LEGAL CULTURE AND LEGAL TRANSPLANTS
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I. *Legal models as a whole*. 1. Historical perspective. 2. Contemporary Development Prospects in the Age of Postmodernism. II. *Individual Institutes and Legal Mechanisms*. 1. Financial law. 2. Constitutional law. 3. Results of reception. 4. What were the driving forces for adoption of law models? 5. Main identifiers of perceived models. 6. Identifiers of law hybridization. 7. Psychological perception. 8. Drafting of model laws and legislative recommendations of international organizations as a method for law unification. III. Conclusions.

I. LEGAL MODELS AS A WHOLE

1. *Historical perspective*

A. *Influence of the other legal models*

The contemporary Russian judicial model reflects not merely the judicial reality, but also the judicial tradition which is historically connected with the Russian population's lifestyle, thinking, and attitude to the law and the judicial dispositions of the public authorities.

In general, Russia's historically established judicial model can be characterized as an original state-legal type bringing it into proximity both with the West and the East, which is not haphazard for Russia links those two parts of the world geographically.

In the course of its extended history, the Russian judicial model found itself drawn by the gravity of multiple judicial systems, i.e. Scandinavia and Byzantium, the Golden Horde and Poland, France and Germany, etcetera.

B. *Resultant influence*

However, in general, the effect of the aforesaid legal systems was limited. Varangian princes Ryurik, Oleg, and Igor who united Kievan Russia failed to bring in the Scandinavian law to the Russian lands. Likewise,

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the effect of the Byzantine law was limited[1]. Thus, Kievan Russia's agreements with Byzantium included Byzantine legal provisions, as well as Russian legal provisions, with a variety of relations regulated by them subject to the effect o the *Russian Law*, as stated in the Agreement of the Year 911.[2]

With the adoption of Christianity in the year 988, numerous versions of the *Books of the Helmsman* and the *Codes of the Righteous* were published, which were drawn up on the basis of the Byzantine codes – the Eclogue and the Prochiron, describing marriage, gift, inheritance, custody and guardianship rules, as well as rules for performance of obligations, allotment of the spoils of war, etcetera. However, they had no legal effect.[3]

The domestic law of the 11th through 13th centuries developed independently, which is confirmed by the analysis of *Russian Truth*, a major legislative instrument of Ancient Russia, and other legislative instruments of that period.[4]

The effect of the Golden Horde's law during its more than two-century-long rule (13th through 15th centuries) was equally limited. The Russian principalities lacerated by the Mongol troops preserved their laws and bodies of power, including courts.

Russia's subsequent history allows tracing the effect of the judicial models of other states, but that effect is not as prominent as might be expected. Nevertheless, although there was no direct reception, the continental system of law gradually gained a foothold in Russia. Yet, some researchers, specifically: R. Leget, do not classify the Russian legal system as belonging to the cluster of the continental or Roman/German law.[5]

C. *Internal development factors*

A number of objective natural and historical factors marked an imprint on the progress of the domestic state and judicial development.

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[1] See, for instance: Sturluson, Snorri, Heimskringla or The Chronicle of the Kings of Norway, M., 1980, p. 101 (in Russian).

[2] Yushkov, S.V., *Selected papers*, 2007, pp. 121-122 (in Russian).

[3] Sergeyevich, V. I., *Ancient History of the Russian Law: Lectures and Research*, M., pp. 28-29; Suvorov, N.S., *Church Law Manual*, M., 1913, p. 65 (in Russian).

[4] Refer to Yushkov, S. V., *Political and Social Framework and Law of the Kievan State*, M., 1949, p. 189. M. N. Tikhomirov, *Russian Truth Studies*, M., 1941, ppp. 194-195.

[5] Legeas, R., *Great Contemporary Legal Systems: a Comparative Approach*, M., 2009, pp. 230-232 (Raymond Legeas. Les grands systems de droit contemporains: une approche comparative). This topic was discussed at one of the meetings of the Academic Council of the Institute of Legislation and Comparative Law umder the Government of the Russian Federation, involving the participation of professor R. Legeas and representatives of the Continental Law Foundation attached to the Ministry of Justice of France, in June 2009.

In the first place, costly production with an extremely small surplus product in the critical arable farming areas predetermined the rooting of the centralized system of government.

In the second place, the state boundaries almost constantly experienced hard pressure on the part of other nations. Many researchers liken Russia to a besieged fortress. There were military attacks against Russia every four years from the year 800 to the year 1237. From the year 1240 to the year 1462, there were 200 invasions. There were a total of 329 war years from 1368 to 1893 (i.e. during the period of 525 years), i.e. an average of only one year of peace for every two years of war. In addition, there were innumerable internal embroilments, mutinies, and uprisings erupting into hot wars, for example: the peasant movement of the years 1773 through 1775.[6] Obviously, such heritage could not but affect the economic, social, and political life of Russia. Militarization, extraordinariness, and force majeure established under the influence of the historical environment become the features of the national life, including also the judicial culture.

In the third place, the expansion of the state boundaries predetermined the use of stiff power technologies to set up national operational administration. Catherine the Great, a well-educated empress, wrote the following to defend constitutionalist Montesquieu: "An empire as great as Russia would die if it had a structure other than despotism set up, because only despotism can assist with the needs of remotely located provinces as quickly as necessary".

Those conditions predetermined the need to search for indigenous judicial solutions, frequently as a counter to the judicial systems of other states. Thus, Ivan the Terrible, in his correspondence with Andrei Kurbskiy, emphatically cast off advice to follow the example of catholic Europe's countries. He argued that with the form of government established by him, "the illiterate is forced to silence, the malefactors are rebuffed, and the tsar enthroned by God rules".[7]

Beyond the factors of internal development, certain impact on the legal development of Russia was exerted by legal traditions of the peoples surrounding or included within its boundaries. As a result, appeared a combination of different legal models and decisions reflecting peculiarities of various legal cultures.

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[6] Refer to Losskiy, N. O., *Absolute Good Conditions*, M., 1991, p. 277.
[7] Correspondence of Ivan the Great with Andrei Kurbskiy, M., 1981, p. 130.

D. *Impact of eastern legal traditions*

On the other hand, as the boundaries of the Russian state expanded and included new nations, the influence of other judicial models intensified, primarily in terms of forms and methods of government. The legal system changed, as well, with an alloy of diverse judicial models and solutions reflecting the specific features of the judicial culture of the peoples making up Russia appearing.[8]

Thus, as Russia moves to the East, such strictly oriental elements of the state and social life as the *ruler's supreme right to land* take root, limiting private property in land. Authoritarian forms of government gain momentum, with sufficiently well-developed forms of self-government, such as popular assemblies, land assemblies, etcetera, committed to oblivion. That turning point occurred during the rule of Ivan the Terrible at the time of Russia's precipitous easterly expansion. This is the time when a new concept of unrestricted autocratic tsar power is developed, evidenced by the correspondence of Ivan the Terrible with Andrei Kurbskiy.[9]

The imprint of the oriental traditions can also be found in later Russian history.[10] While the traditional European institutes vigorously crumbled away and a new image of the society and the state was taking shape (market relations, human rights, parliamentary system), Russia pursued the old pillar preservation policy (communal peasant agriculture, social enslavement, rightlessness, and authoritarian methods of government).

This is what happened over the bigger part of the Russian history, including after the overthrow of tsarism. Thus, the resolution of the 7th congress of the Russian Bolshevist Party stated that, on the basis of dictatorship, it *destroyed the drawbacks of the parliamentary system, especially the division of the legislative and executive powers*.[11] Subsequently, the *drawbacks* of the due process of law were removed in a similar way, which allowed mass purges to be conducted in Stalin's time taking many millions of human lives.[12]

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[8] Refer to Trubetskoy, N. S. *History, Culture, Language*, M., 1995, pp. 212 and 213.
[9] Refer to Luriye, Y., Correspondence of Ivan the Terrible with Kurbskiy, L., *the Public Thinking of Ancient Russia*, 1979, pp. 214-249.
[10] Refer to Bibler, V. S. *Culture Logic Facets*, M., 1997.
[11] Refer to *CPSU: Resolutions and Decisions Made at Congresses, Conferences, and Plenary Sessions of the Central Committee*, Part 1, M., 1962, p. 415.
[12] Refer to Pikhoya, R., *USSR. The History of a Great Empire. Under the Sign of Stalin*, St. Petersburg, 2009, p. 256.

E. *Effect of western judicial models*

At the same time, the western law tradition had a certain influence on the development of the Russian law, as well. That influence is appreciably enhanced by the beginning of the 18th century, during the reign of Peter the Great. The western institutes are perceived as a tool to overcome the secular backwardness of the Russian society. A new administrative and government system is introduced: the Council of Boyards is replaces with a Senate (1711), with orders liquidated and ministerial collegiums, Secret Office, and Synod established[13]. Subsequently, there is a switch-over to the principle of country division into provinces. The homestead tax is replaced with the head tax. School and university education is developing and an academy of sciences is set up. However, those institutes, albeit similar to the western ones, were frequently filled with special content. They were perceived as state products, were controlled by and never lost a connection with the state. Such statism imparted an express *oriental tinge* to the respective institutes.

Note that in choosing between the Scylla of the West and the Charybdis of the East, the question was not one pertaining to the humanitarian plane: the social price of both the *Asian* reforms of Ivan the Terrible and the *westernistic* reforms of Peter the Great was the drastic reduction in the country's population (by 20% in Peter's time). That confirmed one consistent pattern, namely: the successful development of a state was frequently achieved at the expense of the people's level of living drastically falling.[14]

F. *What were the driving forces of forming own legal system of Russia for reception of foreign examples and how were own developing priorities of Russia formed*?

Orthodox Russia was quite tolerant toward different confessions of faith, smoothing out religious antagonisms. Russia guaranteed that the conquered peoples would not only be preserved, but also connected to the world culture, opening their way to a higher level of civilization.

Those processes complicated the development of the ideological struggle between the East and the West. The Oriental regions coming under the auspices of Russia (and not only those regions) would rally driven by the idea of anti-Westernism. On the other hand, the backwardness of the East (referred to as *Asian backwardness*) enhanced the Occidental pull, with the West embodying social and technological progress. To a large extent, those contradictions predetermined the instability and eventual collapse of the

[13] Refer to Pavlenko, N. I. *Peter the Great*, 4th edition, M., 2003, p. 428.
[14] Soloviyov, S. M., *Public Readings on Peter the Great*, St. Petersburg, 1903, pp. 212 *et sequentia*.

state in the 12th century, during the Time of Trouble in the years 1598 through 1613, in October 1917, and in August 1991.[15]

The perception of individual models of the western law in Russia was driven by a number of reasons. Firstly, it was perceived as one of the methods to transform the judicial system (rational, albeit not always giving way to positive changes). Secondly, the use of individual foreign institutes and regulations demonstrated to the work the intention of the Russian state to ensure a level of public development comparable with the headmost nations. What is stated above explains why the reception was basically undertaken on the initiative of the state itself.

a. Conquest, colonization, and other forcible forms of reception

Conquest was not something that only the Russian state was subjected to, pursuing an active policy of expansion by itself. However, that policy was appreciably different from the colonial policy of many other states. In that respect, the experience of many territories annexed to Russia is of indicative nature. Thus, Finland, which became part of Russia following the war with Sweden (1809), was never turned into a colony. It was granted ample political rights and legislative autonomy, with a portion of the Russian territory (Vyborg) transferred to it. Moreover, the Grand Principality of Finland as part of the Russian Empire became a kind of *testing ground* to evaluate democratic innovations. Specifically, universal suffrage was instituted there as early as in the year 1906 (by comparison, in Denmark and Norway, it was instituted as late as in 1915, while in the Netherlands – in 1917).[16] In many parts of the Russian Empire traditional and religious systems of law, including Islamic, regulating the everyday life of various peoples had been preserved. It is difficult to find any similar examples of such a liberal approach to national-identity building in the world.

In the Soviet time another approach was predominant. And though the USSR's nationalities, such as Ukrainians and Belorussians, Kazakhs and Turkmen, Armenians and Georgians and others preserved their national identity and statehood, there was a severe centralization of power which was imposing the uniform soviet law subdued to the ideological dogmas of the Communist party. This became one of the decisive factors causing the collapse of the Union and precipitous formation on its ruins of 15 new sovereign states many of whom still preserving features of the former soviet law.

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[15] National History: People, Ideas, Solutions. Russian Historical Essays for the Period from the 9th Century to Early 20th Century, M., 1991, pp. 163-185.

[16] For details, refer to Mogunova, M. A., *Introductory Article to the Constitution of Finland/Constitutions of European States*, Vol. 3, M., 2001, p. 356.

b. Imitation, ideological, cultural, technical/legal, and other "passive" forms of reception

It is difficult to single out *passive* forms of reception because the key concepts and categories in this field are of non-national nature. Thus, the understanding of legal techniques and procedures was originally developed as international application tools. Many of its features, even, at first sight, the most specific ones, are inherent in any judicial model regardless of whether it belongs to a particular judicial family.

The development of the *passive* reception processes was of the most contradictory nature in the spheres of culture and ideology.

As a result of the reforms carried out by Peter the First, Russia drew near the Western European countries by life infrastructure and production culture. However, the gap between Russia and the West deepened following the revolution of 1917. To a large extent, those processes were caused by multidirectional ideological factors.

It is indisputable that Russia needed to borrow better-life technologies. A combination of pragmatism and spirituality, i.e. the West's *body* and Russia's *soul*, would have been ideal. However, ideal combinations of multidirectional ideologies can rarely be found in real life.

As a consequence, there were constant contradictions and conflicts along the break-up lines dividing the state and the civil society, the power and the personality, the market and directive forms of economic government, and law and lawlessness.

At the same time, as noted by M. Speranskiy as early as at the beginning of the 19th century, "it would be weird to wish that peoples different in their lifestyles, habits, education level, and industry would succumb to a single form of government with equal ease".[17]

The alloy of occidental and oriental traditions preconditioned Russia's special historic role and particular features of its judicial model. Russia's historic role with its potent statehood consisted in ensuring civil peace survival guarantees for the peoples concentrated in Eurasia at large. Russia's orientation only to Europe or only to Asia can destabilize the world

[17] Speranskiy, M. M., *Memorandum on the Arrangement of Russian Judicial and Government Institutions*, 1803; Speranskiy, M. M., S*tate Transformation Plan (Introduction to the Code of State Laws of 1809)*, M., 1905, pp. 164 *et sequitur*.

situation, destroy the integrity of the subcontinent, and throw it back to the sidelines of history.

The specific nature of the Russian judicial model is explained not only by geopolitical reasons, but also by other factors, such as economic, political, and spiritual.

They influenced the formation of a special Russian judicial model.[18] Specifically, it was distinguished for its aspiration for *higher* justice, judicial ideal, and foundation on religious beliefs and values.

Collectivism became a conspicuous distinctive feature of the Russian judicial model, which showed itself at different levels (nation-wide, regional, and local) and in different relations (including property relations).

The judicial culture established in Russia is largely oriented toward the respect for power authority primarily personified by particular-level executives.

Historically, the state always enjoyed a power overbalance in the relations between the state and the personality, with state property protected by more significant sanctions than private property. Possibilities of taking legal recourse to protect the citizen's rights infringed by state officials were limited for a long time.

Over an extended period of time, the prevalent feature of judicial development was the desire to restrict freedom and establish a procedure as unified as possible for citizens to use their political, social, and even civil rights. Such judicial policy resulted in that the bigger part of the Russian public was not accustomed to measuring their actions and the relevancy of the social impact caused by them. No senses of social debt and positive responsibility, which ensure and underlie judicial progress, were common to it.

The Russian judicial model also has different understanding of legal consciousness. Law is perceived within a series of such phenomena as power, state, and government.[19] Historically, this is related to the underdevelopment of personal rights and freedoms, including private property, as well as to the prevalence of community-based forms of economic management as one of the main pillars of the state. Such factors did not facilitate the strengthening

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[18] For example, refer to Alekseyev, N. N., *Philosophy of Law Fundamentals*, St. Petersburg, 1999, p. 38.
[19] Samarin, Y. F., *Selected Writings*, M., 1996, p. 507. Refer to the *Russian Law Journal*, num. 7, 2008, pp. 128 and 129.

of the civil fundamentals of life, which was largely built on the basis of *power hierarchy* laws rather than judicial procedures ensuring equality of parties.

Such perception of law was also preserved following the revolution of 1917, when peasant communities were used as a forced and essentially serfdom-based group association (collective farms) rather than as a union of free husbandmen (cooperation of shareholders).[20]

The Stalin epoch of the 20s through 50s of the 20th century contributed to the strengthening of the nihilistic attitude to law, with the state power perceived as a force which is not bound or limited by any law or justice.[21] The apology of the state and the idea of the supremacy of force resulted in perverted principles of public justice (with the category of guilt, for example, substituted by considerations of class expediency in courts).

Attempts were made in the 1960s through 1980s to change the judicial culture and judicial consciousness. The principles of the supremacy of law and justice were proclaimed. Courses in the fundamentals of the Soviet state and law were introduced in the curricula of schools and higher educational institutions. However, those innovations yielded no due effect in an environment of ideological pressure.

c. Science in reception processes

In the XIX century mainly under the impact of the legal science of the Western European countries national schools of legal positivism (N. M. Korkunov, P. G. Vinogradov, G. F. Shershenevitch), sociology of law (M. M. Kovalevsky, S. A. Muromtsev), natural law doctrines (B. N. Chicherin, P. I. Novgorodzev), Utopian socialism (A. I. Gertsen, B. A. Kistyakovsky), anarchism (M. A. Bakunin) and others. They had been developing accepted from the Western legal science doctrines of people's sovereignty, rule of law, human rights and freedoms, parliamentarism, local self-government and so on. They often had been giving them new content which served as a basis for the appearance of new scientific trends – of psychological theory of law (L. I. Petrazhitsky), moral theory of law (V.S . Soloviev, I. A. Ilyin) and others.

Russian legal science had been producing a big impact on the development of the national legislation. Its prominent representatives initiated and conducted the liberal reforms of Alexander II and the constitutional reforms of Nickolas II in 1905 – 1906.

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[20] For example, refer to V.I. Lenin, *Collected Writings*, vol. 37, p. 245.
[21] Zryachkin, A. N., *Judicial Nihilism: Reasons and Overcoming*, Saratov, 2009, pp. 21-24.

Theoretical issues of legal reception, modes of borrowing political and social institutions of law have been studied by many Russian scholars: in the XVI – XVIII centuries by Filofei, N. Sorskiy, and V. Patrikeyev and in the XIXh century by M.M. Speranskiy, K.D. Kavelin, and B.N. Chicherin.

From the middle of the XIXth century, the legal reception problems stand as an independent matter for scientific inquiry in the works related to the general theory and history of law and comparative law. The theoretical foundations of reception are most fully studied in the works by D.I. Azarevich, I.D. Belyayev, M.F. Vladimirskiy-Budanov, T.N. Granovskiy, D.D. Grimm, S.A. Muromtsev, V.I. Sergeyevich, etcetera.

Scientific contacts as one of the main channels for the perception of western countries' experience played a conspicuous role in the history of Russia's judicial development. European (first and foremost, German) universities were not merely a training place for Russian students, but were also taken as a model for the formation of the entire system of higher education and professional development of the Russian universities' faculty. Subsequently (at least, during the entire period of the Russian Empire), they preserved their meaning as a standard of higher education.

But the social role and purpose of universities differed in Russia and in Western Europe. Universities in Western Europe were independent corporations of professors and students, whereas Russian universities were largely established by the state and served the national interest of general education.[22]

Translated classical law works by G. Jellinek, R. Jhering, A. Dicey, H. Maine, A. Essemene, etcetera published in pre-revolutionary Russia largely contributed to the perception of the western law tradition. It should be noted that many of them were published under the *Popular Self-Education* heading.

That tradition also continued in the Soviet time. Despite stiff censorial control, the USSR published works by many legal scholars from Great Britain, Germany, Italy, France, USA, Japan[23] and translations of legislative acts of many foreign states.[24]

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[22] Russian Law Journal, 2008, num. 7. pp. 128 and 129.

[23] Hudson, M., *Past and Future International Courts*, M., 1947; Morandier, J., *French Civil Law*, vol. 1-3, M., 1958-1961; North, C., *International Private Law*, M., 1982; Vagatsuma, S., and Ariidzumi, T., *Japanese Civil Law*, vol. 1-2, M., 1983.

[24] It is especially important to note a series of books published by Progress Publishers, which contained translated constitutions and legislative instruments of foreign states. A total of about twenty books were published, introducing Soviet readers to the contemporary legislation of the U.S., France, Italy, the Federal Republic of Germany, Austria, Spain, Portugal, Sweden,

But the experience of many and in particular of capitalist states was received through the light of ideological struggle which significantly was limiting the opportunities of objective scientific analysis. The reception of the models existing in other countries was also prevented because legal science had been developing within the frames of a single soviet legal school restricted by numerous ideological limits. And though it used certain ideas and constructions of western normative and sociological legal schools, it rejected this fact on the ground that there was an irreconcilable contradiction between two social and economic systems – of socialism and capitalism.

Nevertheless, despite heavy ideological burden the soviet legal school was developing dynamically in many directions (general theory of law, labor and criminal and civil procedure law, criminology, social insurance, international private law and so on) not yielding and being not inferior to legal schools of other states.

About high authority of the soviet legal school one may judge on legislative acts which had been drafted by many leading soviet scholars and which later in particular in the sphere of social regulation became an object of reception by many states of the world.

d. Economic factors

To grasp the specific features of the Russian judicial model, it is important to take into account the specific content of the right of ownership or, more precisely, the absence of that right as it is understood in the West. In Russia, the right of ownership had long been regarded as a *stray relationship*, since the private ownership, use, and disposal of property had been, for centuries, blocked by such phenomena as relatively late privatization of lands (in the 18th century for noblemen and since 1861 for peasants), limited withdrawal of peasants from rural communities, etcetera. Therefore, initiative and aspiration for innovations historically showed themselves more distinctly in the western economy, with another distinctive factor being that the institute of private property was frequently perceived by the public consciousness as a factor for restricting economic growth and enhancing pauperization of the gross of the public. As a consequence, demands would be put forward to declare private property illegitimate.

Mexico, China, Mongolia, Vietnam, Bulgaria, Romania, and other states. From the late 1980s, the materials published in those books frequently guided the development of new regulatory instruments.

That movement reached its logical end during the revolution of 1917, rejecting not only the parliamentary/democratic model, but also the economic model for the development of the state and society of the western type.[25]

The economic conversion commenced at the time of Gorbachyov's perestroika and which precipitously developed in the epoch of B.N. Yeltsin, brought the Russian economy back to the market forms of business management. This proved to be an important factor predetermining the perception of the experience of those western countries (USA, Germany, France, Great Britain), which created the headmost forms of legal groundwork for market relations and protection of private property and individual rights and freedoms.

e. Indirect reception forms

In general, foreign judicial models were not commonly adopted in drawing up legislative instruments.

Even in the epoch of Peter the Great, when the mission was to become a European state, the use of the western judicial models was extremely selective. In selecting sample determinations of law, the great reformer was not only guided by his own preferences, but also tried to understand what could strike root in the Russian land and what would be rejected as a foreign body. Therefore, the western experience was largely borrowed at the level of techniques, tools, and individual determinations of law rather than at the level of essential conceptual and content-specific images.[26]

This is confirmed by the history of efforts to *correct* the Russian legislation. Peter the First ordered to update the laws taking as a model the Code of Laws of Sweden (Swedish Code) and adapting it to the Russian environment. A ten-month period was allocated to *adapt* that instrument. However, that approach did not and could not yield any meaningful results. The attempts to adapt the Swedish laws to the Russian lifestyle or enforce the *Estlandish or Liflandish rights* were futile. Nevertheless, that very event marked the beginning of the work related to comprehensive codification of the Russian laws or the Code of Laws of the Russian Empire completed a century later under the guidance of M. Speranskiy.[27]

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[25] For example, refer to Glinkin, *Privatization: Concepts, Implementation, Efficiency*, (M., 2004, age 240), characterizing the privatization experience in Central and Eastern European states.
[26] Refer to *Russian Law Journal*, 2009, num. 11, p. 109.
[27] Refer to Systematization of Laws in the Russian Federation, St. Petersbur, 2003, pp. 264 et sequitur.

To develop the Code of Laws, legislative instruments of other European states were studied. However, there were no borrowings as such. The western experience was largely perceived at the level of the creative analysis of doctrinal ideas and the use of individual provisions.

Thus, the following provisions can be pointed out in the Russian Code of Civil Laws, which are similar to those of the Napoleonic Civil Code of 1804.

1) In the field of marriage and family law:

- Marriage was declared a civil agreement (Article 12 of the Code of Civil Laws; Article 65 of the Napoleonic Code);

- One of the most important conditions for marriage was the father's consent (Articles 6 and 9 of the Code of Laws; Article 148 of the Napoleonic Code);

- The woman took a subordinate position in the family (Articles 100-106, 108 of the Code of Laws; Articles 148, 149, 213, 214, 405, and 420 of the Napoleonic Code);

- Dissolution of marriage was permitted on the grounds specified in the law (Articles 45, 47, 49, and 54 of the Code of Laws; Articles 229-246 of the Napoleonic Code);

- Children born out of wedlock were disabled; however, they could be granted equal rights vs. children born in wedlock through their legalization (Articles 133 and 172 of the Code of Laws; Articles 333-340 of the Napoleonic Code);

- Two orders of succession were recognized: by virtue of law and under will (Articles 1104 and 1110 of the Code of Laws; Article 711 of the Napoleonic Code);

- Children became legally capable in civil-law relations upon reaching majority (Article 221 of the Code of Laws; Article 372 of the Napoleonic Code);

2) In the field of right in rem:

- The right of ownership included the right of possession, use, and disposal (Articles 420, 420[1], 423-425, and 541 of the Code of Laws; Articles 544-546 of the Napoleonic Code);

- The property right to land included the property right to the air space and subsurface resources within the land boundaries (Articles 420 and 420[1] of the Code of Laws; Article 552 of the Napoleonic Code);

- Ownership and possession was distinguished between; through antiquity of tenure, possession could be turned to ownership (Articles 420, 523-530, and 533 of the Code of Laws; Articles 543, 2219, and 2228 of the Napoleonic Code);

- Property was divided into movable and immovable types by nature of things or by designated purpose (Articles 384, 401-403 of the Code of Laws; Articles 516 and 546 of the Napoleonic Code);

- Possible limitation of the rights of a real estate owner was provided for to the benefit of the society or individual persons (servitudes) (Articles 433-447 of the Code of Laws; Articles 637-690 of the Napoleonic Code);

3) In the field of the law of obligations:

- The subject matter of contract and the principles of the freedom of contract, equality of parties, and legality of contracts were defined in an identical way (Articles 1384, 1402, 1406, 1528, and 1529 of the Code of Laws; Articles 1101, 1134, and 1138 of the Napoleonic Code);

- Conditions for invalidity of contracts were defined (Articles 1050 and 1518 of the Code of Laws; Articles 1108, 1109, and 1124 of the Napoleonic Code);

- Security was one of the means to secure obligations. Two types of security were defined: pledge of movable property and pledge of immovable property. The law could serve as the source of security (Articles 1554, 1627, 1629, and 1649 of the Code of Laws; Articles 2071, 2072, and 2121 of the Napoleonic Code).[28]

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[28] For details, refer to Tuikin, Y. R., *Historical Correlation of the Russian Civil Laws of the 18th-19th centuries and the Napoleonic Code of 1804*. Synopsis of a thesis for the degree of Candidate of Legal Sciences, Ufa, 2002.

Thus, there were no large-scale receptions at the nation-wide level. At the same time, the influence of the Roman/German (continental) law tradition gradually gained momentum, which is evidenced by the similarity in the system of the sources of law, as well as by the similarity of many institutes of essentially private law.

It is also possible to give a number of examples of reception at the level of individual regions within the Russian Empire. Thus, The Napoleonic Civil Code of 1804 was revived in Poland (Tsardom of Poland) by decision of the tsarist government (it was effective in Poland when the country was part of the French Empire).[29] Finland had special laws in effect based on the Swedish Code of 1734.[30] The Hidayah, a code of Islamic norms drawn up in the 12th century and regulating such issues as personal status and property relations, remained in effect in the Central Asian khanates.[31]

In this connection, it should be noted that, in general, borrowings from foreign laws are an essential element of judicial development. History offers ample examples where the legislative experience of some states served as a benchmark for other states. However, it proved to be a success only to the extent that it was used on the basis of and making an allowance for domestic experience, in general, and its judicial culture, in particular. It should also be stated that it is not sound for countries and peoples having a different cultural environment to have similar regulation. National laws should intrinsically reflect the rational and axiological basis and the emotional and axiological basis, which constitute the backbone of the social, cultural, and political life of the country.[32]

It is sometimes necessary to determine whether the judicial development vector is *correct* or *incorrect*. Cultural progress rests on fine-tuned algorithms for assimilation of intellectual and material products ensuring production growth, social welfare, and everyday comfort. Therefore, positive movement is supported, in the first place, by sustainable rules for the reproduction of the means of subsistence and, in the second place, by innovative processes, such as the spirit of creative work, improvement, optimization, or invention, i.e. an optimum synthesis of *preservation* and *change*, including borrowed ones. Not all changes are capable of leading to a beneficial cumulative effect. Spontaneous borrowings without possible consequences calculated most commonly yield a negative result.

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[29] Stavskiy, V.I., Civil Laws in the Provinces of the Tsardom of Poland, vol. 1, Warsaw, M., 1905.
[30] *General Finnish Code*, 1734, St. Petersburg, 1912.
[31] The Hidayah: Comments on Muslim Law. Translated from English, vol. 1 (Translation edited by N. I. Grodekov), Tashkent, Type-lit S. I. Lakhtin, 1893, 535 pages, reprinted copy.
[32] Refer to the *Russian Law Journal*, 2009, num. 11, p. 113.

G. *General identification elements of received models: legislative, legal, or doctrinal*

Various phenomena may be used as indicators of conceived patterns at different stages of historical development. However, traditions and tacit law rules seem the most significant indicators. The matter is that receptacle law often overlaps with existing public relations. Emerging public relations that require legal importation do not cause any resistance because such processes turn out to be less linked to legal views and traditions.

The general cultural (civilizational) level of the development of any society may prevent law reception: the law of the more socially and economically developed state is likely to reject other legal systems originated by less developed states, like, for instance, the rejection of Mongol customary law by the Russian State during the Tartar Yoke.

The importation may be difficult even if required, when the reproduction of proper legal norms is potentially feasible. Legal and cultural cooperation between Russia and the Byzantine Empire may be given as an example. From the legal point of view such cooperation touched upon ecclesiastic relations only leaving state legal relations behind because successful development of proper legal rules was mostly probable making unwanted any importation of foreign rules and regulations.

The success of law importation revealed by national legal awareness depends on the institutional arrangements of such importation: simple copying or supported organization form implying preliminary research and subsequent follow-up during implementation.

As a rule, foreign legal patterns were not recognized by the legislation of the Russian Empire and subsequently by the legislation of the Soviet Union. It may be explained not only by the state sovereignty doctrine but also by geopolitical and ideological confrontation of Russia and the USSR with the global leaders. Therefore importation indicators are practically invisible in national legal acts and court practice.

The other situation may be observed at the national ideology level. Furious struggle between two different trends- conservative and liberal, Slavophil and Western – was typical for almost the whole 19th century up to the beginning of the 20th century. The influence of the Western schools of philosophy and law is evident in the works of most Russian legal scholars (M. Kovalevskiy, P. Vinogradov, B. Chicherin, P. Novgorodtsev, S. Muromtsev and others) involved in the development of the limited power doctrine and power separation, the supremacy of law, the protection of personal rights and freedoms, parliamentarianism and local government.

The outcome of such an ideological battle determined the major development patterns – Western or Eastern. Though the West and the East are mainly geographical notions, they are used as symbols of different ways of the evolution of the humankind, different civilizational features of national identity and legal order. Such generalization, of course, as any other generalization does not comprehend all legal and political factors.[33] However, it clearly defines the common vector of evolution.

In general, eastern power authority prevailed during the whole story of Russian law whereby western private property legal orders became more and more powerful. They determined legal ideology of liberal reforms from the end of 19th till the beginning of 20th century. Liberal reforms in 1990s were directed towards the West. This ideology plays a determinative role in the current legal evolution in Russia.

H. *Specific recognizable elements of legal hybridization*

In the Russian and later in the soviet law there were no such recognizable sighs as the references to foreign legislation or indication of foreign sources of native normative legal acts. In the main the reception has been carried out by accepting general legal ideas.

The dichotomy "unitarianism – federalism" showing a complicated dilemma of state structure and of the evolution of legal patterns in Russia may be given as an example. Decentralization tools were widely used in the Russian Empire: the independent development of Poland, Finland, the Baltic and other regions of the Empire serves as an evidence.

After 1917 Russia became a federal nation. The Soviet Union was founded in 1924 as a federal state. The constitutional pattern of the separation of powers was consistent with concurrent patterns (in particular, in Australia and the U.S.A.). Thought there was no direct importation, however, the American and the Australian experience was taken into account. At the same time the Soviet federal pattern had its own specific features. Firstly, it was nation-based. Secondly, it was developed in the single-party and strictly centralized political system.[34] Such deformation of federal principles finally led to the collapse of the USSR.

Other examples of reception leading to hybridization of norms may be taken from the constitutional law. The 1936 and 1977 Constitutions of the USSR fixed many rights and freedoms that are defined in various

[33] See, for example: Shcheglova, L. V. *et al.*, Integration and Diversity of Cultures. Culture and Ethnos, Volgograd, 2002. pp. 42-51.
[34] See, Lenin, V.I., *Complete works*, vol. 24, April - June 1917, p. 140.

Western constitutions. On the other hand, the Russian law and later the Soviet constitutions predetermined the legal and constitutional development of different countries in Europe, Asia, Latin America and other parts of the world.

For instance, in May 1799 the Senate of the Russian Empire with participation of a famous admiral F.F. Ushakov elaborated the draft Constitution of Ionian islands which had been actually in force for six years in the six Greek islands, including Corfu, Kefalonia, Zante.[35] In 1879 with participation of Russian political figures and lawyers the Turnovo Constitution of Bulgaria had been drafted, which reproduced a significant part of the norms of the Code of Laws of the Russian Empire.[36]

But the most significant share has been made by the soviet constitutions. The values of state-planned economy, the protection of social and economic rights proclaimed in their texts were borrowed by the constitutions of not only socialist states but also by such states as Italy, Spain, Portugal, Brazil, etcetera.[37]

I. *Psychological perception*

The reception of foreign legal patterns in their integral form is typical mainly for former colonial countries that experienced severe political and legal transformation under the civilizational impact of parent states. Other countries, including Russia, tended to use specific doctrines and norms.

The problem is that Russia left the conformist-oriented state legal system in the beginning of the 20th century and never reached legal national identity. The reason, as we see it, is that the Russian legal culture remains depersonalized and impersonal. While the European life style supported by

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[35] The exact title of this Act reflecting the peculiarities of the Russian legal technique of that time is *Plan for Establishing Government on the Liberated from the French Troops of Former Venetian Islands and for Ensuring Order on Them*. See Ushakov, F. F., Documents, vol. 2, p. 520 – 526. Groskul, V. Y., "Russian Constitutionalism beyond the Borders of Russia", *Native History*, num. 2, M., 1996, pp. 166 –180.

[36] Khabrieva, T. Y., "Turnovo Constitution. Peculiarities of the Constitutional Model", *125 Anniversary of the Adoption of the Turnovo Constitution.*Compilation of the Reports of Bulgarian and Russian Lawyers at the Conference in Veliko Turnovo dated 14 – 16 of April 2004, Sophia, 2004, p. 31-39; Khabrieva T.Y., "Constitutional Models and Main Stages of Constitutional Development", *Journal of Foreign Legislation and Comparative Law*, num. 1, 2005, p. 3-9.

[37] See: *Comparative Constitutional Law*, Chirkin. V. E. (ed), M., 2002, p. 43; Khabrieva T. Y. Stability of the Constitution of the Russian Federation and Reforms (Report at a research and practice conference dedicated to the 15th Anniversary of the Constitution of the Russian Federation. Moscow. The Kremlin, December 12, 2008), Foreign Law and Comparative Jurisprudence, num. 4, 2009.

law and promoting individualism was originated by legal prudence and juridical formalism, Russian law facilitated the expansion of disputes rather than assisted their resolution. It affected the methods that could have been used by a personality to protect his/her rights. This situation aggravated negative trends in many public relations.

It seems hard to achieve the objective of keeping united diverse local communities that are individual members of the state being the carriers of various subcultures. The more complicated the society, the more important the law is. Law is not only used by the state to address all citizens and all communities in the language of legal norms supported by the power. Law is the basis that may be used by any person to send the message to the state in order to demand the protection of his/her rights.

The main objective of law is that it should be functional, executable, effective and culturally based upon historical mentality of different members of the society to comply with their moral expectations. It has never been observed for centuries. Speaking about Russian law Herzen said that the people "just obey the laws treating them as the supreme power"; that made the people morally suppressed and opposed to the laws. Therefore, laws were violated every time when such actions were expected to remain unpunished.[38]

Even the definition of "law" got a specific meaning in the Russian political and legal environment. While law is mainly a decision-making tool in the West, it is a synonym of competence, a mixture of wisdom, authority, justice and truth in Russia, as well as in Eastern traditional legal cultures. However, while the integration of power, law and politics is treated as a main principle in China and Japan; and any conflicts and even the possibility of conflicts are discouraged at all, in Russia any doubts in the impartiality of law lead to the circumvention of law and the negation of its regulating power (and, as a result - legal nihilism).

In this context it is evident why the doctrine of moral sources of state and law was developed in Russia and presented in the works of V. Soloviev and I. Ilyin.

The psychological reception of law was affected by multiple collapses experienced by Russia during a long story of the Russian state and their consequences.

One of the reasons for such collapses was a gap between the power and the society. It is a well-known fact that, from the second half of the 19th century to the beginning of the 20th century Russian, peasants "tried to

[38] Herzen, A. I., *Works*, vol. 3, St. Petersburg, 1905, p. 457.

avoid any contacts with the authorities and any visits to courts even to witness because they did not trust public institutions and did not consider them legitimate. When a representative of public authorities appeared in a village, people would not leave their houses". Similar trends should be taken into account when legal phenomena are analyzed, in particular, in Russia where peasants made about 85% of total population in the beginning of the 20th century. The same trends were typical of the major part of urban population of the country.[39]

Another problem is that the society may normally function only when its requirements to the state are correlated with the ability of the state to satisfy such requirements. It is not always possible for political and mainly for economic reasons. For instance, Peter the First failed to upgrade production facilities because such attempts required funds that were not available. Moreover, the society was not prepared for such reforms.

Often the state tried to involve the society into the problem solving processes. It was evident in the period of reforms in the 1860s – 1870s when the society was assigned numerous tasks that had been previously performed by the state. This resulted in the acceleration of the economic development of the country.

However, another approach was applied during the Soviet time: after a certain period of hesitation the state decided to undertake all public duties. As a result, the state broke down under an enormous stress.

The Russian state passed through two catastrophes in the 20th century-the collapse of the Russian Empire and the fall of the USSR. Both events were caused mainly by the balance upset between the society and the state.[40]

It is difficult to find the border line separating and at the same time uniting the state and the society. This search is becoming more complicated due to the psychologically imbalanced relations between the society and the state. Generally, people tend to treat the authorities and the state unfairly. On the other hand, the power was unfair to the public.

It should be noted that many states experienced similar problems. However, the situation in the West was mitigated by encouraged and promoted self-regulation. It refers above all to market economy tools and democratic government.

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[39] Lurie S., *Metamorphose of Traditional Mentality*, St. Petersburg, 1994. pp. 124, 141.
[40] See, Kolubev A.V., *Russia, 20th century*, Otechestvennaya Istoria, num. 4, 1992.

2. *Contemporary Development* (*Prospects in the Age of Postmodernism*).

A. *Influence of other legal models*

It is possible to say with confidence that pure legal models are just an ideal or a theoretical construct. In real life modern law of the German, French, English, American or Russian state is a system of legal borrowings to a large extent, on the one hand, and on the other hand, "donor" material for establishment of legal systems of other states.[41]

All in all, in the recent years the practice of legal borrowing has significantly expanded. This happens in all countries without any exceptions. International law has become one of the most potent channels of such borrowing. International-law principles and norms become part of the national legal systems. In Russia this principle is formalized by part four of Article 15 of the 1993 Constitution: "Accepted principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation determines other regulations than those provided for by an act, the regulations of international law shall be applied".

In this connection we would like to note that the text of the Constitution itself included many norms of the Universal Declaration of Human Rights of 1948, International Pacts Relative to Human Rights of 1966, other most important international-law documents. Influence of the principles and norms of international law on the contents of the acts of the field legislation: civil, administrative, criminal, procedural etcetera.

Modern Russian legislation develops under the influence of legal models of the most developed states: USA, UK, France, Federal Republic of Germany. It was most obvious in the first half of the 1990s when certain acts, actually, copied the institutions of the Western law of the countries in such fields as bankruptcy, securities markets, banking field, exchange trade etcetera.

However foreign legal norms have not taken root. Illustrative is the fate of the Enterprises Insolvency (Bankruptcy) Act of 1992 drawn up under the influence of the U.S. legislation. In 1988, it was replaced with a new act which did not fall out of the scope of legal regulation traditional for Russia.[42]

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[41] Pigolkin, A. S., *Theory of State and Law*, Textbook for Law Schools, M., 2003. p. 486.

[42] See, Gavrina, S., "Regulation of Banruptcy Institute (comparative analysis of bankruptcy laws), Legal practice", *Ukrainian Laywers' Newspaper, www.yurpractika.com/article.php?id=10000377* March 30, 2010.

Another example is the Trust Decree of the President of the Russian Federation of 1993. In 1996 this institution of the Anglo-Saxon law was introduced into the second part of the Civil Law of the Russian Federation. However, it has not been widely applied. That is why the Concept of Improvement of Civil Legislation of the Russian Federation[43] suggests complete excluding or significant amending of the chapter of the Code of Trust Contract. The assessment of one of the leading developers of the Civil Code A. L. Makovskiy is demonstrative in this relation: "Practice of application of this contract is not actually related to trust and its form is often used not according to the purpose. This institution cannot be a component of our law system! Probably, the reason is that it is based on other mentality".[44]

In general, in the recent years borrowings have been much more deliberate and considered. On the one hand, they took into consideration possibilities of the national economy, and, on the other hand, needs of the country's integration into the global economy. The Civil and Labor, Civil Procedure, and Arbitration Procedure Codes of the Russian Federation may be the examples of such considered approach within which codes unique arrangement of many institutions of law on the solid foundation of the domestic law and, at the same time, using separate constructs of the legislation of other countries adapted to the Russian legal system.

B. *Received Models*

Foreign law may influence the national legal system through legislation, judicial acts, legal doctrines, jurisprudence and legal practices. Correspondently, forms of reception are changing

In the Russian legal system reception of foreign law has been mostly effected in the form of use of separate legal principles, institutions, and norms adapted to the needs of the Russian practice.

In substance, it is a process of reception of the global tendencies of law development. Over the recent decades, the aspiration of the states of the world to unify not only the legislation, but also the directions of social, economic, and political development is becoming increasingly articulate.

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[43] Approved by the Council of the President of the Russian Federation on Codification and Improvement of civil legislation on October 7th, 2009, *Herald of the Higher Arbitration Court of the Russian Federation*, num. 11, 2009.

[44] Interview with Makovsky, A. L., *The Ezh-Yurist Russia's legal newspaaer*, April 15th, 2009.

Gradually, relatively unified law is formed on the global scale, the basis of the law are such values as humanism, tolerance, civil consensus.[45]

a. Embracement at legislation level

As it has been noted above, embracement of other legal models is not so obvious in the modern Russian legislation. They are entwined into the fabric of the current legislation and are often not observable.

The case is that during legislative borrowing ready normative legal "recipes" are adopted as a rule, those "recipes" although being tested in one cultural environment but still requiring confirmation in new legal conditions. To that end it is required to justify not only legal but also moral need of borrowing as well as to ensure presence of own not only regulatory but also material conditions for harmonious implementation of legislative elements borrowed.

As experience of many states demonstrates in the recent years receipt of legislative norms has not been effected "holistically" in the form of borrowing of, e.g., a significant legal institution. As a rule, separate elements, mostly general norms establishing principles and directions of legal regulations, are embraced.

Legislation concerning affiliated persons, major transactions, and interested-party transactions, agreements of members of business entities (agreements of members of joint-stock companies and limited-liability companies) may be named as examples of successful use of foreign experience.[46]

The fact that those constructs have not been embraced mechanically but were adapted and are being adapted to the Russian legal system is security of their taking root and functioning.

At the same time examples of unsuccessful use of some borrowed legal decisions may be indicated. Thus, the norm of Article 2 of the Securities Market Federal Act which reproduces of the American depositary share in the definition of the depositary receipt does not "fit into" the legal system of Russia.[47]

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[45] See, Bainiyazov, R., "The World-View Fundamentals of All-Russian Legal Ideology", *The Journal of Russian Law*, num. 11, 2001.
[46] See, Makovsky, A. L., *About Codification of Civil Law*, M., 2010.
[47] See, Article 2. The Kew Terms Used in the Current Federal Law of Federal Law on Securities Market, num. 39-ФЗ, dated April 22nd; The Collection of Legislative Acts of the Russian Federation, num.17, 1996, Art.1918.

Receipt is effected more broadly via international treaties. Thus, upon Russia's accession to the Council of Europe the Federal Assembly of the Russian Federation passed, and the President of the Russian Federation approved the plan of drafting top-priority acts for harmonizing the Russian legislation with the European Convention for the Protection of Human Rights and Fundamental Freedoms on 20 March 2001. Pursuant to the act the Criminal Code of the Russian Federation, Penitentiary Code of the Russian Federation, Code of Criminal Procedure of the Russian Soviet Federative Socialist Republic (RSFSR), Administrative Misdemeanors Code of the RSFSR, Investigative Activities Federal Act, many other regulatory acts.

While passing new legislative acts not only the requirements of the Convention but also the interpretation provided to it by the European Court of Human Rights were taken into consideration. In particular, the broad interpretation of the concept of "dwelling" by the Court was used in the Administrative Misdemeanors Code and in the Code of Criminal Procedure of the Russian Federation.

b. Judicial practice

In the Russian judicial practice borrowings of foreign determinations of law are insignificant. It develops within the co-ordinates determined by the Constitution and legislation of Russia. At the same time, other models penetrate the judicial practice gradually. First of all, it is predetermined by the constitutional requirement of immediate inclusion of the generally accepted principles and norms of international law as well as Russia's international treaties into its legal system. This means that courts should apply them while adjudicating in certain cases.[48] In the recent ten years a lot of judgments of the Constitutional Court, Supreme Court, Supreme Arbitration Tribunal of the Russian Federation, subordinate courts of general and arbitration jurisdiction have been based on the principles and norms of international law.[49] A tendency of their use as the principal source of substantiation of court positions, alongside the Constitution, begins to take shape at present. This tendency can be traced in the judgments of the Constitutional Court of the Russian Federation most clearly.[50]

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[48] See, Talalayev, A. N., Two Issues of International Law, in Connection with the Constitution of the Russian Federation // State and Law. 1998. num. 3. P. 64.

[49] See, Comments on Past Judicial Rulings and Comments on Past Arbitration Rulings published by the Institute of Legislation and Comparative Law under the Government of the Russian Federation.

[50] See in particular on the issue: Lazarev, L. V., The Legal Propositions of the Constitutional Court, M., 2003; Volkova, N. S., Khabriyeva, T. Ya., *The Legal Propositions of the Constitutional Court of the Russian Federation and the Parliament*, M., 2005; Khabrieva T.Y., *Interpretation of the*

Foreign legal models are introduced into the Russian judicial practice via the judgments of international courts, first of all of the European Court of Human Rights, which are mandatory for performance in the Russian Federation (European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by Russia on 30 March 1998).

As an example, it is possible to provide one of the judgments of the European Court of Human Rights in which it was indicated that use of handcuffs during the court in session violates the right of the defendant to defense. On the basis of the judgment the Deputy President of the Supreme Court of the Russian Federation lodged a protest to the Presidium of Novosibirsk Regional Court. This protest was satisfied, and the case was sent for a new examination.[51]

The practice of the Russian courts' turning to the texts of international documents and judgments of the European Court of Human Rights is growing.[52] At the same time, the need of complex work aimed at increase of qualification of judges with the end for them to acquire skills of application of international treaties and judgments of international courts is becoming more and more obvious.

A new stage in development of judicial practice was opened by the Resolution of the Constitutional Court of the Russian Federation dd. 26 February 2010 concerning the case of constitutionality inspection of part two of Article 392 of the Code of Civil Procedure of the Russian Federation. It was noted in the resolution, in particular, that to satisfy the resolutions of the European Court of Human Rights the persons concerned shall be entitled to apply to the courts of general jurisdiction with the requests to review judgments taking into consideration the evidence newly discovered[53]. While examining such applications, those courts should be guided by the position stated by the European Court of Human Rights.

Constitution of the Russian Federation: Theory and Practice, M., 1998; Khabrieva, T.Y., "Consideration of Cases on Interpretation of the Constitution of the Russian Federation", *Constitutional Judicial Procedure: Manual for Higher Education Institutes*, M., 2003, pp. 299-331; Sassov, K. A. The Legal Propositions for Taxation of the Constitutional Court of the Russian Federation, M., 2008.

[51] *International Law and National Legislation*, Moscow, 2009, p. 357.

[52] See, Zimnenko, B. L., On the Application of International Legal Norms by General Courts, M., 2007, p. 540.

[53] See, Resolution of the Constitutional Court of the Russian Federation num.4-П dated February 26th, 2010, on the Revision of Constitutionality of Part 2, Article 392 of the Code of Civil Procedure of the Russian Federation in connection with complaints filed by Doroshok, A. A. *et al.*, *The Rossiiskaya Gazeta*, March 12, 2010.

In the judicial practice more broad reception of foreign law is promoted by the fact that the Civil Code of the Russian Federation permits corporate and physical persons to subdue their contracts to foreign law. In the event of disputes, Russian courts apply the norms of foreign law which eventually affect the judicial practice in the whole. It becomes more receptive to law protection mechanisms traditionally used in the continental, common and other tradition of law.

c. Doctrine

Formation of the scientific doctrine is a way for creative scientific search and at the same time main way for obtaining new knowledge. Quality differences in the level of the development of doctrines, in different countries is predominated, mainly by peculiarities of historic, social and economic development. It depends also on cultural and ethnic factors. Differences among the states are most notable in the organization of scientific activities, in the structure and peculiarities of scientific potential. In the whole, it is possible to say that in the scientific sphere any state is unique.

Doctrinal researches based on former achievements obtained in the process of scientific studies permit not only to evaluate the state of modern legal practice, to interpret empirical data, but also which is more important to create new concepts, to forecast future results of activities.

Conceiving doctrine as a system for production of knowledge, it is necessary to note, that jurisprudence is utilizing doctrines for elaboration of scientific methods, categories and notions which improves the drafting of laws and other normative legal acts and analysis of their regulating impact.

This explains why at the doctrinal level borrowings are not so obvious. The general theory of law, branch legal sciences study phenomena and operate the concepts and categories of the non-national nature mostly. They are characteristic of any legal model irrespective of its being part of a certain legal family.[54] First of all, the issue is doctrines of a law-governed state, separation of powers, protection of human rights and freedoms which were formed in the general course of development of the international politico-legal science of the modern age and on a very strong foundation

[54] The historical look of Russian conservative of the second half of the 19th century, M.N. Katkov at the issue (see, Katkov, M. N., *The Ideology of Okhranitelstvo*, M., 2009. p. 71 and the following). See also, Voplenko, N. N., *The Sources and Forms of Law. Tutorial*, Volgograd, 2004, p. 23.

created by the efforts of lots of generations of scientists who had worked in the pre-revolution and Soviet Russia.

At the same time, it would be incorrect to completely reject direct and more complete influence of separate foreign doctrines. It exists but in a significantly small segment of the science of law, connected in the main with the development of market relations. Backwardness of these relations in Russia predominates the weakness of the native legal researches. Therefore, they follow in the main the doctrines elaborated in foreign states. In particular, I speak about guarantees of property rights, property liability, intellectual rights and some other issues that still have not become the subject of new theories and doctrines.

d. Legal practice

Legal borrowings are quite widespread at the level of legal practice, mainly in the field of entrepreneurship. With liquidation of the state's monopoly of external-economic activity a lot of Russian companies entered the international market. They were built into the system of co-ordinates which existed there: deals were made, obligations were performed, responsibility was held abiding by the formal requirements assigned by the relevant legislation of Germany, France, the UK, the USA, Japan, other states.

The practice was confirmed by the Civil Code of the Russian Federation.[55] It proclaimed the principle of the freedom of contract, having determined that parties may enter into contracts provided for and not provided for by law and that the contractual terms shall be determined upon the parties' agreement (Article 421). Moreover, developing the principle, the Civil Code introduced the norm according to which the contractual parties may select the law to be applied to their rights and obligations under the contract entered into by them while entering into it or thereafter (Article 1210). As the analysis demonstrates, a significant number of deals of large Russian companies are made with reservations concerning the application of foreign law to them.

Introduction of market principles of economy attracted a significant number of foreign commercial companies to Russia, which companies brought the business rules usual to them to Russia alongside investment. Mostly under their influence new customs of business conduct accepted as one of the source of the Russian law (Section 5 of the Civil Code of the

[55] The First part of the Civil Code entered into force on the 1st of January 1995, the Second part on the 1st of March of 1996, the Third part on the 1st of March 2002 and the Forth part of the Code on the 1st of January 2008.

Russian Federation) began to establish. They are directly applied in judicial practice and significantly influence development of the legislation.

In general, it may be noted that legal practice is one of the strongest channels of penetration of the Russian law by elements of legal models of other countries, including the Anglo-Saxon system of law.

e. The role of juridical science

Juridical science is one of the most perceptible driving forces in the reception of foreign legal models. Russian jurisprudence, from the moment of its birth, has carefully examined the development of the juridical science of other countries, not only in the West but also in the East. These traditions of openness in Russian science have continued in the post-Soviet period.[56] This is evidenced by not only by the discussions that have unfolded in journals and the large chapters in monographs analyzing new jurisprudential ideas, approaches, conceptions, but also in the large volume of translated works. In the last ten years, many classical works concerning jurisprudence have been republished in Russia. I will bring up one example: in the last ten years, 5 books of the great German jurist R. Jhering have been published: Aim in Law, Interest and Law, The Spirit of Roman Law in the Different Stages of its Development, Unsolved Civil Law Cases, On the Basis of Property Protection.

Many works of modern foreign jurists were also published. As an example we can indicate just the books on comparative law. The most famous of these became R. David's book, Major Legal Systems in the World Today, published three times (the last time in 1999, in co-authorship with K. Joffre-Spinozi). In 1996, the book, Introduction to Comparative Law in the Field of Private Law (1995), written by K. Zweigart and H. Kötz, was released. In 1994 and 1998, the classical work written by Harold Berman, Law and Revolution: The Formation of the Western Legal Tradition (1994 and 1998) was published.

In 2008, the book, Comparative Law: A Schematic Commentary, written by Christopher Osakwe and in 2009, the work of R. Legeais, Grand Systems of Contemporary Law: A Comparative Approach, were released.

It is necessary to note few books of the Uzbek comparative jurist A. Kh. Saidov were published: Introduction to Comparative Law (1988); Comparative law and the World's Legal Geography (1993); Comparative

[56] Grafsky, V. G., "Laws and Customs in the Legal Traditions of The West-Russia-The East", *Foreign Experience and Russian Traditions in Russian Law: Materials from the Russian National Research Seminar*, St. Petersburg, 28-30 June, 2004, p. 107.

Law (2007), and also the books by Ukrainian researchers O.F. Skakun, General Comparative Law. The Main Types (families) of Legal Systems in the World (2008) and A.D. Tikhomirov, Legal Comparativism: Philosophical, Theoretical and Methodological Issues (2008).

The works of foreign jurists are constantly being published in Russian periodicals. For example, in the journal Zhurnal zarubezhnogvo zakonadatelstva i sravnitelnogo pravovedeniya (Journal of Foreign Legislation and Comparative Law), published by the Institute of Legislation and Comparative Law under the Government of the Russian Federation, a fourth of all articles are the works by researchers from the USA, France, China, Germany, Italy, Austria, Ukraine, Belarus, Kazakhstan and many other countries.

Such publications give a powerful impulse for the discussion of relevant issues concerning government and law, and they expand the field of legal research and facilitate the development of intercultural dialogue. At the same time, they have a perceptible influence on the theoretical understanding of modern legal processes and on the development of new techniques and methods of scientific learning.

Openness of the science, its eagerness to solve new problems gave a powerful impetus for the development of legislation, for the appearance of new institutions and norms. For instance, the ideas of constitutional justice, recepted from foreign states received broad theoretical substantiation in the works of V.K. Dyablo, M.A. Nudel, I.P. Ilyinsky, V.A. Tumanov and some other scholars.[57] In 1991 they have been used in elaboration of constitutional and legislative norms on the Constitutional Court of the Russian Federation.

The Russian legal science has accepted a number of other ideas put forward in the works of foreign scholars. As an example may serve the doctrine of local self-government, elaborated by G.V. Barabashev and B.A. Strashun mainly under the influence of the ideas of British and American legal schools.[58]

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[57] Dyablo, V. K., *Judicial Protection of Constitutions in the Bourgeaus States and in the USSR*, M., 1928; Nudel, M. A., *Constitutional Control in the Capitalist States*, M., 1968; Ilyinsky, I. P. and Shetinin B. V., "Constitutional Control and Protection of Constitutional Legality in the Socialist States", *Soviet State and Law*, num. 9, 1969, p. 40-48; Tumanov, V. A., "Judicial Control over Constitutionality of Normatiive Acts", *Soviet State and Law*, num. 3, 1988, pp. 10-19; Khabrieva, T. Y., *Legal Protection of the Constition*, Kazan, 1995.

[58] Barabashev, G. V., *Local Self-Government*, M., 1996; Barabashev, G. V., *Municipal Organs of Modern Capitalist State*, M., 1971; Strashun, B. A., *Self-Government of Citizens*, M. 1986. арабашев Г.В. Местное самоуправление, М., 1996. Барабашев Г.В. Муниципальные органы современного капиталистического государства. М., 1971; Страшун Б.А. Самоуправление жителей, М., 1986.

The theory of coincidence of collisions and the system of rules for their solution have been actually transplanted in the Russian jurisprudence from the Polish legal science.[59]

Gradually in the Russian legal doctrine, though in a modified form, has been rooted the ideas of case law. For instance, L.A. Morozova points out that regardless of the official acknowledgement of the judicial practice as a source of law, it is actually giving birth to new legal norms thus creating a certain peculiar independent channel of rule-making.[60] In the whole, according to the opinion of many scholars, it is necessary to recognize now the existence and inevitable necessity of judicial law making, because there are a lot of complicated legal problems which do not have precise and not dubious legislative solution.[61]

Science was not only propagating the ideas accepted from the experience of other states, but was actually taking part in elaboration of legislative acts. For instance, the Institute of Legislation and Comparative Law under the Russian Federation Government took part in drafting the Constitution of the Russian Federation, Civil, Labour, Criminal and other codes, federal laws "On Principles and the Order of Division of Province and Powers between Organs of State Power of the Russian Federation and Organs of Subjects of the Russian Federation" dated June 24, 1999, "On General Principles of Organization of Local Self-Government in the Russian Federation" dated October 6, 2003 and many other legislative acts.

Of course, science was not always ready for accepting and creative processing of certain legal institutions. In particular, it is possible to note administrative procedures. Unlike many other states, in Russia there is no federal law defining general principles of administrative procedures. And the reason for this is not only the complexity of the reform of bureaucratic structures, but the weak theoretical cultivation of this theme. With the aim to fill in such gap the Institute of Legislation and Comparative Law under the Russian Federation Government jointly with the University Paris I Pantheon-Sorbonne have conducted a big scientific research on the subject "Administrative Procedures and Control in the Light of the European Experience".

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[59] Opalpek, K. and Wroblwwski, J., *Zagadnienia teorii prawa*, Warsawa, 1969, p. 102 and 103.
[60] Morozova, L. A., "Again about Juidicial Practice as a Source of Law", *State and Law*, num. 1, 2004, p. 23.
[61] Kolokolov, N. A. and Pavlikov, S. G., *Law, Legislative Act, Judicial Precedent: Russian Version*, M., 2008, p. 89.

In the whole, currently the role of science in the processes of reception is becoming stronger.

f. Reception methods (codification, legislative acts, etcetera.)

Generalizing, we can note that reception occurs on different levels: in legislation – through the incorporation of the principles and norms of international law and the embracement of certain norms of foreign legislation; in court practice – through the implementation of international legal norms and the decisions of international courts; in juridical science – through the research and compilation of new academic ideas and constructions.

The codification of the civil, criminal and procedural legislation, as with the development of Russian legislation on the whole, has developed, overall, along the lines of those traditions, forms, and legislation-related systemization techniques which have formed in the Romano-Germanic legal family.

Additionally, the experience of other legal systems is also taken into account – mainly from those countries that have established traditions of functioning market economies (in particular, Anglo-Saxon law), which offer more perfected methods of building up the state and increasing its effectiveness.

Studying foreign experience and its correlation with Russian experience helps to better understand legal institutions and their nature, and also to clarify, what certain difficulties in its functioning are connected with.

Currently, together with traditional methods of legal reception, other methods are arising that predominantly include elements of political influence. For instance, last years there were a lot of recommendations for reception of normative rules made by International Monetary Fund, International Bank for Reconstruction and Development and by various expert organizations such as New Dartmouth Conference, Club of Rome and so on. They recommend receive one or another method of regulation or mechanism for implementing regulations. In can be either a proposal of a norm with specific content or the provision for their operation by the way of material support and financial control.

Another method is a political-legal influence through the creation of social groups that are associated with law-making activities.[62] Through their

[62] The well known example is the activities of the lobbyist groups. See, Lubimov, A. P., *Lobbyism as the Constitutional and Legal Institution*, M., 1998.

participation in the initiation and presentation of laws, an established channel for the formation of nontraditional (for the society in question) regulations could be created.

Yet another method is an informational-legal influence which includes the proposal of recommended "rules of the game": it is proposed that historically customary laws are to be viewed as mainly a means to critically reason previous legal experience. Certain characteristics of this method resemble the method of expert consultations when updating legislation.

g. Terminology

Reception also occurs though the use of foreign, mainly Western legal terminology. Its adoption is an objective process[63] that is triggered not only by the influence of international law but by the need to provide for a unity in the regulation of, mainly, economic relations. That is why the adoption of terminology is most often found in the fields of civil, financial and banking legislation.

Unfortunately, in the last few years we have seen an excessive adoption of Western terminology. Thus, the Civil Code includes such terms as *del credere*, *aval*, *leasing*, *beneficiary*, *sequester* and others which are incomprehensible not only for the majority of the population but for many lawyers as well.

Often times, foreign terms are introduced without taking into account those definitions that have been developed by Russian legal science. As a result, contradictions arise. So, the same concepts are defined differently in different sectoral legislation. But there must be a unity in the terms and they must service the legislation as a whole regardless of sector.[64]

The situation is made worse by the fact that the terms are adopted from different legal families, mainly from continental and common law. As a result, a "double-layered" basis for conflicts between norms arises, where the first layer is the contradiction between the Russian and foreign terms and the second layer is the contradiction between terms from different legal families.

At the same time, it is necessary to emphasize that necessity of providing for a unity in terminology, because without it, the full-fledged development of foreign economic relations, technical regulations,

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[63] See, for example, Krysin, L. P., "Russian Lexicon, Russian and Foreign", *Current Russian Language and Socio-linguistics*, M., 2004, p. 667.
[64] See, *Zhurnal rossiyskogo prava*, num. 11, 2009, p. 116.

environmental protection, and the solving of other problems brought on by globalization becomes impossible.

C. The driving forces of reception

*a.*We can confidently talk about the presence of two polar opposite trends in Russia's cultural development: traditional and liberal. On the one hand, development is oriented towards the static ideal of preserving former norms of life, and on the other, to its transformation through the embracement of new ideals, the refinement of state institutions, increasing the efficiency of production, and expanding the potential of the person. Static ideals are the most important for traditional culture, while dynamic ideals are the most important for liberal culture.

The following question thus arises: which of the cultures is the dominant one?[65] It is clear that juridical science is not enough for this kind of comparison; here we need a socio-cultural comparison of the historical experience of different countries, their development programs, which could in reality or potentially become the basis for the integration of society, thus preventing its collapse and disintegration.

We must also note that ideology in the Russian Empire and the Soviet Union was based on the aspiration to amplify the significance of authoritarian origins in the interests of reinforcing the authority of the state, which at times grew into totalitarianism. However, Russia also has other traditions based on the ideas of liberalism.

In recent years, liberal ideas have gotten the upper hand. Society and government has banked its future on them because they, to a larger extent, correspond to market relations and provide for the limitless expansion of the individual's potential.[66]

Overall, the assertion of liberal values as an objective process is mainly subject to factors of internal development.[67] In this process, elements of borrowing and imitation play an insignificant role. This is evidenced by the originality of many political and legal institutions in Russia. And it's not a matter of the peculiarities of the systemization and drawing up of legislation. As mentioned above, the Russian legal system does not hinder models (constructions, solutions) from other legal systems. There are no problems

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[65] See, Dezamy, T., *The Code of the Community*, translated from French by E. A. Zhelubovskaya and F. B. Shuvaeva, Volgin V. P. (ed), M., 1956. p. 547.
[66] See, Akhiezer, A. C., *Russia: A Critique of Russian Experience*, M., 1993, p. 43.
[67] See, Melnikov, A. N., *Liberal Values in a Post-totalitarian Society http://ashpi.asu.ru/kiak/congress2/page4.html* (31 March 2010).

with translations of legal texts and the understanding of their meanings. Russian politicians and lawyers know foreign legislation well and are also schooled in English, French, Spanish, German, and other languages thus putting them on par with their Western colleagues.

Russian law is developing in inseparable unity with internal economic, social, and political processes and is oriented mainly towards its own experience and not on that of other governments.

b. Scientific sphere

As mentioned above, science as a whole and juridical science in particular is one of the most perceptible driving forces in the reception of foreign legal models. This is due to the processes of the internationalization of science, which are accelerating more and more as the internet and other modern communications tools are spreading.

At the same time, one shouldn't exaggerate the significance of this driving force. Juridical science processes the ideas and constructions taken from other legal systems and adapts them to those relations, which exist in Russian government and society. That is why reception is mainly limited to the embracement of ideals, values and legal symbols.

Currently, problems are being identified, which the degree of their development shows that in Russian as well as in foreign legal literature there are a lack of comprehensive studies about relevant issues concerning the modern state of law that could be standards for the development of the legal experience of many governments. In particular, among acute problems which need comprehensive studies are such themes as the limits of legal regulation, combination of economic and legal instruments and so on.

Blind spots and black holes still remain in juridical science. We can say that certain legal aspects of deep social-economic transformations in Russia on the cusp of the 20-21st centuries such as an objective analysis of the prerequisites for social transformation and the role that legal institutions play in them, and an assessment of the actual legal benefit of judicial, legal, and administrative reforms are little known to foreign audiences. Russian legal literature is in fact difficult to access for foreign researchers because of the small number of translations.

c. Economic factors

The strongest driving force of reception is economics. The necessity of switching to a new economic system, the modernization of industry,

overcoming the consequences of the financial crisis, and the objectives of making an innovational breakthrough in the economy all demand a careful examination and use of those models that have proven their effectiveness.

For instance, in Russia there is now a discussion concerning the adoption of a special law on innovation activities. Such acts have been adopted by many states. India has enacted the Law on National Policy in the Field of Innovations in 2008. The same year Poland has adopted the law On Certain Forms of the Support of Innovation Activities. The same acts are in force in Serbia, Ukraine, Hungary, Moldova, Kazakhstan and other states. There is an appropriate act in France – Law on Innovations and Researches dated July 12, 1999. But unlike the acts of other states, it does not provide a complex regulation of the sphere of innovations.

In Russia several drafts of the law on innovation activities and innovation policy have been elaborated. But they failed to receive due support. Their provisions in the main were declaratory and were lacking legal content.

The crucial issue for such a law is there an independent subject of legal regulation. The answer to this question determine whether innovation regulation would be embodied in a new special legal act (separated entity of acts) or would be left within the existing framework of regulation.

The increase in International trade and the expansion of foreign economic partnerships dictate the need for unified regulations of economic activities. This explains why model acts have received such a broad dissemination.

Model regulations are widely used in business practice. For example, the standard repurchase agreement and Global Master Repurchase Agreement have been widely used in financial markets. These agreements were developed by the International Securities Market Association and The Bond Market Association

In the last few years, large business structures and public associations of entrepreneurs have set up arbitration courts. Thus, the following arbitration courts have been set up under The Chamber of Commerce and Industry of the Russian Federation: The International Commercial Arbitration Court (ICAC), The Maritime Arbitration Commission (MAC), Court of Arbitration for Resolution of Economic Disputes, and the Court of Arbitration for Sport. Representatives from foreign countries are often times invited to participate in the operations of the arbitration courts. For example, the arbitrators of The International Commercial Arbitration Court are

lawyers from the UK, the USA, France, Germany, Sweden, Mongolia, Finland, Poland, Romania, the Czech Republic, and a number of other countries.

Legislators have rather comprehensively met economic needs and expectations in the current legislation of the Russian Federation. They are even more widely reflected in the regulations in ministries, agencies and services that are part of the economic block of the Government: The Ministry of Economic Development, The Ministry of Finance, The Ministry of Industry and Trade, The Federal Service for Financial Markets, The Federal Information Technology Agency and others.

The 1990s saw the chaotic development of economic legislation. Laws and regulations were often times passed based on opportunistic expediency under the influence of various business groups, each of which pursued it own private interests.[68] In the last few years, the situation has changed significantly. This was facilitated not only by the adoption of large systemic regulations such as the Civil and other codes, but also the optimization of the system for preparing and agreeing laws and other regulations. Last years major part of law drafts is initiated by the Government. Coordination of the lawdrafting work has been enhanced. Currently, it is coordinated by the Governmental Commission on Law-Drafting Activities.

d. Direct influence or influence from third countries

The tight intertwinement of the norms of international and national law, the interaction and mutual influence of various legal systems, often times does not allow for the identification of the source of these or those models. That is why it is always difficult to answer the question of where the influence originated from: directly from the country from which it originated or through a third country which had adopted it from somewhere else.

Direct adoption, in general, occurs during the process of bilateral or multilateral integration in certain spheres. Thus, within the framework of the Customs Union between the Russian Federation, the Republic of Belarus and Kazakhstan, there is an active implantation into the legal systems of Belarus and Kazakhstan of Russian models for regulating customs relations. A certain influence is also exerted upon Russian customs legislation and technical regulations (in Russia, in particular, the technical regulations of Belarus and Kazakhstan are allowed to be in force)[69].

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[68] The Organization of Legislative Work in the Systems of the Federal Executive Branch. □., 2005. P. 28.

[69] For more details, see: Law and Intergovernmental Associations. SPb., 2003. P. 244-282.

Adoption within the framework of the Customs Union, as in other associations whose goal is integration, is done on a voluntary basis. And the dominant influence of Russian models is predetermined by Russia's dominant economic and political position.

D. *Main identifiable characteristics of adopted models: legislative, legal, and doctrinal*

It is difficult to find any identifiable characteristics of adopted legal models apart from international law models. As have been noted above, legislation does not contain any references to the acts of foreign states and if it uses foreign legal material, it is mainly in a processed form and does not cite the models that were adopted. In judicial practice it is also impossible to point out identifiable features of received legal models. It is developing following the guidelines of legislation and previous judicial practice. Legal doctrines also do not show the source of their origin or just indicate that they have general legal and transnational nature

E. *Elements of legal hybridization*

Now we are approaching the problem of legal rule hybridization, i.e. synthesis of elements adopted from different legal systems, including the domestic one. We may make many examples of rather successful synthesis of legal categories. For example, Part IV, RF Legal Code, introduces a notion of "intellectual rights", in this case we follow the example of Austrian, Danish, Norwegian, US, German, Swiss, Swedish and Japanese legislations, which use the legal category of exclusive rights instead of "intellectual property", "industrial property" and "literary property". However, this category fails to be implemented successively that is confirmed *inter alia* by Article 1246 devoted to state regulation of relations in the sphere of intellectual property.

Certain efforts to combine elements of different legal systems were unsuccessful. As an example we may refer to an effort to consolidate two opposite approaches to regulation of real estate transactions in the Russian legislation – the American model (when the law stipulates registration of transactions themselves but not the fact of devolution thus accumulating in the course of time just "a folder" of transactions conducted on the said real estate) and German model (when the law stipulates state registration of devolution or transfer of real rights but not sale contracts or other contractual agreements that result in devolution of real property).

Such combination of opposite approaches by the Russian legislator instead of selection of a particular regulation model makes civil real estate transactions in the Russian Federation unjustifiably complicated.

This circumstance was especially noted during discussions and adoption of the Russian Federation Civil Legislation Development Concept as a scientific basis for further improvement of the civil law.

Another example of unsuccessful combination of different models is a Russian-legislator-selected approach to establishment and operation of business entities (public and private joint stock companies, limited-liability companies and superadded liability companies). The Russian legislator establishes liberal requirements to the amount of authorized capital but simultaneously fails to stipulate severe sanctions against founders (participants) involved unfair practices.

The same defect is inherent in the institute of preliminary contract. It has been included in the Russian legislation but lacks any contractual liability tools (culpa in contrahendo). The model of preliminary contract currently provided in the Civil Code actually fails to indue such agreements with legal force, and opens ample opportunities for unfair transactors involved in the negotiation process in prejudice of property interests of transactors in good faith.

In the whole, it is possible to note that legal hybridization is inherent in the main to the civil and financial law which regulates relations which are still not finally formed.

F. *Psychological perception*

Lately, a turning point has begun to show in psychological perception. Public conscience perceives legislation of developed countries both of the West and of the East (Japan and Korea in particular) as one of the main tools to provide for economic growth, welfare gain, enhancement of order, establishment of democracy, protection of rights and freedoms. Respectively, assessments of foreign legal models undergo changes. They become free of confrontability characteristic of the Soviet period. Aspirations to look into and understand mechanisms of legal rules, and if needed use those legal solutions (elements of legal solutions), which enable the state and society to solve their problems, dominate nowadays. Such changes in psychological perception strengthen the confidence that liberal ideas will have a strong presence. Indeed, until now the liberalism in Russia suffered defeat not only due to its weak social and cultural base but also due to

abstract nature and underdevelopment of its ideas and values at all levels of society.[70]

A primary target of boosted development of the legal model adopted in the modern Russian State is to save human resources. To this end, various legal programmes should be implemented in the following spheres:

- Health care (liquidation of depopulation trends, support of motherhood, childhood and family);

- Development of intellectual resources (establishment of science-intensive society);

- Hi-Tech development (first of all, in the spheres of computers, biotechnologies, ecologically pure nanoindustry, etcetera.);

- Development of territories (first of all, north-eastern regions of the country);

- Ecology (preservation, support and rehabilitation of the Russian natural environment).

In general, human psychological perception of the law, legal bans and permits, constraints and preferences depends not only on properties of established legal regulation mechanism or ideas elaborated by the domestic legal doctrine. A sum of factors that psychologically provide for perception of the law as a positive part of our life eventually is uncalculatable since the human-being perceives not only the scope, clarity and accessibility of the law, its material sources and doctrinal justifications. The law is perceived not only as a solid social object but also as an element of private human life evoking particular (positive or negative) sentiments. Positive attitude to the law and its institutes, and therefore to the rules of law, their observance or inobservance, depends on dominance of "positive" sentiments.

In the modern Russian legal model, psychological perception of the law is affected by a specific trend of state development. Russian legal experience has demonstrated that the State may function successfully if it personifies a legal, cultural and organizational form of dialogue, its particular configuration that corresponds to complexity of emerging challenges at the respective stage of life. History of the Russian State many times demonstrated ability of the nation to overcome break-up, and configure an effective state-legal mechanism of dialogue. Emile Durkheim urged: "We

[70] Berdyaev, N. A., *Philosophy of Free Spirit*, Moscow, 1994, pp. 62, 324.

should abandon this far too prevalent habit of judging an institution, a practice or a moral position as *if* they *were good or bad* in or by themselves".

In the context of psychological perception of the law by citizens, a problem of their legal consciousness and legal culture of the society becomes evidently urgent. In general, legal culture of the society and self-consciousness of the people serve as collateral for correct and normal fulfillment of social and state functions by the public authority. But the culture means not only cultivation of positive behavior samples but also imposition of constraints.

A problem of constraints in the law currently is in the focus of attention. Evidently, there are many spheres of social life where constraints of rights imposed on the grounds of cultural level support, are just necessary For example, public broadcasting of aesthetically inferior "works of art", which cultivate basic instincts, should be prohibited while their private broadcasting should be restricted. Permanent attention to the level of culture in the society has only positive effect on solution of a national moral health care problem, which has become urgent lately. This in turn is directly connected with perception, observance and fulfillment of the rules of law.

II. INDIVIDUAL INSTITUTES AND LEGAL MECHANISMS

It is reasonable to discuss specific features of legal reception by the example of two branches of law: financial and constitutional, which have adopted foreign legal models in different scopes and forms.

1. *Financial law*

Historically, institutes of the financial law were the first to emerge. They became emerging in Ancient Rus of the late IX century in the period of uniting the ancient Russian tribes and lands. The first subject of regulation was taxes. Exactions to feudal lord's treasury ("render") were initially irregular and looked more like contribution from conquered tribes. In the course of time, the render transformed into a regular direct tax paid with money, food, etcetera. The render was collected in the form of provision of horses and cartage ("povoz"), and in the form of a tax so collected ("poludye"). In Kievan Rus, a taxable unit was "chimney smoke" that showed the number of chimneys and ovens in each household. Another common exaction was so called "myt" or a sort of customs duty collected when goods were transported over guard posts located next to towns and big settlements.[71]

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[71] Yushkov, S. V., *History of State and Law of USSR: Educational Book*, Moscow, 1961, pp. 64-77.

At later stages, the institutes of fiscal law were revises many times. Major reforms were implemented under Tsars Alexey Mikhaylovich and Peter the Great.

Emergence of the insurance institute in Russia is associated with an ancient Russian legal document called "Russkaya Pravda", which contains interesting data on the legal system of the X – XI centuries. You may find all elements of civil liability insurance contract[72] in Articles 6 and 8 of Russkaya Pranda. Under Peter the Great, marine insurance was introduced. The first effort to establish a unified insurance system in the Russian Empire was made under Ekaterina II. As the State Bank of Borrowings was established in 1876, it was entitled "to take in pledge houses and factories made out of bricks at its own risk and peril". To secure the pledges, they established the State Insurance Expedition at the bank in order to carry fire insurance of goods and buildings. In so doing, the new bank was entitled to take in pledge only those houses and real estate that have been insured in this bank. Insurance in Russia was always associated either with direct state regulation or with state patronage (provision of specially established state monopoly to insurance companies, i.e. their support in the cradle).

In the XIX century, new institutes of financial law emerged. Rules of budgetary law were regulated rather completely. Such acts as General Cost Estimate Rules of 1892 and Procedures for Consideration of State Income and Expenditure Statement of 1862 have introduced a principle of budget integrity.

Certain arrangements of the emerging budgetary law have been adopted from foreign countries. In particular, it is referred to the institute of budget openness.

The domestic and foreign scientific literature and official documents of the late XIX century unambiguously indicate the cause of such reception - the need to improve effectiveness of budgetary policy.

At the first stage of the reform (1862), legal acts of France, Belgium and Prussia were examined, and individual elements of budget openness mechanism specified in these acts were used.

In the course of subsequent reforms, Russia adopted a French-Belgium model of budget openness doctrine. Such step was mainly preconditioned by changes in the political system of the State (introduction of representative power elements). Meanwhile, it should be noted that many

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[72] Orlanyuk-Malitzkaya, L. A. (ed.), *Insurance Operations* (*Strahovoye Delo*), Moscow, 2003, pp. 20 and next.

important elements of parliament budgetary right exercise mechanism have not been perceived (there was no independent body of financial monitoring; right to approve/disapprove a majority of expenditures was not within the competence of the State Duma, etcetera.).[73]

It is worth noting that propagation of that model of the budgetary law at that time was all-round almost in all countries of Europe, but for Turkey.

However, after the revolution of 1917 and change of political regime the legal institute of budget openness again was negated. This institute enjoyed revival only in 1985-1991.

Until the end of 80s, there were no major receptions in the sphere of the financial law. But in the last decade of the XX century the situation started changing. It was associated with transition of the economy to market relations when the country faced a new cluster of problems in the spheres of taxation, banking and state financial monitoring, etcetera.[74] The domestic scientific research base in these spheres was underdeveloped. Therefore Western experience was borrowed to a certain extent.

2. *Constitutional law*

The first acts of constitutional significance were adopted in Russia amid the powerful revolutionary movement of 1905 – 1907. On November 17, 1905 Manifesto "On the Improvement of Order in the State", and on April 27, 1906 – "Fundamental Laws of the Russian Empire" were published. These acts have been prepared by "the Constitutional Counsel" chaired by Emperor Nicolas II.[75]

In general, they were built on the available rules organized in the Code of Laws of the Russian Empire, in particular in its section "Fundamental State Laws". At the same time, it is undoubtedly that originators used constitution development experience of foreign countries. The reception is observed most distinctly in constitutional regulation of human rights and freedoms, as well as forms of State Duma activities, i.e. in those spheres, which have become regulated for the first time in Tsarist Russia. For example, when determining the person's legal status, originators of "Fundamental State Laws" used legal provisions of the American, French, Swiss and Prussian constitutions on inviolability of dwelling (Article 33),

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[73] Alexeyev, A. A., *Budgetary Law of Representation of the People*, Kharkov, 1918, pp. 11-18, 284.
[74] Sinitzin, N. A., *Budgetary Law of Russia before the Revolution. Educational Book*, Moscow, 1998, p. 65.
[75] Kokovtzev, V. N., *Out of my Past. Memoirs 1903 – 1019*, Book 1, 1992, pp. 125-30.

freedom of residence and occupation, and right to acquire and alienate property (Article 34), right to hold peaceful meetings (Article 36), and freedom of association (Article 38), etcetera.

Enrooting the parliamentary system of government, originators of "Fundamental State Laws" used constitutional provisions of foreign countries about parliamentary questions (Article 66), and budgetary process (Articles 72 – 76). Of course, there was no blind imitation. The respective provisions were edited with due account for the existing monarchical power system. It was not seldom when they got new content. Chapter 3 "On Laws" is illustrative in this case. This chapter for the first time in the history of constitution so completely regulated the substance and operation of the acts of law.

The first constitutional act of Bolshevik Russia, i.e. the Constitution of the RSFSR of 1918, completely disregarded the values of bourgeois constitutionalism. Together with them, many other fundamentals of the society (economic, political and moral) have been destroyed. Formally, the political power belonged to the Soviets of Workers', Soldiers, and Peasants' Deputies established as a unified system at all levels of state governance, i.e. national, regional, provincial, district, municipal and village levels. But in fact, full authority belonged to the Bolshevik Party.

No matter how the Constitution of revolutionary Russia could be novel, many its provisions actually evolved from constitutional acts of other countries. First of all, it is referred to fundamental laws of revolutionary France. By its example, Bolsheviks introduced an institute of people's commissars, as executive power bodies. Their hierarchy was headed by the Soviet of People's Commissars of the Republic (Articles 37 - 48).

Certain other constitutional arrangements and provisions of foreign countries were also used. In particular, Collegiums established at People's Commissariats were analogue of Western European collegiums of ministries (Article 44). Elections were arranged and held by Election Commissions, which operation procedures formally did not differ from those of similar commissions of many foreign countries (Articles 66 – 70).

The policy consolidating new elements of constitutionalism was continued in the next fundamental law, i.e. the Constitution of the USSR of 1924 that confirmed the priority of government property and state-planned economy (Article 1), supremacy of Soviet power (Articles 8 and 64), and principle of revolutionary legality (Article 43), etcetera. Meanwhile, this act contained many rules of law that regulated procedures of public authorities almost in the same sense as constitutions of other countries did it. In

particular, it is referred to the sessional order of work established in the Soviet of the Union and Soviet of Nationalities, i.e. two houses of the first USSR Parliament, as well as to that of the Judicial Collegium for Civil Cases and Judicial Division for Criminal Cases of the USSR Supreme Court, etcetera.

The Constitution of the USSR of 1936 has mollified "revolutionary" paphos of the first Soviet fundamental laws. Its text did not contain rhetoric of class hatred and class struggle although it was the time when a new wave of mass repressions rose. A mechanism of state power started getting more familiar configuration. In particular, the Soviet of People's Commissars has changed its name to the Council of Ministers, and the people's commissariats – to the ministries traditional for many Western countries. Formally, the 1936 Constitution has restored many constitutional rights and freedoms common for all countries. However, in fact they were not observed and used as a sort of a screen to hide true nature of the totalitarian power.

The next fundamental law, i.e. the Constitution of the USSR of 1977, was also declarative. For example, it proclaimed a principle of socialist democracy (Article 9) that had little in common with the real democracy. It has introduced an institute of referendum (Article 5) that yet has never been used in the Soviet time. Many constitutional values common for all countries have been distorted.

Turning point in constitutional development was observed after the USSR collapse. In 1993, the Russian Federation adopted the first genuine democratic constitution that fully complies with the standards of contemporary constitutionalism. As stated above, it has incorporated a significant number of international legal rules regulating the person's legal status. For the first time in the Russian history it implemented principles of democratic and law-based state, separation of powers and local self-government. This fact explains similarity of many Russian and foreign constitutional institutes. For example, the Russian model of separation of powers that consolidated a special status of the president, has much in common with the French constitutional model. Constitutional legislative consolidation of the local self-government principle in Russia corresponds to the standards that were historically applied in the West European countries, and subsequently used for configuring local authorities in many other countries.

3. *Results of reception*

Analysis of foreign legal model reception by the example of two branches of law shows that the reception was conducted in different scopes

and forms. In the constitutional law, it was limited with reception of mainly individual principles and terms. In the financial law, it was more extensive. The Western legal models had the strongest influence on the securities market legislation. Their influence was also observed on certain insurance law institutes.

At the same time, legal models of foreign countries both in the constitutional law and financial law were never perceived by Russia in their pure form. Russia perceived only their individual principles and approaches that were modified under the influence of various factors: ideological, political, economic and international.

4. *What were the driving forces for adoption of law models*?

The main task set by the 1993 Constitution was to provide political stability. It was necessary to rule out the recurrence of the tragic events of 1993, when the stand-off between the Russian President and The Congress of People's Deputies drove the country to the verge of a civil war. This objective was mainly achieved through political means, mainly due to the efforts of the first President of Russia. He was also the main inspirer of the reception of many legal models of foreign states.

The financial law reform addressed different tasks: law codification and bringing it closer to similar laws operating in world leading countries. The improvement of financial institutions with due consideration of the relevant experience of leading states is one of the requirements of the Russian business community. The main tasks were to remove unnecessary administrative barriers, create sound competition, guarantee ownership rights, and lower an excessive tax burden. So, the main driving forces of these reforms were not only state bodies but the business community as well.

Juridical science has had a serious effect on the development of constitutional and financial institutions. It has perceived many of the doctrinal ideas worked out by the foreign science. Thus, constitutional law was effected by the French juridical school. This can be seen not only in presidential ruling, but also in a number of other institutions and tenets devoted in particular to popular sovereignty, government structure and forms of activity.

In XIX and the first half of the XX century financial law was mainly influenced by the German school of financial law, in the end of the XX century – by the American school of financial law. The ideas of these two schools are used for improving of financial policy, transferring the economy to innovative development path. In particular it concerns tax incentives, the

improvement and simplification of tax control procedures, tax accounts procedures and forms, mitigating responsibility for economic crimes, the increase of the number of financial instruments on the financial market, etcetera.

The rapid development of financial legal relationship calls for systematization of norms that regulate relations in financial and economic fields. The Russian financial law science is involved in debating the codification of banking and currency law on the model of some foreign countries.[65]

5. *Main identifiers of perceived models*

The modern Russian constitutional and financial law is based on the civil law legal system on the whole. At the same time, the role of judicial precedent has been increasing, for example the role of orders of the Constitutional Court of the Russian Federation, of resolutions of the Supreme Court and the Supreme Court of Arbitration. This indicates the appearance of elements essential in common law legal system.

In the recent years the role of international legal regulatory standards has increased significantly. Mainly these standards determine the legal position of the Constitutional Court of the Russian Federation when it comes to interpreting and applying the constitutional norms concerning personal rights and freedoms. The financial law is getting more influenced by recommendations rendered by the Organization for Economic Co-operation and Development, by International Monetary Fund, and other international organizations. References to these documents are often found in concepts and substantiations of drafts of various legislative acts.

As noted above, there has been no direct adoption of foreign fundamental laws in the constitutional development of the Russian Federation.

The modern development of financial law presents a different picture. In the first years after the break-up of the USSR, attempts were made to transfer some legal patterns (high tax rate with a sophisticated systems of deductibles, offsets, reimbursements, with no direct benefits and preferences, etcetera.) automatically from law systems of the US, Germany, and other countries.[66] It was not till 1990th that a more balanced approach

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[65] See, for example: The Concept of Russian Bank Code (preliminary materials), *Analytical Bulletin of Federal Council of Federal Assembly of the Russian Federation*, num. 15, September 2000.

[66] See Chernzh, D. G., "Property or Real Estate Tax?", *Nalogovy Vestnik* (*Tax Bulletin*), num. 3, 2001, p. 15.

began to prevail. One of the examples is the project of developing a real estate tax system based on the estimation of its market value.[67] In October 1995 The United States Agency for International Development began the financing of the program for technical cooperation *Developing of Real Estate Tax System on the Basis of its Market Value*. Since 1997 the towns of Veliky Novgorod and Tver became a scene for the experimental program on real estate taxation, when a number of property taxes (enterprise property tax, income tax, and land tax; article 2 of the Federal law o*n Experiment*) were replaced by a single real estate tax. The objective set for the experiment was to stabilize tax receivables into local budgets and cutting taxation of the active part of capital assets.[68]

However, the project was suspended. At present, the concept of the real estate tax based on its market value has been significantly changed. Serious preparatory work on setting a real estate register is underway. The tax is intended to be introduced step-by-step considering uneven development of various municipal areas and threats of abrupt change in the tax burden on various taxpayer categories.

Financial crisis has increased Russia's attention to amendments in laws of foreign countries targeted at overcoming crisis consequences. For example, measures to stimulate the demand for home-made cars were adopted on the Russian soil after the analysis of their use in Germany and the USA.[69]

The principles of business purpose, of arm's length, and many others have been adopted to protect public interests. Thus, the principle of arm's length is reproduced in article 40 of Tax Code of the Russian Federation; the principle of business purpose-in Plenum Resolution num. 53 of the Supreme Court of Arbitration dated 12 October 2006 "On Assessing the Validity for Receiving Tax Benefits by Courts of Arbitration".

6. *Identifiers of law hybridization*

The signs of law hybridization are the combination and synthesis of diverse elements of law. They can be recognized in law terms, norms, and institutions.

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[67] See Sup S. I., "Land and Property Complex in Russia as regulatory object", *Legal Regulation of real estate market*, num. 2-3, 2000, p. 8.

[68] See Ivahnenko, A. N. *et al.*, "Reformation of Real Estate Taxation System (based on materials of Veliki Novgorod administration)", *Nalogovy Vestnik* (*Tax Bulletin*), num.1, 2000, p. 10.

[69] See, for example Shadrina, T. V., "Up the hill on the first one. Government measures to stimulate the demand increased car sales in Europe", *Rossiiskaya Gazeta*, May 18, 2009.

However, it is very difficult to recognize law hybridization. Sometimes specific adopted features can be found in authentic national and traditional elements of legal cultures as well. On the other hand, various configurations of legal institutions and norms make it impossible to definitely recognize law hybridization that appeared some time ago.

Law hybridization can bring both, positive and negative results. Accordingly, the task is not only to select those elements of foreign legal experience or advanced ideas of international juridical science that can ensure a positive result in law improvement, but also to plait these elements skillfully into the texture of domestic legislation, into the traditional environment of law activity. Thus, it is important not only to meet juridical technical requirements, but to comply with the mentality and expectations of the Russian society.

Law hybridization in the field of constitutional and financial law often manifests itself in matter and terms discrepancies among various institutions or among elements of certain institutions.

The regulations on federal subjects of the Russian Federation can be an example of the above discrepancy in the field of constitutional law. Unlike many foreign federations, The Russian Constitution sets the diverse composition of Russian Federation constituent entities, including *respublika* (republic), *kray* (territory), *oblast* (region), federal city, *avtonomnaya oblast* (autonomous regions), *avtonomny okrug* (autonomous district) (Articles 5, 65). All these constituent entities are recognized as equal entities of the Russian Federation, which in particular does not conform to a special status of autonomous okrugs that are a part of krays and oblasts.

Discrepancies in the field of financial law can be illustrated by the institution of investment tax credit which is significantly different from the foreign ones. One of the fundamental differences is that the Russian legislation enunciates the principle of recurrence of this type of credit drawing it closer to a civil law institution.

Many other examples of law hybridization can be cited. This phenomenon brings about considerable problems in applying corresponding regulations, mainly in the field of financial law.

On the other hand, hybridization of many legal norms and institutions without doubt had a positive effect in many fields of constitutional and financial law. Thus, the Russian constitutional model of separation of powers combining features of various approaches facilitated stability of political relations in the period of transition.

The institution of financial control combining various elements of Russian and foreign law is effective in preclusion of infringements and abuses in the finance services market, etcetera.

7. *Psychological perception*

The perception of many constitutional and financial law institutions has not provoked any noticeable rejection lately, due to the realization of the inevitability of the globalization processes, which predetermine the similarity of many law institutions and norms.

Another reason for the positive or at least neutral perception is the realized stability of the legal regulation; the legislative rules of the constitutional and financial law are planned as the long-term mechanism of the legal regulation, which is always very important for a psychological perception. Personal attitude toward the law is positive when there is certainty that the established and successfully carried out lawful rules are intended for a long-term period. The stabilization of the legislation has a positive impact on the psychological perception of the legal regulation.

One more factor is the continuous informing of the wide circle of interested people and organizations of the content of the prospected innovations. It positively affects the adequate reaction of the society to the law, including the borrowed elements. Generally, any decision publicly supported in its fundamental part is guaranteed to be accepted by public opinion. Taking into account the possible reactions of the society is the security to the successful reception of norms and concepts.

8. *Drafting of model laws and legislative recommendations of international organizations as a method for law unification*

Currently, the mechanisms of circumstantial law unification are used more and more. They use such instruments as the model laws and recommendations addressed to the legislative bodies. The advantage of the circumstantial law unification is that it does not assume the execution of strict rules which demand its implementation in the national law system the way they were formulated in the international law acts.[76] The model law and recommendations are both only the proposal to harmonize the legal regulation of any relationships in different states.

The advantages of the "soft" mode of the law unification predefine its active usage by the international organizations. Nowadays, a certain

[76] See, *Law and Interstate Unions*, St. Petersburg, 2003, pp. 39-50.

specialization is formed among international organizations connected with the unification of the civil law.

UNCITRAL of the United Nations Commission on International Trade Law develops model laws and recommendations on the international economic cooperation.

UNIDROIT or the International Institute for the Unification of the Private Law is related to the preparation of model laws in the sphere of trade, and the common principles of international contracts regulation, in particular.

The Hague Conference on Private International Law, operating in Europe, and the Inter-American Specialized Conference on Private International Law (CIDIP), operating within the Organization of American States (OAS), specialize in the development of international conventions that is international contractual unification of the private international law.

Law unification for the purpose of economic integration is being successfully developed in separate regional state unions—European Union and the North American Free Trade Agreement.

The Commonwealth of Independent States (CIS) and another economic union of the five CIS countries, the Eurasian Economic Community (EurAsEC) have an extensive experience in the usage of the model legislation. The recommendatory (model) legislative acts and model projects are developed in their framework.

The model law serves the purpose of orientation of states in the law-making sphere. This "soft" form of the aimed influence on the national law-making practice of the states participants of the interstate union made it possible to provide common conceptual approaches, without the imposing of strict limits. In some spheres, for example, transportation services, management of natural resources, and natural environment protection, it provided the detailed concurrence of development of the national legislative systems of the states members. Model law in the CIS and EurAsEC practice gave an opportunity to the countries partners with relatively similar features of the political legislative, and social economic relations, to provide the perception of the normative juridical decision models, in order to prevent unreasonable discrepancies during the regulation of the similar-type issues and the unified salvation of similar legislative tasks. The model laws "On the Agreed Principles for Citizenship Regulation", the Civil Code, "On the State Support of the Small Entrepreneurship", the set of model laws about ecology ("On the Principles of Ecological Safety in the Commonwealth States",

"About Ecological Expertise", and "On the Ecological Education of the Population"), and "On the Prevention of the Organized Crime". During the period of the highest demand in the modernization of the economic relations in the mid 1990s, the following model laws were recommended: "On the Protection of Economic Competition", "On the Financial Industrial Groups", and "On the Standardization".

Such experience also appeared to be useful for the improvement and modernization of the national legislation because the model acts are generally developed with regard to the international experience, based on the acknowledged international law principles, and same fundamentals adopted in the majorities of countries in Europe and worldwide, including law-making traditions of the continental law. Usage of the model acts for the purpose of drawing together of the national legal systems is the pathway that represents great possibilities to maneuver: its separate provisions may be excluded or amended when adopted by the states. As it was shown in practice, the model acts turned out to be suitable for all cases when states intended to create a national act based on the unified text, and at the same time to take into consideration their own national specific features and historical traditions. Each state works out its own means of "adaptation" taking into account a large number of factors, and first of all the population composition, territorial and administrative structure, character and specific features of the external relations.

A. *Level of borrowing: word for word or amended*

The legal system of the Russian Federation almost fully copied the UNCITRAL model law about the commercial court. During the economic reform of 1990s, connected with the commercialization, the experience of the international contractual unification of the legal regulation of the trading, accounting, transportation and other relations, was used. The Civil Code of the Russian Federation literally absorbed the terminology and regulation principles of the United Nations Organizations Convention about the international sales of goods agreements.

B. *Law hybridization*

However, the unification has not always been successful. The unification based on the prepared in the framework UNIDROIT Convention about the international financial leasing of 1988 was not properly developed. There is no indication of this Convention in the Federal law "On the Financial Leasing" of October 29th, 1998, as amended in the Federal law of July 26, 2006. However, the Russian Federation is its

member. There are certain discrepancies between the mentioned law and the statements of the Convention.

C. *Precedents of usage*

Many decisions of the Constitutional Court, Supreme Court, general and arbitral jurisdiction courts, and referee's court have references to the model acts and recommendations of UNCITRAL, UNIDROIT, and other international organizations.

Thus, the UNIDROIT principles of the international commercial contracts are used for consideration of foreign trade disputes; courts often base their decisions on the recommendations of the International Securities Market Association (ISMA) for consideration of security market disputes, and so on.

III. CONCLUSIONS

The resulting analysis gives ground for the following conclusions:

1. There were not any major receptions of law in the history of Russia. Borrowings of the law models were made at the level of law ideas, institutions, and separate norms.

2. In recent years, the borrowings were generally well weighed and considered. On the one hand, they took into account the possibilities of the national economics, and on the other hand, the necessity of the country's integration into the world economics was accounted for. The examples of such considered approach can be the Civil and Labor Codes, and the Civil Procedure and Arbitration Codes of the Russian Federation. Within their framework, a unique systematization of many institutions was made on the stable foundation of the Russian law, while at the same time using separate constructions of the other countries' legislation adapted to Russian law.

3. The international law became one of the most powerful borrowing channels. According to the Constitution, its principles and regulations are part of the legal system of Russia.

4. The reception of foreign models occurs at other levels as well, such as the law enforcement practice, legal consciousness, business practice, and juridical science, thus providing the mutual enrichment and interaction of various legal cultures.

5. The role of Russian legal science is growing. It not only creatively processes doctrines and ideas received from foreign scientific schools, it roots them in the Russian law by taking part in elaboration of legislative acts.