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Sovereignty in a Federal State: Theoretical and Legal Bases and Practice of Implementation in Russia

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Abstract. The article raises the issue of state sovereignty in a federal state and reveals its legal nature. The authors draw attention to the diversity of approaches to the concept and essence of sovereignty, reveal its correlation with related categories, describe the concepts of unity and divisibility of state sovereignty. The paper proves that sovereignty is not a quantitative, but a qualitative characteristic of a state, which is either present or not. The authors substantiate the exclusive possession of state sovereignty by the Russian Federation. Based on the analysis of the doctrinal, regulatory sources and the practice of the Constitutional Court of the Russian Federation, the authors show that the Russian constitutional model explicitly outlines the principle of solid and indivisible state sovereignty spreading throughout the whole territory of the Russian Federation. Recognition of the principle of state sovereignty of Russia presupposes a clear definition of the scope of rights that the Federation should possess in order for its sovereignty to be ensured.

The article examines the main features of the state sovereignty of Russia enshrined in the Constitution of the Russian Federation, among which are the supremacy of federal law over the law of the subjects of the Federation, the inviolability of borders and territorial integrity, the unity of the economic space, fiscal, banking and monetary systems, common army (Armed Forces), the right of the state to protect its sovereignty and rights of citizens. Despite the unequivocal decision on the integrity of state sovereignty of the Russian Federation expressed the Constitution of the Russian Federation and by the Constitutional Court of the Russian Federation, this fundamental principle is not completely ensured since the idea of the sovereignty of the republics as components of Russia continues to retain its potential threat to Russian federalism, taking into account the provisions of Art. 73 of the Constitution of the Russian Federation that provide for the full state power of the constituent entities of the Russian Federation.

Keywords: constitution, federal state, sovereignty, popular sovereignty, state sovereignty, national sovereignty, state power.

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The topic of research on state sovereignty is one of the most relevant, and at the same time controversial and questionable in the modern world. Only in the Russian scientific discourse hundreds of publications are devoted to it: in the theory of law, constitutional law, political science, sociology, philosophy of law, international law, and more recently, even in the financial, tax and customs law. Moreover, it should be noted that "a variety of opinions regarding the prospects for the development of state sovereignty in modern conditions has a wide scatter: from the statement about the symbolism of state sovereignty, about the complete disappearance of the national state and law to the proposal to preserve them at any stage of the globalization process."[1] Now it has become popular to write about fiscal, tax, digital, economic sovereignty.[2] So, what does the concept of "sovereignty" mean in the doctrine of constitutional law?

The concept of sovereignty: from the absolute to "residual"

From the beginning of the 20th century, in characterizing a state, it has been axiomatic to distinguish three main features: territory, population, and public authority.[3]

Without diminishing the importance of the first and second elements, let us turn our attention to the latter – public authority. The idea of power has attracted the attention of thinkers, politicians and scientists since the ancient times (Plato, Aristotle). Such interest did not fade later, in the Middle Ages (N. Machiavelli, T. Aquinas, etc.). The experience of the centuries-old existence of power structures and power relations, as well as the theoretical understanding of the history of their development, leads to the conclusion that public authority is expressed in the form of political, economic, legal and organizational institutions. Therefore, the phenomenon of public authority splits into several types – the initial (popular sovereignty), state, municipal and corporate.[4]

When considering state power, it should be noted that talking about such power is possible only when it is sovereign, that is, independent and independent. But at the same time, it should be emphasized that sovereignty is not derived from state power; rather, it is a necessary sign of the state. And now we'll open this thesis in more detail.

The word "sovereignty" (English: sovereignty; German: souverenitat; French: souverainete) means independence and autonomy. The term "sovereignty" was introduced into law science in the 16th century by a French jurist Jean Bodin, who understood it as the unlimited supreme power over citizens and subjects, as the "permanent and absolute power of the state", which is inalienable and unchanging.[5] This power, as believed by J. Bodin, is an indispensable attribute of any state and a determining condition for its existence.[6] At the same time, a number of so-called "sovereign rights" follow from this concept, such as: the law-making power; the law of war and peace; the right

[1] Makuev, R.Kh. (2007). *Globalization and a human factor in the evolution of the Russian rule of law*. Orel, Publishing house ORAGS, 65.

[2] Streltsov, A.A., Piliugin, P.L. (2016). To the question of digital sovereignty. In *Informatization and communication,* (2), 25-30; Farkhuddinov, I.Z. (2008). Economic sovereignty of a state in the context of globalization. In *Law and Security*, (3), 58-65. Khavanova, I.A. (2013). Fiscal (tax) sovereignty and its borders in integration entities. In *Journal of Russian Law*, (11) (203), 41-51.

[3] See: Jellinek, G. (1908). *General doctrine of the state*. St. Petersburg, 103; Duguit, L. (1908). *Constitutional law. General theory of the state.* Moscow, 128; et al.

[4] For more details see: Iugov, A.A. (1999). *Legal basis of public authority in the Russian Federation*. Monograph. Ekaterinburg.

[5] See: Bodin, J. (2001). *Composition on state power*. Moscow, 212.

[6] Bodin, J. (2000). *A method for easy cognition of history*. Moscow, 136–137; Bodin, J. (1986). *Les six Livres de la Republigue*. Paris, 179-180.

to appoint senior officials; the law of supreme jurisdiction; the right to loyalty and obedience; the right of pardon; the right of coinage; the taxation right.[7]

Thus, sovereignty is always associated with the exercise by the authorities of their powers (exclusive ones), but at the same time it characterizes a state as a special organization of power (personified subject of power).

In modern Russian science of the constitutional law, sovereignty is understood either as an attributive feature of the state or as a property of the state power.

In accordance with the first approach, state sovereignty means the supremacy of a state within a given country and the independence of a state from the power of any other state – this is a property or a feature of a state.[8] The definition of state sovereignty "as a property and ability of a state to independently determine its internal and external policy under observance of human and civil rights, protection of the rights of national minorities, and the observance of international law, is most widely used in modern domestic jurisprudence."[9] To formulate a shorter definition, sovereignty is manifested in territorial supremacy (state power is absolute in a certain territory) and international legal personality (the right to recognition and equal international communication with other states).

Apologists of the second approach to the essence of sovereignty understand it as a property of state power. The doctrine, as a rule, defines sovereignty as "the supremacy of state power within a country and its independence from any other authority in international relations."[10]

Such an understanding of the essence of sovereignty should hardly be considered as justified methodologically. There is a logical circle: sovereignty is a property of state power, power is a property of the state. This only implies that states are sovereign because they have power. But powers of authority or authority matters belong only to states, both municipalities and intergovernmental organizations have these powers (and therefore authority). Sovereignty should not be seen as a property or reflection of public authority (different entities possess it), but as an attribute, an integral element of the general legal personality of the state. The specificity of this position consists in consideration of sovereignty as a feature of the state as a special subject entity, and not as a property emanating from the government, which is a priori personified not in one person, but is considered to belong to various state bodies. State power is derived from its subject, which is the state. The sovereignty of state power is determined by a status of the state as a sovereign. If we turn to the history of the development of statehood in the world, we will see enough examples of the fact that the volume and degree of sovereignty of state power was predetermined by the peculiarities of the political and legal status assigned to the state at various historical stages and in individual societies.[11]

Sovereignty is the most important essential feature of a state, but not of state power. State power along with state sovereignty is the same essential feature of the state[12], and is a prerequisite for the international legal personality of the latter .[13]

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[7] See: Manelis, B.L. (1964). *The problem of sovereignty and its significance in modern conditions*. Tashkent, 76-77.

[8] Denisov, A.I. (1960). *The essence and form of a state*. Moscow, 28. And also authors adhered to this point of view: Ravin, S.M. (1961). *The principle of federalism in the Soviet state law*. Leningrad; Aleksandrenko, G.V. (1962). *Bourgeois federalism*. Kiev; Ushakov, N.A. (1994). Sovereignty and its embodiment in domestic and international law. In *Moscow Journal of International Law*, (2).

[9] *Problems of sovereignty in the Russian Federation* (1994). Moscow, 4.

[10] Levin, D.B. (1958). *The main problems of modern international law*. Moscow, 200. Also, supporters of this position: Dorogin, V.A. (1948). *Sovereignty in the Soviet state law*. Moscow, 40; *The course of Soviet state law* (1962). Moscow, 266; Lepeshkin, A.I. (1972). *Soviet federalism: theory and practice*. Moscow; Modzhorian, L.A. (1955). The concept of sovereignty in international law. In *Soviet state and law*, (1), 74; Farberov, N.P. (1946). *On the sovereignty of the union republics*. Moscow, 3; Shevtsov, V.S. (1972). *The sovereignty of the Soviet state*. Moscow, 33.

[11] Chirkin, V.E. (1997). *Constitutional law of foreign countries*. Moscow, 123.

[12] Marchenko, M.N. (2003). State sovereignty: problems of defining the concept and content. In *Jurisprudence*, (1), 190-196.

[13] Palienko, N.I. (1903). *Sovereignty. The historical development of the idea of sovereignty and its legal significance*. Yaroslavl, 566.

Sovereignty, in our opinion, is a property of a state that acquired the right to rule of its own free will through legal institutions, which is expressed in supremacy within its territorial jurisdiction and independence in international legal relations.

Features of state sovereignty

In the domestic doctrine, another debatable issue is the classification of sovereignty features.

Thus, from the point of view of A.F. Andreev, the features of sovereignty should include: 1) sovereignty and supremacy of the state within the borders; 2) state independence in the international arena; 3) unity of sovereignty of a state (state power)[14].

S.A. Avakian also distinguishes the number of features of sovereignty similar in content and quantity: 1) supremacy of the people or authorized state bodies that enshrine the entire system of public relations and the domestic organization in the constitution and other normative legal acts; 2) unity, i.e., the same essence, forms and methods of exercising state power at all levels; 3) autonomy and independence of the state and state power both from political organizations in a given country, and from foreign states and international organizations (it is impossible to replace government bodies with any internal or foreign structures)[15].

Another approach to determining the number of features adds the fourth component, although in different cases it is new: completeness[16], unlimitedness[17] or inalienability[18].

According to the authors of the third approach, R.V. Engibarian and E.V. Tadevosian – sovereignty has five essential features: supremacy, independence, completeness, exclusivity and unity.[19]

Moreover, the overwhelming majority of Soviet constitutionalists and internationalists include only two features of sovereignty: supremacy and independence (or internal and external sovereignty).[20]

From our point of view, sovereignty is indeed manifested externally in two essential characteristics that have been unchanged for over four hundred years: supremacy and independence. Moreover, these two categories overlap the content of other features in the scientific literature.

It seems that such a property of sovereignty as supremacy already contains features of unity and unlimitedness, since it is the state that concentrates power and coercion with respect to all state bodies, legal entities and individuals (including in relation to members of the federation). The feature of supremacy also reflects that there is no other higher power over the state, and the state itself establishes the general principles of empowerment, functioning and termination of activities of all state bodies on its territory. Unity and unlimitedness are secondary, derived categories that form the basis of a more general feature – supremacy. Completeness as a feature of sovereignty is also encompassed by the content of such a property as supremacy, since only the state has the totality of power functions that cannot belong to any other holder of power. The inalienability of sovereignty is determined by its nature: sovereignty cannot be transferred, sold, divided or limited, otherwise the meaning of the existence of the concept itself is lost. Sovereignty is associated with the identity of the state – its alienation entails the termination of statehood. By citing the exclusivity of sovereignty as one of its features, it seems that we are violating the rule of Occam's razor – "entities are multiplied beyond what is necessary," namely: supremacy

[14] Andreev, A.F. (2012). Sovereignty of the Russian state as a subject of international law. In *State and Law*, (8), 80.

[15] Avakian, S.A. (2006). *Constitutional law of Russia*. Moscow, 2, 42.

[16] Bezuglov, A.A. (1975). *The sovereignty of the Soviet people*. Moscow, 41-45.

[17] Zolotareva, M.V. (1999). *Federation in Russia: problems and prospects*. Moscow, Probel, 64; Iashchenko, A.S. (1912). *Theory of federalism*. Yuriev, 196; Alekseev, A. (1895). *Russian state law*. Moscow, 123.

[18] Zinov'ev, A.V. (2000). *Constitutional law of Russia*. St. Petersburg, 128.

[19] Engibarian, R.V., Tadevosian, E.V. (2000). *Constitutional Law: Textbook*. Moscow, Iurist, 198.

[20] Agabekov, G.B. (1993). *Sovereignty in a federal state: a scientific and analytical review*. Moscow, 22; Denisov, A.I. (1960). *The essence and forms of states*. Moscow, Moscow State University, 28; Levin, I.D. (1948). *Sovereignty*. Moscow, Iurizdat, 64, 107; Ushakov, N.A. (1963). *Sovereignty in modern international law*. Moscow, IMO, 6, 23-27.

and independence include the impossibility of the emergence of a property inherent in either the state or any other power subject with a status higher than sovereignty.

Independence implies the right of the state, its exclusive prerogatives to establish equal relations with other states, and the impossibility of their interference in internal affairs or management of the foreign policy of a sovereign state. Independence means complete disobedience to the supreme authorities of other states, the absence of power relations between them (guardianship, trusteeship, etc.) with the existence of only voluntarily assumed contractual obligations.

Correlation of categories of state, national and popular sovereignty

As a rule, in domestic political science there are three facets of the category of "sovereignty": state, national and popular.[21]

What is the content of such concepts as "popular" and "national" sovereignty from a doctrinal position?

M.V. Zolotareva notes that popular sovereignty as a concept emerged in modern times thanks to the works of D. Locke, J.J. Rousseau and other representatives of liberal democracy as a result of the contradictions between civil society and absolute power.[22] Given their mutually conditioned nature, there are sufficient grounds for establishing a direct relationship between popular sovereignty and a democratic political regime.

The constitutional doctrine rightly notes that popular sovereignty is one of the fundamental pillars of the constitutional system of all modern democratic states, which is actually an axiom in Russian state science.[23]

With this in mind, most modern ideas about the state, which are based on the general rule of recognition of the concept of popular sovereignty, proceed from the definition of a democratic regime as the only political regime, within which the real content of the idea of popular sovereignty is revealed.[24]

On the other hand, Soviet doctrine has always emphasized the derivative nature of state sovereignty. Thus, for example, V.S. Shevtsov noted that "popular sovereignty (sovereignty of the people) lies at the heart of state sovereignty."[25] The most interesting thing is that Russian researchers essentially repeat this controversial thesis of Soviet scientists. So, V.V. Goriunov writes: "Sovereignty of a state is based on the power of the people. State sovereignty is a form of manifestation of popular sovereignty; it is limited (caused) by the latter... Since the entire multinational people of Russia have popular sovereignty, then the state sovereignty as a form of popular sovereignty is projected onto the Russian Federation in general. The level of exercise of state sovereignty coincides with the level of exercise of the sovereignty of the people."[26]

In legal reality, the concept of popular sovereignty does not have a clear legal meaning, since it only indicates the source of education of sovereign power – the people. As F.F. Konev rightly observes, "what can mean 'the supremacy of the people', that is its sovereignty, if all powers of authority are transferred by the people to state power? The will of the people, their 'supremacy', is realized through the state power on the basis and within the framework of the constitution of the state."[27] Therefore, it must be admitted that "the formula 'people is a holder of sovereignty' has rather a nature of a political slogan."[28] And in fact, this constitutional principle denotes nothing more than a kind of declaration on the belonging of power to the people (and not to one subject – a monarch or

[21] Plekhanov, M.V. (2005). Features of sovereignty of a federal state (the case of the USA). In *Russian Journal of Law*, 2 (46), 50-56.

[22] Zolotareva, M.V. (1999). National sovereignty at the junction of the law and politics. In *Federalism*, (3), 142.

[23] See: Chervoniuk, V.I. (2018). The sovereignty of the people in the era of postmodernism: a critical understanding of the doctrine and practice of evolving constitutionalism. In *Constitutional and municipal law*, (3), 3-4.

[24] See: Klishas, A.A. (2018). *Sovereignty. From the struggle for the right to the struggle for sovereignty*. Moscow, 31-102.

[25] Shevtsov, V.S. (1972). *Sovereignty of the Soviet state.* Moscow, Legal literature, 51.

[26] Goriunov, V.V. (2007). *Sovereignty of the Russian Federation: essence, content, guarantees*. PhD thesis, Ekaterinburg, 10.

[27] Konev, F.F. (2005). Sovereignty: popular or national? In *Constitutional and municipal law*, (6), 22.

[28] Chernichenko, S.V. (1999). *Theory of international law*: in 2 vols. 2. Old and new theoretical problems. Moscow, 34.

a social group).[29] Of course, one can object to this, that the people exercise their "sovereignty" in such forms as elections or referenda, but often, in modern conditions, their results are either falsified or do not adequately reveal the will of the people when less than 50% of voters participate in elections.

However, against the background of all three varieties of sovereignty, it is difficult not to notice that the most problematic of them is national sovereignty. Moreover, it is often identified with the popular one, which is not always justified.

Quite a lot of authors paid special attention to this problem. Thus, A.N. Kokotov devoted an entire chapter to the Russian national sovereignty in his monograph.[30] The author rightly raises the question of the appropriateness of the existence of three types of sovereignty in one political space. "The main channel for the realization of national and popular sovereignty is the state that secures the sovereign rights of peoples and ethnic groups in legal forms."[31]

In Russian legal science, national sovereignty is traditionally identified with the right of a nation to self-determination. According to Iu.G. Sudnitsyn, "national sovereignty is the freedom of self-determination of nations and peoples, up to the secession and establishment of an independent state."[32] V.S. Shevtsov also points out that sovereignty expresses "the sovereignty of a nation... the possession of a real opportunity to completely control its fate, primarily the ability to politically determine itself, including the secession and establishment of an independent state."[33]

Meanwhile, modern authors often copy traditional ideas about the national sovereignty of the Soviet era, however, stipulating that the latter "is expressed in the right of ethnic, territorial, civil, religious and linguistic communities (peoples, nations) to self-determination in various ethnocultural and political forms, which is realized based on the constitutional and international law."[34]

It seems that at the present stage, the categories of "popular" or "national" sovereignty are more a subject of study of political science or philosophy than of legal science. N.I. Grachev and S.I. Klimova note that "popular and national sovereignty, as a phenomenon, does not exist and cannot exist separately and apart from a state. A nation or people as a political subject always acts as one of the elements of the state, its ethno-social basis and source (sometimes one of the sources) of state sovereignty."[35] Thus, sovereignty itself as a phenomenon of supreme power can only be regarded as an attribute of statehood.

As for the understanding of national sovereignty as the realization of the right of a nation within a state in other forms (for example, in the form of national-cultural autonomy), it is not connected with the right to territorial isolation within the boundaries of residence of a certain ethnic group and granting this group the rights to imperious supremacy in these territorial limits, and therefore, the essence of national sovereignty is also getting lost.

Sovereignty – Divisible or Indivisible: On Theories of Sovereignty in a Federal State

All theories of sovereignty in a federal state can conditionally be reduced to three groups: the first recognizes belonging of sovereignty both to a federation and members of

[29] Analyzing the positions of both Russian and foreign theorists of different times and eras, L.Iu. Cherniak convincingly proves that the people, their part, and the state as a whole, state power and its individual bodies were called the holders of sovereignty or its source in theory, so its legal value is greatly overestimated. That is why the concept of popular sovereignty at the present time, as previously, historically had a political nature. See more details: Cherniak, L.Iu. (2006). To the question of a holder of state sovereignty. In *Siberian Law Journal*, (3), 15-22.

[30] Kokotov, A.N. (1994). *Russian nation and Russian statehood*. Ekaterinburg, 41.

[31] Ibid, 43.

[32] Sudnitsyn, Iu.G. (1967). The main issues of the theory of national sovereignty. In *Bulletin of universities*. Jurisprudence. (4), 48-49.

[33] Shevtsov, V.S. (1978). National sovereignty (problems of theory and methodology). Moscow. In *Legal literature*, 3.

[34] Porfir'ev, A.I. (2008). *National Sovereignty in Russian Federalism*: PhD thesis. Moscow, 11.

[35] Grachev, N.I., Klimova, M.I. (2011). State and popular sovereignty: correlation, contradictions and identity. In *Philosophy of social communications*, (3) (16), 71-72.

the federation jointly, i.e. it divides sovereignty; the second recognizes belonging of sovereignty to the subjects of the federation, the third one – only to the federation.[36] Based on the foregoing, three main approaches to the problem can be distinguished: 1) divisibility of state sovereignty represented by the classical theory of divisibility of sovereignty; 2) single and indivisible sovereignty (unitary theory, separative theory, dualistic (synthetic) theory and theory of participation); 3) a theory of existence of two sovereignties within the same territory (recognition of "double" sovereignty and its variants).[37]

1. The classical **theory of the divisibility of sovereignty**, later, in the 20th century, called the theory of cooperative federalism or limited sovereignty of subjects, takes its rise in the works of American federalists – the authors of the US Constitution: A. Hamilton, J. Jay, J. Madison, as well as A. Tocqueville and G. Waitz. At the heart of this concept there is a concept of separation of powers between the federation and the states, which is laid down in the text of the US Constitution[38] as establishment of a list of powers for each supreme authority. Its essence lies in the basic assumption that sovereignty can be divided between the federation and the subjects, like the powers are divided between different bodies of the state, and not only through the federation-subjects scheme. They considered this separation through the prism of C. Montesquieu's concept of separation of powers and interpreted it as a kind of vertical division of power. At this, a federation was understood to be such a state form, in which one part of functions of the state life is performed jointly and the other – by separate subdivisions and where "sovereignty does not belong either to a collective state or to united states, but to each in its sphere."[39]

The main problem of this theory is that its authors, in fact, simply identify such concepts as the authority matter, competence and the rights of subjects with the concept of sovereignty.[40]

It should be noted that in our country this concept received significant recognition in the doctrine in the 90's of the past century; its adherents pointed out that limited sovereignty is a necessary feature of statehood of the subjects of the Russian Federation.[41] It was also noted that "in federal states, a certain 'conditional federation' has sovereignty as a whole, but the federal centre and the subjects of the federation are endowed with only limited sovereignty."[42]

We share the point of view that in one and the same territory no power (of a different level or nature) can compete with the federal state power. Indeed, state sovereignty excludes the existence of other sovereign political organizations besides the federation itself, since "the execution of two supreme and, at the same time, independent powers within the same territory is impossible."[43]

2.1. Supporters of the second approach – the so-called **"separative theory"** – believed that only the states were truly sovereign, since it was they who would establish the supreme power of the federation and, accordingly, could break this connection at any time. The German lawyer Max Seydel and the US Senator John

[36] Kremianskaia, E.A. (2002). Issues of sovereignty in the practice of the Constitutional Court of Russia. In *Law and Power*, (2), 36; Pastukhova, N.B. (2009). The problem of sovereignty in the system of federal relations. In *Problems of strengthening law and order: science, practice, trends*, (2), 39.

[37] Cherniak, L.Iu. (2005). The main theories of state sovereignty. In *Siberian Law Journal*, (4), 15-17; Leksin, I.V. (2011). Sovereignty issues in a federal state. In *Constitutional and municipal law*, 12, 26-28.

[38] See: Plekhanov, M.V. (2005). Features of sovereignty of a federal state (the case of the USA). In *Russian Law Journal*, (2) (46), 55-56.

[39] Iashchenko, A.A. (1912). *Theory of Federalism. The experience of the synthetic theory of law and state*. Iur'ev, 272.

[40] Cherniak, L.Iu. (2005). The main theories of state sovereignty. In *Siberian Law Journal*, (4), 15-17.

[41] Grachev, N.I. (2007). Sovereignty and federalism: legal problems of the organization of supreme power in a federal state. In *Law and Power*, (1), 12. Dmitriev, Iu., Khyshyktuev, O. (1996). On the question of the divisibility of state sovereignty. In *Law and Life*, (10), 3−9; *Federalism: Encyclopaedic Dictionary* (1997). Ch. ed. S.D. Valentei. Moscow, 9, 58, 235−236, 245; Farukshin, M.Kh. (2004). *Federalism: Theoretical and Applied Aspects*. Moscow, 178.

[42] Kochev, V.A. (2000). *Constitutional and legal foundations of the correlation of state power*. Perm, 78; Tadevosian, E.V. (2002). On the character of state power of a subject of a federation. In *State and Law*, (3), 32; Khudolei, D.M., Khudolei, K.M. (2012). To the question of the concept of state sovereignty. In *Russian Law Journal*, (2) (83), 38.

[43] Kurashvili, K.T. (2000). *Federal organization of the Russian state*. Moscow, 55.

Calhoun considered the subjects of the federation to be sovereign and gave them the right to secession.

If this idea is recognized to be true, then it should be summarized that if the constituent parts of a federal state have sovereignty, then the union they create is not of an intrastate character, but has an international legal status. In other words, such an alliance is temporary and should, in fact, be called a confederate alliance.

In the early 2000's, Russia also expressed similar ideas, clearly politically biased by the ethno-national elite of a number of republics, about the primacy of the sovereignty of states within the Russian Federation, and the federation is actually the result of their voluntary uniting.[44]

2.2. As an antipode of the separative theory, there is a so-called **unitary or centralist theory** of sovereignty. In fact, it was based on the practical experience of the existence of federations. After all, even in the United States, the dispute over who owns sovereignty was resolved in favour of the federal authorities, as evidenced by the results of the Civil War of 1861-1865. In science, it has become generally accepted that the right to secession is incompatible with the federal form of organization, since "no state can include a clause on its own liquidation in its constitution" (A. Lincoln).[45] This concept has gone through two main stages of its formation. Its authors, P. Laband and G. Jellinek, while denying the existence of sovereignty among the subjects of the federation, nevertheless regarded the latter as "non-sovereign states." But their followers – Geller, Kuntz and Mattern – debarred the entities the right to be called states, only giving the federal union the exclusive sovereignty: after all, only the Federation can have the right to liquidate the subject or to join another subject in case of danger of the whole Federation; the subject does not have the right to declare a state of emergency; the subject does not have the right to resolve disputes on competence…, since only the federation has the right to determine the competence of the authorities and the federal constitution.[46]

2.3. In attempts to find a compromise between the theory of exceptional sovereignty and the theory of divisibility of sovereignty, consensual theories arose. These include the "theory of participation and the theory of synthetic federalism." The founders of the so-called **theory of "participation"**, French lawyers – Borel and Le Fur – argued that Federation is "a state in which a certain participation in the formation of sovereign will is granted to states that, due to this, differ from communities and self-governing provinces of a unitary state."[47] Thus, sovereign power belongs to the federal authorities, and the subjects "seem to participate in the formation of a common will."[48]

In the framework of the dualistic (synthetic) theory (K. Ware, A.S. Iashchenko, P.V. Volkov), a central thesis (which developed the ideas of Borel and Le Fur to the logical end) was that sovereignty cannot be divided, but at the same time, it belongs to three subjects at once: the central government, the authorities of the subjects and some aggregate, nationwide power. K. Ware wrote that the essence of federalism is manifested in the fact that "the allied and regional authorities, each in their own sphere, are coordinated and independent."[49] Accordingly, the Federation has a double source of sovereignty, but it does not belong to either one authority or another, but it belongs to them jointly. However, not in parts, as in classical theory, since "sovereignty, as the supremacy and legal completeness of power cannot be divided by its very concept."[50]

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[44] Iskhakov, I.I. (2001). *Republic (state) within the Russian Federation: Issues of theory and practice*; PhD thesis. Ufa, 17; Iusupov, T.Z. (2004). *Tatarstan – a state in the Russian Federation. Constitution as a symbol of the era*: In 2 volumes. Ed. by prof. S.A. Avakian, 2, 34–35.

[45] Cited by: Levin I. D. (1948). *Sovereignty*. Moscow, 294.

[46] Alekhina, N.V. (2007). On the issue of state sovereignty of the Russian Federation. In *Constitutional and municipal law,* (10), 12; Kremianskaia, E.A. (2002). Issues of sovereignty in the practice of the Constitutional Court of the Russian Federation. In *Law and Power*, (2), 23.

[47] Iashchenko, A.A. Op. cit. 296.

[48] Ibid, 297.

[49] Aleksandrenko, G.V. (1962). *Bourgeois federalism (critical analysis of bourgeois federations and bourgeois theories of federalism)*. Kiev, 316.

[50] Iashchenko, A.A. Op. cit. 276.

The main flaw of these concepts is the fact that their theoretical views are at variance with reality: no federal, "joint" power existed, does not exist and cannot exist. There are only federal bodies and entities whose interests can coincide and diverge...

3. In the Soviet theory of state law, there were two approaches to the sovereignty of the republics. According to the first approach, both the union and the union republics possess a kind of **"conjugate sovereignty"** (double sovereignty), meaning that they are equally sovereign. Moreover, this concept gave the Union and its subjects complete, not partial or limited sovereignty.[51]

On the other hand, some authors recognized sovereignty of only the supreme power of the Union, but they admitted that the subjects of the federation had the so-called **"potential or dormant sovereignty."**[52] This theory is based on a very uncertain assumption that the sovereignty of the subject of the federation is directly related to secession (as though it is reserved in the right of free unilateral withdrawal of the subject from the composition of the union). And "while the decision on withdrawal has not been made, the sovereignty of the subject of the Federation is, so to speak, 'dormant', which means it exists only in potency."[53] Only when this right is realized can the state sovereignty be sort of "deployed." As noted by A.A. Liverovskii and B.I. Gogurchunov[54]: "in a federal state, we must always remember that it consists of entities, and if they feel bad, they will strive to leave the federation, in which case their potential sovereignty can develop into the real one. Therefore, federations should do everything for the entities to feel comfortable and not think about breaking with the federation, otherwise their "dormant sovereignty" will transfer to a new quality."

Currently, a slightly modernized conception of two incomplete sovereignties of a federation and entities was put forward by K.V. Aranovskii. In his opinion, "neither a federation nor its entities have full state sovereignty."[55] He specifically notes that state sovereignty is devoid of such attributes as indivisibility and an absolute nature. He states that "incomplete sovereignty, limited statehood have long ceased to be rare and ignoring them means to remain in captivity of outdated theoretical constructions."[56]

Until now, these theories remain within the framework of a scientific discussion on the problem of sovereignty[57]. But I would like to draw the attention of readers to several important details that are able to tilt the balance in favour of the conception of exclusive sovereignty of the federation.

1. In any federation, the priority of the federal constitution over acts of the entities of the federation is constitutionally fixed.

2. A federation has the right to control the compliance of acts of regional legislation with the Constitution and federal laws, and may also apply measures of responsibility in relation to the authorities of the constituent entities of the Federation (dissolution of parliament and impeachment of the chief executive of the entity).

3. Only a federation has the right to representation in international relations, and entities have only very limited powers in this area, carried out, as a rule, with the consent of the federation itself.[58]

Sovereignty in a Federal State: Summary

Sovereignty of a federal state is important and requires close attention, since the modern Russian doctrine did not have a single opinion on it, its essence and affiliation.

[51] See: Engibarian, R.V., Tadevosian, E.V. Op. cit. 19.

[52] *Constitutional (state) law of foreign countries: textbook*: in 4 vols. (1995). 1-2. ed.-in-chief B.A. Strashun. Moscow, 674-675.

[53] Ibid. 674–675.

[54] Gogurchunov, B.I. (2001). *The category of "sovereignty" in a multiethnic federal state – Russian Federation: destruction or creation?* Ways of forming a civil society in a multi-ethnic South Russian region: Abstracts of reports of the All-Russian Scientific Conference (Rostov-on-Don. September 20-21, 2001). Publishing house of the RSU; Liverovskii, A.A. (2002). *Actual problems of the federal structure of Russia*. SPb., 48–50.

[55] Aranovskii, K.V. (2000). Sovereignty in systems of federal relations. In *Law and Politics*, (1), 14.

[56] Ibid. 16.

[57] See: Leksin, I.V. (2017). State sovereignty: illusion of conceptual diversity and variety of conceptual illusions. In *Federalism*, 1 (85), 79-92.

[58] Burbina, Iu.V. (2009). Problems of sovereignty of a federal state. In *Legal World*, (3), 8.

It is important to note that sovereignty is not a quantitative, but a qualitative characteristic of the state, which either exists or does not exist. It is impossible to be sovereign in part. Therefore, the opinion that "neither a federation nor its entities possess complete sovereignty" is also erroneous.[59] In this regard, V.E. Chirkin pointed out that the word "sovereignty" has a certain meaning and it does not need to be extended out of all recognition, swallowing as much as can be swallowed."[60]

A federation's entity may be a priori declared sovereign. But the legal mediation of the existence of state sovereignty of entities of the federation is their right to secession, as well as the right to unilaterally change the status of the entity of the federation to a status of an acceding state.

In the Russian constitutional model, the principle of state sovereignty is clearly defined as unified and indivisible, spreading over its entire territory (Article 4 of the Federal Constitution). The current Constitution of Russia has removed from circulation the concept of "sovereign" in relation to the republics of the Russian Federation, which was used earlier in the Federal Treaty. The Constitution of the Russian Federation declared the legal supremacy of the norms of the Constitution of the Russian Federation over the provisions of the Federal Treaty and other treaties (Articles 3, 15).

Thus, the new federal constitutional model has established that there can be no delegation of sovereignty from the bottom up, by agreement, since all the main issues of separation of the state power are defined precisely in the text of the federal Constitution and nowhere else.

Recognition of the principle of state sovereignty of the Russian Federation implies a clear determination of the scope of rights that the Federation must possess in order for its state sovereignty to be ensured. These are the so-called inalienable rights of the Federation. Their loss means deprivation of the status of state sovereignty.

The Constitution of the Russian Federation enshrines the main features of state sovereignty of Russia. Among them, the supremacy of the federal law over the law of the entities of the Federation; inviolability of borders and territorial integrity; unity of the economic space, fiscal, banking and monetary systems; unified army (unified Armed Forces); the right of the state to protect its sovereignty and the rights of citizens.

The issue of state sovereignty is related to the issue of state powers. The most important powers of the state, which directly express its sovereign status, represent the basis for the realization of state sovereignty. The sovereign rights include: the right to independent exercise of constituent power; the right to formation and constitutional consolidation of a system of state bodies; the right to independently carry out all forms of state activity (legislative, executive, judicial, etc.); the right to independently dispose of its territory; the right to establish citizenship and determine the legal status of citizens; the right to centrally manage economic and socio-cultural activities; the right to political (essentially confederal) alliance with other states with the right to freely withdraw from this state association.

Despite the unequivocal decision in the Constitution of the Russian Federation on the unity of state sovereignty of the Russian Federation, this fundamental principle is not adhered at other levels of legal regulation. A stumbling block is the viability of the idea of sovereignty of the republics as constituents of Russia, which is formed on the basis of Art. 73 of the Constitution of the Russian Federation, which provides the completeness of state power of the constituent entities of the Russian Federation.

A while back, C. Montesquieu said: "If small republics die from an external enemy, then large ones die from an internal ulcer."[61] In Russia, internal ulcers tended to spread. In the 90's of the past century, one of such trends was the recognition of sovereign status by a number of republics within the Russian Federation.[62] Therefore, there can be no sovereignty

[59] Aranovskii, K.V. (2000). Sovereignty in the system of federal relations. In *Law and Politics*, (1), 14.

[60] Chirkin, V.E. (2000). State power of an entity of the Russian Federation. In *State and law*, (10), 10.

[61] Montesquieu, C. (1995). *Selected Works*. Moscow, 268.

[62] *Which was seen earlier from the provisions of most republican constituent documents*. Also see: Baranov, V., Lapshin, I.

in sovereignty. If a state is part of another state, then the loss, and not just the restriction of sovereignty, is inevitable. The entities of the Russian Federation, even with great powers, are not sovereign. M.V. Baglai reasonably emphasized that there cannot be sovereign republics within a federal state, this contradicts the very principles of federalism. If some entities of the Federation were recognized as sovereign, while others were not, then what equality of entities we can talk about?[63]

The unified approach that has developed in the Russian federal legislation – the refusal to recognize the state sovereignty of the constituent entities of the Russian Federation, has been repeatedly confirmed by the Constitutional Court of the Russian Federation.

In this case, the Decree of the Constitutional Court of the Russian Federation of March 13, 1992 No. 3-P laid the foundations of the consideration of the presence (absence) of sovereignty of the republics. In this Decree, the Court recognized the state sovereignty of the Republic of Tatarstan as unconstitutional, indicating that the international law precludes the use of references to the principle of self-determination to undermine the territorial integrity and unity of a sovereign state and national unity.[64]

In the Resolution of June 7, 2000 No. 10-P,[65] the Constitutional Court of the Russian Federation emphasized that the Constitution of the Russian Federation does not allow any other medium of sovereignty and source of power besides the multinational people of Russia, and therefore does not imply any other state sovereignty besides the sovereignty of Russia... The entities of the Federation do not have sovereignty, which initially belongs to the Russian Federation as a whole.

And finally, in the Decision of June 27, 2000 No. 92-O,[66] the Constitutional Court noted that, in the article 5 (part 2) of the Constitution of the Russian Federation, the use of the concept "republic (state)" does not mean recognition of the state sovereignty of these constituent entities of the Russian Federation, but only reflects certain features of their constitutional status related to factors of a historical, national and other nature."

If a state is part of another state, then loss, and not just restriction of sovereignty, is inevitable. The entities of the Russian Federation, even with great powers, are not sovereign.

In the Constitution of Russia, naming one type of its constituent entities – republics – by states (Article 5) should be considered in this vein not as a recognition of their common legal personality as a state, but as a political compromise with the national elites of the republics at the stage of development and adoption of the 1993 Constitution of the Russian Federation. It is also important that the Constitution of the Russian Federation does not mention the sovereignty of the republics, and outside the sovereignty of a territorial entity, it is not possible to consider it as a state. In other words, the statehood of the republics of the Russian Federation is nothing more than a

(2000). Sovereignty of the Republic: Reality and Law. In *Rossiiskaia Gazeta*. September 30.

[63] Baglai, M.V. (2000). History knows no examples when a Federation survived a war of regions with the center. In *Rossiiskaia Gazeta*. July 20, 1-2.

[64] Decree of the Constitutional Court of the Russian Federation of March 13, 1992 N 3-P "In the case of verification of constitutionality of the Declaration on State Sovereignty of the Tatar SSR of August 30, 1990, the Law of the Tatar SSR of April 18, 1991 "On Amendments and Additions to the Constitution (Basic Law) Of the Tatar SSR", the Law of the Tatar SSR of November 29, 1991 "On the referendum of the Tatar SSR", resolution of the Supreme Council of the Republic of Tatarstan of February 21, 1992 "On holding a referendum of the Republic of Tatarstan on the state status of the Republic of Tatarstan", available at: http://www.garant.ru/products/ipo/prime/doc/1675704/#ixzz5fu962U6U

[65] Resolution of the Constitutional Court of the Russian Federation of June 7, 2000 N 10-P "In the case of verification of constitutionality of certain provisions of the Constitution of the Altai Republic and the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of the Entities of the Russian Federation" Corpus of legislative acts of the Russian Federation. 2000. N 25. Article 2728.

[66] Decision of the Constitutional Court of the Russian Federation of June 27, 2000 N 92-O "At the request of a group of deputies of the State Duma on checking compliance with the Constitution of the Russian Federation of certain provisions of the Constitutions of the Republic of Adygea, the Republic of Bashkortostan, the Republic of Ingushetia, the Republic of Komi, the Republic of North Ossetia-Alania and the Republic of Tatarstan" Corpus of legislative acts of the Russian Federation. 2000. N 29. Article 3117.

legal fiction that is unsubstantiated by specific powers that make up the core of this status, as well as the lack of a universal feature of this status – sovereignty.

The entities of the federation cannot be considered as states; these are special political entities that claim to be in a state status, but nothing more.[67] As rightly noted by V.A. Litvinov, "even in those federations whose entities are legally referred to as states, such names are conditional in nature, and indicate that their carriers have some formal attributes of statehood, such as territory, system of government, legislation, etc. With this in mind, we can conclude that it is incorrect to use the term "state" when characterizing the territorial entities that make up the federation."[68]

In our opinion, there are no clear legal differences between the status of a state and a "state-like" entity, except that the legal tradition of the international law used the latter definition to characterize the situation of the so-called "free cities" or cities with a special independent status (West Berlin, Trieste, Danzig).

Thus, a subject of a federation has the status of a state entity, which differs in a number of qualitative characteristics from the position of autonomy or administrative-territorial formation in a unitary state, but clearly does not have state sovereignty and does not allow it to be called a "state" in a literal sense.

[67] Nevinskii, V.V. (1986). *The legal status of entities of the bourgeois federation*. Krasnoyarsk, KSU, 10, 15.

[68] Litvinov, V.A. (2012). The problem of sovereignty in a federal state. In *Russian Law Journal*, (1) (82), 31.

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Суверенитет в федеративном государстве: теоретико-правовые основы и практика реализации в России

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Аннотация. В статье поднимается проблематика государственного суверенитета в федеративном государстве и раскрывается его правовая природа. Обращено внимание на многообразие подходов к понятию и сущности суверенитета, выявлено его соотношение со смежными категориями, представлены концепции единства и делимости государственного суверенитета. В работе доказано, что суверенитет – это не количественная, а качественная характеристика государства, которая либо есть, либо нет. Авторами обосновывается исключительность принадлежности государственного суверенитета Российской Федерации.

На основе анализа доктринальных, нормативных источников и практики Конституционного Суда РФ авторами показано, что в отечественной конституционной модели достаточно четко обозначен принцип государственного суверенитета как единого и неделимого, распространяемого на всю ее территорию. Признание принципа государственного суверенитета России предполагает четкое определение объема прав, которыми должна обладать Федерация, чтобы ее государственный суверенитет был обеспечен.

Рассмотрены закрепленные в Конституции РФ основные признаки государственного суверенитета России, среди которых верховенство федерального права над правом субъектов Федерации; неприкосновенность границ и территориальная целостность; единство экономического пространства, бюджетно-финансовой, банковской и денежных систем; единая армия (единые Вооруженные Силы); право государства на защиту своего суверенитета и прав граждан.

Несмотря на однозначное решение в Конституции РФ и Конституционным Судом РФ вопроса о единстве государственного суверенитета Российской Федерации, данный основополагающий принцип не полностью обеспечен, поскольку идея суверенитета республик как составных частей России продолжает сохранять свою потенциальную угрозу для российского федерализма с учетом положений ст. 73 Конституции РФ, предусматривающих всю полноту государственной власти субъектов РФ.

Ключевые слова: конституция, федеративное государство, суверенитет, народный суверенитет, государственный суверенитет, национальный суверенитет, государственная власть.

Научная специальность: 12.00.00 – юридические науки.