

# POLITICS AND LAW AS REGULATORY CORRELATES OF POWER

## POLÍTICA Y DERECHO COMO CORRELATOS REGULATORIOS DEL PODER

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### ABSTRACT

The current article attempts to denote the relationship between the regulatory purpose of politics and law, which form coherent power as a dialectical unity of political power interested in the legal legitimation of its status and legal power, appealing to the power represented by the state, on the one hand, and their denial of each other as the embodiment of the paradigms of efficiency (politics) and legitimation (law), on the other hand. To meet that aim, general scientific (dialectical, comparative, historical-genetic, structural-functional), and also specific scientific (specific-sociological, formal-logical, historical-legal, comparative jurisprudence) methods are taken into consideration. Given the results of the study, the efficiency paradigm is determined by the factor of result, and the legitimation paradigm is determined by the factor of process. The interaction of these paradigms gives rise to an antinomic contradiction, which is an attributive characteristic of the political and legal regulation of social processes.

**Keywords:** power; politics; regulation; efficiency; legitimation.

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## RESUMEN

El presente artículo pretende denotar la relación entre la finalidad normativa de la política y el derecho, que configuran el poder coherente como unidad dialéctica del poder político interesado en la legitimación jurídica de su estatuto y del poder jurídico, apelando al poder representado por el Estado, sobre por un lado, y su negación recíproca como encarnación de los paradigmas de eficiencia (política) y legitimación (derecho), por otro. Para cumplir con ese objetivo, se toman en consideración métodos científicos generales (dialéctico, comparativo, histórico-genético, estructural-funcional), y también científicos específicos (específico-sociológico, lógico-formal, histórico-jurídico, jurisprudencia comparada). Dados los resultados del estudio, el paradigma de eficiencia está determinado por el factor de resultado, y el paradigma de legitimación está determinado por el factor de proceso. La interacción de estos paradigmas da lugar a una contradicción antinómica, que es una característica atributiva de la regulación política y jurídica de los procesos sociales.

**Palabras clave:** poder; política; regulación; eficiencia; legitimación.

## INTRODUCTION

The initial premise of the study is that power in its concentrated form is represented by the regulatory potential of politics and law, embodying an organic unity, when, on the one hand, there is a specification of their regulatory purpose (an opposition to each other), and, on the other, the unification of this purpose (the mutual responsibility for the functioning and development of society as a whole) (Fremeth et al., 2022).

Here it is necessary to take into account that the conceptual triad power-politics-law tends towards the metaphysics as the inexhaustibility of its semantic diversity. In this regard, power can be interpreted as primary, i.e. an earlier, pre-civilizational, phenomenon, and politics and law can be seen as secondary, i.e. later, civilizational, phenomena (Parrillo, 2020; Srivastava et al., 2021).

The assumption is that the asymmetry of influence has always existed in the history of mankind: the prerogative of power, while the conclusion of this asymmetry in the framework of the corresponding rules of the game became possible only on the path of civilizational irradiation of humanity – the prerogative of politics and law. This idea was formulated by Aristotle for the first time (Sani, 2020). According to it politics is a civilizational form of community, serving to achieve the common good within the art of government, i.e. ways to achieve the goals of the state inside and outside its territory. The politicization of social life inevitably actualizes another fundamental regulator i.e. law as a general measure of justice, expressed in a system of generally binding norms (rules) protected by public (state) power. This means bringing to the fore the problem of politics and law correlation, designating their regulatory specificity and fundamental purpose, which, in turn, creates an opportunity to designate new semantic accents in the interpretation of power (Kalch et al., 2021).

## METHODS

The methodological basis of the study is represented by general scientific (dialectical, comparative, historical-genetic, structural-functional), as well as specific scientific (specific-sociological, formal-logical, historical-legal, comparative jurisprudence) methods.

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## RESULTS AND DISCUSSION

The relevance of political and legal issues is seen in the fact that the lack of fundamental research of modern legal and organizational forms of state activity, the peculiarities of the mechanism of political and legal regulation, the relationship between politics and law in the formation of state strategy, the conflict of legal restrictions and legal opportunities is clearly visible, as it is noted by Butko et al. (2017). However, the true purpose of the political and legal tandem cannot be understood by ignoring its inclusion in the global regulatory context – the existence of power as such.

Hence it follows that the perception of political and legal power should be based on the perception of power in general – a phenomenon that is interpreted very ambiguously as a consequence of the diversity of theoretical and methodological attitudes of scientists and thinkers dealing with this problem. So, power is interpreted as the ability to make decisions and to achieve their mandatory implementation; the ability of one person to force another to do what he would not voluntarily do; a person's ability not so much to act as to interact (Habermas et al., 2003).

The above definitions of power imply that, firstly, power is a fundamental invariant of social relations; secondly, the authorities are responsible for working with society; thirdly, power appears not in a pure, but in a burdened form, meaning its gravitation towards the political and legal expression of its regulatory potential, as a guarantee that it (power) will not become synonymous to ordinary violence.

The latter circumstance requires a more detailed analysis. Thus, according to M. Weber's theory, power means the ability to achieve the triumph of one's will within a social relationship, even in spite of resistance; and it does not matter what this opportunity is based on (Hobson & Seabrooke, 2001). In this definition, one can already see the communicative interpretation of power, which Dahl develops, understanding by the latter such relations between social units, when the behavior of one or more units (responsible units) depends under some circumstances on the behavior of other units (controlling units) (Dahl, 2017). As a result, it turns out that such an attitude includes the realization of the motives emanating from the subject of power and the object-subject feedback. Outside of this connection, the subject's power does not exist (Srivastava et al., 2021).

We can say that the above definitions of power are reduced to a formula that assumes the account of the entire diversity of social activity in the numerator, and their reduction to uniformity in the denominator, i.e. exclusively to significant forms of social activity. Such formal regulators need to be grounded; in filling with political and legal content, because outside of this they lose the status of a civilizational phenomenon, transforming into ordinary violence. In this regard, politics can be viewed as a function of social regulation that takes place in any society, and law as a form and image of the social (legal) order (Sani, 2020).

This allows us to interpret the political and legal tandem as a concentrated expression of power, which, however, does not exhaust the entire regulatory potential of power, because the latter can manifest itself both within the political and legal field, and outside it either as mundane needs, or in as transcendental values. Based on this assumption, and also taking into account the criterion for taking into account the degree of immersion of power in society, the following main types of power can be distinguished:

- immanent (from Lat. *I immanentis* – staying within) power based on the needs prescribed in society;

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- coherent (from Lat. *cohaerens* – being in communication) power based on interests characteristic of the main social strata, strata and groups of society;
- transcendental (from Lat. *transcendens* – going beyond) power, determined by values that are not rigidly determined by dynamically changing social conditions.

In other words, we are talking about three hypostases of power: (1) social (immanent) power totally dependent on society; (2) claiming to be a representative of the society of political and legal (coherent) power; (3) cultural and religious (transcendental) power abstracted from society. It follows from this alignment that the key sparring partner of society is a political and legal (coherent) power, since it is not characterized by either the desire to merge with society, the ideal of social power, nor the desire to distance from it as much as possible, the ideal of cultural and religious power.

Consequently, power is correlated with society mainly in the political and legal shell of the hypostasis, which can be explained by referring to the big and small sociality, which, according to Kalch embody the following: small sociality accumulates the experience of personal communication in natural everyday life, and large sociality is an experience focused on the normative behavior of an individual who gains stability through the awareness of belonging to a certain whole, associated with behavior in public (Kalch et al., 2021). The conclusion suggests itself that due to social burdening political and legal power becomes a coherent, organically linked with society, a regulator, claiming the status of working power.

Let us emphasize that we are talking precisely about political and legal power, when politics and law are understood as forming a single regulatory tandem responsible for ensuring order throughout society. So, politics will demand the right due to the urgency of the problem of legitimizing its (policy) regulatory purpose, because to state the regulatory bias of politics is one thing, but to assess it is another. Therefore, the statement of the key regulatory role of politics in relation to society will inevitably require the need to legitimize (justify) this role, because otherwise, strictly speaking, the existence of politics itself will become impossible, since it will be incomprehensible what distinguishes it from others (for example, criminal ones) regulatory forces.

According to Doshi's study, the power, in order to manifest itself in the form of authority, must contain the idea of justice. Proceeding from it, proper legal relations will arise between people (Doshi et al., 2019). It is the right that gives politics the status of a legitimate force, receiving in return the key mechanisms of state coercion, which turns it, along with politics, into the most important regulatory component of power.

Another aspect of the organic relationship between politics and law is that in the first case it implies an appeal to social interests, and in the second – to norms. The bottom line is that the very fact that a political force turns to social interests is already a norm, since we are talking about its claim to the role of a just force responsible for creating social conditions conducive to raising the level and quality of life of people, contributing to their civic expression. Therefore, the obligatory (normative) appeal to social interests makes political power a political and legal power.

This happens, however, not automatically, but only under the condition of the subordination of politics to the requirements of law, when politics personifies regulation based on the values of Freedom and Justice. This gives the legal norm an actualized (working) state, which, in turn, generates a metamorphosis – a legal norm *de facto* becomes a political value endowed with the status of a

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regulatory force, to which, in particular, Onafuwa draws attention: “The norm is a value reflection of reality, it carries the value “load” (objectifies values) (Onafuwa, 2018).

Its content captures the existing, which is not yet real, but which ... is desirable for society, class, social group as subjects setting goals and formulating, doing what is due. That is why for these subjects what is due ... has a higher value rank than what exists (Fremeth et al., 2022). This can be deciphered in such a way that the priority of law over politics is due to the fact that being tied to the ideal, it is less opportunistic than politics, designed to flexibly respond to dynamically changing social conditions and circumstances. All this creates the basis for possible collisions between politics and law, between expediency and justice, between the desire to live for today and orientation towards the future, etc.

The contradiction between politics and law is also seen in the fact that for politics the key role is played by quantity, which makes it possible to carry out measurement procedures, i.e. go to the problem of the effectiveness of regulatory impact. From the point of view of law, this role is played by quality, which does not lend itself to measuring procedures and is determined by the factor of faith – the problem of the legitimacy of regulatory influence (Habermas et al., 2003). These regulatory paradigms are in a kind of linkage, which, however, does not remove the question of their primary and secondary status.

In this regard, the opinion of the modern Russian political philosopher Andrias and Sachs (2020), is significant, who, analyzing the interaction of the two branches of the US government, the President (responsible for solving the problem of efficiency) and Congress (responsible for solving the problem of legitimacy), comes to the following conclusion: The Founding Fathers were fully aware that legal pedantry, which ensures legitimacy, can significantly slow down decision-making and, in general, affect efficiency. And yet they went for it, believing that the dangers arising from the limitations of efficiency are less frightening than the dangers of power, which has a free hand.

The primacy of law in relation to politics does not mean that the latter unambiguously obeys the requirements of law, quite the opposite, often political power ... itself needs only one right – the “right of power. Of course, it is necessary to clearly distinguish between the political powers appeal to law, painted in opportunistic (declarative) tones, and its objective interest (in the form of public approval) in the use of the regulatory tools of legal regulation. However, in any case, politics is faced with an existential choice, tending to either permissiveness or self-restraint. In the first case, the political force seeks to free its hands from the point of view of using the means to achieve the desired goal - an effective result (in the spirit of Machiavelli), which provokes a situation when the prevalence of politics over law leads ... to direct contradictions, illegal political actions (Andrias & Sachs, 2020).

In the second case, political power is characterized by selectivity in the use of means, which inevitably prompts it to strive for a legitimate result (in the spirit of Kant) and, accordingly, to legitimize the power itself. Bearing in mind the latter circumstance, M. Weber emphasizes that the legitimacy of power is manifested in three ways, acting as: 1) “traditional domination” in the person of the patriarch or prince; 2) “charismatic domination” in the person of a military prince or a political party leader; 3) “legal domination” in the person of the modern civil servant (Fremeth et al., 2022).

In all these cases, designated by M. Weber, there is the law in its extremely broad interpretation, as a synonym for fair power, or authentic politics embodied in political and legal power, devoid of temptations emanating, on the one hand, from social power in the person social networks and cultural



and religious power in the face of spiritual authorities, and, on the other hand, initially burdened by antinomical (insoluble) contradictions between two fundamental regulatory principles, efficiency (in a political shell) and legitimacy (in a legal shell) (Hobson & Seabrooke, 2001; Sellers, & Scharff, 2020).

Thus, law and politics embody organically interrelated forms of power that correlate with society as a regulatory energy that personifies a contradictory unity, respectively, potential and actual, due and existing, ideal and real, formal and substantial, supra-conjunctural and opportunistic, impartial and biased, promising and current, etc.

## CONCLUSION

As a result of the theoretical and methodological analysis of politics and law as regulatory correlates of power, the following conclusions can be drawn.

First, the political and legal power, due to its coherent nature, takes on the role of a kind of working regulator of various manifestations of social activity, combining the regulatory potentials of politics and law, when the former, thanks to the latter, becomes authentic (genuine) politics, and the latter, due to the first turns into a positive (as a system of legislation) law, becoming a regulator based on the power of the state as a key social institution.

Secondly, the unity of politics and law is not absolute, but relative, since each of these regulators is subject to its own strategy, either efficiency (politics) or legitimacy (law), which dictates the need to understand this circumstance in a dialectical way, as never before the ceasing struggle of these strategies in the regulatory exposure of society.

**Conflict of interest:** The authors confirm that the information provided in the article does not contain a conflict of interest.

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