

## THE PRINCIPLE OF DELIBERATION AS A KEY BASIS OF STATEHOOD IN MODERN RUSSIA

### Abstract

The development of statehood is predetermined by a great variety of factors. In modern society, citizens are developing an increasing willingness to fully participate in political and legal processes jointly with the state. Today the ideas of deliberative democracy attract the close attention of legal theorists in this aspect. The subject of the research is the key aspects of the philosophical and legal treatment of social relations in the sphere of realisation of the principle of deliberation in modern Russia. The purpose of this study is a multilevel analysis (general legal, philosophical, technical/legal) of the principle of deliberation, with substantiation of its significance as a key foundation of statehood in modern Russia. The research results confirm the initial hypothesis and evidence that the goal of the study has been achieved. The correlation of state and public interests in terms of deliberative interaction is of fundamental importance for the development of Russian statehood.

*Keywords:* Russian statehood, deliberative democracy, deliberation principle, self-regulation.

### Introduction

The need to search for efficient ways of development of the state, law and society increasingly permeates the modern legal theory and practice. The modern stage in the existence of the Russian state is characterised by the reformation of all spheres of social life. The introduction of digital technologies in a broad range of social processes, including legislative activity, has a significant impact, which engenders the need to find due ways of participation of people at large in rulemaking (Pashentsev, 2019, pp. 5-13). The formation of statehood along with the purposeful incorporation of governmental entities into the world economic and political space conditioned the increased importance of legal issues in the life of the society. The presented study seems to be quite timely and relevant in this aspect; its purpose is a multilevel analysis that includes general legal, philosophical, technical/legal aspects

of the principle of deliberation, with the justification of its importance as the key basis of statehood in modern Russia.

In defining the terminological range, it is necessary to note the following. The term “deliberation” is etymologically based on the Latin word “deliberare”, which means to evaluate (in the ideological sense), contemplate, consult or heed the advice. Joseph M. Bessette (2011), a scholar credited with introducing the term “deliberative democracy”, based this concept on the importance of “debating on social and political issues throughout the U.S. development history as a process of discussing problems (deliberative process)”.

Moreover, as believed by J. Habermas (1992, p. 50), one of the most famous scholars who made a significant contribution to the development of this legal phenomenon, it is the emerging autonomous associations of the public that serve as subjects of spontaneous opinion for-

mation, penetrating each other through the organised acquisition of people's loyalty. At the same time, the grounded idea of a nation's sovereignty correlates with the communicative conditions for the discursive formation of opinion and will. Thus, deliberative democracy is based on the conviction that the individual is capable of shifting from the role of client to the role of a citizen of the state, that he/she is willing to compromise and even to give up some of his/her preferences if they get in the way of reaching agreement (Zaitsev, 2013, p. 31).

The contribution of the article to the philosophy of science lies in the fact that this study reveals new regularities in the development of scientific knowledge and complements the substantive elements of existing patterns, in particular, various forms of continuity of scientific knowledge, as well as the development of digitalisation processes in the modern society and their impact on the specifics of doctrinal development.

The contribution of the article in the methodology of science lies in the use and perspective optional application of the systemic method of scientific knowledge in relation to the analysed legal phenomena, in particular, in respect of synergetically predetermined self-organising systems. The systemic analysis of dialogical deliberative interaction between the state and representatives of modern being-transformed society for the purpose of development of the Russian statehood is also essential.

### Methodology

During the work on the stated problem, the following methods were used: dialectical, systemic, comparative/legal, historical/political, formal/legal. The choice of methods is accounted for by the need to analyse the genesis and transformation of deliberation and the doctrinal views in respect of this phenomenon, the importance of studying the diametric positions, the experience of social and, particularly, legal regulation of this subject area within the Russian society, the need

for acculturation processes in the globalising legal reality.

### Discussion

The development of modern society, which is proceeding quite actively, entails the extension of forms and methods of interaction between the state and the society as well as the development of joint decision-making procedures. In addition, the crisis of state/society interaction implies a revision of the existing postulates; in this aspect, the ideas of deliberative democracy are becoming increasingly widespread and accepted among a number of different concepts. In the context of the current crisis of state/society power relations, this concept appears to be an efficient way to restore the dialogue of these global communities.

The quite high relevance and demand for ideas of deliberative democracy today is predetermined to a greater extent not by the fact that it is really an efficient modern tool for achieving the common benefit and solving a number of problems, but by the fact that our society today is ready for the realisation of deliberation procedures to a greater extent than in the previous period of its existence. The modern society is referred to as informational for no coincidence; in terms of contemporary philosophy of law, one can speak of the emergence of multi-substantial platforms for discussing information flows, relevant forms and methods of influencing decisions, their philosophical, legal and socio-cultural mediation. Thus, contemporary society increasingly implements the tools of influencing governmental legal institutions.

Virtually any democratic participation in the life of modern society is predominantly based, as recorded in recent years, on the explicit or formal principle of deliberation, since nowadays it is not so difficult to obtain and process the information obtained in the course of discussion aimed at the solution of some problem significant for the state or the society.

The substance of deliberative procedures is

revealed in the theory of communicative action, during which an exchange of opinions in various discourses takes place. It is assumed that the process participants can adjust and change their opinions under the influence of each other's arguments, which leads to a consensus. The key accent in the analysed concept is made not so much on the dominance of the majority rule – although this fact is not refuted – but on the mechanisms of achieving power by the majority in the course of which different social communities come to a consensus. The core component of these mechanisms is communication.

At the same time, any communication in the process of realisation of deliberative democracy procedures serves as a kind of background for both the conflict and the compromise. The balance of interests, in this case, varies between the urge of the state to limit the range of permissible actions and the natural desire of the society, represented by groups or individuals, to extend the framework of legal permission. A. V. Polyakov (2014, p. 139) points out rightly that law itself is considered in this case as a sphere of human interaction and mutual understanding, consent and compromise, freedom and responsibility, equality and justice. Law is not always the result of the utmost agreement and the pinnacle of justice; still, its necessary baseline prerequisites are minimal agreement and justice.

There is no denying that the democratic existence of the society has nothing to do with the anarchic rejection of the organising power of the state and with the abusive, excessive violation of active social positions. But at the same time, in the conditions of contemporary legal reality, the role of the state is becoming increasingly contested both within its power organisation and at the international level. States are forced to evolve in a more open and interdependent world. Therefore they experience a fundamental transformation of their underlying rationality. The state is increasingly competing with the social sphere (Osvetinskaya, 2014, pp. 161-162). This compe-

tion is primarily based on consensus and compromise.

J. Morley (2010, pp. 6-7) rightly notes that one of the most important issues of the compromise is setting a boundary between reasonable caution in developing beliefs, reasonable restraint in expressing them, reasonable slowness in trying to realise them – and disguised insincerity, self-delusion, unconstrained hypocrisy, carelessness and cowardice. Indeed, it is difficult to set the boundaries of the compromise, its permissibility and limits, especially in the legal and political sphere.

The compromise is a result of the agreement with a formal adversary; at the same time, the difference in views remains but is sacrificed for the sake of the result – elimination of confrontation, cessation of a conflict. Accumulation of contradictions leads to fixation of persistent serious disagreement, which is indicative of the formation of a negative result – a conflict. However, both the compromise and the conflict are specifically valuable since they represent equitable means of active, though not always positive, development of the legal reality. Reaching a compromise is accompanied by process of accommodation – adaptation, passive or active transformation of views and behaviour patterns. An important condition for fruitful, efficient accommodation and compromise is reconcilability, mutual tolerance of other people's ways of life, behaviour, demands, attitudes, interests, opinions, ideas. It is tolerance that is a democratic principle inseparable from the concepts of pluralism, particularly those traditional for modern Western Europe. In the Western tradition, tolerance and conscious perception of innovations are a manifestation of the strength of a personality and society.

It seems pertinent to note the essential difference between the terms “compromise” and “consensus”. The latter seems to be a certain ideal, “topmost goal”, with no contradictions in views and no formal opponents, while it permits achie-

ving unity of ideas, aspirations and means of their realisation.

At the same time, the approaches in the interpretation of the compromise, particularly legal compromise, are different, which is natural for science as a living and evolving phenomenon. For instance, A. V. Kayshev (2005) defines the criminal-law compromise as “a means of the state to satisfy its interest in achieving a goal to establish justice through a waiver of its right or its obligation to punish a person who committed a crime, subject to the latter’s strict obedience to the law”. N. I. Makoveev (2000) fairly notes that the compromise in the specific political sense is defined as “a system of interaction in the “domain of politics”, basically representing a process of reaching a political agreement (voluntary, voluntary-compulsory or strictly forced) and its result, always based on concessions (not always equivalent, but always mutual) between two (or several) political actors, aimed at handling specific objectives by each party involved in this interactive system.

Deliberative processes are aimed at achieving a compromise rather than consensus. It is natural for a multipolar society and a complexly structured state to have contradictions in views, attitudes, stereotypes and goals, which gives rise to irreconcilable positions of the communicating parties: “state-society”, “part of society – part of society”, “state – part of society”. It is only the reciprocity of aspirations, readiness to withdraw from the elements of dogmatic beliefs, high level of self-awareness and self-organisation of actors involved in communication and interaction that allows achieving a positive result – proceeding from the conflict to productive cooperation and collaboration.

The normative model of deliberative democracy of J. Habermas (1992, pp. 194-195) relies on the ideal of a community of free and equal individuals who determine the forms of their life in society through political communication. In conformity with this model, it is not the decision expressing the allegedly formed will of people

(according to the formula of some politicians: “I know what the people want”) that is legitimate, but the one discussed vigorously by people at large. At the same time, political communication itself should rationally form the will of its participants and not just reflect their political predilections.

Thus, a number of positive aspects of the analysed concept of deliberative democracy should be noted:

- the decisions made by legislative and executive authorities, if supported by broad segments of the population, are more viable and tend to be realised more efficiently than unpopular measures;
- the authorities’ turn to public opinion enables them to gain a deeper understanding of issues at hand, to analyse different points of view and to take most balanced decisions that would satisfy the interests of the majority of citizens while also taking the minorities’ interests into account to a certain extent at the same time;
- being involved in a broad discussion, people can change and variate their opinions, which contributes to better reasoned (more rational) decision-making rather than impulsive in case of voting (whether it is direct vote or voting in a representative body);
- involvement of the population in open and free discussions, the results of which are taken into account in making governmental decisions, which contributes to the formation of the due social base of the civil society, strengthens the reciprocal trust of citizens and governmental institutions, makes social relations more stable and predictable. For instance, in recent years, certain expertise has been becoming increasingly relevant in the post-soviet space: this kind of expert examination is carried out not only by experts and public authorities but also by the public. This represents the public evaluation of projects – a specific public policy with activities maintained on the border between the experts’ domain and the

civil society institutions' competence (Lyakhovich-Petrakova, 2011, p.37).

Electronic democracy is also promising when computers and computer networks are used to realise the essential functions of the democratic process, such as the spread of information, communication, expression of citizens' common interests, influencing decision-making (Bashkarev, 2008, p. 25).

Consequently, the below premise is true, voicing that the introduction of deliberative democracy principles in the public mentality and in the work of political institutions of our country contributes to the gradual awakening of their feeling of involvement in the social and political processes, engendering the desire to eradicate the political shortcomings, primarily through one's direct participation in the social justice discourse and active collaboration with the authorities in this domain (Uglov, 2010, p. 12).

At the same time, the citizens should be ready for active participation in the life of the society and the state for self-regulation. The political environment of the country is a complex and, to a certain extent, self-organised system.

The conceptual ideas about the self-organisation of systems initially emerged in natural sciences. The sphere of natural science exploring self-organising systems was called "synergetics" (Kurdyumov & Malinetsky, 1989). I. Prigozhin, a leading representative of this scientific trend, proposed to treat self-organisation as establishing order in a system (Prigozhin & Nicholis, 1990, p. 25). Self-organisation in the classical cybernetic sense of this word is a process of structuring the system, controlled from within this system. At the same time, synergetics puts an emphasis on spontaneity, the immediacy of the self-organising nature of a system. Self-organisation means a transition from an unorganised system to an organised one, or transition from a low level of the system's orderliness to a higher level (Sorokin, 2007, p. 346).

The first attempts to apply the synergetic approach allowed some authors, among other

things, to come to a conclusion on the need and relevance of curtailing the sphere of the regulatory impact of the state, since the future will represent the scene of self-regulation of social processes. According to G. V. Maltsev (2010, p. 99), "social regulation or self-regulation – this is a flawed alternative". The point is that the ratio between the regulatory (governing) nature and the basics of self-regulation in different dynamic systems is formed in a different way.

Self-regulation is a phenomenon that is projected in the sphere of humanitarian knowledge onto a wide range of objects. It is important to keep in mind that self-regulatory processes within the framework of deliberative development of socio-political communication represent an element of institutionalisation of the civil society in present-day Russia.

Traditionally, the Russian society represents a society of mobilisation/communitarian, "closed" type. The specifics of the mobilisation-type society involve overcoming the dichotomy of the private interest and the public benefit by means of state coercion. Mobilisation means the quality of social life characterised by no inconsistency in social existence at the individual, group and state level, for the purpose of meeting meta-social and supra-state objectives within the framework of communitarian integration (Nikiforuk, 2001, pp. 104-108; Baranov, 2003, pp. 18-19). That is, we can recognise the need, with a fair degree of certainty, for the prospective formation of a policy of "conflict-free existence" of all entities in the space of political communication that reflects a multitude of heterogeneous interests.

A certain established practice of using the mechanisms of self-regulation, as well as the readiness to obey their requirements, is inherent in the Western tradition. Modern Russia is successfully introducing the basics of self-regulation into its political life through the principles of deliberative democracy.

However, there are many pitfalls in this concept that are often overlooked and make a number of progressive deliberative practices ineffi-

cient or even formal. This assertion is true in the context of both classical and post-classical legal science.

Thus, for instance, considering a particular case of the deliberative process, it can be noted that in terms of law-making, this is an issue of formalising the multi-channel discourse maintained by the public and transferring it into the political plane of legislative decision-making. From this perspective, modern law is shaped and refined in the process of interactive, continually renewed dialogue between the parliament and the society (Lapaeva, n.d.).

At the same time, it should be noted that excessive participation of citizens in this process, even within the framework of legal communication, may also have certain negative consequences. Similar conclusions can be drawn in considering the achievements of deliberative consensus – to what extent the result of public communication will be unbiased and reflective of realities of public discourse, given that the level of professionalism of the actors of discussion will be far below the professionalism of public authorities. It seems it will not meet the requirements of appropriateness in all cases.

Bertrand de Jouvenel (2011, pp. 342-343) rightly notes that opinions and interests should not be confused: “if no relevant fundamental distinction is made, then the power will turn into a plaything of interested stakeholders who, under the guise of opinions, stirring passions, compete for the votes of the majority which acts as a judge of what they are not competent in”.

It is hardly possible to place the two types of power distinguished by J. Habermas (1992, p. 50) on the same level – the power born in the process of communication and the administratively applied power. For an additional argument, let us turn once again to the opinion of Bertrand de Jouvenel (2011, pp. 342-343), who, in the context of one of the problems dwelled upon above, focused on the fact that the fundamental ideal was not to replace the despotic will of a monarch by the despotic will of a ruling mass of

people as a supreme authority. Applying the meaning of the mentioned position to modernity, it should be noted that the decisions formulated by social structures within the communicative discourse will not be devoid of a certain share of subjectivism and selfish motives by analogy with a number of state-power entities.

However, despite the noted positive effect of realisation of the legal phenomenon under study, one should note the bipolarity of external manifestation of the deliberation processes versus a wide range of manifestations of social life. In addition, the possibility of the impact of negative phenomena on deliberative processes should not be excluded, namely:

First, incompetence of entities – participants of social communication, as well as their excessive formalism, passivity or submissiveness in decision-making. This was pointed out by J. Habermas (2010, p. 160) despite adherence to his own deliberative concept. He emphasised that obedience can be hypocritically feigned by individuals or even entire groups for purely opportunistic reasons, or practised for their own material interests, or accepted as something inevitable because of personal weakness and helplessness.

Second, the state-wide level of deliberative democracy procedures is not always promising; it has certain prospects where democratic institutions are closest to the citizens – in local communities (Mochalov, n.d.). In these conditions, the range of problems to be solved will be quite narrow, the category of communicative discourse actors will be quite specific and homogeneous; therefore, this will contribute to a greater level of objectivity of decisions to be taken.

Third, the conditions for efficient use of deliberative democracy procedures are not always present. In Russia, it is impossible to equate the Internet users and the bulk of the politically active population. In addition, the mentality features, the development trends of legal nihilism, and the improper level of technical literacy of the population in this sphere play quite a significant role.



Fourth, there is a significant impact of the so-called “new despotism” that represents sophisticated and refined forms of manipulating society with the use of modern communication technologies, mass culture and political processes. It does not resort to overt violence, suppression of individual rights, abolition of democratic institutions; the democracy structure is preserved, but its content is emasculated (Bashkarev, 2008, p. 29).

Fifth, the use of deliberative procedures can serve as an opportunity to delay important decisions. Much likely, this list can be continued.

At the same time, one should have in mind that the deliberative principle is undoubtedly not just a philosophical/cultural and political/legal concept, but rather a well-founded legal reality, despite the fact that a number of scholars do not assess its potential positively, referring to it as inapplicable, difficult to realise, inefficient, etc. The development of post-industrial society provides quite stable prospects for its existence. Consequently, a positive result of the introduction of deliberative procedures in the Russian legal reality will be yielded gradually, in a constructive way. The realisation of the deliberation principle carries a potential for new ways of interaction between the state and the society and for the achievement of common benefit.

### Results and Conclusions

1. In order to build a deliberative democracy, it is important to have a possibility to varyate and change one’s opinion through a system of arguments, which leads to a consensus of the participants of a process involving discussion of social, political, legal innovations, dispute resolution.
2. The accent in the concept of deliberative democracy is placed not on the dominance of the majority rule but on the mechanisms of achieving power by the majority in the process of which different social communities come to a consensus.
3. In achieving the goals of deliberation, the balance of interests varies between the urge of the state to limit the range of permissible actions and the natural desire of the society, represented by individual groups or individuals, to extend the framework of legal permission, which determines the focus on pursuing this competitive struggle through consensus and compromise.
4. The boundaries of the compromise in the legal and political sphere, its admissibility and limits require careful analysis and elaboration in order to increase the prospective efficiency of deliberative processes. At the same time, it should be recognised that both the compromise and the conflict are specifically valuable since they represent equitable means of active development of the society.
5. A due condition for fruitful, efficient deliberation is acceptance of a compromise expressed in reconcilability, mutual tolerance of other people’s ways of life, demands, attitudes, interests, opinions, ideas.
6. Deliberative processes in the society in real-life conditions are aimed at achieving a compromise, not consensus, because consensus implies the total absence of contradictions in views, factual achievement of unanimity of concepts and aspirations, i.e. represents a certain ideal, a “topmost goal”.
7. The concept of deliberative democracy manifests itself in support of decisions taken by representative and executive authorities by broad segments of the population, which makes them more viable.
8. The deliberative approach enables a broad range of individuals to gain a deeper understanding of topical issues, to analyse different perspectives, to engage in wide-ranging discussions, to change and vary their own opinion, which contributes to more rational and socially meaningful decision-making.
9. Owing to the deliberative approach, the social framework of the civil society is formed, and the reciprocal trust of citizens and power

institutions is strengthened.

10. The prerequisite for the establishment of deliberation is the citizens' readiness for active participation in the life of the society and the state for self-regulation.
11. The synergetic approach is of special importance for understanding deliberative democracy since it allows to actualise the need for curtailing the sphere of the regulatory impact of the state, to recognise the prospective efficiency of self-regulation of social processes.
12. It is necessary to recognise the need for the prospective formation of a policy of "conflict-free existence" of all social entities in the space of political communication that reflects a multitude of heterogeneous interests.
13. At present, the Russian Federation is successfully introducing the principles of self-regulation into its political life through the principles of deliberative democracy, which evidences the acceptance of significant innovative doctrinal and practical concepts of prospective development by the society and the state.

The above makes it possible to formulate a number of working assumptions reflecting the basis for the development of deliberative democracy in the modern Russian state:

- the procedures for the realisation of the deliberative democracy principles must be subsidiary to the activities of the governmental authorities and in no way may be equated with them, except for certain cases which, like any exception, merely confirm the rule;
- it is necessary to develop a specific detailed mechanism for introduction and realisation of the concepts, practices and principles of deliberative democracy in the legal life of the society; otherwise, the realisation of this political/legal phenomenon, with its due constructive orientation, will not be possible;
- the most important areas for the use of deliberative democracy procedures in Russia are public discussion and public expertise;
- it is necessary to fix the legally defined limits

for the use of deliberative democracy procedures in official statutory regulations with regard to the specific impact of a number of factors that are determinative for the level of development of the state and the society at a certain stage of their existence;

- in view of the determinative influence of maturity and self-organisation of the society on the efficiency of development and realisation of deliberative processes, it is necessary to develop a strategy for introducing the idea of active political participation into common perception.

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