

# Institutionalization of Power: A Legal-Sociological Approach to the Creation, Development and Dissolution of the State

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**Abstract.** The article considers the problem of institutionalization of power from the standpoint of the formation of the state as the basic institution. Institutionalization allows you to trace the paradigm of the formation, development and decomposition of the state, which is traced in the works of famous scientists of our time and past. The approach proposed by D. North to defining the structure of the state through access to violence made it possible to determine ways of retaining power in democratic and authoritarian states. Different ways of actions in states of democracy and authoritarian (totalitarian) state using the violence varies according to the purpose, method and object of application, as showed in the article. Authors come to conclusion that the concept of state sustainability is dynamic, and it depends on the stage of the state's life cycle, and as a result of the formation of the state, the rights of individuals are protected by coercive power of the state. A dynamic system seems to be the most correct form of the state. Dynamism of the state provides for the possibility of cyclic development of public administration system, from the inception to the decomposition of the state.

## 1. Introduction

Institutionalization of power is a process in which three important principles can be singled out. First, as we noted earlier, there is a tendency to depersonalize power when power is not associated with a specific person (king, emperor, etc.). Power does not change in connection with the change of the person exercising authority. In fact, such a person temporarily assumes authority and certain functions. Secondly, there is a tendency to formalize power relations, when the exercise of power is limited by rules, regulations, procedures, principles or norms. Thirdly, for the process of institutionalization of power, it should be noted the increasing integration of power relations in the current political regime. Power is becoming increasingly focused on existing established (embedded) relationships; it takes into account embedded relations in the exercise of its powers. Power integrates at complex social relationship that supports it. It is important to note that such behavior of the authorities, that is, depersonalization, formalization and integration, as three principles together, create a sustainable basis for power, the stability of the state. At the same time, these same three principles, acting as the natural restraints of power from arbitrariness, make power safe for citizens [Popitz, 2017]. Violation of one of these principles entails not only the risks of arbitrariness, but also undermines the stability of the state. In

this case, institutionalization leads to the formation of sustainable structures, an increase in the reliability of the functioning of the public administration system, and the coordination of the interests of the state, business, and society. So Thus, the institutionalization of power is one of the fundamental processes of “stabilization”, “establishment”, “consolidation” of social relations, and, consequently, processes that are inseparable from the fundamental principles of human coexistence.

It is important to note here that strengthening of power is possible in two ways, in particular, by changing the political regime (by authoritarian or totalitarian), and by institutionalizing power, when the mechanism for exercising power authority obeys the above principles.

In both cases, the issue is violence. It is important to note that in a democratic system of institutionalized violence mode, power is applied in the case of violation of the individual's conscious of the established rules and regulations, that is, to force the individual to follow the procedure established by law. In totalitarian and authoritarian regimes, violence is used to strengthen the government, and only then to punish violators of the rules, or so, people threatening the regime are accused of violating the rules and violence is used against them to legalize the terror being carried out. In both cases we are talking about the use of violence, but the conditions and reasons for its use may be different. It is important to note that the institutionalization of power dictates access to violence, that is, the mechanism of access to violence becomes decisive for the formation of the state regime.

Thus, the logic of actions of a democratic and authoritarian (totalitarian) state in the name of violence varies according to the purpose, method and object of application.

**Table 1.** A logic of action democratic and authoritarian (totalitarian) states in direct using the violence.

Indicator	Democratic state	Authoritarian (totalitarian state)
Purpose	Punishment of a person who committed a socially dangerous act to calm the society	Elimination of a person who is dangerous for the current regime
Way	Investigation, prosecution, fair trial with the provision of protection to the accused	Repressive apparatus (verdict in absentia, absence or restriction of the possibility of defending the accused)
An object	A person who has committed a socially dangerous act that is reproached in society	A person posing a threat to the current regime
Institutes	Criminal procedure, use of violence as a way of protecting society from persons who have committed socially dangerous acts (refusal from the death penalty, torture, accusatory bias in the activities of the bodies)	The use of violence as a way to curb attempts to change the current regime (flood of fear, groundless arrests, torture, widespread use of the death penalty, the presence of punitive organs)

Authoritarian (totalitarian) regimes use all the attributes of persecution of socially dangerous people in democratic regimes to cover the true goals of repression.

**2. Materials and methods**

Institutionalization is the most important aspect of state formation. There is a discussion about the origin of the state, the birth of this institution. The dispute comes down to the characteristics of the

state and the assessment of the conformity of reality with theoretical models. So, for example, M. van Creveld asserts: “The earliest political entities that could be called states were France, Spain, Portugal, Great Britain, the countries that made up the Roman Empire, the countries of Scandinavia and the Netherlands” [van Creveld, 2006]. He describes the period of the end of the XVII century. All other territorial entities (we deliberately note the impossibility in the opinion of van Creveld called all other states as the states), he refuses to name the state. Although further, we see some appeal to the past, since van Creveld, speaking of all the others, compares them with ancient Greece and Rome: “However, apparently, among them there were no governed on the principles of democracy and separation of power from property, as in ancient Greece and Rome”. Thus, states by van Creveld may be called those entities where public administration is based on the principles of democracy, and power and property are separated from each other. Since only France, Spain, Portugal, Great Britain, the countries of Scandinavia and Holland were awarded the titles of “state”, it is necessary to understand the characteristic features of these states in the political regime, and also to determine what led to the formation of the state institution in these countries in that period. The rest of the countries were characterized by van Creveld in the following way: “throughout the rest of the globe, the tribes without rulers that had existed there since time immemorial, more or less centralized heads and empires of different sizes and types”. According to van Creveld, it turns out that the institution of the state appeared and disappeared in chronological order, because before ancient Rome and Greece there was a certain political order, however, like after them, but they were denied the institutionalization of the state. For example, why is Byzantium not a state, and France of the late 17th century already a state?

### **3. Discussion**

To become protostates as states, van Creveld sees three possible ways, one of which (the third) is a special interest for us. It is possible as an imitation of other states (in this way Japan went), as well as the conquest of a protostate by the state and the imposition of state institutions on the conquered territories. L. Siedentop practically following van Creveld, notes that “The state is one of the forms of government, the one in which the sovereignty is determined by constitution, written or unwritten. It appeared relatively recently and only in one part of the world. Its occurrence was not inevitable. It is not a mandatory attribute of society or a sustainable social order” [Siedentop, 2004]. We note here that Siedentop speaks about the recent emergence of the state, connects it with the presence of the constitution, but at the same time declares the state an optional attribute of society, as well as a factor in the stability of social order. It turns out that the state is not necessary, but the rules (the constitution), which are of a state-forming nature, are necessary for society to ensure the sustainability of social order.

Van Creveld and Siedentop, however, in their judgments contradict, for example, N. Machiavelli, who calls the states and the empire of Alexander the Great (note, formed by the extensive conquests of neighboring states) [Machiavelli, 1996]. It should be noted that not only the empire of Darius, but also the countries he conquered are also named as states. The state of the Sultan of Egypt is also mentioned by Machiavelli. D. Lloyd claims that “every independent country was an independent legitimate entity, a “state” [Lloyd, 2002]. He further notes that the possession of sovereignty makes this formation a “state”. The question remains, how independent is this or that state *de facto* and *de jure*, since you can give examples when a formally independent state was (and some even now) dependent on a stronger neighbor. In this regard, in such a state alone is only relative. Hence it is clear that independence is determined by degree. There are two of its main degrees: ordinary independence and exceptional, hypertrophied independence. Under the exclusive autonomy understand the sovereignty of the superpowers, which have the ability to influence the state with ordinary autonomy.

J. Bodin noted: “if a multitude of people are gathered in one place, depriving them of laws and management, without providing any protection for public interests, where everyone will equip their personal affairs in the absence of punishments that keep immoral, and without awards, which are exemplary. What is this community like in the state? [Bodin, 2000]. Hence, using the subtraction method, it is possible to identify which institutions were important for declaring a state as a state: the ex-

istence of laws and management, security, the prevalence of public interest over the private, the presence of violence to enforce the laws, and the remuneration of law-abiding citizens. How are these institutions typical for modern states?

By the way, Thomas Hobbes gives this definition to the state: "... the total power that would be able to protect people from the invasion of foreigners and from the injustices inflicted on each other, and thus provide them with the security in which they could be fed from labors their hands and from the fruits of the earth and live in contentment can be raised only in one way, namely, by concentrating all power and strength in one person or in an assembly of people, which by a majority vote could bring all the will of citizens into a single will. Moreover, "the state is a single person responsible for whose actions it has made itself through mutual agreement between a great many people, so that this person can use the power and means of all of them as he considers necessary for their peace and common protection" [Hobbes, 1964].

What are the rules that create opportunities for state formation, calls Hobbes? Protection from external and internal enemies, so that citizens can feel safe and reap the fruits of their labors, live in contentment. These rules create the possibility of concentrating power and strength in one person, and for state formation a "mutual agreement" is necessary. This again raises doubts that van Creveld is right in his refusal to pre-Roman and medieval states in the status of a state, because the set of institutions that is characteristic for all historical periods is sufficient for state formation from the positions and judgments characteristic of that time, and not from the positions of the newest time and achievements of political thought of our time.

Bodin gives options for determining the state of the presence of power. So, he emphasizes the power of the city-state, government, law [Bodin, 2000]. According to him, the city-state provides citizens with the order of government (government) and laws, and, besides, security (presence of fortress walls). It is important to indicate the presence of fortress walls in our time. No reasons. At the same time, what function served the walls? Security. This function of the state and the institutions that provide it act in our time, moreover, they are constantly being improved, even coming into conflict with the basic human and citizen rights (which is only the universal installation of security cameras).

This means that in the past the judgment of states and their attributes was somewhat different from what is accepted in our time. In our opinion, the problem lies in which institutions are given the power of education of the state, more precisely, which institutions, if any, indicate that the state has taken place, has been institutionalized. Since the set of institutions for state formation in the Middle Ages - the new time and in modern times are clearly different, the judgment of territorial entities as states or non- states is different in the writings of medieval scholars, the new era, and at modern times. Thus, a set of institutions determines the status of a territorial entity, and not vice versa. Hence the primacy of the institutionalization of the state before state formation as a process: first there are institutions, then on their basis the state. This judgment corresponds and, at the same time, confirms the correctness of our definition of the category "institution" - this is a rule that creates opportunities for the realization of which organizations are formed. The chain of logical reasoning is as follows: rules arise characteristic of the organization of a political regime, opportunities arise from them - the establishment of personified power, for example, and for the realization of this opportunity, that is, an organization is created to establish a regime of personified power.

#### **4. Conclusion**

If institutions are social rules, but not norms of law, then they are not produced by the state, but they are produced by the state. This is another proof that institutions create states. Institutions are primary to the state. If the state is an institution, then the institution is primary in relation to the state. If the basis of the state is a social contract, then the institution is primary in relation to the state. The social contract is formed on the basis of some rules established earlier, and then the state was formed as a result of the conclusion of the social contract, which means that the institutions are primary in relation to the state.

The very existence of sustainable (embedded) institutions, through which state power is legitimized and used, determines the existence of the state. These embedded institutions differ from each other in terms of incorporation into the institutional structure due to changes in the historical conditions of the development of the state. Embedded institutions can be called as citizenship in the Greek polis or the Roman republic, and the kingdom during the absence of the king [Manov, 2014; Kantorovich, 2014]. Given the position of D.North that institutions are the rules of the game in society ... these are man-made restrictive frameworks that characterize the relationship between people [North, 1997], it turns out that institutions must streamline relations between people, and, therefore, must be coordinated by them in advance. Another Ch.Tilly noted that "consistency is formally linking solutions with each other" [Tilly et al., 1975]. The consistency or mutual solution of decisions leads to the orderliness of legal relations, whence it follows that this becomes a condition for the stability of the state. On this occasion, Montesquieu noted: "The reason that free states are less durable than others is that both their misfortunes and their luck almost always lead to the loss of their freedom. But the fortunes and misfortunes of the state, where the people are subordinate, equally enshrine their slavery. A wise republic should not venture upon such enterprises, the outcome of which depends on the vicissitudes of fate. The only good she must strive for is the stability of states" [Montesquieu, 1955]. Understanding the stability of the state is intuitively inherent in almost all political philosophers who turned to the institutional issues of state formation.

Montesquieu points out that those institutions that helped make Rome the most powerful state of the time proved unsuitable for the preservation of this powerful state. In other words, for the formation of a state, for the growth of its power and for the retention of this power, different institutions are needed: there is always such a phenomenon that the laws that made a small republic big become inconvenient for it when it increases, because their natural action is to create a great nation, but not to rule it. There is a big difference between the laws of good and expedient, between those that make the people the ruler of other nations, and those that support the power acquired by them [Montesquieu, 1955]. Hence follows the logical conclusion of Montesquieu that the fall of Rome has as its root cause a process of quick and successful conquests of neighboring states, for which the state itself was not ready. The empire turned out to be too vast for the oligarchic regime to rule [von Fritz, 2007].

On the other hand, the institution of a social contract, in its essence, contains the recognition of both parties to the treaty of the need to maintain the stability of the state and the consent of both parties to maintain this stability. Locke notes in confirmation of this thesis: what is the beginning of any political society and in fact makes it up is only the consent of any number of free people capable of forming a majority, to unite and join such a society. And it was this, and only this, that gave and could give rise to any legal rule in the world [Locke, 2018]. It should be noted that Locke repeatedly addresses the issue of state resilience, although it does not include it in the wording of the basis of a social contract: After all, once they conclude an agreement between themselves and come to an agreement on limiting power, on the one hand, and on obedience, on the other, the state of war and slavery ceases while the contract is valid. Thus, the contract is a way to eliminate the contradictions between masters and subjects. The social contract forms a system of rules, procedures and restrictions for eliminating the state of war and slavery, that is, the overlord gets the opportunity to organize the state and use the power, and the citizens get the opportunity to live in the territory where the public power protects the rights of the citizens.

Hobbes complements this idea, but he begins with the result of the founding of the state. He says that justice and property flow from the foundation of the state, which indicates the original nature of the institution of the state in relation to other institutions. At the same time, Hobbes puts mutual trust in the basis of the agreement: "agreements that have mutual trust as their basis are void where there is a fear of non-fulfillment by any party ... the source of justice is the conclusion of agreements ... however, there is no actual justice until eliminated the reason for the fear that it is not feasible as long as people are in the natural state of war of all against all" [Hobbes, 1964]. It turns out that in the absence of trust there must be some instrument that will force people to abide by the agreement under the threat of punishment. Otherwise, how to ensure the execution of contracts, how to ensure the protec-

tion of property rights and other rights. Such a Hobbes instrument can be a state; with its foundation, the “trust-coercion” of citizens for peaceful coexistence is resolved. At the same time, citizens in such a state do not have the right to change the regime by force, as there is no reason for that. Hobbes leaves open the question of whether it is possible, or whether citizens have the right to revolt, if the state gives grounds for this.

It turns out that the very concept of state sustainability is dynamic, and it depends on the stage of the state’s life cycle, as in pre-state societies rights are protected only by force, which entails a “war of all against all”, and as a result of the formation of the state, the rights of individuals are protected by coercive power of the state, that is, the infringer of rights will be subjected to legitimate violence and enforced compliance with the established procedure. A dynamic system, therefore, seems to be the most correct form of the state. Dynamism provides for the possibility of cyclic development of a system, from the inception to the decomposition of the state.

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