

State Power Legitimacy Crisis in the Era of Globalization

Iya I. Osvetinskaya

Associate Professor of the Department of Theory and History of Law and State, School of Law, Higher School of Economics National Research University (Campus in St. Petersburg); Associate Professor, Department of Theory and History of State and Law, St. Petersburg State University, Saint Petersburg, Russian Federation, Candidate of Legal Sciences; osv.iya@gmail.com

ABSTRACT

One of the urgent problems requiring special research is the comprehensive crisis of legitimacy that accompanies globalization, and one of the manifestations of which is the fragmentation of the phenomenon of legitimacy due to the fragmentation of the mechanisms of legitimation associated with different aspects of legitimacy being: power legitimacy, religion legitimacy, moral legitimacy, etc. State power legitimacy crisis has political and communicative grounds, such as: problematization of state sovereignty existence and state power existence; expanding political and non-political actors will to power; partial or complete lack of political will among citizens, which in turn is caused by a low level of public involvement in politics, which in turn is due to the usual functioning of political communication. The rules of language games (political, legal, cultural) are not created by the participants themselves in the result of a consensus-communicative discourse, but are set from the outside and are no longer shared by all members of a particular communicative community. The shaking of habitual traditions and norms of behavior leads to the imposed rules rejection and disruption of the consensus-communicative public discourse mechanisms functioning. These circumstances require a rethinking of the very phenomenon of power and the development of strategies for overcoming the crisis. From the point of view of a deliberative strategy (J. Rawls, J. Cohen, J. Habermas, S. Benhabib), the organization of a communicative power could become a way out of the crisis. This process requires all interested in the decision parties consensus expression. According to the agonistic strategy (C. Mouff), power is not interpreted as a purely external relation that develops between two given identities, but as something that establishes these identities themselves. According to J. Rawls and J. Habermas, it is necessary to find a way to eliminate power, because the more democratic a society is, the less power is present in its social relations. But according to C. Mouff, power relations are the basis of social relations, and the main issue of democratic politics is not how to eliminate power, but how to create such forms of power that could be more compatible with democratic values. Both approaches have the ability to bring the legitimacy of power out of the crisis, as long as the authorities will demonstrate its creative potential, which consists in protecting the fundamental rights of citizens; harmonious combination of public and private spheres; freedom realization.

Keywords: Political Communication, Legitimacy Loss, Power, Deliberative Democracy, Communicative Consensus, Agonistic Pluralism, Power Creative Potential, J. Habermas, C. Mouffe

1. Introduction

Globalization affecting all spheres of social life without exception is accompanied by rapid transformations of generally accepted legal and value system ideals. It results in emergence of numerous previously unknown non-conventional views which lead to the situation where previously formed phenomena experienced as legitimate are perceived as unfamiliar and illegitimate (this can occur both at the national and international level). In particular, in the age of globalization, the state sovereignty concept undergoes transformations. Many scientists fear whether this concept is becoming obsolete at all¹. The democracy concept is also problematized.² The emergence of new political and economic actors on the international scene challenges the traditional beliefs in what democracy is and what its opposite is. Globalization is characterized by such features as inter-subjectivity, ambivalence and asymmetry³. Globalization is inter-subjective since, on the one hand, it emerges due to the actors who use their own resources and communication tools to act, and on the other hand, globalization undergoes reification and starts being experienced by the actor as something objective. Globalization is ambivalent since it can bring both positive and negative consequences. By itself, it cannot be assessed positively or negatively. To a large extent, its result is individual for each specific state and depends on whether this state can benefit from globalization or collapse under its influence. Globalization is asymmetric since different countries are unequally integrated into its processes. Globalization is also accompanied by disintegration and fragmentation, regionalization and localization. These changes directly affect the concept of legitimacy, whose content is problematized in the context of globalization. In the modern conditions of political power, legitimacy is especially essential, but it is very easy to lose and quite difficult to return.

¹ See, for example.: Guehenno J. *The End of the Nation State*. University of Minnesota Press, 2000; Ohmae K. *The End of the Nation State*. New York, 1996; Held D., McGrew A., Goldblatt D., Perraton J. *Global Transformations: Politics, Economics and Culture*. New York, 1999.

² See, for example.: Zolo D. *Democracy and Complexity: A Realist Approach*, Moscow, 2010.

Globalization contributes to a high level of liberalized thinking that begins to sharply perceive any bureaucratic obstacles that state power erects in the economic sphere. This is supplemented by a significantly complicated system of value preferences, as well as value relativism. The legitimacy concept disintegrates in all spheres of legitimacy existence: power legitimacy, law legitimacy, religion legitimacy, morality legitimacy, ethics legitimacy, etc. This means that the key problem is no longer the loss of trust in various social institutions, including the state power institution. The chief bugbear is the fact that the necessity of these institutions as such is disputed and the very idea of a state-organized society is rejected. The problems associated with power legitimacy can be tackled through different strategies (aggregative, deliberative, agonistic) which are described below in relation to settlement of the state power legitimacy crisis.

2. Political and Communicative Grounds for State Power Legitimacy Crisis in the Era of Globalization

The notions of state power and state sovereignty are contested in the era of globalization. The loyalty of residents to transnational corporations, international companies and “communities of identities”³ outweighs the satisfaction from the state politics. The concept of sovereignty has been criticized by scholars of various fields. For example, J. Habermas in his speculations about how the concept of sovereignty emerged, emphasizes the fact that it was fixed in the actor’s mind through “usurping the coercive power as a concentration of power that can overcome any other power”.⁴ The thinker believes that this monopoly will persist regardless of whether the sovereignty is identified with the particular people or correlated with the competence of the institutions formed by the people in accordance with the constitution. J. Habermas believes that it is essential to raise the capacity for political action to a higher level extending beyond the borders of nation-states. “A world dominated by nation-states is indeed in transition toward the post-national constellation of a global society. States are losing their autonomy in part as they become increasingly enmeshed in the horizontal networks of a global society”.⁵ The scientific community largely holds the view that globalization exposes the state sovereignty to significant “erosion”⁶, and that the universalization of all spheres of social life prevents any nation-state from exercising its sovereignty, it is “eroded”⁷, and this process is inevitable and objective. Such fears of scientists originate from the idea that globalization pushes the world to transfer from the Westphalian system of nation-states interaction, through the stage of “united nations”, to a global order which can transform both to completely perished state, and to a new microsystem, cosmopolitan democracy or transnational states. The territorial boundaries of the state that are one of its key features become more transparent as a result of strengthened possibilities of inter-subjective extraterritorial communication, and are losing their traditional meaning. The loyalty of individual actors is transferred from the state arranged on a territorial basis to all kinds of inter-territorial organizations. In addition, libertization (from the English –liberty) of the individual (gravitation towards the idea of freedom) in all directions, whether it is political freedom, cultural or economic freedom of expression, also contributes to the erosion of state power legitimacy. Indeed, one of the consequences of global changes is the acquisition of unprecedented flexibility and dynamism by a society. According to D. Zolo’s righteous assertion, “the increase in differentiation and the colossal spread of mobility, knowledge and opportunities for new experience, which occurs thanks to technological innovations, sharply exacerbates the need for functional freedom and personal independence”^{8,9}. This, in turn, entails the delegitimation of any institutions that impede realization of this freedom. Globalization is characterized by accelerated dissemination of information, knowledge, opportunities for acquiring new experience,

³ Malakhov V.S. *State Under Conditions of Globalization*. Moscow, 2007. P. 187.

⁴ Habermas J. *Faktizität und Geltung*. Frankfurt a. M., 1998. Pp. 364–365.

⁵ Habermas J. *The Divided West*. Moscow, 2008. P. 119.

⁶ The western researchers call this process erosion of sovereignty. See, for example: Goodwin G. L. *The Erosion of External Sovereignty? // Government and Opposition*. Vol. 9. No. 1 (WINTER 1974). Pp. 61–78; Loughlin M. *The Erosion of Sovereignty // Netherlands Journal of Legal Philosophy*. 2016 (2). Pp. 57–81; Raz J. *The Future of State Sovereignty // Oxford Legal Studies Research Paper No. 61/2017* [Electronic resource]. URL: https://scholarship.law.columbia.edu/faculty_scholarship/2069 (date of application: 01.07.2020).

⁷ Or “softened”. These terms are commonly used by indigenous researchers of the state sovereignty. See, for example: Bogaturov A. D. *The concept of world politics in the theoretical discourse // International processes*. 2004. No. 1. p. 19; Lebedeva M. M. *World Politics*. Moscow. : Aspect Press, 2006. P. 66; Tsygankov P. A. *World Politics and Its Contents // International processes*. 2005. No. 1. Pp. 58–59.

⁸ Zolo D. *Democracy and Complexity: A Realist Approach*, Moscow, 2010. Pp. 311–312.

increased mobility, which results in increasing need for freedom and independence. And this desire for freedom (namely, negative freedom, that is, “freedom from” excessive state intervention) leads to destruction of political consensus that existed earlier, which served the basis for functioning of all social institutions.

Globalization has a decisive effect on the territorial organization of social and political institutions, creating ever new forms and methods for exercising power at the supranational level. The constant increase in the flows of social activity on all continents leads to the inability of these interactions to be arranged only within the sovereign states. As a result, institutions of global supranational governance are formed (the system of UN specialized agencies, European Union bodies, etc.).⁹

Globalization is accompanied by such a tendency as “strengthening the will to power” of political and non-political actors. The emergence of such strong actors as supranational institutions of power, international organizations, transnational corporations, which pursue their economic and political goals in the international arena, compel states to act not always at their discretion, which lead to formation of special configurations of power relations accompanied by the value disintegration of the society. “The power falls into a certain circle of social legitimacy crisis. It spreads out and takes new more complex forms”¹⁰. For this reason, the very phenomenon of power requires a thorough rethinking.

The state power legitimacy crisis is associated with a partial or complete lack of political will among residents (with an increase in the will to power of political and economic actors), which, in turn, is caused by a low level of involvement of the population in politics, which is due to the usual functioning of political communication. Political elites form the necessary political views through the media, while applying technology of manipulating the population’s consciousness by imposing the pleasing pictures of the world and, the idea of “symbolic” meaning of the reality. The population is consequently unable to assess the real political picture, to understand the political game rules, to make fateful political decisions and to take responsible political actions. In order to “get” legitimacy, the authorities resort to manipulation and shaping of public opinion. The audience persuasion is not based on argumentation, but on emotional suggestion. The dialogue communication that mediates the relationship between the state and the society is replaced by monologue communication. Such communication, in terms of its content, leads to the opposite process, i.e. to the loss of legitimacy in general. However, globalization, while libertizing thinking, brings the consciousness of the individual to a new level requiring the expansion of the political action boundaries.

3. Manifestations of State Power Legitimacy Crisis

Legitimacy is a phenomenon of social actors’ perceptions that is formed in the process of their communication with each other, and presupposes trust, approval and recognition of social institutions, including institutions of power. At the same time, the criteria for the legitimacy of this or that social institution are not legal meanings or not so much legal, but value-oriented attitudes. The complexity of the legitimacy phenomenon lies in the consensus on the relevancy of social institutions as regards their value and target meanings. Globalization leads to instability, uncertainty of society development directions, deformation of the value content of both private and public life, and, finally, imbalance and global revaluation of values. In other words, the main criteria of legitimizing social institutions in the process of globalization are discredited and transformed, which results in disintegration of the legitimacy phenomenon and its transfer to the phase of a crisis.

In democracies, the state power legitimacy is based on the majority principle, which is implemented within a particular political community. At the same time, for its existence, the legitimacy requires the existence of “we-identity” condition that unites independent decisions of the political union members. Globalization, while leading to legal standardization, discredits the national and cultural identity of national societies, and reduces the level of legitimacy within these societies. In such a situation, two levels of legitimacy come into conflict with each other: the legitimacy of the democratic principle of majority and the legitimacy of the international principle of fulfilling obligations. This conflict consists in the fact that the authors of international treaties are not the people of the nation-state, but professional experts, whose opinion may run counter to the opinion of the majority of the population of a particular state. These decisions are not made by people’s representatives, since they are only ratified in the parliament.

⁹ For more details of globalization and its influence on the state sovereignty, as well as of supranational power institutions, see: Osvetimskaya I.I. State Sovereignty: contents and transformation under conditions of globalization // News from Higher Educational Institutions. Legal Studies. 2017. No. 2. Pp. 150–168.

¹⁰ Ibid.

These decisions often do not correspond to the level of development of a particular society, but, being implemented in the national legal system, help to establish a gap between the law and democratic procedures of legal legitimation. Democratic procedures are based on a consensus between those participating in the processes of democratic legitimation and those who are thus affected by the legitimized decisions. Due to the fact that the phenomenon of “we-identity” does not allow expanding the range of democratic procedures to infinity, the principle of consensus is violated.

On the one hand, decisions from the outside are imposed on a democratic society, and on the other hand, decisions are legitimized by this society itself. Coming into conflict, these two levels of legitimacy existence increase the alienation of a given society from the authorities and from other societies. The power, if considered in the context of the supremacy of the law¹¹, is a kind of “instrument” that carries law through legislation as a positive form of law, not reducible to law in general. Trust in positive law thus determines trust in the actions of all branches of government. If positive law ceases to reflect general principles and ideas of law, and begins to be perceived as an instrument that restricts freedom, a new phase of human alienation from both law and state power arises.

Thus, the enhanced interaction of national states with other international actors contributes to blocking the principles which serve the basis for arrangement of all life within a democratic society. As a result, the normative basis for language games in a national society, whose institutionalization is only possible if there is a national (political, economic, legal, cultural, social) “we-identity”, is discredited. The statement above is based on the L. Wittgenstein’s concept of “language games”, since language games reflect a certain form of language communication which functions in accordance with certain rules. But if these rules are disobeyed, the entire discursive practice and the entire language game are destroyed. Since a language game is carried out only in the process of communication, it is a specific way of the subject’s communicative interaction with the environment. To understand the essence of a language game and its meaning, it is essential to be in this game space, to be a “player”. L. Wittgenstein emphasizes the connection between the text and the way of its interpretation.¹² Due to the fact that in the era of globalization, the creation of the language game rules is not done by the members of a particular political community during the implementation of communicative conciliation procedures, but by external actors, these rules are not legitimized by a part of the members of this political community. Common traditions and standards of behavior are disobeyed, which finds its expression (consciously or unconsciously, in one way or another) in rejection of the rules imposed by others and malfunctioning of consensus-communicative public discourse mechanisms. Rapid changes in the social life order which accompany globalization and are clearly observed in the formation of global network relations, cause the emergence of heteronomous (alien) rules of conduct in the legal sphere. The main criterion for the law legitimacy seems to be its compatibility with substantial values. There is no doubt that unfreedom and injustice are not fundamental values that underlie social order. Freedom, equality and justice are a kind of reference point both for the individual and for the society, despite the fact that they need harmonization due to discrepancies in their interpretation. One way or another, these values are embodied in law to one degree or another. This a priori foundation, which is the quintessence of natural law, creates a pattern to be followed by positive law. If any pauses occur in such a follow-up, a crisis of the law legitimacy arises, which leads to the crisis of the legal legitimacy of other social institutions and phenomena.

Globalization is accompanied by the standardization of national legal systems. National law is incorporated into the international legal system, i.e. global law. As a result, different ideas emerge about what is right and what is legitimacy. National law is recognized as legitimate if it meets the standards recognized by international law. Thus, the justification of legitimacy, to which we are accustomed within the framework of national law, is rapidly moving into a new environment. There is a need to substantiate the legitimacy of international law as a measure of the legitimacy of national law. In addition, global tendencies problematizing state sovereignty discredit the faith in the sovereignty of national law, whose legitimacy continues to be understood as the legitimacy of national law.

The indicated effect of “loosening” the normative foundation of a society is easy to detect in developing countries, which are overly influenced by stronger states, including through legal intervention. Due

¹¹ The supremacy of law is here understood similarly to Professor A. V. Polyakov, i.e. as “establishment of such an order which acts on the basis of common standards, ensures human’s rights and their guaranteed legal protection, and which is aimed at exercising the idea of justice in the context of law” (Polyakov A.V. Rule of Law, Globalization and Issues Related to Modernization of Philosophy and Legal Theory // News from Higher Educational Institutions. Legal Studies. No. 4. 2013. P. 20).

¹² Wittgenstein L. Philosophical Investigations // Wittgenstein L. Philosophische Untersuchungen. Moscow, 1994. Pp. 90–91.

to the fact that alien standards cannot be harmoniously introduced into autochthonous normative worlds, they cannot gain legitimacy, but only lead to relativism in relation to existing standards.

If criticism of fundamental foundations in scientific thinking can lead through scientific revolutions to a change in the entire scientific picture of the world, then any manipulations with the “life world” can lead to unforeseen results. The collision of the basis for the “life world” of a particular society with normative worlds alien to it causes aggression, fear and alienation. There is probably some chance that this scenario will end positively if the criticized “life-world” undergoes its own internal changes. Conflicting ideas will be “filtered”, some of them will be accepted in the course of public reflection and, as a result, the legal pluralism will emerge. But if the scenario turns out differently, namely, if the invasion of alien normative worlds is too intense, they will not be able to complement the existing picture of the world of a particular society, but will be perceived as something conducive to the death of the entire established normative basis.

4. Rethinking the Phenomenon of Power

Today there are many approaches to understanding the essence of the phenomenon of power. Let us dwell on the most relevant for post-classical science, such as communicative concept presented by H. Arendt and J. Habermas, and post-structuralism concept presented by M. Foucault and P. Bourdieu. According to these concepts, power is a repeatedly mediated instrument of inter-subjective interaction located in the social field and the sphere of communication. H. Arendt characterizes power as “multi-level institutional communication”.¹³ The emergence of the phenomenon of power is caused by the need to coordinate inter-subjective interaction in the process where members of society realize their private interests in order to correlate them with a common interest. According to J. Habermas, power is a kind of macro-instrument that allows settling problems arising from the correlation of private and public spheres of public life, which is aimed to preserve and multiply the communicative discourse between political actors.¹⁴ M. Foucault and P. Bourdieu also treat the power as a kind of relationship and communication. M. Foucault, in his concept of power, emphasizes that power should not be identified with state power, because the latter is based on a whole system of micropower (“grid of power relations”), which includes a number of fostering, educational, medical and psychiatric institutions, as well as prisons. This forms the “whole bundle of power relations”¹⁵ which entangles the individual and which helps the power to become omnipresent, reproducing itself at any point. In addition, “power relations are the relations of force, the relations between adversaries”¹⁶. This is the relationship that develops between two poles: one is the pole of force application, and the other is the pole of opposition to the force.

We can say that P. Bourdieu expands this approach and proposes his concept of “symbolic power as a kind of aggregate of various capitals distributed among the actors according to their positions in the political field”.¹⁷ There are many various forms of capital: economic, cultural, etc. The “political field” in his opinion is a social sphere constructed directly by the mutual subordination of power relations. P. Bourdieu’s concept of symbolic capital is of interest for solving the problem of legitimizing power due to the fact that, according to the scientist, during the establishment of power, there is a transition of certain types of power capital into symbolic capital. Symbolic capital includes reputation, good name, and authority. It is thanks to the symbolic capital that the authorities begin to believe in it, they begin to follow it, that is, the legitimation of power is by its nature symbolic. Confirmation to this thinking can be found in T. Luckmann and P. Berger, who believe legitimation to be a prerequisite for constructing society as an objective reality. In their opinion, legitimation is a semantic objectification of the “second order”. Objectification (or signification) means giving meaning to any phenomena, events, processes. Legitimation in this case forms its own worlds by creating new symbols and signs. Such worlds are called “symbolic universes” by T. Luckmann and P. Berger¹⁸. As a result, it turns out that in the process of symbolizing capital, that is, “moving” it into symbolic worlds, its owner is endowed with “perfect” mean-

¹³ See: Arendt H. *Origins of Totalitarianism*. Moscow, 1996.

¹⁴ See: Habermas J. *The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society*. Massachusetts. 1991.

¹⁵ See: Foucault M. *Power/Knowledge*// Foucault M. *Intellectuals and Power*. Moscow, 2002.

¹⁶ *Ibid.* P. 290.

¹⁷ See: Bourdieu P. *Social Space and Symbolic Power* / Bourdieu P. *The Origins* / translation from French by M. A. Shmatko. Moscow, 1994.

¹⁸ See: Berger P., Luckmann T. *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. Moscow, 1995.

ing in the perception of others, and this allows his power not to depend on anyone or anything. Thus, symbolic capital for P. Bourdieu and charisma for M. Weber are practically the same.¹⁹

According to P. Bourdieu, individual capital, which is a kind of political capital, is based on celebrity and recognition, and on the possession of such qualities that form a certain reputation and cause support from other actors. For M. Weber, charisma also represents such a quality of personality, thanks to which he is recognized by everyone as a gifted person. The seizure of symbolic capital or the symbolization of existing capital provides the authorities with its legitimacy. And what is very important, on the part of the subjects of legitimation, this process of legitimation will not always be conscious.

5. Possible Methods to Recover from State Power Legitimacy Crisis

In order to find a method to recover from the legitimacy crisis, it may be useful to rethink the basic models for settling conflicts that arise in the process of legitimizing power, such as aggregative, deliberative and agonistic models.

J. Schumpeter can be considered the founder of the aggregate strategy²⁰. He believed that the essence of democracy lies in the aggregation of citizens' preferences and decision-making in the course of an open competitive electoral struggle by a majority of voters. On the whole, the aggregate model is overly procedural, reducing the phenomenon of democracy to mere procedures for achieving a balance of disparate interests through the interaction of various groups. Thus, E. Downs is convinced that the pluralism of interests and values is much more important than the common interest and the common good, therefore, the latter concepts should be completely abandoned.²¹ It seems that the disadvantage of the strategy lies in the formation with its help of a one-way model of political communication. Communication in this channel is understood "as a formal, technical process of transferring precise, abstract information from a source-subject to an addressee-object. Such a one-sided, linear, subject-object political communication serves to achieve the power of a political leader or state apparatus that creates, regulates information and is its main source".²² Such a model is not able to help find a way out of the current crisis, since it denies a person's ability to perceive and interpret political information coming from outside, in accordance with their value orientations.

Deliberative strategy or democracy of discussion is represented by two approaches. J. Rawls²³ and J. Cohen²⁴ are representatives of the first approach, while J. Habermas²⁵ and S. Benhabib²⁶ support the second approach. These scholars are convinced that deliberative procedures contribute to the achievement of an agreement that is consistent with the principles of normative rationality and the principles of democratic legitimacy. The former are expressed in the protection of fundamental rights and freedoms, the latter — in the people's sovereignty. According to this approach, legitimacy is based on universal rational agreement (consensus). If deliberative procedures create an opportunity for the implementation of principles such as equality, impartiality, absence of violence, honesty, then their result will be the finding of common interests that suit all participants in the discussion, and the decision thus made will be legitimate.

And finally, the **agonistic strategy** presented by C. Mouffe calls to understand power not as communication imposed by one subject on another from the outside, but as communication that forms these subjects.²⁷ Let's consider the last two strategies in more detail.

¹⁹ This is emphasized by Bourdieu P.: "Symbolic capital would be nothing more than another way of designating what Max Weber called charisma if he, who no doubt had best understood that the sociology of religion is a chapter of the sociology of power (and not a minor one at that), hamstrung by the logic of realist typologies, had not made charisma into a particular form of power instead of seeing in it a dimension of any power, that is, another name for legitimacy as the product of recognition or misrecognition, or of the belief (these are so many quasi-synonyms) 'by virtue of which persons wielding authority are endowed with prestige.'" (Bourdieu P. *The Logic of Practice*. St-Petersburg: Aleteya, 2001. P. 280).

²⁰ See: Schumpeter J.A. *Capitalism, Socialism and Democracy*. Moscow, 1995.

²¹ See: Downs A. *An Economic Theory of Democracy*. New York, 1957.

²² Linde A. N. The conception of deliberative democracy by J. Habermas in the context of the present theory of political communication // *Russian Political Science*. No. 2, 2017. PC. 75.

²³ See: Rawls J. *A Theory of Justice*. Novosibirsk, 1995.

²⁴ See: Cohen J. *Democracy and Liberty* / J. Elster (ed.), *Deliberation Democracy*, Cambridge, 1988.

²⁵ Habermas J. *The Inclusion of the Other*. *Studies in Political Theory*. St-Petersburg., 2001. P. 385.

²⁶ See: Benhabib S. *Toward a Deliberative Model of Democratic Legitimacy* / S. Benhabib (ed.), *Democracy and Difference*, Princeton, N. J., 1996.

²⁷ Mouffe C. *Toward an agonistic model of democracy* // *Logos*. 2004. No. 2 (12). P. 188.

Trying to find a way out of the situation related to the crisis of democratic legitimacy, denial of sovereignty, and the crisis of trust in democratic and power institutions that were characteristic features of the age of globalization, J. Habermas offers a new interpretation of the essence of democratic legitimacy, namely through the definition of sovereignty inter-subjectively as “power generated by communicative means”²⁸. Both J. Rawls and J. Habermas seek to combine democracy and liberal values. According to scholars, power must be subject to universal justification in certain forms. The foundation of the legitimacy of democratic mechanisms is based on the fact that institutions, which strive for power, explain their desire by the fact that the result of their activities will be decisions that express the interests of all members of society.

However, if we think in this vein, it is not sufficient to take into account the interests of all participants together, as well as each separately to ensure the democratic decision-making procedure.

It is necessary to ensure the consensus of all parties concerned in the decision to be made. In this case, a “communicative power” will be formed, which “presupposes the absence of a permanent hierarchy, bringing both justification and application of prescriptions into the discussion area, widespread use of negotiation and conciliation procedures, corrective feedback, etc.”²⁹. If we turn to S. Benhabib, she writes the following about this: “In accordance with the deliberative model, in order to achieve rationality and legitimacy of joint decision-making processes in the state, it is necessary that the institutions of power provide an opportunity for the formation of a common interest in the course of deliberative procedures, openly and honestly organized between equal and free citizens”.³⁰ J. Rawls and J. Habermas are characterized by the desire to achieve not a simple agreement, but a rational consensus, since it is the only which serves as the basis of liberal democracy, guarantees the compliance of power mechanisms with democratic values. For J. Rawls, the basic democratic value is justice. According to J. Rawls, it is possible to consider a democratic society only that one which is based on the principles corresponding to such an understanding of justice which is characteristic of the largest number of citizens. Only in this case the effective and legitimate functioning of state institutions is possible. J. Habermas considers legitimacy to be the main democratic value. According to J. Habermas and S. Benhabib, for the effective and legitimate functioning of state institutions, it is necessary to create a political community that adheres to rational views of legitimacy. For this reason, the main problem is the search for such a tool which, when used, will help to make guaranteed unbiased decisions that reflect the position of all citizens equally. Such a tool is advisory procedures, the result of which is the achievement of a rational consensus. “Legitimacy that meets democratic principles emerges as a result of open joint discussion of issues related to common interest,”³¹ writes S. Benhabib.

However, with this formulation of the question, it is important to recall the words of L. Wittgenstein, who believed that it was not enough to reach a consensus in the definition of a concept. There is a need to reach a consensus on using this concept. Reflecting these words on the above reasoning of representatives of deliberative democracy, we can say that the gravitation towards the values of democracy and liberalism, rather, is based not on rational argumentation, but on “a passionate commitment to a system of reference”³². Following the chosen system of values becomes the faith and *modus vivendi* of every member of the political community.

C. Mouffe, criticizing the deliberative strategy, stresses that politics is not free from values, especially when it comes to the most important issues related to justice. In this regard, it is impossible to come to a universal solution that suits everyone. She puts forward the main argument that the actions and decisions of the authorities constitute social reality. In other words, any social reality is a political and constructed reality. In this perspective, power is interpreted not as an externally imposed relationship that develops between the subjects, but as **something that forms these subjects themselves**³³.

As a result, if we follow the strategy of deliberative democracy, then it is necessary to find a way to eliminate “passions from the public sphere”³⁴ in order to achieve a rational consensus. If we follow the agonistic model of democracy, then we are looking not for a way to eliminate passions due to the disappearance of pluralism of interests, but a way for the existence of pluralism of interests as a unity in a conflict context.

²⁸ Habermas J. The Inclusion of the Other. Studies in Political Theory. P. 385.

²⁹ Belyaev M. A. Deliberative Model of Democracy: Basic Principles and Practical Difficulties // Proceedings of the Institute of State and Law of the RAS. 2019. Volume 14. No. 3. P. 86.

³⁰ Benhabib S. Supra note 27. P. 69.

³¹ Ibid. P. 68.

³² Wittgenstein, L. Philosophical Works. Part I. Moscow, 1994. P. 470.

³³ Mouffe C. Toward an agonistic model of democracy. P. 188.

³⁴ Ibid. P. 195.

According to the agonistic model, democracy requires the addition of the constructed phenomenon of the social sphere with the utilitarian basis of the authorities' aspiration for legitimacy. Power and legitimacy are not in a state of irresistible division, on the one hand. But no power is a priori legitimate — on the other hand. If any authority is established, it means that someone recognizes it as legitimate. But it remains so only if it fulfills its purpose effectively. This interdependence of two phenomena, according to C. Mouffe, is not taken into account by a deliberative democracy, which adheres to the idea of the reality of building rational argumentation to eliminate power and form legitimacy on the basis of pure rationality.

Developing this thesis, C. Mouffe proposes her own approach, which she calls “agonistic pluralism”. In doing so, she shows the difference between two manifestations of pluralism, such as antagonism and agonism. If antagonism can be described as a confrontation between enemies, then agonism is a confrontation between rivals.

In modern democratic politics the crucial problem is how to transform antagonism into agonism. The difference between an adversary and an enemy lies in its legitimacy. We enter the struggle with the rival, sharing with him common political and ethical principles of freedom and justice. Our opposition consists in the existence of some differences in the interpretation of the meaning of these principles and the ways of their implementation. Such differences cannot be eliminated through rational discussion, for the reason that consensus cannot be reached in the area of public interest. “A well functioning democracy calls for a vibrant clash of democratic political positions. In this regard, the ideal of pluralistic democracy cannot be achieved through public consensus. Consensus in the public sphere is impossible”³⁵.

It seems that the model of agonistic pluralism, despite the fact that it is more sensitive to the various impulses sent from society, nevertheless implies a certain danger. This danger lies in the identification of social relations with relations of power. If we accept their identity, then there is a danger of a theoretical justification for removal of responsibility from public authorities.

6. Conclusion

Both approaches, deliberative democracy and agonistic pluralism, have the potential to overcome the legitimacy crisis. However, it should not be forgotten that the constitutive feature of the individual is rather a difference than a consensus. Therefore, in the eyes of an individualistic society, the power that supports individuality, the diversity of life forms, dialogues, etc. will be considered legitimate. The agonistic model of democracy is more suitable for such a society as a strategy. A society that is characterized by a greater bias towards common interests than private ones should adopt a deliberative model that seeks homogeneity through communicative consensus.

At the same time, it is important to understand that the level of modern society development requires the government to comply with high standards: the right to elect power, to freely influence the government and to participate in its decision-making processes. Compliance with democratic principles presupposes well-functioning mechanisms of two-way communication, effective dialogue, public control, and feedback. We should also remember the warning of H. Arendt that consensus can serve the basis for creation of political homogeneity which might be then followed by totalitarianism. In order to avoid this, the authorities should not forget about their “**creative potential**”, which, according to H. Arendt, is as follows³⁶:

1. Governmental protection of undeniable, inalienable rights and freedoms of citizens.
2. Harmonious interaction of public and private interests ensured by the authorities. The priority of the public sphere over the private, the disproportionately large role of government institutions and the bureaucratic apparatus in the life of society entails a distortion of the life of society due to excessive infringement of personal space.
3. Realization of the phenomenon of freedom. In the field of politics, freedom can be realized as “protest” in the meaning of influencing the government and as “own position” in the meaning of disagreement with the government's decisions. As an internal quality, freedom means the ability to create and implement something new, just as freedom in the context of political reality means the presence of some space between individuals for their independent activity.

References

1. *Arendt, H.* Origins of totalitarianism [Istoki totalitarizma]. Moscow : CenterCom [TsentRKom], 1996. (transl. from English)

³⁵ Mouffe C. Toward an agonistic model of democracy. P. 196.

³⁶ Arendt H. Origins of Totalitarianism. P. 614.

2. *Belyaev, M. A.* Deliberative Model of Democracy: Basic Principles and Practical Difficulties [Deliberativnaya model' demokrati: bazovye printsipy i problemy realizatsii] // Proceedings of the Institute of State and Law of the RAS [Trudy Instituta gosudarstva i prava RAN]. 2019. T. 14. No. 3. Pp. 79–95. DOI: 10.35427/2073-4522-2019-14-3-belyaev.
3. *Benhabib, S.* Toward a Deliberative Model of Democratic Legitimacy, in Seyla Benhabib (ed.), *Democracy and Difference*, Princeton, N. J. : Princeton University Press, 1996.
4. *Berger, P., Luckmann, T.* The Social Construction of Reality. A Treatise on Sociology of Knowledge [Sotsial'noe konstruirovaniye real'nosti. Traktat po sotsiologii znaniya]. M. : Medium [Medium], 1995. (transl. from English)
5. *Bogaturov, A. D.* The Concept of World Politics in Theoretical Discourse [Ponyatiye mirovoi politiki v teoreticheskom diskurse] // International processes [Mezhdunarodnye protsessy]. 2004. Vol. 2 No. 1 (4). Pp. 16–33.
6. *Bourdieu, P.* Social Space and Symbolic Power. [Sotsial'noe prostranstvo i simvolicheskaya vlast'] // Bourdieu P. Beginnings [Nachala] / trans. from fr. M. A. Shmatko. M. : Socio-Logos, 1994. (transl. from French)
7. *Cohen, J.* Democracy and Liberty / J. Elster (ed.), *Deliberation Democracy*, Cambridge : Cambridge University Press, 1988.
8. *Downs, A.* An Economic Theory of Democracy. New York : The University of Chicago Press, 1957.
9. *Foucault, M.* Power and Knowledge [Vlast' i znanie] // Foucault M. Intellectual and Power: Selected politically articles, speeches and interviews [Intellektual i vlast': Izbrannye politicheski stat'i, vystupleniya i interv'yuu] / transl. from French. S. Ch. Ofertas, ed. V. P. Vizgin and B. M. Skuratov. M.: Praxis [Praksis], 2002. (transl. from French)
10. *Goodwin, G. L.* The Erosion of External Sovereignty? // Government and Opposition. Vol. 9. No. 1 (WINTER 1974). Pp. 61–78.
11. *Guehenno, J.* The End of the Nation State. University of Minnesota Press, 2000.
12. *Habermas, J.* Involvement of the Other. Essays on Political Theory. [Vovlechenie drugogo. Ocherki politicheskoi teorii.] SPb. : Nauka, 2001. (transl. from German)
13. *Habermas, J.* The Broken West [Raskoloty Zapad] / Transl. from German O. M. Velichko, E. L. Petrenko. M. : Ves Mir Publishing House [Izdatel'stvo «Ves' MiR»], 2008. (transl. from German)
14. *Habermas, J.* The Structural Transformation of the Public Sphere. An Inquiry into a Category of Bourgeois Society. Massachusetts : The MIT Press, 1991.
15. *Habermas, J.* Faktizität und Geltung. Frankfurt am Main : Suhrkamp, 1998.
16. *Held, D., McGrew, A., Goldblatt, D., Perraton, J.* Global Transformations: Politics, Economics and Culture. New York, 1999.
17. *Laclau, E., Mouffe, C.* Hegemony and Socialist Strategy. Towards a Radical Democratic Politics. London : Verso, 1985.
18. *Lebedeva, M. M.* Global Politics. [Mirovaya politika] M. : Aspect Press [Aspekt Press], 2006. (in rus.)
19. *Linde, A. N.* The Value of the Concept of Deliberative Democracy by J. Habermas for the Theory of Political Communication [Znachenie kontseptsii deliberativnoi demokrati Yu. Khabermasa dlya teorii politicheskoi komunikatsii] // Russian Political Science. No. 2, 2017. Pp. 73–81. (in rus.)
20. *Loughlin, M.* The Erosion of Sovereignty // Netherlands Journal of Legal Philosophy. 2016 (2). Pp. 57–81.
21. *Malakhov, V. S.* State in the Context of Globalization [Gosudarstvo v usloviyakh globalizatsii]. M. : KDU, 2007.
22. *Mouffe, Ch.* Towards an Agonistic Model of Democracy [Gosudarstvo v usloviyakh globalizatsii] // The Logos. 2004. No. 2 (12). Pp. 180–197. (in rus.)
23. *Ohmae, K.* The End of the Nation State. New York, 1996.
24. *Osvetimskaya, I. I.* State Sovereignty: Content and Transformation in the Context of Globalization [Gosudarstvennyi suverenitet: sodержanie i preobrazovanie v usloviyakh globalizatsii] // News of higher educational institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. 2017. No. 2. Pp. 150–168.
25. *Osvetimskaya, I. I.* State in the Context of Globalization: Theoretical and Legal Research [Gosudarstvo v usloviyakh globalizatsii: teoretiko-pravovoe issledovanie]. Thesis for a Candidate Degree in Law Sciences [Dissertatsiya kand. yurid. nauk]. St. Petersburg, 2017.
26. *Polyakov, A. V.* Rule of Law, Globalization and Problems of Modernization of Philosophy and Theory of Law [Verkhovenstvo prava, globalizatsiya i problemy modernizatsii filosofii i teorii prava] // News of higher educational institutions. Jurisprudence [Izvestiya vysshikh uchebnykh zavedenii. Pravovedenie]. No. 4. 2013. Pp. 18–30.
27. *Rawls, J.* Theory of Justice [Teoriya spravedlivosti]. Novosibirsk : Novosibirsk Publishing House. University [Novosibirsk : Izd-vo Novosib. un-ta], 1995. (transl. from English)
28. *Raz, J.* The Future of State Sovereignty // Oxford Legal Studies Research Paper No. 61/2017. [Электронный ресурс]. URL: https://scholarship.law.columbia.edu/faculty_scholarship/2069 (дата обращения: 01.07.2020).
29. *Schumpeter, J. A.* Capitalism, Socialism and Democracy [Kapitalizm, sotsializm i demokratiya]. M. : Economics [Ehkonomika], 1995.
30. *Tsygankov, P. A.* World Politics and its Content [Mirovaya politika i ee sodержanie] // International processes [Mezhdunarodnye protsessy]. 2005. No. 1. Pp. 53–65.
31. *Wittgenstein, L.* Philosophical Works. Part I. [Filosofskie raboty. Ch. I.] M. : Gnosis [Gnozis], 1994. (in rus.)
32. *Zolo, D.* Democracy and Complexity: a Realist Approach [Demokratiya i slozhnost': realisticheskii podkhod]. Moscow : Ed. House of the State University Higher School of Economics [M. : Izd. dom Gos. un-ta Vyshei shkoly ehkonomiki], 2010. (transl. from English)