reducing the distance between them.

**Keywords:** Power, state, constitution, culture, legitimacy, society, law, elite.

### INTRODUCTION

In the political process of modern Russia, there are three interrelated and interdependent tendencies: first, the desire for a spiritual and moral justification of state power and the social-moral responsibility of the power-management elite; second, the need to integrate Western European achievements into the field of human rights and freedoms, some democratic values with the socio-cultural model of political organization and traditional practices of public-power interaction; third, the need to restore a strong statehood. Moreover, the concrete historical manifestation of state power has a moral and legal way of substantiation, in which the vertical of the value-normative hierarchy is built from spiritual, absolute truths and dominants to sociopolitical ones.

In these contradictory processes, the dynamics of elites and the development of constitutionalism play an important role. In today's social and humanitarian field, the elite is generally viewed as "the persons who have received the highest index

---

\* PhD, Professor, Russian Presidential Academy of National Economy and Public Administration, Russian Federation. *Email: pravosoznanie@gmail.com*

\*\* PhD, Professor, Russian Presidential Academy of National Economy and Public Administration, Russian Federation. *Email: k\_fp3@mail.ru*

\*\*\* Doctor of Political Sciences, candidate of Legal Sciences, associate professor, Head of the Theory and History of the Russian and Foreign Law Department, Vladivostok State University of Economics and Service, Vladivostok, Russian Federation. *Email: mamychev@yandex.ru*

\*\*\*\* PhD, associate professor, the head of constitutional and municipal law department, Northern (Arctic) Federal University named after M.V. Lomonosov. *Email: plas1972@yandex.ru*

in their field of activity, having attained a higher level of competence” (Pareto V., 2008, p. 308). In addition, these people control a large share of the material, symbolic and political resources of society in comparison with any other social stratum, occupying the highest positions in the hierarchy of status and power. Undoubtedly, in reality, the content of modern Constitutions is composed if not by representatives of the elite, then under their direct control, since it is the elite that forms not only cultural and ideological trends in the development of society but also the constitutional and legal policy of the state as a whole, since it has all the leverage in a bourgeois liberal-democratic state. Therefore, the constitutional and legal elitology is called upon to study the processes, institutions, mechanisms of elites’ influence on the constitutional and legal development of Russia, as well as to propose new methods for analyzing constitutional and legal political science in the field of elites, to identify ways of finding equilibrium between democracy and elitocracy in the modern state, including ways to democratically limit the power of elites.

## **MATERIALS AND METHODS**

It seems quite promising to study the geopolitical and political-economic aspects of constitutional and legal policy in the context of elitology. In this regard, one can not but pay attention to the fact that many researchers see the world political elite as a separate independent participant in global processes. The existence of a special “shadow” government, the so-called “world behind the scenes” has been written about for a long time by both domestic and foreign authors. The ideas of the new “networked” state continue to live and develop, some causing joy, while others provoking unconditional condemnation. However, in our opinion, recent events in the world clearly demonstrate that the positions of national states as independent and relatively self-sufficient participants in international relations are still very strong. And it is national states, as many scientists predicted, that remain the last bulwark against the “network” government and “network elites”.

It is necessary for the constitutional-legal science to develop its own definition of elite. Without going into the range of theoretical issues, we only note that in modern Russia, like in the whole world, there is an abyss between the meaning of the term “elite” and its usage in the corresponding phrase.

The point is that in spite of the traditional sense of the term “elite” that presupposes the properties of the best, and of the fact that most of the political elite is formed through direct legislative procedures, in the public consciousness, the political elite is perceived as a limited group of people who by the will of destinies have found themselves in the levers of managing the political and economic processes in the country.

From the point of view of public consciousness, national interests are considered by this group of those selected exclusively as a means of obtaining economic benefits and political dividends for a relatively long-term perspective. In the case when personal economic interests outweigh national interests, they are forgotten. Also, in the public mind there is a deeply-rooted opinion that for the modern political elite Russia means little more than a way to increase prosperity and at any moment can be replaced by a more comfortable country.

Let us note that the leading methodological principle of the present study is instrumental and political realism, which regards knowledge of socio-cultural factors and ethnopolitical dominants of constitutional and legal development as necessary elements not only for forecasting and managing actual (existing) political processes (Baranov, Ovchinnikov & Mamychev, 2015).

In addition, this study is based on a number of fundamental methodological guidelines and provisions: first, the knowledge of the individuality of the Russian constitutional legal process as a complex set of structures, public institutions, constitutional and legal worldviews, as well as non-political components, is based on the self-sufficiency of the Russian socio-political space and legal culture (Ovchinnikov, Mamychev & Mamycheva, 2015); Secondly, socio-cultural foundations form an inalienable, deep and stable component of the transformation of constitutional and legal relations (Ovchinnikov, Mamychev, Litvinova, 2015).

## RESULTS AND DISCUSSIONS

The history of the development of constitutionalism in Russia over the past decades is inextricably linked with the will of the new political, administrative and economic elite, which is traditionally perceived as the main engine of Russian development, including the processes of constitutional development. The formation and establishment of public institutions, the territorial state structure, the choice of the basic principles of the relationship between the individual and the state, the determination of the peculiarities of the status of certain categories of citizens participating in the exercise of public authority - these and many other questions entirely depend on a limited number of people who desire and are able to influence each and every legal and socio-political process on the territory of modern Russia.

The peculiarity of the formation of the new political elite of the early 1990s is the fact that Russia, unlike many other countries in the transition period, did not follow the lustration way, but on the contrary, a new political elite was formed including and on the foundation of representatives of the former political elite. Such an amazing continuity and “flexibility” even then could seriously alarm the would-be electorate. Given the conditions under which the first Russian constitution was adopted, one can not but recognize that the text of the Basic Law of the Russian Federation of

1993 is entirely a product of the activities of the political elite, moreover, that of a pro-presidential nature.

It seems sustainable to systematically characterize the specifics of the Russian constitutional legal regime and its legitimacy, and then to analyse the development of the processes of elitogenesis and modern constitutionalism.

Constitutional and legal regime. The core element of the political regime in the modern Russia is the constitutional legal regime. The most important characteristics of the constitutional and legal regime of the state can be reduced to the following.

Firstly, constitutional legal regimes serve to approve and implement power decisions in the form of legal regimes aimed at certain spheres of public life.

Secondly, the constitutional and legal regime of the functioning of the state power does not give an opportunity to ignore the interests of the people. Hence the system of law and the system of legislation is built in accordance with the above principles: constitutional law is the leading branch of law, all normative acts must comply with the Constitution, must ensure human and civil rights and freedoms, publicity, democracy, justice, etc.

Thirdly, the constitutional legal regime is characterized by the fact that its proximity to the foundations of power activity, its political composition encompasses the entire society, all social relations and thereby it is wider and more global than the legal regimes of relations of particular groups of people. Hence it normally involves all participants in public relations.

Fourthly, the constitutional legal regime is also presented as a system of methods for observing and ensuring the legal norms that regulate relations between public authorities and the people.

Fifthly, the constitutional and legal regime performs an essential function: it limits the political regime. In other words, although the political regime of modern Russia is defined by the legal characteristics contained in the Constitution of the Russian Federation, in practice it does not completely coincide and tends to go beyond them or violate them.

The main characteristics of the constitutional-legal regime of modern Russia are its following elements:

- The only source of power in the Russian Federation is its multinational population (Article 3 of the Constitution of the Russian Federation);
- The state power in the Russian Federation is carried out on the basis of the principle of separation of powers into legislative, executive and judicial (Article 10 of the Constitution of the Russian Federation);
- Local self-government is recognized and guaranteed in Russia (Article 12 of the Constitution of the Russian Federation);

- Political diversity, multi-party system (Article 13 of the Constitution of the Russian Federation) is recognized and respected in Russia;
- In the Russian state, the rights and freedoms of people and citizens are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Article 17 of the Constitution of the Russian Federation);
- In the Russian Federation, equality of rights and freedoms of people and citizens is guaranteed (Article 19 of the Constitution of the Russian Federation).

From the teleological point of view, the constitutional and legal regime of the Russian state is characterized by a declaration that fixes the main target for the development of Russian statehood: the construction of a social, law-based state.

Constitutional legal legitimacy. To date, the term “constitutional legal legitimacy” has become widespread in foreign jurisprudence, acquiring the importance of one of the fundamental essential characteristics of state power. In terms of its meaning, it is very close to the concept of “legality”, although it does not coincide with it. The term “legality” means the legitimacy of the authorities, the correspondence of its “mandate to the board” to the previously established legal procedures.

There are various types of the constitutional and legal legitimacy of state power. The rational type of constitutional and legal legitimacy is characteristic of modern European states, such as Germany, France, Great Britain, etc. In these countries, both power and population are distinguished by stable liberal democratic traditions, literal interpretation of constitutional norms, by certain political and cultural pragmatism. The conformity of decisions made by the authorities to constitutional norms is “tested” by the bodies of constitutional judicial control, whose decisions until quite recently were hardly at all dependent on the political motives of the elite: the sword of justice in these countries enjoys real independence.

Russia is more characterized by the constitutional legal legitimacy, the peculiarity of which is a very flexible interpretation of constitutional norms in certain situations, the political motivation of decisions made by the Constitutional Court of the Russian Federation, the “idolization” of the RF Constitution by legal experts, their agreement that “the Constitution does not need to be amended, it must be correctly interpreted”, a very fair recognition of the need to strike a balance between human rights and the interests of the state. The fact is that, unlike the formal rational style, the value-rational style of political and legal thinking prioritizes not compliance to the procedure and the “letter of the law”, but the value of justice or the values of other kinds - ethical, political, pragmatic and others.

The value-rational legitimacy is characteristic of the domestic political tradition, where ideocratic, ideological, value-idealistic landmarks still play a big role. A much more important component of the constitutional legitimacy of state power in Russia is the existence of the expected values in the content of laws, which in jurisprudence was called “the desired right.” Therefore, the constitutional legitimacy of power in Russia presupposes the existence of the desired right in legal policy and the application of power by the authorities. The constant lack of legal support for the desired values in the policy of power leads to a search for the legitimacy of the alternative elite and can result in popular protests. Social inequality, the stratification of society, elite corruption and the impunity of certain high-ranking officials outrage the population incomparably more than a formal comparison of the behavior of power with the norms of constitutional law.

Russian political system has the following sociocultural peculiarity: power emerging on the basis of clear and transparent legal procedures does not always enjoy full recognition in public sense of justice. Contrariwise, a power, even if it results from “unlawful” and “undemocratic” procedures, can eventually be approved in the public sense of justice directly by the results of its positive impact on people’s lives.

The degree of constitutional legitimacy of power is characterized by a number of circumstances. Firstly, because the Constitution itself is the main law of the state, the legitimacy of the elite is determined by the attitude of the population towards the State, as well as to the Constitution itself. The attitude towards the State is determined by historical concepts about the essence and origin of the State, law and state power in Russia.

Secondly, the constitutional legitimacy of state power can be determined by the attitude of the population to the models of the mechanisms for the formation of this power, prescribed in the Constitution, and laws based on it.

Thirdly, the constitutional legitimacy of state power can be determined by how exactly the legal procedures in the process of its formation, fixed in the Constitution, were observed. The level of observance of formal conditions for the formation of power institutions concerns both the formation of power on the basis of modern “democratic” procedures and other ways of forming power.

Fourthly, the level of constitutional legitimacy, for example, of federal and local authorities, may not be the same in the public sense of justice. The point is that, generally supporting the policy of the state and accepting and agreeing with the principles of the formation of power at the federal level and directly implementing the entire range of procedures enshrined in the law, a person may at the same time ignore similar authorities at the local level, proceeding from both of the above bases, as well as from its weak efficiency.



Thus, a political regime, on the whole, can remain constitutionally legitimate regardless of the openly expressed distrust of individual institutions or state leaders. If a president is unpopular, this does not necessarily mean a lack of confidence in the institution of the presidency as a whole.

It must be said that modern society in most states is distinguished by the rational legitimacy of power. Ultimately, it is possible to identify the main three of its varieties, which are based on the foundation of the state structure of the modern world. In those states where the Basic Law protects contemporary liberal-democratic values, there is a liberal-constitutional legitimacy; where the constitution consolidates the above values, but the political regime is actually quite different, we can speak about formal constitutional legitimacy; with countries where the Basic Law consolidates monarchical regimes, conservative, religious values, one can speak of constitutional-value legitimacy.

Let's try to answer the question about where is Russia among the three above-mentioned types of legitimacy. In terms of liberal values, the Constitution of Russia is exemplary. The economic life of the state proceeds according to neoliberal schemes, designed on the basis of borrowings from abroad. The modeling of private-property relations is carried out on the basis of a liberal constitutional standard. As a result, we have a vulnerable economic system from the point of view of sovereignty, which can not but negatively affect the legitimacy of state power, but does not affect the constitutional legitimacy, since in the Constitution values and their hierarchical relations are liberal.

Political life, in general, corresponds to the Constitution, with the exception of certain separate features of liberal-democratic regimes, such as lack of institutional opposition. Also, the norms that guarantee the social rights of the population so far remain unrealized. But the steps taken by the government in the direction of social policy have brought a positive result: the majority of Russian citizens, as sociological polls show, support state power, and therefore the existing government enjoys constitutional-democratic legitimacy.

However, the traditional values of the domestic statehood dictate the need for a conservative course of development of our state in the sense of its priorities and higher meanings. Therefore, it is quite positive and promising to see the consolidation of spiritual ideals, values, and norms in the Constitution of the Russian Federation.

It should be borne in mind that it is necessary to distinguish between the legitimacy of power and the degree of public confidence in it. On the one hand, this problem looks fairly transparent. In the case of the discussion of the term "constitutional legitimacy," it is a question of the constitutional institution of power establishment, its foundations, special procedures and their observance. If these signs are formal, ideological and conceptual, then the authorities are constitutionally

legitimate. The level of people's trust in power is determined not only by the above criteria but also by the extent to which the government effectively implements the norms of the Constitution. Thus, one can say that the degree of trust in power is determined, among other things, by the level of its constitutional legitimacy, and the term "trust" is more general in relation to the term "legitimacy".

Thus, being one of the indicators of the attitude to power in this or that society and the state, constitutional legitimacy also acts as an indicator of the right-realization effectiveness of the activity of the government itself in the public sense of justice, not being an absolute magnitude. Given the wide range of issues that need to be taken into account when investigating the level of constitutional legitimacy, it can be said that, on the whole, it is a derivative of two main characteristics of power: the constitutional procedures for its formation and the degree of effectiveness of the implementation of the norms of constitutional law. Thus, in the political and legal respect in modern Russia, under constitutional and legal legitimacy, in our opinion, one should understand the positive attitude of the population of the country to the current Constitution and the institutions of state power based on it, and their recognition as "legitimate" in public sense of justice.

It is a question of a completely voluntary and objectively predetermined recognition by the people of the "constitutional right of power to rule".

The concept of legitimacy is closely linked with the problems of constitutional delegitimization of state power which are especially relevant for modern Russia. As many researchers note, the main prerequisites for the delegitimization of modern Russian power are of ideological, rather than formal-legal nature. However, more and more often one can hear that "the authorities do not ensure the realization of social and economic rights", "the principle of a social state fixed in the constitution is ignored", "the principle of separation of powers is formal", etc. This testifies to the growing importance of the Constitution and constitutional legal awareness in the socio-political life of Russia.

As circumstances contributing to the aggravation of the problem of the constitutional delegitimation of modern power, there are also increasing bureaucratization and corrupt officials, as well as the criminalization of society in general. It turns out that in modern constitutional law institutions of public control and anti-corruption mechanism are poorly represented.

It is well known that in our country the institutions of civil society are still poorly developed and there is practically no so-called "bottom" control; the situation is further aggravated by the protracted reform of the political system. At the same time, it must be said that the modern Russian government, finally fully aware of the great urgency of the problem, has taken realistic steps to ensure that the last presidential election would look most open, constitutional and democratic and that civil society institutions participate in the government. For example, this is facilitated by the

Internet resource “Russian Public Initiative”, created in pursuance of Presidential Decree No. 183 of March 4, 2013, for placement of public initiatives by citizens of the Russian Federation and voting on them.

In the mechanism ensuring the constitutional legitimacy of state power, the following elements need to be singled out: the widespread use of legislative initiatives in law-making activities from various social groups, institutions of civil society; the use of referendums to identify the desired right of the population; development of institutions of people’s representation through majority elections; accounting for public opinion in the activities of legislative and executive authorities. But most importantly, it is necessary to highlight the constant and unshakable constitutional law-abidance of the state power itself.

Elites and constitutionalism. The constitutional legal legitimacy of state power depends on the legitimacy of the Constitution itself. The legal force of the Basic Law is directly related to the adoption of the text of the law. As rightly noted: “If the basic law does not reflect the basic values of society, but is imposed on society by the state (ruling elites), the country does not have a constitution in the true sense of this concept. If the legal norms do not reflect the values, customs, and traditions of society, they, despite all the efforts of the state apparatus, often remain a “dead letter” because of passive and sometimes even active resistance of citizens” (Eliseev, 2014).

Meanwhile, the first stages of the emergence of constitutionalism in the new Russia should not be seen as a manifestation of a special will or the wishes of the population. The leading lawyers also speak about its elite character: “This monumental document was created in a short timespan due to the enthusiasm and creative work of representatives of the Russian elite, including many prominent lawyers” (Yakovlev, 2015). This was one hundred percent the result of the activity of the political elite, and this trend continues to persist to this day.

Constitutional legal elitology examines the priorities of the constitutional and legal policy of Russia in terms of the interests of elites. For example, one can not help noticing that the current legislative activity of the political elite is aimed primarily at additional restrictions in the field of political rights and freedoms of citizens, which is presented to the society as a natural and necessary deviation from the traditional liberal democratic path of development and resistance against openly pro-Western influence on modern Russian Constitutional and legal institutions, as well as the fight against the threat of international terrorism.

The legislative activity of the political elite does not in any way affect the basic and fundamental liberal-democratic values enshrined in the text of the Constitution of the Russian Federation, which would allow us to really talk about the influence of the political elite on a return to traditional, including legal, national values. This circumstance gives rise to the recognition that all legislative activity in the sphere

of restriction of rights and freedoms under the pretext of combating extremism is called upon only to protect the narrow circle of representatives of the political elite from control by the population and to return to any traditional values in its essence is not. However, we believe that the issue is much more difficult: with the elite's undoubted interest in preserving its status, the "Yarovaya package" and other measures are necessary to counter external attempts to carry out a coup d'état, since sometimes the legislator makes decisions that are openly contrary to the will of global world political elites, as a result of the prevailing global political configuration of forces.

We must say that this attitude of ordinary citizens to their political elite, in the long run, is fraught with serious political complications. Perhaps for this reason, it was under the aegis of the corresponding "public request" that the processes of the so-called nationalization of elites were started. In 2013, the idea of nationalization of elites was formulated, and its meaning was expressed in a popular slogan: "If you serve this country, you must vote for it with your money and your property". However, it should be recognized that even today the process of "elites' nationalizing", i.e., banning the ownership of accounts and other economic interests abroad by government bureaucrats and heads of state companies, which was actively launched in 2013, is still in a rather uncertain state, as evidenced both by periodic media reports, and "official" scandals, ending, as a rule, either in public repentance, or in the loss of the desired status.

In this connection, the issues of legal restrictions on the power of the elite are also of interest to constitutional and legal science. It would not be superfluous to recall that the main opposition at the time of discussion of this bill was representatives of the executive. However, due to the very modest participation of the executive power in the legislative process and thanks to the political will of the President of Russia, V.V. Putin in 2013, a package of three laws was adopted, prohibiting officials from having accounts abroad and using foreign financial instruments.

Speaking about mechanisms of elite influence on constitutional lawmaking, one should pay attention to the fact that there are special studies devoted to the mechanism of influence of political elites both on legislative activity in general and on the development of long-term and short-term strategic decisions. It must be said that this influence is not always negative. Thus, in the Czech Republic, the reluctance of elites to bear responsibility for the actions of the President served as an impetus to the abolition of the election of the Republic's President by the parliament, to be replaced by direct elections by citizens, without changing the powers of the head of state. On the one hand, scholars of this country believe: "Appeal to the "voice of the people" is populism. The political elite does not justify itself, it refused to seek a compromise, it was not able to overcome the hostility of political conflicts and got rid of all responsibility by transferring it to the citizens" (Jirasek, 2012, p. 800). On the other hand, there is a democratic change in constitutional legislation.

For example, the current legislation does not allow the subjects of the Federation and municipalities to enact civil law standards and to exercise legal regulation of intellectual property (clause “o”, Article 71 of the Constitution of the Russian Federation). However, the desire of the regional elite to absorb funds for innovative development allows us to adopt normative acts regulating the expenditure on innovation. Thus, for example, the Law of the Novosibirsk region of April 20, 1995 No. 17-OZ “On scientific activities and regional scientific and technical policy of Novosibirsk region” establishes the foundations for the organization of scientific and innovation activities, the formation of scientific and technical policy of Novosibirsk region, defines the conditions and order for its implementation. The law says: “The legal basis for the scientific and technical policy of Novosibirsk region and the organization of scientific activities in Novosibirsk region are the Constitution of the Russian Federation, the Federal Law “On Science and State Science and Technology Policy”, as well as other regulatory legal acts of Russian Federation, the Charter of Novosibirsk Region, Law and other normative legal acts of Novosibirsk region” (Markeyev, 2015).

And this is not surprising because it is the political elite that possesses all the leverage of lawmaking in our country. Acceptance, approval, and signing of the law, in fact, the whole legislative process is the result of the activity of the political elite and in this connection, it is senseless to deny its influence on the constitutional development of Russia. However, as noted by researchers in Russia in recent years, the principle of vertical rather than horizontal separation of power has been increasingly (though informally) recognized. This excludes the relative formal legal independence of various branches of power and leads the political dialogue between elites from the legal field into the sphere of “backstage confrontation”. If you pay attention to the legislative process of the last decade, it will be very difficult to recall a case when a federal law would not have been approved by the Federation Council or would not have been signed by the President. And this can mean that all disagreements of this nature are resolved outside of the legal field. In the context of the theory of separation of powers, it is also often discussed whether the judiciary refers to the political elite and why it is not subject to restrictions that apply to other representatives of public authority.

In addition, it should be noted that the modern Russian political elite is seriously divorced from the country of residence. In common opinion, its contact with Russia is associated exclusively with economic interests. Resorts, universities for children’s education, clothes, vehicles, even movies - the modern political elite of Russia does not consume anything Russian. At the same time, political competition within the elite itself is usually limited by its boundaries due to the extreme political apathy of the Russian population.

Constitutional and Legal Policy. Legal policy is not so much a kind of state policy (in the field of law) as legal support for state reforms, including reforms

of the legal system and constitutional law. In addition, the legal policy is often assessed as an applied field of scientific knowledge, assessing the current legislation and developing measures for its optimization. Legal policy is an ideologically, culturally and scientifically grounded, consistent and systematic activity of state and municipal bodies, as well as public organizations for the creation and improvement of the legal regulation mechanism, the legal system of the country. In other words, in the sphere of legal policy development, those social relations that need legal mediation are included.

The constitutional and legal policy of Russia is a strategy for the development of the constitutional law of our state, implemented in the form of scientifically based, consistent and systematic activities of state and municipal bodies, as well as public associations to create and improve the system of constitutional law and legislation.

The constitutional legal policy defines law-making, law-realization, law-enforcement and human rights activities of authorized state bodies, local self-government bodies, officials, as well as directly the people of the country, constituent entities of the Federation, the population of municipalities to create, amend, abolish legal norms and change their scope. According to estimates of scientists, the 1993 Constitution of the Russian Federation contains more than 70 references, suggesting the adoption of relevant laws for the implementation of constitutional provisions. There are 12 references to federal constitutional laws, more than 50 - to federal laws, and 12 articles refer to laws without specifying a specific act.

In relation to the Constitution of the Russian Federation, the constitutional legal policy of the state is implemented in various ways. At the present stage, it is generally carried out by adjusting the Constitution of Russia without interfering with its text, i.e. interpretation of its norms or the adoption of relevant legislative acts in the framework of the so-called "creeping" constitutional reform. Lawyers note the important role of the so-called "live constitution", developed by law enforcement practice (mainly by the Constitutional Court of the Russian Federation).

The ratio of the legal and actual constitutions inevitably changes with the economic, political development, the change in social reality, and forms the "backlog" of the previously worked out text of the Basic Law from the real conditions of dynamically developing society and state. Over the past 10-15 years, without amending the constitution, the authorities managed (1) to change the procedure for the formation of the Federation Council by removing the leaders of the regions from it and replacing them with representatives; (2) to establish federal districts and institutes of presidential plenipotentiaries in federal districts; (3) to introduce a new scheme of delineation of powers between the Federation and its subjects; (4) to implement the reform of local self-government; (5) to limit the rights of citizens to hold referendums during the period of federal election campaigns; (6) to significantly restrict the rights of citizens to hold rallies and public gatherings;

(7) to limit the maximum participation of citizens in political activities, reducing the number of parties that can act as real political forces. Such steps in the sphere of constitutional legal policy are not met with the approval of scholars, as the constitution itself does not contain such a scheme, and such a policy reduces the rights of Russian citizens to elect and be elected to public authorities and express their position through democratic institutions.

When implementing the constitutional and legal policy, it is necessary to strive for a number of priorities. First of all, this is the priority of the people's power, which is enshrined in Art. 3 of the Constitution of the Russian Federation, which reads: "The carrier of sovereignty and the only source of power in the Russian Federation is its multinational population". As noted in the literature, the people who are the focus of power not only establish a certain system of government, but also remain responsible for its further functioning, implementing various ways of participating in the management of state affairs (the formation of representative bodies of power through elections, voting in referenda, enquiring information from officials and public authorities, making appeals, the holding of public events, including protest actions, etc.). The implementation of this priority requires the process of developing and adopting norms that ensure the participation of all politically active citizens in this process and the development of compromise solutions that correspond to the will of all groups of society, including those who are oppositional, in the conditions of ideological diversity and political competition based on it.

The next priority is the consistent provision and introduction into the state and social life of the supreme legal force and the supremacy of the constitution, the mandatory nature of its framework for the people and all parts of the state machinery. This priority is close to the rule of law. The most important here are guarantees of the operation of the constitution, including mechanisms of responsibility, a special procedure for reviewing constitutional provisions, constitutional control.

No less important priorities are the protection of human rights and freedoms, separation of powers, principles of direct action of the Constitution. In general, the system of priorities of constitutional and legal policy is reflected in Chapter 1, which discloses the principles and foundations of the constitutional system of the Russian Federation.

The role of the Constitutional Court of the Russian Federation in the constitutional and legal policy should be specifically noted. With the help of the activities of the Constitutional Court of the Russian Federation, innovative development is provided not only for those areas of legal regulation proper which fall within the scope of constitutional and judicial control, but also constitutional norms and institutions, principles, development priorities, goals. The Constitutional Court, while solving cases on the constitutionality of the law or while interpreting the Constitution (official or casual), reveals changes in the actual constitution, the

social and legal reality, and determines the content (interpretation) of the relevant provisions of the Constitution. In general, in the intensification of the implementation of the Constitution of the Russian Federation, the constitutions and charters of the subjects of the Federation, the decisions and legal positions of the Constitutional Court of the Russian Federation and constitutional (statutory) courts of the subjects of the Russian Federation play a large role.

## CONCLUSION

Constitutional and legal science is called upon to develop measures of legal restriction of the elite's power. One of the mechanisms consists in taking into account the opinion of the population of the country when solving issues of national importance. Let us recall that since the adoption of the Constitution of Russia in 1993, federal referendums in this country have not been held. The ideas of "social initiative" are largely forgotten. Such institutions of direct democracy as periodic federal elections are not perfect by definition and can not serve as a confirmation of the constitutional thesis that the multinational population of the Russian Federation is the only carrier of sovereignty and the only source of power in this country. The gap between the political elite and the population continues to increase.

What is needed is a constitutional and legal policy to increase the level of interaction between the political elite and the population of the country, which could reduce, if not economic, then the socio-political distance between them. And in this program, the ideas of nationalizing elites that have not yet been brought to their logical conclusion should not be in the last place. There is no doubt that the fundamental fact that a prosperous and stable state results from the unification of the interests of the political elite and the population. The term constitutionalization is closely connected with the concept of constitutional and legal policy. Constitutionalization is most often considered as an increasing process of implementing constitutional provisions (principles, norms, etc.) in lawmaking, in the field of private and public law, in judicial and other law enforcement practices to ensure and protect human and citizen's rights and freedoms. This is not only a process of concretizing the principles, mastering the values and norms of the Constitution in the current legislation, but also the inclusion into the Constitution of the basic principles and statuses of certain subjects of constitutional and legal relations, which will result in their legal status being determined by law in sufficient detail. Constitutionalization is also raising of a legal norm into the status of a constitutional provision (constitutionalization here is connected with the definition of objects of constitutional regulation as a direct fixation of one or another normative provision in the text of the constitution) and the all-round development of hierarchically interrelated ways and methods of legalization of social relations characteristic of industrial societies.



### **Acknowledgement**

The work was carried out with the financial support of the grant of the President of the Russian Federation No. MD-6669.2016.6.

### ***References***

- Eliseev, S.G. (2014). Formalization of fundamental legal values of freedom, equality and justice in the constitutional regulation of the social rights of citizens of Russia. *Lawyer*, No. 11, p. 63.
- Jirasek, I. (2012). Constitution and crisis of political elite. *Constitutional right and policy: Collection of materials of the International scientific conference: Law department of Lomonosov Moscow State University*. Moscow: Yurist, p. 800.
- Markeev, A.I. (2015). Legal regulation of innovative activity: manual. *Help legal system "ConsultantPlus"*. Retrieved from [http://www.consultant.ru/law/podborki/innovacionnaya\\_deyatelnost/](http://www.consultant.ru/law/podborki/innovacionnaya_deyatelnost/)
- Pareto, V. (2008). Compendium on the general sociology. Moscow: Publishing house Higher School of Economics - National Research University, p. 308.
- Yakovlev, V.F. (2015). *Modernization of the Civil code of the Russian Federation – development of basic provisions of civil law. Codification of the Russian private law of 2015*. Moscow: Statut, p. 447.
- Baranov, P.P., Ovchinnikov, A.I. & Mamychev, A.Y. (2015). The state authority constitutional legitimacy in modern Russia. *Mediterranean Journal of Social Sciences*, T. 6., No. 5 S3, pp. 201-208.
- Ovchinnikov, A., Mamychev, A. & Mamycheva, D. (2015). Sociocultural bases of state – legal development coding. *Mediterranean Journal of Social Sciences*, T. 6, No. 3 S4, pp. 67-74.
- Ovchinnikov, A., Mamychev, A. & Litvinova, S.F. (2015). Extra-legal and shadow functioning of public authorities. *Mediterranean Journal of Social Sciences*, T. 6, No. 3, pp. 387-393.