
THEORY AND HISTORY OF LAW ENFORCEMENT

DOI 10.24147/2542-1514.2021.5(1).5-15

RUSSIA: PROPERTY AND STATE. THE HISTORY OF POST-SOVIET LAW ENFORCEMENT (Part II)**

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Article info

Received –

2020 June 07

Accepted –

2020 August 20

Available online –

2021 April 15

The subject. The relevance of the article is stipulated by the gap in the study of property and the state as a consistent system.

The purpose of the article is to confirm or disprove the hypothesis that each way of organizing property such as private, mixed (corporate) and general (collective) potentially stimulates the existence of a certain state structure.

The methodology. The author uses normative structuralism. This methodology is created by the author and is based on the idea that property as the main system-forming goal of the state's existence predetermines principles of rationing its structure genetically.

Keywords

Way of organizing property, state structure, normative structuralism, privatization, property, Constitution, post-Soviet Russia

The main results of the research. Each way of organizing property in a particular social time period can acquire the quality of the main backbone in the organization structure of the state. Each way of organizing property provides proper social function: private way of organizing property provides function of social development; mixed (corporate) way provides function of social compromise (convergence); general (collective) way provides function of social security in the broadest sense. If private way of organizing property genetically programmed for the production and reproduction of social competition, mixed (corporate) and common (collective) ways are determined by the idea of its limitations and leveling. When the private way of organizing property becomes the main system-forming one it begins to fully stimulate the existence of a democratic structure of state organization. In turn, when mixed (corporate) and common (collective) ways of organizing property become the main system-forming ones, they stimulate the existence of a wide structural range of state functioning: from various regimes of democratic orientation to specific non-democratic regimes.

Conclusions. The study of property as the main system-forming goal of the state existence through the normative structuralism concept allows us to conclude that that each way of organizing property stimulates the existence of a certain state structure.

** See the first part in: *Pravoprimerenie = Law Enforcement Review*, 2020, vol. 4, no. 3, pp. 5–15. DOI: 10.24147/2542-1514.2020.4(3).5-15.

4. Issues of property in the Constitution of the Russian Federation

Fleeing from socialism as from the plague, the nomenclature of the state bureaucracy, outwardly as if freed from the dogmas of Marxist-Leninist teaching, mentally within the framework of a narrow corporate consciousness, remained essentially the same in its desire for monopoly omnipotence. The nomenclature of the state bureaucracy, formulating the concept of its post-Soviet functioning as the construction of a sovereign democracy, tried to construct a certain political divide that would allow it to distance itself from the ideology of socialist development (see [1, p. 333-347; 2; 3; 4; 5; 6]). As a result, a certain mental paradox arose at the conceptual level.

What is Soviet socialism? This is a social system in which the general (collective) way of organizing property acts as the main system-forming one and where state property is its dominant form. Now we are building state capitalism. And what is state capitalism? This is a social system in which the general (collective) way of organizing property can act as the main system-forming one and where state property can be its dominant form.

Thus, both socialism and capitalism are state-owned. The difference between Soviet socialism and state capitalism is fundamentally one thing. If Soviet socialism forcibly eliminated the private method of organizing property, then under state capitalism it operates in combination with other methods of organizing property (mixed (corporate) and general (collective)), but the latter can exercise the quality of the main system-forming one [7; 8; 9; 10, pp. 159-172].

The desire of the modern nomenclature of the state bureaucracy to distance itself from everything Soviet socialist and caused a significant degree of conceptual uncertainty in the semantic content of Articles 8-9 of the Constitution of the Russian Federation, as a result of which in the "Fundamentals of the Constitutional System" "property as the main system-forming goal of the state is regulated by the principle of "neither fish nor meat" (see [11, p.71-85; 12, p. 7-31; 13, p. 32-41; 14, p. 14-25; 15, p. 88-91]). Property as the

main system-forming goal of the modern Russian state, without having received its unambiguous constitutional permission, determines the existence of the following political processes.

First, the absence of a single goal setting leaves unanswered the most important social question: what kind of state are we going to build?

Secondly, the uncertainty of state goal-setting stimulates the generation of a corresponding amorphous public consciousness. This does not contribute to the formation of a mature civil society with a high degree of moral and political consolidation.

Third, the uncertainty of goal setting makes the political "floating" of the nomenclature of the state bureaucracy free, which allows it to artificially replace the basic system-forming goal with the goal of its narrow corporate existence and prosperity.

Fourth, the absence of a certain system-forming goal for the functioning of the modern Russian state will lead it repeatedly to the nomenclature-bureaucratic construction of the next political "majesty". If the goal is unclear, it is always easier to explain the vital necessity of the "predictor-pilot" and, in case of failure, shift all political responsibility to him.

4.1. Consolidation of property issues in the second chapter of the Constitution of the Russian Federation.

We return to the analysis of the text of the articles of the Constitution of the Russian Federation devoted to property. Chapter Two "Human and Civil Rights and Freedoms", Articles 35, 36, 44.

Article 35 of the Constitution of the Russian Federation states:

"1. The right of private property is protected by law.

2. Everyone has the right to own, own, use and dispose of property either individually or jointly with other persons.

3. No one may be deprived of his property except by a court decision. Compulsory alienation of property for state needs can be made only under the condition of preliminary and equivalent compensation.

4. The right of inheritance is guaranteed."

Let's start with point 1: "The right of private property is protected by law."

With regard to private property, it is clear. Something else is unclear. And the right of state ownership? And the right of municipal property? I can immediately object that Chapter two of the Constitution of the Russian Federation is directly devoted only to the basic rights and freedoms of man and citizen. And what does state and municipal property have to do with it? It is precisely in this chapter that we should talk about the sovereign right of a citizen to participate in the management of state and municipal property. We have state property, we have municipal property, formed directly and indirectly from the funds of a Russian citizen-taxpayer. As a result: everything that can be taken from a citizen was taken, and what to do with state and municipal property will be decided by the bureaucratic nomenclature (see [16, p. 19-22; 17, p.5-13; 18, p. 3-20; 19, p. 33-40; 20]). It may again be objected to me that various forms of public control exist in modern federal legislation, and one can agree with this. But only the right of a citizen to exercise public control over the effectiveness of the use of state and municipal property in the Constitution of the Russian Federation for some reason forgot to register.

Paragraph 2: "Everyone has the right to own, own, use and dispose of property, both individually and jointly with other persons."

Here the generally accepted synonymous identity is used: the right of property as possession, use, disposal. In the conditions of the existence of classical forms of land capital, industrial capital-such a conceptual triad, quite possibly, corresponded to the mental conditions of development. At the present time, when financial capital in various forms of its manifestation has acquired the quality of system-forming in the global economic space, the use of the conceptual category of property based on the identity of "own – use – dispose" is largely an imprint of the past.

Pay attention to the phrase "to own, own, use and dispose of property".

First, if property is identified with property, then where is such an object of property as

intellectual property (paragraph 1 of Article 44 of the Constitution of the Russian Federation)?

Secondly, the use of the legal construction of "own-use-dispose" as a property right raises a number of fundamental questions. What is property? What is the right to property? Where are the formal boundaries between ownership, use, and disposal? What is the difference between possession and use, disposal from possession, use from disposal? If one of these elements, from the point of view of the law enforcement officer, is missing or these elements in their conceptual sense significantly absorb each other, then all this leads to a state of uncertainty in law enforcement.

Third, each of us has the right to own or own property. Such differentiation is also crucial for law enforcement, and we will see this in the example of Article 35, paragraph 3: "No one may be deprived of his property except by a court decision. Compulsory alienation of property for state needs can be made only on the condition of preliminary and equivalent compensation." Where is the property here? We are deprived of property, we have it forcibly alienated, but we are not deprived of property. What is it? Another political slyness?

Finally, Article 35, paragraph 4: "The right of inheritance is guaranteed." The question immediately arises: by whom and in what legal form? Once again, we are faced with uncertainty, which, as a rule, gives rise to the arbitrariness of law enforcement by the nomenclature of the state bureaucracy.

Consider the content of Article 36 of the Constitution of the Russian Federation.

"1. Citizens and their associations have the right to own land in private ownership.

2. The ownership, use and disposal of land and other natural resources shall be carried out freely by their owners, provided that this does not cause damage to the environment and does not violate the rights and legitimate interests of other persons.

3. The conditions and procedure for the use of land shall be determined on the basis of a federal law."

According to item 1 "Citizens and their associations have the right to have land in private ownership". If a citizen's private ownership of land is

understandable, then what is the private property of an association of citizens? There can be various forms of general (collective) the method of organizing property, there can be various forms of mixed (corporate) ownership.) the method of its organization, but to have private ownership of the association of citizens on the land – raises great doubts.

Regarding paragraph 2: "The ownership, use and disposal of land and other natural resources are carried out freely by their owners, if this does not cause damage to the environment and does not violate the rights and legitimate interests of other persons." There is a certain conceptual assortment.

First, "The right of private property is protected by law" (Article 35, paragraph 1). But at the same time, we are deprived not of property, but of property by a court decision (paragraph 3 of Article 35).

Secondly, we do not have a general institution of property, but its various variations: property property (paragraph 2 of Article 35), intellectual property (paragraph 1 of Article 44, paragraph "o" of Article 71), land property (Article 9, paragraph 2 of Article 36), natural property and other resource (Article 9, paragraph 2 of Article 36).

Third, there is another conceptual confusion: if we are deprived not of property, but only of property by a court decision (paragraph 3 of Article 35), then what to do with intelligence, land, nature and other resource property that does not fit into the concept of property here?

Fourth, we have property, then "possession, use, disposal" (p. 1-2 of Article 35, p. 2 of Article 36, p. " b " of p. 1 of Article 72). Here, the legal triad of "own-use-dispose" is a monolith of these three elements, through which the realization of property rights takes place. Literally, the next item (item 3 of Article 36) – "The conditions and procedure for using land are determined on the basis of federal law". This revision raises a different question on the triad of property rights, since the terms and conditions of land use are taken out of the scope of this triad. That is, the ownership and disposal of land should be determined in a different legal form. In the land

and urban planning legislation of the Russian Federation, indeed, a stable professional concept of "land use" is used (see, for example, Article 11 of the Land Code of the Russian Federation ; Article 1 of the Urban Planning Code of the Russian Federation). In paragraph 3 of Article 36, most likely, we are talking about it. The use of the concept of "use of land" destroys the logic of the unity of the legal triad "own-use-dispose" as a concept of property rights.

4.2. Consolidation of property issues in the third chapter of the Constitution of the Russian Federation.

Consider the content of other articles of the Constitution of the Russian Federation, which use the term "property" or its legal quasi-substitute "possession, use, disposal".

In Article 71, which defines the subject matter of the Russian Federation, we are interested in the content of paragraphs " d " and "o": "e) federal state property and its management"; "o) the judicial system; the prosecutor's office; criminal and penal enforcement legislation; amnesty and pardon; civil legislation; procedural legislation; legal regulation of intellectual property".

The content of item "d" "federal state property and its management" raises one question. Article 114, paragraph 1, of the Constitution of the Russian Federation states: "The Government of the Russian Federation ... manages federal property." In one case, we are talking about federal state property, in the other-about federal property. So what does the Government of the Russian Federation manage: federal property or federal state property?

The structure of paragraph "o" of this article is more complex. As you know, property right "is the most important and integral institution of the civil legislation of the Russian Federation, as evidenced by the provision of paragraph "o". But a little further on, the same paragraph separately fixes the position on "legal regulation of intellectual property". If the legal regulation of intellectual property was not included in the system of civil legislation of the Russian Federation, then such a personal allocation of the substitute "intellectual property" would be understandable. But when within the framework of the unified Civil Code of the Russian Federation

"intellectual property" is regulated as a legal phenomenon, this personal allocation raises deep concerns about the unity of civil legislation.

In Article 72 of the Constitution of the Russian Federation, which establishes the subject of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation, subclause "b" clause 1 fixes: "issues of ownership, use and disposal of land, subsoil, water and other natural resources", and just below in subclause "d" clause 1 fixes the issue of "delineation of state property". In one case, we are talking about the issue of ownership, use and disposal of land, mineral resources, water and other natural resources... in the other - about the issue of delineation of state property. That is, the legal ambiguity of the provisions of Articles 35-36, in essence, migrated to the provisions of paragraphs "b" and "d" of Article 72.

It is clear that any property, and even more so land, subsoil, water and other natural resources, has a certain point of coordinates on a specific territory where citizens of the Russian Federation live, first in the parameters of local self-government, then-the subject of the Russian Federation and, finally, the Russian Federation as a whole (see [21, p.3-17; 22, p. 517-525; 23, p. 11-12; 24, p. 12-19; 25, p. 47-53]). Similarly, the bureaucratic nomenclature, depending on the territorial location, is divided into municipal, sub-federal and federal, and, as is known, "land, subsoil, water and other natural resources" have a specific coordinate point and a specific territorial location.

In contrast to this territorial feature of the formation of municipal, sub-federal and federal bureaucracy, the vertical of its nomenclature is formed on a different basis-not "from the bottom up", but "from the top down". Therefore, the legal status of the nomenclature of the state bureaucracy at the federal level will always have the highest legal prerogative in relation to the corresponding divisions of the sub-federal and municipal bureaucracy. In relation to the municipal bureaucracy, we are not talking about the direct administration of its activities, which is unacceptable in accordance with art. 12 of the Constitution of the Russian Federation, and on the

hierarchy of legislation, in which each level of the bureaucratic nomenclature has its own legal resource of regulation.

The Russian Federation is one of the richest countries in the world in terms of land and natural resources. The desire of each of the divisions of the nomenclature bureaucracy – federal, sub-federal, and municipal-to increase its influence on the distribution of these riches is understandable. As a result, the nomenclature of the federal bureaucracy, under political pressure from the sub-federal and municipal ones, trying to at least to some extent protect their legal resource in the distribution of land and natural resources, was forced to make a certain political and legal concession in the form of paragraph 1 of art. 9 of the Constitution of the Russian Federation, which enshrined the provision: "Land and other natural resources are used and protected in the Russian Federation as the basis for the life and activities of the peoples living in the relevant territory." This allowed the sub-federal and municipal nomenclature bureaucracy to somehow influence the distribution of land and natural resources, defending and protecting the interests of the respective territory (see also the Federal Treaty of March 31, 1992).

Having made this political and legal concession, the nomenclature of the federal bureaucracy strengthened its political resource by introducing the formula "ownership, use, disposal" of property, land and other natural resources into the text of the Constitution of the Russian Federation, moving away from fixing the specific formula of the concept of "property". What is the meaning of this legal combination?

First, and this is indisputable, the right of ownership is an integral institution of civil law and the subject of the exclusive jurisdiction of the Russian Federation.

Secondly, if the nomenclature of the federal bureaucracy had specifically fixed this right without introducing the provision of paragraph 1 of Article 9 and fixing the formula "possession, use, disposal", it seems to me that the results of the national referendum on December 12, 1993 could have been different.

Third, the introduction of the formula "possession, use, disposal" was a political

compromise. On the one hand, it provided support to the nomenclature of the federal bureaucracy from the sub-federal and municipal bureaucracy, on the other hand, it gave the nomenclature of the sub – federal and municipal bureaucracy a certain hope, based on the provision of paragraph 1 of Article 9 of the Constitution of the Russian Federation, at least in some way to limit the legal resource of the nomenclature of the federal bureaucracy.

The political nature of clause " b "of clause 1 of Article 72 of the Constitution of the Russian Federation on the introduction of the formula" possession, use, disposal", which allows to avoid direct contradiction with clause" o "of Article 71 of the Constitution of the Russian Federation, is confirmed in a certain sense by the provision of clause" d "of clause 1 of this Article:"differentiation of state property". Here, the authors of the draft Constitution of the Russian Federation did not consider it necessary to use the formula "possession, use, disposal", having come to the trivial use of the concept of "property".

What is the differentiation of state property, when in the text of the Constitution of the Russian Federation there are only the terms "state property" (Articles 8-9), "federal state property" (paragraph "d" of Article 71)? At the same time, the text of the Constitution of the Russian Federation does not contain the term "state property of a subject of the Russian Federation". What is the division of state property in question? After all, it is possible to distinguish state property only between the Russian Federation and the subject of the Russian Federation. But the subject of the Russian Federation is not constituted as an owner. Then what kind of differentiation of state property can we talk about?

In fact, this will be the allotment by the Russian Federation of the relevant subject of the Russian Federation of a certain part of the property, land, or other natural resource that is federal state property, but not the delineation of state property. This mechanism of granting state property to a subject of the Russian Federation is a feature of our state structure in the form of a unitary federation, as it were.

A real federation is organized "from the bottom up" with the initial legal fixation of its property as the property of the subjects of the federation. In our case, each of the subjects of the Russian Federation was already assigned a corresponding part of state property after the signing of the Federal Agreement of March 31, 1992. Such a process of granting state property to the subjects of the Russian Federation initially defined the generation of our state as a unitary one, the further life activity of which may or may not receive the organizational contours of the real existence of a federal structure.

Everything will depend on the formation of a certain configuration of the existence of ways of organizing property in the parameters of our statehood. If the general (collective) way of organizing property in its forms, and above all the state, becomes the main system-forming one, then the practical reality of the unitary form of state structure will be provided for us in the near social perspective.

4.3. Fixing property issues in other chapters of the Constitution of the Russian Federation.

I have already made a formal comment on Article 114 of the Constitution of the Russian Federation regarding the discrepancy between the terms "federal property" and " federal state property "(item" d " of Article 71). Let us turn to the content of Articles 130 and 132 of the Constitution of the Russian Federation, which establish the basis for the existence of local self-government in the Russian Federation in terms of regulating municipal property.

Paragraph 1 of Article 130 of the Constitution of the Russian Federation: "Local self-government in the Russian Federation provides for the independent decision of the population on issues of local significance, ownership, use and disposal of municipal property."

Once again, we are faced with the combined formula "ownership, use, disposal of municipal property". The territory of a municipality or the territory of local self-government is the intersection of numerous interests of various divisions of the nomenclature bureaucracy: federal, sub-federal, and directly municipal. This territory may contain

property, land, mineral resources, water and other natural resources.

I have already noted that when a complex architecture of interests of the federal, sub-federal, municipal nomenclature bureaucracy arises in the territory, then the text of the Constitution of the Russian Federation, as a rule, uses an expanded understanding of property in the form of "possession, use, disposal", which allows you to form a broad conceptual space where you can look for and find a significant variety of political compromises in terms of the nomenclature of the federal bureaucracy to ensure the target priority of federal state property. In the end, these political and legal manipulations of the federal nomenclature bureaucracy repeatedly leave the municipalities and subjects of the Russian Federation in the "forever broken trough", taking away from their territories most of the surplus product produced.

I want to draw your attention to one more nuance. Item 1 of Article 132 of the Constitution of the Russian Federation: "Local self-government bodies independently manage municipal property, form, approve and execute the local budget, establish local taxes and fees, protect public order, resolve other issues of local significance, and also, in accordance with federal law, ensure the availability of medical care within their competence." For me, the phrase "local self-government bodies independently manage municipal property" is of particular interest.

First, who is the owner of municipal property: municipalities or local self-government bodies? Secondly, if the municipality is the owner, then only it can authorize the local government body to manage this property. Third, if a local government body is the owner of municipal property, then who can authorize it to independently manage it? In general, as they say, the carelessness and inaccuracies in the text of our Constitution are reflected.

5. Conclusions

At the end of the study of the text of the articles of the Constitution of the Russian Federation regulating property relations, it can be argued that it does not contain the concept that

any property is sacred and inviolable, and even more so – private. Is it an accident? In my opinion, no. The new type of nomenclature that replaced the socialist party-state nomenclature – the state-bureaucratic nomenclature, having constructed an extremely powerful institution of presidential power in the Constitution of the Russian Federation, understood that the existence of a private method of organizing property is an objective social necessity. But she also understood something else – that the successful development of the private method of organizing property with its production and reproduction of social competition would jeopardize the very principle of the existence of the bureaucratic nomenclature in the wording of the Constitution of the Russian Federation of 1993 (see [26, p. 133-143; 27; 28; 29; 30, pp. 92-95; 31, pp. 5-14]). What was needed was a variant of the existence of a private method of organizing property.

The existence of a private method of organizing property was obviously determined by the parameter of its permissible functioning, in which the state-bureaucratic nomenclature would not experience any fundamental problems in the exercise of its social omnipotence. It sought to make manageable the potential of production and reproduction of social competition generated by the private way of organizing property.

On December 25, 1993, the Constitution of the Russian Federation came into force. The day before, on December 24, 1993, the Decree of the President of the Russian Federation No. 2284 "On the State Program of Privatization of State and municipal enterprises in the Russian Federation" was adopted. The strategic issue of the country's future existence was decided "in a hurry" by the President of the Russian Federation, who did not have sufficient legal grounds for this, and most importantly – already with the officially adopted text of the Constitution of the Russian Federation at the national vote on December 12, 1993, where the institution of privatization of state and municipal enterprises was not provided for.

On July 22, 1994, the President of the Russian Federation adopted Decree No. 1535 "On the Main Provisions of the State Program for the Privatization of State and Municipal Enterprises in the Russian Federation after July 1, 1994".

Let's start with the fact that in accordance with paragraph 1 of Article 15 of the Constitution of the Russian Federation: "The Constitution of the Russian Federation has the highest legal force, direct effect and is applied throughout the territory of the Russian Federation. Laws and other legal acts adopted in the Russian Federation must not contradict the Constitution of the Russian Federation." «1. Federal constitutional laws and federal laws that have direct effect on the entire territory of the Russian Federation are adopted on the subjects of the jurisdiction of the Russian Federation. 2. Federal laws and laws and other normative legal acts of the subjects of the Russian Federation adopted in accordance with them are issued on the subjects of joint jurisdiction of the Russian Federation and the subjects of the Russian Federation." Finally, the provision of paragraph 3 of Article 90 of the Constitution of the Russian Federation: "Decrees and orders of the President of the Russian Federation must not contradict the Constitution of the Russian Federation and federal laws."

See paragraph "d" of Article 71 of the Constitution of the Russian Federation: "The Russian Federation is responsible for ... federal state property and its management... "In paragraphs" b "and" d " of paragraph 1 of Article 72 of the Constitution of the Russian Federation: "In the joint jurisdiction of the Russian Federation and the subjects of the Russian Federation are ... c) issues of ownership, use and disposal of land, subsoil, water and other natural resources; d) delineation of state property..." And in accordance with paragraphs " d "and" e " of paragraph 1 of art. 114: "The Government of the Russian Federation ... d) manages federal property... f) implements measures to ensure the rule of law, the rights and freedoms of citizens, the protection of property and public order, and the fight against crime...»

What do we see based on the above-mentioned constitutional provisions, which have the highest legal force and direct effect?

First, in accordance with paragraph 1 of Article 76 of the Constitution of the Russian Federation and paragraph "d" of Article 71 of the Constitution of the Russian Federation, the Decree of the President of the Russian Federation is not

provided as a direct act of normative legal implementation on this subject of competence. Secondly, in accordance with the provisions of paragraph 2 of Article 76 of the Constitution of the Russian Federation and paragraphs " b "and" d " of paragraph 1 of Article 72 of the Constitution of the Russian Federation, the Decree of the President of the Russian Federation is not provided as a direct act of normative legal implementation on this subject of competence. Third, in accordance with the provisions of paragraphs "d"," e " of paragraph 1 of art. 114 of the Constitution of the Russian Federation, the Decree of the President of the Russian Federation is also not provided for as a direct act of normative legal implementation of this power of the Government of the Russian Federation. Fourth, in accordance with the provisions of paragraph 1 of Article 130 and paragraph 1 of Article 132 of the Constitution of the Russian Federation, municipal property is not subject to legal regulation by the President of the Russian Federation.

From the above constitutional provisions, it is clear that the Decree of the President of the Russian Federation of July 22, 1994 No. 1535 "On the Main Provisions of the State Program for the Privatization of State and Municipal Enterprises in the Russian Federation after July 1, 1994" does not meet the requirements of the provisions of paragraph 1 of Article 15, paragraphs 1-2 of Article 76, paragraph "d" of Article 71, paragraphs "b", "d" of paragraph 1 of Article 72, paragraphs "d", "e" of paragraph 1 of Article 114 of the Constitution of the Russian Federation... 6 of this Decree, the sophistication of the nomenclature of the federal bureaucracy led to the pseudo-formation of a new mechanism of legal regulation: "This Decree comes into force from the moment of its publication and *is valid until the adoption of the federal law "On Approval of the State Program for the Privatization of State and Municipal Enterprises in the Russian Federation after July 1, 1994"*" (our italics – A. B.). This constitutionally unconstrained formula seems to have legalized the fact that the relevant federal law will be adopted only on December 21, 2001. (Federal Law No. 178-FZ of December 21, 2001 "On the Privatization of State and Municipal Property"). Thus, property as the main system-forming goal of the existence of the Russian state was largely

usurped by the nomenclature bureaucracy, which turned it into the exclusive domain of its narrow-corporate community, which openly and cynically ignored the requirements of the provisions of the Constitution of the Russian Federation on this issue in favor of its private group interest.

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BIBLIOGRAPHIC DESCRIPTION

Butakov A.V. Russia: property and state. The history of post-Soviet law enforcement (Part II). *Pravoprime-
nenie = Law Enforcement Review*, 2021, vol. 5, no. 1,
pp. 5–15. DOI: 10.24147/2542-1514.2021.5(1).5-15.
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