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# Civil society and constitutional state: similarities and differencies

The article analyzes the essence of civil society and the rule of law in the light of two paradigmatic approaches: subject-object and subject-subject. Traditions of interaction of these concepts are considered as factors of modern civilization development. It is proposed to use the historical experience of public contract theories to build a truly legal platform where the first place is the freedom of citizens. It is noted that civil society is possible only if the obligations are fulfilled equally by all participants in legal relations.

*Keywords*: civil society, constutional state, global community, subjects of law, polis, social system, subject-object paradigm, subject- subject paradigm.

The collapse of the USSR had led to the foundation of new sovereign states, that faced the hardships of forming constitutional state, establishing market relations, creation of institutes of the civil authority. Everything had been done with a single goal — to become a part of global community as it's equal member. As the results of their independent sovereign existence shows, these transitions were carried out without sufficient theoretical comprehension of the nature of these new types of relations, which just could not but negatively affect the effectiveness of ongoing reforms.

The phenomenon of civil society is a kind of historical product that Hegel defines as communication of individuals through the system of needs and division of labor, justice (legal institutions and law and order system), external order (police). He noted, that «The legal foundations of civil society are the equality of people, subjects of law, their legal freedom, individual private property, the inviolability of treaties, the protection of the law against violations, as well as orderly legislation and an authoritative court, including a jury» [1; 233].

The very concept of «civil society» itself was the subject of study for more than a single generation of scientists, and it's understanding has a long history. So, in ancient Greece was formed a special type of society, not similar to other communities of antiquity. Ancient Greeks called that society «polis», which is often translated as «city-state». Ancient Greeks themselves considered the polis primarily as civilian collective. Aristotle noted that the state is a natural product, since it reflects the interests of the polis and society, because the essence of the individual, as a political animal is inextricably linked to civil society and the state. Based on the political nature of man, all other spheres of human life are politicized: moral, marital, economic etc. In the Greek polis only those who participated in the court and the people's assembly were truly considered a citizen, i.e. ones who were part of the political life of society. So, according to Aristotle, civil society is a totality of political citizens, and the state is political communication of citizens [2; 110].

Further development of the understanding of the essence of civil society can be found in the writings of many thinkers of different times.

For example, Machiavelli believed that the essence of the political organism is to harmonize obedience (to the state) and freedom (in association, in society). People's sovereignty is the highest in relation to the state, the people have the right to overthrow absolutism.

In Kant, civil society is based on the following principles: 1) the freedom of each member of society; 2) its equality with every other member of society; 3) the independence of each member of society as a citizen.

For Hegel, civil society and the state are independent, but interacting institutions. Civil society, together with the family, forms the basis of the state. The state represents the general will of it's citizens, civil society is the sphere of special, private interests of each individual.

Marx believed that in civil society each individual is a certain closed set of needs and only exists for the other because they mutually become a means for each other [3; 213].

At the present stage, civil society is increasingly viewed as a relationship based on private property. «Civil society is such a social system, the economic basis of which are market relations, various types of

ownership and forms of entrepreneurial activity that can meet the needs of people in various vital benefits» [4; 96].

Despite positive achievements in understanding the essence of civil society, all of them, however, have one feature. As a rule, all of them were formed in conditions of domination of only one paradigm — the subject-object paradigm of social self-organization of a society. A characteristic feature of this paradigm is that those who acted in the role of subject, pursued, in the first place and above all, their own interests and treated other members of society as an object-like mass. Therefore, in the long term, civil society was doomed to develop only in the framework defined by the authorities themselves. Hence the corresponding understanding of the essence of civil society. «The term civil society does not correspond to what it designates, because the community of citizens is not a civil society, but a state» [5; 110]. Thus, an objective need for a civil society emerges as a form of protest against social self-organization existing in a regime dominated by the subject-object paradigm in the organization of all spheres of life of society. Its development manifestation in sort of the opposition of interests primarily of a member of the society, in the person of its ordinary citizen, on the one hand, and the interests of the government in the person of the state, on the other. Traditionally, in this relationship, as a rule, priority has always been and still given to the interests of the state. That is, the dominant subject-object paradigm of social self-organization put ordinary citizens of society in the position of the object: they were used only as a means to achieve any goals of the state itself.

Long history of different understanding has such phenomenon as constitutional state. In the traditional sense, a constitutional state refers to a state where each citizen is provided with a set of specific rights. And no less important principle of the rule of law is the compulsion for all state bodies and officials to comply with the requirements of laws. Laws come from the state, therefore, the state itself undertakes to comply with the requirements of laws. «A constitutional state is a state where a law is formed, a lot of laws are issued and there are established procedural and legal norms that allow citizens to protect their rights and freedoms from their violation from someone else's side» [6; 57].

In addition, the state assumes the function of a guarantor of observance of these rights. Of course, this guarantee does not apply to cases when the interests of the state and society are in conflict. In these cases, of course, the priority remains for the state.

One of the attributes of the constitutional state is the rule of law, its dominance in public life. The most important aspects of social life must be regulated by laws. For example, in accordance with the Constitution, the Parliament of the Republic of Kazakhstan «has the right to issue laws that regulate important social relations, establish fundamental principles and norms relating to the legal personality of individuals and legal entities, civil rights and freedoms» [6; 56].

The very idea of a rule-of-law state arose as a response to a solution of the problem associated with the unfair distribution of rights and the search for a mechanism for reducing the rights of power on the one hand by increasing the rights of subordinates on the other. The subject-object paradigm itself necessarily created a situation in which the object-like mass chose for itself the way of overcoming object-like nature through such means as rebellion, insurrection, revolution. This all corresponded to the model of establishing justice on the contrary. And then bourgeois philosophers proposed a different way out of this situation. An alternative to rebellion, as a form of violence, was a social contract.

The idea of a social contract, as an option to overcome the distortion in the distribution of rights between the rulers and subordinates, was progressive in nature in many aspects. First, it contributed to the preservation of social stability. Secondly, it suited the authorities, because the authorities went on a voluntary refusal from part of their privilegesin order not to lose everything. Thirdly, it was believed that this suited the people as well, who became the owner of more rights, and shifted part of his duties to the shoulders of authorities. Nevertheless, the social contract offered only the following option: the civil society formed and determined by the government was under the control of this exact government, and, first of all, served its interests.

Ideologists, fathers of the idea of a social contract, being representatives of the bourgeoisie, could not even allow the thought of formal equality of everyone in rights. It was, first of all, about equality in following the requirements of the law, but not about equality in securing rights. Therefore, control over the activities of civil society, was a kind of guarantor of maintaining the dominant position of authorities.

The origin of the ideas of the constitutional state originates in the ancient world. In Greek society, as well as in Roman society, man, due to the emergence of private property (as part of the ownership of society, as the owner of a part of social property, as the owner of certain rights (limited to certain conditions: short-term, long-term, perpetual use), could become a subject, that is living on new, artificially created social

norms, which just allowed members of this society to acquire a part of social property (with a certain condition) into private property. And thanks to private property, all free citizens had the opportunity to become subjects. But they became subjects only when they were legally sanctioned by the state law. Therefore, the nature of the relationship between the owners of this right was called legal relationship. The fact that a man could have such a right only when he had deserved it (after fulfilling a certain range of duties) fell into the background and began to be forgotten. A new, artificial system of norms was needed to regulate any type of relationship, in particular between subjects. And so there was a need for a legislator. And in order for the law to have real power, the legislator should have been vested with authority.

The state arises there and then, where and when the authprity legitimately appropriates for itself the right to write laws defining rights and duties for its citizens. Thus, the very idea of a constitutional state and its features, as in the case of civil society, was formed under the conditions of the same subject-object paradigm. Therefore, the state, forming the institutions of civil society, based them on the principle of self-preservation. To regulate any type of legal relationship, it went on the principle of imposing its will on top of any other. Both of these institutions served the interests of power, and, ultimately, the preservation of the existing order. Hence the logic of the formation of legal relations of the legislative system of the state: rights, freedoms, duties. Algorithm of civil society activity: freedom, duties, rights. Traditionally, even in the conditions of the existing constitutional state, it is believed that civil society is dependent on the state, moreover, the state controls the phenomenon itself and further activity of the civil society institutions, and the prospect of the development of civil society is linked with the interests of all the same state. Therefore, the power, thanks to this way of the formation of the system of law, tried to keep as much of freedom of activity as possible.

As alternative to this approach can serve another logic of the relationship between society and power. If, in the understanding of the traditional approach, the state allows the emergence and existence of civil society institutions with the main goal of maintaining its dominance (the supremacy of the minority), then the activity approach puts human interests first, and the state is secondary in function. After all, the need for any authority function arises as a need for the implementation of managerial functions and need for the guarantor of compliance with applied rules transformed into a form of law. Hence, the nature of the formation and functioning of civil society institutions should be built on the basis of taking into account the interests, first of all, of members of society as its ordinary citizens, and the power should build its activities, within the limits permitted by these citizens. It is no accident, for example, that it is stated in the Constitution of the Republic of Kazakhstan: «The only source of power is the people» [7; 3]. And the interests of the state, logically, can not have priority over the interests of a person.

The logic of the formation of civil society in the theory of activity is as follows. Joint activity of the legislative and executive branches of power is a way of solving the difficulties arising in the course of life in the crossing of these branches of power. This scheme of «cooperation» is known as a system of checks and balances. The activity approach determines the order of emergence of civil society and the state institutions, which is an alternative to the generally accepted one. All types of relationships in society are reduced to the following main manifestations.

The first of them is a relationship that emerges at the interpersonal level. Their goal is to create, through joint efforts, various types of opportunities to ensure the individual existence of each of the participants in case they lack personal resources for this.

The second are relations that arise between ordinary citizens and any kind of social entities that have a social, production or authoritive character and arise as a service function for servicing the interests of physical entities.

The third is a relationship that, due to its legitimate nature, arises between various kinds of public, industrial, power structures, individual states and other structural subdivisions of the world community [8; 288, 289]. Thus, power is formed from the bottom up. And those who have the power work in the regime of legal permission — do only what they are allowed. And managed ones operate in the regime of legal prohibition — everything that is not forbidden is allowed. Therefore, it is necessary to affirm a certain set of not rights, but specific duties. This form of organization of governance allows to prevent various conflicts (financing on the residual principle, election of akims). It is in this way that the emergent state can be considered legal — the rule of law for the legislative and executive power.

The activity approach asserts the interests of the person, civil relations as the determining value, and the state has the role of guardian of these interests.

Another difference between the constitutional state and civil society is that freedom in a constitutional state is limited by the will of others through law, and in civil society, a person's freedom can be limited only

by his own will, by accepting the obligations of each member of society to his environment. As it was said above, in the traditional interpretation in a constitutional state, the measure of freedom is determined by a legal authorization regime, that is, everything that is not allowed is prohibited. A measure of human freedom in civil society is limited to the regime of legal prohibition, that is, everything that is not forbidden is allowed. In addition: in civil society, a person through a ban restricts freedom to himself, but in the traditional sense, the freedom of man is limited from the outside through laws determined by the authorities. Therefore, it is the order of freedom-duty-right that allows members of society to make them formally equal in the sphere of legal relations

Unfortunately, this particular feature is not taken into account today when forming the legislative base of a society that claims to be a civilian. And this could help the organization of interaction between society and the state in the spirit of relations that truly correspond to their market essence.

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## Азаматтық қоғам және құқықтық мемлекет: ұқсастық пен айырмашылығы

Мақалада екі парадигмалық тұжырымдамалардың (субъект-объектті және субъект-субъектті) шеңберінде азаматтық қоғам мен құқықтық мемлекеттің мәні талданды. Осы ұғымдардың арақатынас дәстүрлері қазіргі өркениеттік дамудың факторы ретінде қарастырылды. Бірінші орында азаматтық құқықтары тұрған шынайы құқық алаңын құру үшін қоғамдық келісім теорияларын тарихи тәжірибесін қолдану ұсынылды. Құқықтық қатынастардың барлық қатысушылары міндеттерді тең атқарған жағдайда ғана азаматтық қоғам бола алады деп ескерілді.

*Кілт сөздер:* азаматтық қоғам, құқықтық мемлекет, субъект-объектті парадигма, субъект-субъектті парадигма, полис, әлеуметтік жүйе.

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## Гражданское общество и правовое государство: сходство и отличие

В статье анализируется сущность гражданского общества и правового государства в свете двух парадигмальных подходов: субъект-объектной и субъект-субъектной. Традиции взаимодействия данных понятий рассматриваются как факторы современного цивилизационного развития. Предлагается использовать исторический опыт теорий общественных договоров для построения истинно правовой площадки, где на первом месте стоят свободы граждан. Отмечается, что гражданское общество возможно только при условии соблюдения обязанностей в равной степени всеми участниками правоотношений.

*Ключевые слова:* гражданское общество, правовое государство, субъект-объектная парадигма, субъект-субъектная парадигма, полис, социальная система.

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