

---

## Constitutional Economy in the Context of the Concept of Electoral Democracy in Modern Russia

---

Markina E.V.,<sup>1</sup> Kolyushkina L.U.,<sup>2</sup> Tkachenko M.A.,<sup>3</sup> Vertij O.U.<sup>4</sup>

**Abstract:**

*The aim of this research is to formulate an explanatory model based on theoretical reflection and empirical data that can give an increment of knowledge about the theoretical and methodological problems of the application of economic approach to law in terms of the interface points of the constitutional economy and electoral democracy.*

*The leading methodological approach lies in the fact that constitutional Economics explores the impact of constitutional values on economic processes, as well as economic laws and regularities on the formation and interpretation of the constitutional principles within the context of a modern Russian electoral democracy as a political ideology and political practice.*

*The main results of the study is to formulate an explanatory model that allows to allocate several points of junction between the constitutional Economics and electoral democracy.*

**Keywords:** *Constitutional economy, electoral democracy, constitutional principles, legal space of democracy, rational choice.*

**JEL Classification Codes:** K10.

---

<sup>1</sup>Candidate of Science (Law), Associate Professor of the Department of «Constitutional and Municipal Law», Rostov State University of Economics, Rostov-on-Don, [shevelevaev@mail.ru](mailto:shevelevaev@mail.ru)

<sup>2</sup>Candidate of Science (Social), Associate Professor of the Department of «Constitutional and Municipal Law», Rostov State University of Economics, Rostov-on-Don, [larisa.kolyushkina2013@yandex.ru](mailto:larisa.kolyushkina2013@yandex.ru)

<sup>3</sup>Candidate of Science (Law), Associate Professor of the Department of «Civil Law», Rostov State University of Economics, Rostov-on-Don, [kafedra37@bk.ru](mailto:kafedra37@bk.ru)

<sup>4</sup>Post-graduate student of the Department of «Financial and Administrative Law», Rostov State University of Economics, Rostov-on-Don, [kfiap@yandex.ru](mailto:kfiap@yandex.ru)

## **1. Introduction**

Points of connection between the constitutional economy and the concept of electoral democracy are presented in this study. Accordingly, the explanatory model of the research (organization of the research space) of the interface points is based on the identification of economic and constitutional aspects of the problems associated with strategic economic decision-making, the need to take into account constitutional values in economic decision-making, the constitutional ordering of relations between the state and citizens and thereby the regulation of individual rights and freedoms, the powers of state bodies and control of state power. Control rules are created on the basis of democratic elections (control of voters) in conjunction with the division of legislative, Executive and judicial power in the legal space of the exercise of democracy in accordance with the principles of the rule of law (Emelkina, 2016).

A number of authors rightly draw attention to the fact that the constitutional economy is especially important for constitutional lawyers, arguing that if lawyers do not take the first step towards the constitutional economy, it will pass them, providing economists, sociologists and political scientists to determine the content of the concepts and categories of constitutional economic law directly related to the categories of «welfare of the people», «welfare of Russia», «decent life and free development of the person» (which, in turn, are the most important categories of constitutional law). Gadzhiev (2009) argues that in the constitutional economy it should be not just about a clear and mutual addition of legal and economic analysis, but about their partial merger and interpenetration, both in theory and in practice.

According to the generally accepted approach, going back to the works of Buchanan (2004), constitutional Economics studies the laws of the choice of rules within which both economic and political activities are carried out. The economic analysis of the Constitution is aimed at explaining the features of the functioning of alternative sets of legal, institutional and constitutional rules that impose restrictions on the choice and activities of economic and political actors. Thus, the constitutional economy assumes distribution of the principles and methods of the economic analysis to the sphere of traditional application of the constitutional law (Buchanan, 2004; Sergeev, 2013).

The hypothesis of the study is based on the assumption that the construction of an explanatory model of the points of connection between the constitutional economy and electoral democracy in the legal space of the exercise of democracy includes four sections of the possible analysis through the identification of the laws of interaction of economic relations and constitutional provisions both at the level of legislative decisions and in real life and allows to better understand the essence of the transition from totalitarianism to democracy, from state regulation to the market, from etatism to competition in Russian conditions.

## **2. Literature review**

A review of the literature shows that in the second half of the twentieth century, a number of the world's major economists made serious attempts to combine economic and legal analysis. In 1982, the term «constitutional economy» was first used, and in 1986, the economist from the United States Buchanan won the Nobel prize in Economics. Journals with the theme of «Law and Economics» are widespread, and the American practicing lawyer and researcher R. Posner published several books on this subject, as well as his famous textbook «Economic analysis of law» (Posner, 2004).

According to one of the leading Russian researchers of the subject Gadzhiev (2009), the subject of the constitutional economy is the development and cultivation in society of rational rules of interaction between government and business, the essence of which is the protection of such constitutional values as economic freedom, the inviolability of private property, the inadmissibility of arbitrary interference in private Affairs, the stability of the prevailing economic conditions and legal certainty. The content of the constitutional economy is the development in the process of interpreting the basic legal principles for the economy of various kinds of rules, orders, imperatives, prohibitions and recommendations that would be logical, based on the internal logic of law, but also effective from an economic point of view (Gadzhiev, 2009).

In turn, Barenboim (2007) draws attention to the fact that the constitutional economy reveals the interdependence of the constitutional norms of regulation of economic relations and strategic economic decisions affecting the welfare of the masses. The published works of foreign and domestic researchers recorded certain achievements in the field of economic analysis of law and constitutional economy. Among them – the works of Buchanan (2004), Posner (2004), Cooter and Ulen (1997), Polinsky (1989) as well as Andreeva (2015), Barenboim (2007), Bibik (2016), Boldyrev (2015), Gadzhiev (2010), Sergeev (2013) and others. However, there is no research in the context of the correlation between the constitutional economy and electoral democracy, which, according to a number of experts, has developed in Russia.

## **3. Methods of conducting research**

For the basis of reflection accepted theoretical concepts that act as carriers of value-semantic approaches and languages of description in the study of the interface points of the constitutional economy and electoral democracy: the theory of rational expectations; the theory of rational choice; the theory of «common good».

The theory of rational expectations is based on the fact that social actors have certain information and use it to forecast the process in such a model of economic and other activities as they imagine and consider to be correct, while acting rationally. The behavioral attitudes of an individual reflect his conscious choice based on a

comparative assessment of behavioral alternatives. In this sense, the theory of expectation links behavioral activity with a deliberate, rational process of choice.

The theory of rational choice is based on the postulate that a person behaves rationally, performing certain actions, minimizing costs and striving for the maximum benefit for himself. In legal relations, a person behaves in a similar way, and therefore there are all grounds for the introduction of this theory in the legal science (Bibik, 2016). In this case, as in economic theory, the economic approach is linked to the search for a rational model of behavior.

The «common good» theory in the most general form, the good (value) is something that satisfies the needs — the desires of a person or serves to meet them. The common good in the European Education was perceived as the ultimate goal of the state and its head, and at the same time - as a guide for the activities of all government agencies, not excluding the monarch. The state itself as a certain institution is created not for the sake of the sovereign, but in the name of citizens; the state and its citizens have the highest duty of the sovereign, the meaning of his «position»; sovereigns coming otherwise, sin against the natural rights of man.

The idea of the common good as the goal of the state is the achievement of modern culture, based, among other things, on the belief that the power of the state must have borders. And these boundaries are set by the need to recognize a person, his rights and freedoms, which according to the Constitution of Russia are the highest value. In this setting, constitutional law is quite consistent, since this postulate corresponds to the internal logic of constitutional law. Indeed, all the diversity of human goals is subject to the highest goal – the preservation of individual existence and well-being. When these objectives are legalized, legal categories such as constitutional rights and freedoms, as well as private law expressing the needs and social value of reasonable selfishness, appear. Public law is the objectively necessary boundaries of private interests (goals). At the same time there is a very General legal category «common good» (Gadzhiev, 2010).

The common good is the meaning and the desired result of the legal type of organization of the social and political community of people as free and equal subjects. Historical experience and theory show that only this type of organization of the community of people and the coordination of the interests of the community and its members, whole and part, private and public, individuals and power, is compatible with the freedoms and rights of people, with the recognition of the dignity and value of the human person (Gadzhiev, 2010).

The leading methodological approach of this study is that the constitutional economy studies the impact of constitutional values on economic processes, as well as economic laws on the formation and interpretation of constitutional principles in the context of electoral democracy as a political ideology and political practice in modern Russia.

---

New approaches define a different «optics» views on the variety of subjects of the problem-subject field of research.

#### **4. Results**

Different types of societies are characterized by their own, specific mechanisms of interaction between the economy and politics, which is most clearly manifested in the actions of the political authorities to regulate the economic life of the country. Fundamentally different constitutional foundations of the state structure form a common basis for the differentiation of economic and political relations of different types.

The increasing variety of sources of legal regulation of economic relations and economic institutions belongs to the peculiarities of the modern development of constitutional democratic States. The provisions of constitutional acts have been added to traditional sources in the form of legislative acts and judicial decisions. Some of them are binding – for example, the rules governing the status and functions of the audit institutions of public authority.

The assimilation of such provisions by the «second generation» of constitutionalism strengthens the legal basis and political authority of these institutions, helps to strengthen their independence in relations with other institutions of public power and potentially helps to set their actions on flexibility and efficiency, which are increasingly necessary in the conditions of dynamic modern reality.

Based on the current theoretical approaches relating to the identification and comprehension of the junction points of constitutional Economics and electoral democracy in the coordinates of law and legal discourse, it seems possible to propose an explanatory model (the theoretical-methodological construct) as an analytical tool aimed at understanding the economic and constitutional-legal aspects of problems associated with the adoption of strategic economic decisions, necessity of the account of constitutional values in making these decisions, constitutional regulation of relations between the state and citizens and thus regulation of individual rights and freedoms.

Under the construct we understand an idealized object with established properties, used as a «template» or «matrix» for building a cognitive scheme, in particular - for the theoretical description of the properties of empirically observed objects. No wonder A. Shutz comes from the fact that in the space of «our knowledge of the world» contains a set of constructs as a set of abstractions and generalizations, formalizations and idealizations corresponding to a certain level of organization of thinking (Shutz, 2004). Thus, we see that the construct is synonymous with the model.

The problem field of study involves building a research model, which is based on the conceptualization of the basic concepts in the coordinates of the scientific problem, expressed in the understanding of the correlation between the constitutional economy and electoral democracy. The constitutional economy is based on the idea that legal, first of all constitutional, principles and institutions have the highest value and should be taken into account by economic agents, legislators, and law enforcement officers. In the economic sphere, it is necessary to make a reasonable combination of economic (rational, egoistic) and other values – constitutional, moral and ethical – in order to achieve social well-being.

As for electoral democracy, the Austrian political scientist A. Schedler, after a number of other researchers, defines it as a semi-democratic political regime in which it is possible to hold clean, competitive, more or less general elections, but which can not protect political and civil liberties that distinguish liberal democracy (Schedler, 1998).

Legal space is a relationship open to legal state intervention, as well as relations that are covered by state and judicial protection. The legal space of democracy as a basic principle of the Russian state directly goes to the electoral right and the electoral system (the system of organization of elections). The Constitution of the Russian Federation fixes the constitutional and legal formula of the relationship between democracy as a political form of organization of state power and elections - an institution that provides one of the directions of direct participation of the masses in the government of the state. Thus, democracy provides one of the leading rights of the individual-the right to free expression of will – with a dominant semi-democratic political regime.

We have to start from the postulate that the concept of democracy is one of those that are difficult to adequately interpret. Thus, Dahl (1964) considers the main dimensions of the political regime to be «competitiveness» and «participation», and the main indicators of democracy - the set of civil and political rights and freedoms (Dahl, 1964). The term «electoral democracy» is usually used to refer to a specific type of half - democracy-a regime that manages to hold clean, competitive, more or less general elections but that cannot protect the political and civil liberties essential to liberal democracy. We will, however, use the term «electoral democracy» in a broader sense as a suitable short term for any subtype of «reduced democracy».

Identifying the points of connection between the constitutional economy and electoral democracy, we will rely on the understanding of the constitutional economy as a set of principles of optimal combination of economic feasibility with the achieved level of constitutional development, reflected in the rules of constitutional law governing economic and political activities in the state. The constitutional economy examines the impact of constitutional values on economic processes, as well as economic laws on the formation and interpretation of constitutional principles (Gadzhiev, 2009).

When identifying the points of connection between the constitutional economy and electoral democracy, it is also important to pay attention to the economic content of the Constitution. The main distinctive feature of the Constitution of 1993 is its liberal character. For the first time in Russian history, the Basic Law of the country organically intertwines political and economic liberalism. Their mutual connection is undeniable, since political liberalism creates the basis for economic liberalism and in many ways predetermines it.

The liberal nature of the Russian Constitution can also be judged by the logic of its construction, which is based on ensuring pluralism — political (multi-party and political freedom), economic (pluralism of ownership and freedom of enterprise) and ideological (the inadmissibility of recognizing any ideology as dominant). It is this unity that forms the basis for all other principles, ideas and provisions of the Constitution. At the same time, the Russian Constitution includes the whole set of ideas and principles that have been developed by the democratic tradition of the last two centuries. Article 8 of the Constitution of the Russian Federation contains the definition of the market economy, which is given through its main characteristics: the guarantee of property rights, freedom of entrepreneurship, support for competition, the unity of economic space. It is significant that among the most important functions of the state, which determine the limits of its possible intervention in the economy, the fundamental liberal values — the protection of property and support for competition—are highlighted.

As the historical experience shows, the market economy is, of course, the basis of the existence of a democratic regime, but its presence may not lead to the formation of such. The absence and unrestricted development of freedom of business are equally dangerous for democracy. Awareness of this threat has led many countries to take measures to maintain market competition and business. The state, form and stability of democratic regimes are greatly influenced by such factors as the level of economic development, polarization of society, the ability of the state to maintain minimum social standards. In addition, within the framework of this direction, the mechanisms of the impact of the economy on the preservation or change of constitutional forms are studied.

In practice, a significant number of varieties of democracy are distinguished, among them - electoral (elective) democracy - is a kind of state, on the basis of which the electoral system is built in the emerging civil society, which is applicable to modern Russia. The model of regulation of political and legal relations, determined in contrast to unilateral domination and subordination, partnership and consent, is the internal content of electoral democracy and ensures the implementation of civil legal culture of participation in the electoral process.

One of the models of electoral choice - the model of rational choice or the model of economic voting-is correlated with this. The theoretical basis for the economic explanation of the behavior of voters is presented by Downs (1957) in the work

«economic theory of democracy» the model operates on the basis of three assumptions: a) all decisions made by voters and political parties are rational, i.e. they are based on self-interest and are applied on the principle of maximizing the usefulness of action, b) the democratic political system assumes a level of coherence that allows to make predictions about the consequences of the results of various elections, c) the democratic system provides, despite the consistency, the level of uncertainty.

The work of Lewis-Beck «Economics and elections: Basic western democracies», in which the author analyzes the impact of Economics on elections, also became famous. On the basis of available research, he argues that objective macroeconomic indicators explain very little why people support or reject the ruling party or coalition in the elections (Lewis-Beck, 1988).

In a situation when the importance of electoral law, which forms the legal basis for the functioning of the institutions of representative democracy, the latter acquire a socio-political status and claim to be an independent purpose in the domestic political and legal system. Democracy and the electoral system are linked as political and legal processes, the change of one of which leads to the transformation of the other (Migranijan, 2013).

Electoral democracy is a kind of statehood on the basis of which the construction of the electoral system in the emerging civil society is carried out. In the context of electoral democracy, a political regime can be described if it meets a number of minimum criteria for democracy. It is believed that the status of electoral democracy will be achieved if there are competitive and multi-party elections in the country. Electoral democracy may not meet the criteria of consolidated democracy: the rule of law, separation of powers, the existence of civil society, constitutionalism, pluralism, respect for human rights, freedom of information and freedom of opinion. Thus, the concept of electoral democracy is limited to electoral institutions and processes and does not take into account the level of democracy of other political institutions.

Turovsky (2006) draws attention to the peculiarities of electoral democracy in Russia: a) low civil activity. Articulation of public interests is very difficult from the point of view of the organization and ineffective in terms of the result of the process; b) in the new conditions of development of electoral democracy determined that the Soviet legacy continues to prevail. It is based on the traditional alienation of the masses from the government in combination with the metered paternalism of the authorities; c) sharply increased atomization of society, which does not contribute to the formation of social solidarity.

In identifying the correlation between the constitutional economy and electoral democracy, it is also important to pay attention to the position and role of the person in the chosen coordinates of the analysis. It is the human being, his dignity, his

existing rights and fundamental freedoms that are the basis of every Constitution. Also at the heart of economic relations is a person with his rights, needs and interests.

The legal space for the exercise of sovereignty and economic decision – making is an important component of the explanatory model. The unity of the legal space is a state of consistency, correlation and subordination of legal norms due to the Federal Constitution, based on their legal significance (supremacy). Democracy can be defined as a complex political and legal phenomenon, the fundamental beginning of the implementation of governance in a modern democratic state, combining political, legal, social and economic characteristics. Based on modern international standards, summarizing the experience of political doctrines, democracy in the modern Federal state is implemented through the normative consolidation in the constitutional acts and is revealed through a complex state-legal mechanism at the regional and local levels (Budaev, 2011; Somov, 2001).

Bondar and A.A. Dzhagaryan note that the consolidation at the constitutional level of citizens electoral rights allows to define them as an element, an integral part of the normative content of the complex (multifaceted in its significance) right of Russian citizens to participate in the management of affairs of the state. In this regard, political and electoral rights are a means of realization of democracy in the Russian Federation, as well as a way to attract every citizen to the implementation of political democracy through participation in the implementation of both state power and local self-government (Bondar and Dzhagaryan, 2005).

The Constitution declares Russia a legal state, where the law is the basis for any decision affecting the rights of citizens, including economic. Therefore, based on the explanatory model formulated, it is important to identify the forms and methods of guaranteeing the basic constitutional values in the current legislation, to give an objective assessment of the existing reality and to determine the degree of real impact of the interface of the constitutional economy and electoral democracy in modern Russia.

## **5. Conclusion**

The main results of the study: the explanatory model is formulated, based on certain points of connection of the constitutional economy and electoral democracy. Thus, the hypothesis of the study based on the assumption that the construction of an explanatory model of the points of connection between the constitutional economy and electoral democracy in the legal space of the exercise of democracy includes four sections of the possible analysis through the identification of the laws of interaction of economic relations and constitutional provisions both at the level of legislative decisions and in real life and allows to better understand the essence of the transition from totalitarianism to democracy, from state regulation to the market, from ethatism to competition in russian conditions.

The first section of the analysis is to identify the relationship between political and economic liberalism as a context of the interface between the constitutional economy and electoral democracy.

The second cut reveals the positive impact of such basic principles of the constitutional regulation of economic and social life as freedom of enterprise, competition, the economic functions of the branches of government and management bodies on the level of life and well-being in the context of the production of the common good and, therefore, a rational choice of voters, as well as the correlation enshrined in the Constitution of the Russian Federation the priority of individual rights to the state. The third section of the analysis is the identification of economic decision-making that affects electoral behavior and electoral choice. The fourth section is the identification of the relationship of social relations, emerging in the process of implementation of democracy in the space of constitutional and legal norms of economic nature with the rational choice of voters on the basis of such constitutional principles as legal certainty, economic freedom, the inadmissibility of arbitrary interference of the state in private affairs.

### **References:**

- Andreeva, G.N. 2015. Reflections on the peculiarities of the formation of the Russian theory of constitutional regulation of economic relations. *Constitutional and municipal law*, 9.
- Arutyunijn, G.G. 2014. Constitutional Economics or anti-constitutional (corruption) economy?. *Constitutional justice*, 3.
- Barenboim, P.D. 2007. Constitutional economy: twenty-five years in the world and ten in Russia. *Legislation and Economics*, 6.
- Barenbojm, P.D. 2002. About a ratio of constitutional law and the constitutional economy. *Law and economy*, 1.
- Bibik, O.N. 2016. Economic approach in legal science]. *Bulletin of Omsk University, Series «Law»*, 4.
- Boldyrev, O. 2015. Constitutional law and Economics: search methodology and escape from ideology. *Constitutional and municipal law*, 4.
- Bondar, N.S., Dzhagaryan, A.A. 2005. The Constitutional value of electoral rights of citizens of Russia. Moscow, Formula prava.
- Buchanan, J.M. 1997. The Constitution of economic policy. Calculation of consent. The limits of freedom. Moscow, Taurus Alfa.
- Buchanan, J.M. 2004. Constitutional economic theory. *Economic theory*, P. Newman, Moscow.
- Budaev, A.M. 2011. Implementation of the principle of democracy in Russia: problems of theory and practice. *Proceedings of the Institute of state and law, Russian Academy of Sciences*, 5.
- Cutter, R., Ulen, T. 1997. *Law and economics*. Boston, Reading, Mass, Addison-Wesley.
- Dahl, R. 1964. *A Preface to Democratic Theory*. Chicago, University of Chicago press.
- Downs, A. 1957. An Economic Theory of Political Action in a Democracy. *The Journal of Political Economy*, 2.

- 
- Emelkina, A.I. 2016. Problems of Improving Russian Legislation on Property Rights and Other Proprietary Interests. *European Research Studies Journal*, 19(3) Part B, 170-186.
- Gadzhiev, G.A. 2009. The Constitution of Russia as a legal basis of economy: legal model and modernity. *Jurisprudence*, 9.
- Gadzhiev, G.A. 2010. Ethical foundations of philosophical and legal category «common good» in the context of constitutional economy. *Comparative constitutional review*. Moscow, Institute of law and public policy, 2(75).
- Gadzhiev, G.A. 2009. *Essays in constitutional Economics*. Moscow, Yustitsinform.
- Kuznetsov, V.M. 2017. Basic principles of constitutional economy in Russia. *Society, politics, economics, law*, 2.
- Lewis-Beck, M.S. 1988. *Economics and Elections: The major western democracies*. Michigan, The University of Michigan Press.
- Mazaev, V.D. 2010. Method of constitutional law and constitutional economy. *Philosophy of law at the beginning of the XXI century through the prism of constitutionalism and constitutional economy*. Moscow.
- Migranijan, A.M. 2013. *Democracy in the Russian mirror*. Moscow, MGIMO, University.
- Polinsky, M.A. 1989. *An introduction to Law and Economics*. Boston. Little, Brown.
- Posner, R. 2004. *Economic analysis of law*. New York. Aspen Publishers.
- Schedler, A. 1998. What is Democratic Consolidation? *Journal of Democracy*, 9(2).
- Sergeev, A.M. 2013. Constitutional economy and development of Russian constitutionalism. *Russian legal journal*, 6.
- Shutz, A. 2004. *Favorites: the World glowing with sense*. Moscow. Russian political encyclopedia.
- Somov, S. 2001. Unity of legal space. *Legality*, 2.
- Turovsky, R. 2006. *Regional elections in Russia: the case of atypical democracy*. Moscow, Center of political technologies.
- Ulen, T.S. 2011. Theory of rational choice in economic analysis of law. *Bulletin of civil law*, 3.