



RANEPA

THE RUSSIAN PRESIDENTIAL ACADEMY
OF NATIONAL ECONOMY
AND PUBLIC ADMINISTRATION

STATE
AND LAW

WORKING PAPER

18/10_E

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CONSTITUTIONAL MYTHS AND CONSTITUTIONAL ILLUSIONS

About Heroic Past and Better Future

УДК 34
ББК 67
Б26

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Б26 Конституциональные мифы и конституциональные иллюзии: о героическом прошлом и лучшем будущем (Constitutional Myths and Constitutional Illusions: About Heroic Past and Better Future): на англ. яз. / И. Н. Барциц. — М. : Издательский дом «Дело» РАНХиГС, 2018. — 60 с. — (Научные доклады : государство и право).

ISBN 978-5-7749-1404-3

This working paper provides insight into the essence, content and destiny of constitutional myths and illusions as “load-bearing elements” of constitutional order, government system and political regime. Special attention is paid to the analysis of individual constitutional myths and illusions, such as the doctrine of the sovereignty of the people, concept of social contract, nation-wide referendum, values of separation of powers, open government, etc., as well as examples of their embodiment in the Constitutions of Russia, China, the USA, France, Venezuela, Kazakhstan, Armenia, Ukraine, etc.

УДК 34
ББК 67

ISBN 978-5-7749-1404-3

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Contents

The Positive Component and Purpose of the “Myths” and “Illusions”	5
What we get wrong and how to get it right	12
Origination and Destiny of Constitutional Illusions in Russia . . .	23
Constitutional Illusions and Myths of Russia in the Period of their Dismantling	34
Post-Soviet Constitutional Mythology	42
Constitutional Myths Are Left Behind! Have Constitutional Illusions Ceased to Exist?	49
List of Literature	55

The Positive Component and Purpose of the “Myths” and “Illusions”

Heavy on every sovereign head
There lies a People's misery,
Save where the mighty Law is wed
Firmly with holy Liberty...
O Monarchs, ye are crowned by will
And law of Man, not Nature's hand.
Though ye above the people stand,
Eternal Law stands higher still...
The first bowed head must be your own
Beneath Law's trusty canopy
Then Peoples' life and liberty
Forevermore shall guard your throne.
("Ode to Liberty"
by Alexander Pushkin, 1817)

"...You know, Moishe's son Avrom must already be in America. If you meet him, say hello to him from me. Tell him, his father is a clever man—he died shy of Constitution! And our Motl has disappeared—nobody knows, where he might be... Many of ours disappeared like him... Some of them ran away, others were killed, and still others saunter through the snows of Siberia, working, chained to their barrows... And they don't care, driving a hard bargain—they want a Constitution! Once for all! And that's it!.. No more news. Keep well and give my very best to each of ours personally. I am not going to America. I don't like your America! A country, where a newspaper is called "paper", where Bluma becomes Jenny, and a bridegroom is found to

be a trigamist... I am sorry to say this, but one should bung off such a country! From your letter I see that, if we had a real Constitution, as we understand it, we wouldn't need any America! We would have our own "America", even better than yours... Don't grieve, Yankel! I wish I had a piece of gold and Krushevan had a pain as great, as the Constitution that we will have, if God allows this to be so!...

Your Friend Yisroel"
Sholem Aleichem¹

"From the Tailor's New-Year Letter
to His Friend in America" (1907)

Key for understanding the terms "myths" and "illusions" when used in the context of constitutional matter is the fact that they do not have any negative valence of fantasies or ungrounded hopes. Unlike their definitions typical of other areas, in the area of humanitarian knowledge they are not confined to the declarativity and fictitiousness of the phenomena that have transformed into such myths and illusions. The positive attitude towards constitutional myths and constitutional illusions is based on understanding that they do not necessarily conflict with the truth or reality. Even when social or legal scientists have to admit that such myths or illusions are groundless, they quite often point out their usefulness for the state and law. Sergei Guriev in his book "Myths of Economics—Misconceptions and Stereotypes that are Reported by the Media and Politics" uses as an epigraph the words of John F. Kennedy, "... *The great enemy of the truth is very often not the lie—deliberate, contrived, and dishonest—but the myth—persistent, persuasive, and unrealistic.*"²

Unlike him, we should proceed to covering this matter from the perspective of Henry Tudor, according to whom, "*We can make a start by disposing of a widely held but misleading preconception. In common usage, the term "myth" stands for any belief that has no foundation in fact. A myth, we are told, is a fiction or illusion, the product of fantasy and wishful thinking rather than the result of any serious attempt to tackle the world in which we live; and political myths are simply fictions or illusions about*

¹ Sholem Aleichem. There are no news ... Tevye the Milkman. Stories / Trans. from the Jewish. Moscow, Publishing House "Fiction". 1969. Pp.438–439.

² President John F. Kennedy. Commencement Address At Yale University, New Haven, Connecticut, June 11, 1962//Public Papers Of The Presidents Of The United States: John F. Kennedy, 1962. P. 234. Cit. by: Guriev S. Myths of the economy: misconceptions and stereotypes that are spread by the media and politicians. Moscow, United Press, 2010. P. 19.

political matters. There is nothing wrong with using the term in this popular sense-provided that it is used as a term of abuse and with no pretensions to academic rigour.”¹ [Tudor Henry, 1972. P. 13].

Narrowing the notion of a myth to a fairy tale takes us back in time to the childhood when the word “myths” would mean life stories of the Olympian gods—many generations of Soviet and Russian teenagers remember them in the classical interpretation of Nikolai Kun. Whatever fairy they may be, even the myths of Ancient Greece are historical documents, albeit presented artistically, with a fair share of exaggeration and fantasy. Becoming part of the political life the myths (should it be myths about the Storming of the Bastille or Winter Palace, the Founding Fathers of the USA or Aryan descent) can have a huge creative or destructive potential.

Among all the various political myths, a special place is held by those that appeared due to the advent of the constitutional doctrine and became disseminated due to the development of the constitutional thought as part of philosophy as well as practical constitutional and legal regulation.

Alain Marciano, a professor at the University of Montpellier, is absolutely right to explain the more or less seamless functioning of the human society by the fact that its members share the same basic idea of their roots, principles of existence, and ways to interact. Such ideas are foundational and also known as myths. These myths enable the existence of the society and are important because they create societal inertia, rather than because they are one hundred percent truthful or accurate. Among the social institutions that generate myths Constitutions occupy a non-negligible place since in a certain way they shape the society. [Marciano A., 2011. P. 1–2]

If there is anything that could justify the negation of the grandeur of constitutional myths and illusions, it is the fact that they themselves were established as such through categorical denial of the pre-constitutional system of myths and illusions. The most sublime theory of the modern constitutionalism—i. e. the theory of sovereignty of peo-

¹ However, we can make a start by disposing of a widely held but misleading pre-conception. In common usage, the term “myth” stands for any belief that has no foundation in fact. A myth, we are told, is a fiction or illusion, the product of fantasy and wishful thinking rather than the result of any serious attempt to tackle the world in which we live; and political myths are simply fictions or illusions about political matters. There is nothing wrong with using the term in this popular sense-provided that it is used as a term of abuse and with no pretensions to academic rigour.

ple's rule—initially pursued purely practical political purposes and discarded the centuries-old belief in the divine origin of the state power, in support of which Louis XVI and his wife were sent to the guillotine.

In the Soviet period, the study of social and political myths was predominantly boiled down to the criticism of the “bourgeois mythology”, as well as to defending the Soviet ideology from the criticism of “bourgeois authors”. *“The propensity to mythmaking was considered as a fixed property of the bourgeois ideology, as a way to achieve its ultimate goal—to disguise the essence of relations between classes in the “world of capital”* [Shestov N.I., 2005. P. 57]. Therefore, for the majority of researchers the main aim was to dispel bourgeois myths. At the same time, it is quite natural for the constitutional ideology of any society at any social and economic regime to feature elements of mythology.

Indeed, myths can and sometimes should be dispelled, and those cherishing illusions can and sometimes should be made to wake up to reality. However, one should be very cautious in dealing with constitutional myths and constitutional illusions. Turning into constitutional myths and constitutional illusions these phenomena become elements of social psychology and even load-bearing structures of the constitutional order, government system or political regime, undermining of which can hardly be in the interests of patriotic researchers. As argued by Carl Friedrich and Zbigniew Brzezinski, *“A myth is typically a tale concerned with past events, giving them a special meaning and significance for the present and thereby reinforcing the authority of those who are wielding power in a particular community”*¹ [C. J. Friedrich, Z. L. Brzezinski, 1961. P. 99].

Constitutional myths and constitutional illusions are produced by the political and intellectual elite. It is impossible to prove the verity of constitutional myths, let alone constitutional illusions, empirically, which brings us back to the stratagem of agnosticism. Each and every individual has to decide for himself or herself, whether to believe in their truthfulness or not. The mere impossibility to embrace their existence or content, if any, is the chief argument in favor of their elitism. Those who do not care about the inner truth are not keen to spend their time on searching for it. And only those looking down on “human hives” and “moving masses” bother to pick out certain sets of values or symbols typical of specific nations or groups. Similar to the stars from

¹ “A myth,” they say, “is typically a tale concerned with past events, giving them a special meaning and significance for the present and thereby reinforcing the authority of those who are wielding power in a particular community.”

the poem “Listen” by Vladimir Mayakovsky, constitutional myths exist, because there is someone who needs them.

Listen,
if stars are lit
it means—there is someone who needs it.
It means—someone wants them to be,
that someone deems those specks of spit
magnificent.

[Mayakovsky V. V., 2014. P. 1].

However, the elitism of constitutional myths does not remove the dangers of their divorcement from the reality of social life. On the contrary, it implies them. Exploring reasons of such divorcement from reality M. Krasnov aptly notes that *“representatives of the intellectual elite, whose priorities include providing the society with new ideas, conceptualizing those ideas, etc., fail to make sure that hoary myths are not repeated at least, most probably because they do not bother to take into consideration their historical background or simply have a dip into authentic sources...”* [Krasnov M., 2007. P. 31].

“At all times and in all cultures, mythical content has been based on hieroglyphic symbols describing a scope of knowledge that goes beyond any rational comprehension capabilities. The archetype becomes the code that makes possible the decoding of these symbols or even unfolding of the entire body of knowledge hidden by them, should there be a priestly caste (or educated political elite) that keeps the “bunch of keys”, says M. V. Borisenko [Borisenko M. V., 2002], who defines the myth as a cultural code that enables better understanding of the various aspects of the state and society, and clearer explanation of the diverse political and cultural phenomena, rather than just a deceitful legend.

That is why very often constitutional illusions and myths are closely related to popular mythology. For instance, the popular concepts of “people’s will” and “people’s wisdom” (as good as “people’s sovereignty”) are very much in tune with the traditional assumptions about the “good Tsar-Martyr” and “bad boyars” (isn’t it a great basis for a model of separation of powers with strong presidential authority?).

“The myths help to store and transfer paradigms, exemplary models; it is based on them that all the things are done for which the man takes responsibility”, says Mircea Eliade explaining his understanding of the myth as a “sacred story” [Eliade M., 1987. P. 30].