



Original Article

Dialectics of Tradition and Modernization in the Constitutional Development of Russia

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Abstract: The Soviet project reflects the cultural, historical, economic, and ethnonational resources of non-Western modernization. The Marxist Party of the USSR controlled power by building an ideological and political-managerial vertical that connected Soviets, party, trade union, and other public associations, the press, enterprises, settlements, the army, schools, families, all generations of society, and art. “Perestroika” destroyed the ideological and political “core” of the soviet system (repeal of Article 6 of the Constitution). The separation of powers replaced the system of the Soviets. The Russian state has lost its political ideology, significantly weakened its security agencies and army, and lost a significant part of its economic potential. China and Vietnam took into account the costs of Soviet reforms, drew the appropriate conclusions and took a different political path, which Russian researchers have yet to study. Later, after 2000, new political reforms began in Russia, which made it possible to move on to the creation of the ideological and political “core” of the new state. Under Vladimir Putin, the institute of the presidency really formed such a political “core” that would help to gradually move along the path of consolidating the political system and society, solve national security issues, and revive the economy and the system of educating young people. Amendments to the Constitution Russia in 2020 summed up a certain result of the formation of a strong state.

Keywords: Russia, tradition, modernity, perestroika, constitutional reform.

1. Introduction

Lawyers take into account the dialectic of tradition and modernity, manifested in the theory and practice of drafting texts of constitutional acts, adoption of amendments, approaches to

their interpretation. In present conditions, on the one hand, globalization, strengthen universalization in politics and law, spurring the desire for modernization of states and the international community as a whole. On the other hand, as shown, for example, by the results

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of the COVID-19 pandemic, national governments have actualized the ability to use funds and resources that are most consistent with traditions. At the VII International Congress of Comparative Law “National and Universal in Law: from Traditions to Postmodernism” (December 2017), scientists emphasized the collisions of international and domestic law. Opening the plenary session of the Congress, Academician of the Russian Academy of Sciences, member of the European Commission for Democracy through Law (Venice Commission) T. Y. Khabrieva stressed that the law of cyclicity operates in society: the period of disintegration replaces integration. Historical roots and traditions deserve special attention. One of the tasks of legal science is to find a balance of national-legal and supranational values [1, 20 - 21].

Determining the optimal balance of traditions and modernization can prevent serious threats to national values and the viability of the state. The experience of the political and legal development of the USSR, Russia and the post-Soviet states confirms this conclusion. Their constitutional development has shown both the successful use of traditions in the modernization of society and the state, and failures when reforms ignored the peculiarities of their own historical path.

2. The Soviet system was a combination of the tradition and modernization

The Soviet project in its main directions is an example of the interaction of traditions and modernization. V. S. Martyanov correctly interprets it as an “alternative” Modern - the successful use of cultural, historical, economic resources of adaptation of non-Western societies (including Russia, Vietnam and China). At the same time, the USSR formed a synthesized Marxism adapted to reality as a method of ethical interpretation of the economic and political teachings of K. Marx [2, 284 - 285].

The Soviet way absorbed the traditions of cooperation of the peoples, sociality,

conciliarity, collectivism, the combination of a sovereign state with people's self-government. The experience of the political and legal systems of Russia and the USSR (with all its shortcomings) was very valuable. The Constitutional Commission, which, along with the Bolsheviks, included left-wing Social Revolutionaries, as well as prominent lawyers and state experts, carried out the preparation of the first Soviet Constitution of the RSFSR (1918). The legislator did not allow the establishment of privileges or advantages due to racial and national differences, as well as the oppression of national minorities or the restriction of their equality. However, the legislator secured the freedom of conscience, speech and press, assembly, association in all kinds of unions only for the working people - the proletariat and the poorest peasantry.

The formation of the USSR (1922) entailed the development of the Constitution of the USSR in 1924, which ensured the joint development within the framework of one state of different nations and nationalities that traditionally lived on its territory. The Union republics exercised state power independently, with the exception of the powers assigned to the federal authorities, and retained the right of free withdrawal from the USSR. To limit or abolish such a constitutional right, the consent of all the republics that were part of the USSR was required.

One of the most important vectors of the political and legal development of the Soviet state was its social orientation. This tradition has its roots in antiquity. Already in the era of Kievan Rus, the rulers were aware of the responsibility for supporting the “orphans and the poor”. “Russian Truth” - the first systematized legislative act of Ancient Rus - regulated the legal status of a widow, a younger son in a special way, provided for the protection of other children. The princes allocated funds from the established fees to support not only monasteries and churches, but also almshouses that help orphans, the poor, the disabled, and the homeless. Already in these years, there were fees for the construction of schools and shelters.

Empress Catherine II took part in the formation of social policy, laying the foundations of social assistance. P. A. Stolypin carried out major reforms. These are the introduction of state insurance of workers in cases of illness, injury, disability, old age, legalization of trade unions, mandatory organization of medical aid points at factories, promotion of various forms of charity, etc. The Soviets continued this tradition. The Soviet state secured the rights to an 8-hour working day and annual paid leave, general and vocational education, free use of preschool institutions, free medical care and sanatorium treatment, the right to housing, etc. Women were entitled to a number of additional benefits related to the birth and care of a child.

Within the framework of the Russian tradition, it was necessary to form a strong state. The consequences of World War I and the Civil War, foreign intervention created a stop to a deep crisis. The victorious party stood for the dictatorship of the proletariat, which allows preserving the state and overcoming the devastation. However, the Bolsheviks included non-party and left SRS in the government, helped the state to involve a lot of workers, peasants, and intellectuals in the restoration of the state. It was also a continuation of the tradition: self-government originated from the time of the Veche meetings, where residents of Novgorod and Pskov jointly resolved issues of taxes and fees, defence against enemies. The Zemsky Sobor included representatives of all estates: clergy, boyars and nobles, merchants and artisans (the total number of the latter classes sometimes reached 20%) elected Boris Godunov. Streltsy, Cossacks and two peasants also participated in the election of Mikhail Romanov. The Zemsky Sobor adopted the largest legislative act of the monarchy period - the Council Code of 1649, as well as decisions of 1653 - 1654 about the entry into Russia of the Zaporozhye Sich (part of modern Ukraine).

Despite certain shortcomings, the Soviet political system met the needs of a multinational society. The USSR withstood all the tests and restored the national economy destroyed by the

largest war of the XX century, supported the national liberation movements. The fierce struggle of the two world systems, the need for nuclear confrontation with the United States and NATO, the efforts required to support the socialist countries had a significant impact on the development of the Soviet system. In the 1980s, along with objective factors, subjective reasons became increasingly important, namely, the inability of the Soviet leadership to launch overdue socio-economic and political reforms in time, defining their strategic and tactical goals and objectives taking into account the totality of domestic political factors and the international situation.

3. “Perestroika” - modernization without taking into account historical traditions

Analyzing the “perestroika”, most researchers call the abolition of Article 6 of the Constitution of the USSR the main reason for the collapse of the Soviet system. This destroyed the ideological and political “core” of not only the CPSU, but also the system of Soviets, the entire statehood. The political leadership of the USSR came into sharp conflict with the leadership of a number of other republics on the issue of the future state structure and legal regime.

Gorbachev's policy has lost the support of a significant part of the country's population and the political elite. The parade of sovereignties and the collapse of the USSR became the logical conclusion of the political and legal “perestroika”. The independent states formed in the post-Soviet space could not successfully use the existing economic potential, entered into an acute political crisis. A number of them had to give up their sovereignty and even state integrity. This was the result of the rupture of the traditional economic ties of the Soviet republics, the rapid privatization of enterprises capable of successfully operating. Rising prices for basic products and goods, unemployment have led to a sharp decline in the incomes of the majority of the population. All this seriously undermined the

positions of the post-Soviet states in the international arena.

Among the causes of the Soviet crisis is also the gap between the new values borrowed in the West for reforms, on the one hand, and the traditions, established in the life of society and socialist values, on the other. It is important to recall, for example, that in the 1990s, at the initial stage of the formation of a new state, the basis of the ongoing reforms and the Constitution of Russia in 1993 included mainly Western values. A. N. Medushevsky rightly noted that the Russian Constitution, combining the norms of the constitutions of France and the United States, has acquired a contradictory character. In particular, in regulating the institution of responsibility, she used the approaches of different political systems. On the one hand, the State Duma gives consent for the appointment of the Prime Minister (a form of responsibility, as in the parliamentary government); on the other hand, the President has the right to decide on the resignation of the government alone, and this is already characteristic of presidential systems [3, 171].

The consequence of borrowing a different political and legal tradition was that «the new liberal-democratic ideal of the Constitution of Russia already at the very beginning of its implementation revealed the problems of adapting the legal consciousness and mentality of citizens and the population to constitutional changes» [4]. The implementation of many constitutional provisions that defined Russia as a democratic federal rule-of-law state with a republican form of government and separation of powers has come into conflict with established political and legal practices.

Judge of the Constitutional Court of Russia A. N. Kokotov uses the concept of the disease of “self-denial”, as a result of which there is a rejection of one's identity, one's own ideas and principles, faith in age-old ideals, as well as excessive borrowing of Western experience, which ultimately is fraught with disastrous consequences for the country [5, p.13]. Interestingly, in 2017 The Club of Rome, along with harsh criticism of capitalism and old liberal

values, justified the ideas of synergetic of different social systems, the growing role of the state in the modern economy, balance and consideration of the common good [6].

One of the main lessons that theorists and practitioners formulated, summarizing the results of the development on the legal basis of the Constitution of Russia in 1993, was, first of all, the recognition of the need for a strong state. As V. T. Kabyshev wrote on this occasion, historically, the strengthening of power in our country has always contributed to the strengthening of national unity and sovereignty, although it has always been accompanied by some restriction of individual freedom. But implemented in the Constitution of Russia in 1993 the socio-liberal model focuses on the maximum reduction of the social functions of the state and the assignment of citizens themselves to take care of their social well-being [7, p. 81 - 82]. While throughout the entire Soviet history, the state developed as a socially-oriented one.

Representatives of various fields of scientific knowledge and theoretical directions addressed the problem of ill-conceived borrowing of values alien to national traditions. N. Rulan, within the framework of legal anthropology, paid special attention to the fact that in some cases, the reception of someone else's law can lead to legal deculturation, when the legislator does not take into account the “former law”. “The legal culture of the recipient is being destroyed, a huge number of contradictions and unacceptable simplifications arise in the law, which also does not ensure that the recipient reproduces the borrowed legal culture in his country” [8].

The well-known Russian constitutionalist S. A. Avakian noted: “The Constitution has not one, but two characteristics - stability and dynamism. The essence of the first lies in the inviolability of the basic constitutional foundations, and dynamism allows for the possibility of reflecting in the constitution mature current rules detailing the practice of the implementation of certain rights and freedoms, the activities of state bodies, etc. The main thing

is that dynamism is combined with stability, without "overturning it" [9].

The lessons of "perestroika" and the initial stage of the formation of independent states in the post-Soviet space with all their costs actively study researchers in many countries, and especially in China and Vietnam. His analysis helps China and Vietnam to avoid the severe consequences of Soviet modernization.

4. The state is a key factor of constitutional development

The most important lesson of the failures of Soviet modernization is the awareness of the need to return the sovereignty of the state. A strong state corresponds to the traditions of Russia and meets the challenges of the future, a source of optimal interaction of traditions and modernization of Russian constitutionalism. Democratization is impossible in a weak state. Threats of international terrorism, hybrid wars, migration challenges, and pandemics confirm the importance of strong states.

Since the beginning of the 2000s, Russia has consistently reformed federal relations, ensuring effective interaction between federal and regional state authorities. In 2003, the municipal reform led to real local self-government at the level of not only large cities and districts, but also small urban and rural settlements. The management model began to acquire the necessary quality of consistency. As a result, of the administrative reform, staff renewal has begun. One of the main directions of the development of state and municipal administration was the strengthening of the rule of law, as well as the improvement of official discipline. The society has developed civil society institutions.

Russia's political agenda reflected all this with the actualization of the category "national interests" in the 2000s. T. Y. Khabrieva emphasizes: "In the conditions of developing globalization and integration of Russia into the world economy, it retains the right to choose its own path of democratic development in

accordance with universal human values and those traditions that have been established over the centuries of the development of Russian statehood, which has absorbed the experience of the civilization of many peoples living on its territory. Mechanical copying of other people's legislative models without taking into account the conditions of the country suppresses its state interests and does not bring success" [10].

In general, over the first two decades of the XXI century, Russia has developed a political system, the main element of which was a strong state. Another link that meets the political traditions was the leader - V. V. Putin. The role of personality in history plays an important role. Researchers in Russia often discuss the importance of the personal factor, comparing the period of Ivan the Terrible and the Petrine era, the Stalinist regime and Brezhnev stagnation, Gorbachev's "perestroika" and the period of Boris Yeltsin's rule. Many thinkers of the past and present, reflecting on the history of Russia's political development, concluded that there was a complex of factors that required the arrival of a strong leader. These are significant spatial characteristics and the geopolitical position of the state, natural and human resources, the mentality of the people.

The active formation of civil society is gradually changing the attitude towards the state and the leader. There is also a more critical attitude towards the role of personality in history. However, as recent sociological studies show, Russians reasonably note those areas where positive changes have taken place in recent years. Accordingly, the rating of such leaders is quite high: as of 31.10.2021, in the difficult conditions of the global pandemic, 64.4% of Russians surveyed trust Vladimir Putin, and 60.8% positively assess his activities. In addition, politicians such as Defense Minister Sergei Shoigu and Foreign Minister Sergei Lavrov, head the Russian, confidence index [11].

The attitude of citizens to the initiative of the President of Russia (constitutional reform) confirmed the confidence of the President of Russia, which they also showed by their participation in the vote. In 2020, in his next

Address to the Russian parliament, Vladimir Putin proposed to make a number of amendments to the Main Constitutional Act of the state necessary for the further development of society and the state. It was obvious that «the Constitution is connected by numerous legal and social threads with the expectations of citizens in the field of legal and social justice; it should have factors of identification of civil and public hopes for the improvement of social well-being and the expansion of democratic participation of citizens in order to align the needs and interests of individuals with the interests of society and the state» [12]. At the same time, it seemed logical that the constitutional reform of 2020, providing further modernization of the political and legal system, should have preserved, and in some cases, even strengthened the role of those traditions that ensured success in its development.

5. Constitutional reform of 2020

The discourse of constitutional changes in Russia has been going on for quite a long time. Constitutional lawyers, politicians, and representatives of civil society took an active part. The most common references were to the experience of the constitutional development of other States. Thus, legislators have made only 27 amendments to the US Constitution, adopted in 1787, for more than 200 years. In addition, deputies have already made more than 50 amendments to the Basic Law of Germany (1949): out of 146 articles, they have changed more than 100. In France, the constitutional reform of 2008 strengthened the role of parliament in controlling the executive branch, expanded the rights of citizens. The Constitution adopted in Hungary in 2011 enshrined in the Preamble national traditions: the role of Christianity in the preservation of the nation, respect for religious traditions, the need to protect the heritage, including a unique language, Hungarian culture, languages and cultures of the peoples living on its territory, the traditional family.

V. V. Nevinsky notes: “The modern development of constitutional values is at the historical crossroads of two main trends: on the one hand, the universalization of constitutional values is becoming more and more obvious, capturing to a greater or lesser extent all states; on the other hand, the desire of all the same states and their peoples to preserve their own historical, cultural identity, including the identity of legal culture with its constitutional values, to further national and international development based on their own social values” [13, 109 - 110].

Constitutional reform in Russia reflects the values of national constitutional development, as well as a number of foreign states. The priorities of the amendments to the Constitution of Russia should include the strengthening of traditional values, including the strengthening of the traditional family for Russians as a union of men and women (the amendment is aimed at countering the liberal trend of legalizing same-sex marriage). The constitutional amendments also counteract the falsification of historical facts the belittling of the feat of the Russian people in the Great Patriotic War.

Jurists and politicians constantly touched upon the issues of constitutional regulation of the institutions of the welfare state in Russia. Chairman of the Russian Constitutional V. D. Zorkin wrote: “The concepts of “decent life” and “free human development” enshrined in the Constitution have not yet received in our country not only proper practical implementation, but also adequate theoretical understanding of their significance” [14]. Social guarantees occupied an important place among the constitutional amendments: the minimum wage, the subsistence minimum of the able-bodied population in the whole country, the indexation of pensions, the right to compulsory social insurance, targeted social support, the indexation of social benefits. Of particular importance is such a social value as children (the most important priority of Russian policy). The State is obliged to create conditions conducive to the

comprehensive spiritual, moral, intellectual and physical development of children, education of patriotism, citizenship and respect for elders.

Some of the constitutional amendments are necessary to strengthen the State, its sovereignty and national security. In particular, according to the adopted amendments, senior civil servants, judges and deputies of the State Duma do not have the right to foreign citizenship and permanent residence permit in the territory of another state. The amendments establish the priority of domestic constitutional acts relative to the decisions of international bodies if they contradict the Constitution of Russia. The Constitution has established a ban on the alienation of Russian territory.

In general, the constitutional amendments reflected the views of Russians on the purpose and objectives of the state. The results of a study, conducted on 12.02.2021 by the Russian Center for the Study of Public Opinion (JSC VTsIOM), showed that 96% of respondents agree with the statement «the main duty of the state is always to take care of all citizens and provide social support». 83% of respondents were in favor of the fact that state policy should first of all preserve and strengthen traditions and traditional values, and 65% of respondents were in favor of strengthening the role of the state in the life of society. The top 5 priorities in the development of Russia, in the opinion of OJSC respondents, looks like this: the government should pay attention to the quality and accessibility of medicine (38%), increasing the availability of education (25%), opening new industries (23%), solving the housing problem (19%) and increasing social guarantees to various groups of the population (15%) [15].

6. Conclusion

In summary, we note that the constitutional development of Russia has repeatedly experienced periods of modernization; reforms significantly and sometimes radically updated the political system. It happened that the reformers forgot about the traditional

experience. Sometimes the reforms contradicted the traditional experience, and the people and the state of Russia suffered significant losses.

At the same time, the appeal to the best practices of the past helped to solve complex problems in difficult situations. The importance of the optimal balance of modernization and traditions reflected, in particular, the course of events in modern Russia, Vietnam, and China, in the fight against the COVID-19 pandemic. The Governments of these countries have applied the socialist experience of legal provision of resource mobilization to reorganize the health care system, create effective vaccines, as well as assist other States.

In general, the constitutional reform of 2020 in Russia took into account the dialectic of modernization and tradition. The novelties of the Constitution of Russia met the expectations of the majority of Russians and created the prerequisites for the further development of society and the state. The constitutional reform strengthens the state and opens up new prospects for social legislation.

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