I. CONSTITUTIONAL LAW

Information for citation:
Bartsits I. N. Konstitutsionnyy dizayn (o krasote i estetike konstitutsiy) [Constitutional Design (on the Beauty and Aesthetics of Constitutions)]. *Vestnik Permskogo Universiteta. Juridicheskie Nauki* – Perm University Herald. Juridical Sciences. 2018. Issue 41. Pp. 344–370. (In Russ.). DOI: 10.17072/1995-4190-2018-41-344-370.

UDC 342.41
DOI: 10.17072/1995-4190-2018-41-344-370

CONSTITUTIONAL DESIGN (ON THE BEAUTY AND AESTHETICS OF CONSTITUTIONS)

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Received 01.02.2018

Introduction: *this article aims to comprehend, explore and describe Constitutional Design as a phenomenon of constitutional theory and practice in terms of its usage as a criterion for assessing the aesthetics, beauty and topology of constitutions, as well as the tools of legal linguistics and legal writing. Analyzing different points of view on this matter, the author makes conclusions not only with regard to the usefulness of the concept of Constitutional Design in constitutional and legal practice, text structuring, articulation and prioritization of specific constitutional content but also concerning the features of Constitutional Design – its nature, roots and sources, constitutional customs and traditions of different countries throughout their history and statehood development. The author pays special attention to the evolution of constitutional design as such, constitutional and legal thought, their dependence on profound changes in the course of development of the society, law, and culture.* ***Purpose:*** *to develop a thorough understanding of constitutional design, its content, and applicability to the constitutional theory based on the analysis of scientific sources, practice of constitution-drafting and modeling, texts of constitutions, and other constitutional and legal provisions.* ***Methods:*** *in the course of this empirical study, the author uses methods of comparative analysis, classifies and interprets historical data, and uses a system approach to draw conclusions regarding the importance of Constitutional Design in constitutional theory and practice.* ***Results:*** *it has been proven that in the constitution-making process every society relies upon various techniques and principles of Constitutional Design, peculiar to it or borrowed. However, Constitutional Design structures are not rigid, their content is subject to continuous rethinking and amendment. Substantiating the importance of Constitutional Design to the state and society, the author develops a set of criteria for the analysis of Constitutional Design, in particular its dependence on political and cultural values of the state and society, the need to establish linkages between political views, ideas, political culture, government and social institutions, to develop an institutional framework conducive to the attainment of social welfare goals, etc.* ***Conclusions:*** *comparative legal analysis of different countries' constitutional texts has revealed both significant differences between constitutional concepts and borrowings of various approaches and even wordings by constitution designers – i. e. migration of constitutional ideas. At the same time, Constitutional Design is an attribute and integral part of constitutionalism. Therefore, developing ways to gain*

a better understanding of this process facilitates clearer expression of the constitutional and legal thought, underpins the legal beauty and aesthetics of the structure of law, helps to reflect the people's historical experience and current status of the state, to present the vision by the state of its future development.

Keywords: constitution; constitutional design; parliamentarianism; institutional design; democracy; society

Information in Russian

КОНСТИТУЦИОННЫЙ ДИЗАЙН (О КРАСОТЕ И ЭСТЕТИКЕ КОНСТИТУЦИЙ)

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Поступила в редакцию 01.02.2018

Введение: *статья посвящена осмыслению, раскрытию и описанию такого феномена, как «конституционный дизайн» в конституционной теории и практике в части его использования для оценки эстетики, красоты и топологии конституции, а также средств юридической лингвистики и юридической техники. Приводя различные точки зрения по этому вопросу, автор приходит к выводу не только о целесообразности использования термина «конституционный дизайн» в конституционно-правовой практике, структурировании текста, а также расстановки акцентов и артикуляции отдельных содержательных позиций конституции, но и его отличительных чертах: характере, истоках и источниках, традициях и обычаях в конституционном строительстве различных государств на протяжении их истории и становления государственности. Особое внимание уделено вопросам эволюции самого дизайна конституций, конституционно-правовой мысли и их обусловленности глубинными изменениями в развитии общества, права и культуры.* ***Цель:*** *сформировать представление о конституционном дизайне, его содержании и возможностях использования в теории конституционного процесса на основе анализа научных источников, практики конституционного проектирования и моделирования, текстов конституции и других конституционно-правовых норм.* ***Методы:*** *проводя эмпирическое исследование, автор использует методы компаративного анализа, классифицирует и интерпретирует исторические данные и, благодаря системному подходу, синтезирует выводы о значении конституционного дизайна в конституционной теории и практике.* ***Результаты:*** *доказано, что каждое общество при создании конституции пользуется различными, присущими только ему или, наоборот, заимствованными у других народов приемами и принципами конституционного дизайна, при этом конструкции конституционного дизайна не являются застывшими формами, их содержание постоянно переосмысливается и дополняется. Обосновывая значение конституционного дизайна для государства и общества, автор разрабатывает перечень критериев для анализа «конституционного дизайна», в частности его обусловленность политическими и культурными ценностями государства и общества, необходимость формирования системы связей между политическими взглядами, идеями, сложившейся в обществе политической культурой, государственными и социальными институтами, разработки конструкции институтов, способствующих достижению целей общественного благосостояния, и др.* ***Выводы:*** *сравнительно-правовой анализ текстов конституций различных стран позволил выявить как существенные различия в концептах построения конституций, так и заимствования проектировщиками конституций тех или иных подходов и даже форму-*

лировок – миграцию конституционных идей. При этом конституционный дизайн является неотъемлемым признаком и частью конституционализма, а комплекс критериев позволяет достигать лучшего выражения конституционно-правовой мысли, способствует обеспечению конструктивной правовой красоты и эстетики закона, отражению исторического опыта народа, современного состояния государства и формированию картины его будущего развития.

Ключевые слова: конституция; конституционный дизайн; парламентаризм; институциональный дизайн; демократия; общество

> *"Constitutional act can be compared with a plaster mask or cast of the live face of reality. But, unlike the mask of plaster, constitutional mask does not only copy the original, but in many ways determines the future development of its features".*
>
> Durdenevsky [11, p. 9]

> *"Constitutions are made, not found. They do not fall miraculously from the sky or grow naturally on the vine. They are human creations, products of convention, choice, the specific history of a particular people, and (almost always) a political struggle in which some win and others lose. Indeed, in this vein one might even want to argue that our constitution is more something we do than something we make: we (re)shape it all the time through our collective activity".*
>
> Hannah Fenichel Pitkin [67, p. 168]

What should a constitution be like? Being a supreme law, should it, in its form or meaning, reflect any special characteristics of the state or people it is intended to serve? Is there any universal project which could be used as a gold standard or template by those drafting new constitutional texts? Why do printed versions of the Constitutions of Brazil or India look like hefty books capable of comprising all the European constitutions? Why has the US Constitution been able to successfully avoid modification for two and a half centuries, while France and Russia amend the texts of their fundamental laws on a regular basis? Why do the Constitutions of Germany, Spain or Italy are so easy to read, while the citizens of the UK or Israel require an explanation of the term "unwritten constitution"?

This list of questions (which bring to the conclusion that there is no universal formula capable of settling in the best possible way all kinds of constitutional relationships or reflecting in full the diversity of constitutional theories and practices) can be continued endlessly. Similarly, there is no ideal set of guidelines indicating how a state's constitution should look in descriptive terms, which legal tools should be used for the purpose of its development, drafting, wording or putting on paper – i.e. what the design of the constitution should look like. Such general idea is not present in scientific literature and, therefore, it is not present in constitutional doctrines or practices of states.

The diversity of constitutional concepts (so called constitutional designs) and significant differences between them give rise to the question if the ideal (perfect or optimal) constitutional design is possible, even despite the trends of globalization and universalization or the fact that certain approaches or even wordings can be borrowed by constitution designers (due to the migration of constitutional ideas). There is no unanimity on the issue of the mere applicability of the term "Constitutional Design". While Gunter Frankenberg states positively that "Therefore, "design" characterizes quite appropriately what happens when constitutions are made. According to the standard dictionaries, design captures with a fair amount of precision how constitution making works and is anything but a misleading figure of speech or far-fetched analogy" [43, p. 153], Thomas Ginsburg brings strong arguments against it, "Design implies a technocratic, architectural paradigm that does not easily fit the messy realities of social institutions, especially not the messy process of constitution making" [61, p. 1].

General Definition of Design

Most dictionaries offer similar definitions of Design:

"Design is the kind of artistic project activity which embraces the creation of industrial products and rational formation of a coherent object

environment. The methods of design, which cohere the consumer appeal and aesthetic properties of the objects and products intended for direct use by humans, with their optimized structure and production technology, can contribute in a certain way to the addressing of important social questions, such as the functioning of production and consumption, or existence of human beings in the world of ambient objects" [see: 33; 6].

"Design is the activity related to the development of the artistic image of objects, drafting of the appearance of various products" [12, p. 209].

"Design is the styling of objects, drafting of the aesthetic appearance of industrial goods" [37, p. 167].

"Design is 1) The development of style features or appearance of manufactured goods, facades of buildings, building interiors, etc. – e.g. styling design; modern design; designer; go in for design; 2) Colloq. Art-quality appearance of a product. Admire the design of a car" [2, p. 258].

Let us summarize. Design is, in the first place, the type and nature of a certain targeted activity; and, in the second place, the result of such activity. Application of the general notion of design to the constitutional law does not contradict its essence or key features. Describing the creation of a constitution as a certain activity of statespersons, legal experts, citizens and citizen groups aimed at putting in place a system of regulation of social interactions and selecting models to determine the type of state, form of government and political regime, one can use the term "design" to characterize this truly creative process. And not only the process itself but its outcome too. Similarly, this term can be used to describe the activities related to drafting the text of a constitution, the process of selection of legal tools for its formulation, and the final result – i.e. a specific supreme law.

Given the richness (polysemy) of the term "design", it is important to clarify its meaning it the syntagm "constitutional design" as applied to the constitution (supreme law) of a state:

1) When used in respect of the text of a constitution, it means the result (already achieved or expected in the process of drafting or discussion) which can be measured based on the answers or explanations given in regards to the following questions: how the text is visualized with the use of the legal language and legal drafting tools (with legal psychology in mind), and what is the topology (logic, logistics) of the text.

2) If applied to the development or drafting of constitutional acts, it means the activities of state and social institutions, both universal and those established specifically to design or amend a constitutional act; or the set of mechanisms used to reach an agreement upon or establish the legal value of a constitutional act, in whole or in part.

3) In the context of the subjects, relationships, activities, phenomena, processes, or events which are regulated by the constitution of a state as its fundamental law, or which are based on or proceed from the imperatives of such supreme law, it is worthwhile to apply the framework of "constitutional architecture" as a basic system enabling self-regulation (homeostasis) of the constitutional order [32], consistent patterns of state building, power relations, and interactions between the state on the one hand and the civil society institutions and individuals on the other hand.

This article is intended to help understand, discuss and describe one of the three aspects of constitutional design mentioned above. The one which is most open for empiric study – i.e. the Constitutional Text. This implies the need to examine: a) how compact / detailed / comprehensive the constitutional text is; b) how it is structured (number and sequence order of parts, chapters, sections, articles, paragraphs and subparagraphs); c) how its various provisions are prioritized and articulated; d) how its various sections correlate visually in terms of their volume; e) how long the longest and shortest parts, chapters, sections, articles, paragraphs and subparagraphs of the constitution are; how long the longest and shortest wordings of constitutional provisions are; f) how ergonomic the text of the constitution is; g) how beautiful, aesthetically and visually balanced, and poetic (to the extent to which this word can be used when describing a legal document) this text is.

The Notion of Constitutional Design. Does it Have the Right to Exist?

"They (constitutions) neither fall from heaven nor are they revealed in a mysterious way to Founders. Instead, they are drafted, framed,

created, constructed, and, yes, designed" [57, pp. 537–542; 43, p. 152], says G. Frankenberg, introducing his study in which he analyzes the concept of "constitutional design" – the term that is used in the title of the book (collection of articles) edited by Tom Ginsburg – from the perspective of its very right of existence. Following this artistic approach, Tom Ginsburg illustrates the cover of the book "Comparative Constitutional Design" with an etching from the collection of the British Museum which dates back to the French Revolution (1789) and depicts representatives of three estates literally hammering out a constitution on a blacksmith anvil.

The technocratic approach, frequently disguised as neo-institutionalism, may be attractive thanks to its demonstrativeness and visibility. The modern science in general and the modern theory of government and law in particular tend to use figurative language and metaphors borrowed from other areas of knowledge, sciences, and even arts and technology.

Universal theories and legal doctrines are becoming increasingly popular as a basis for state institution building. As the experience of other countries becomes easily available for study and analysis in the process of drafting constitutions and shaping and developing political systems (effective and efficient development of comparative law and constitutional comparativism), the various constitutional mechanisms that exist in other states and legal systems are readily borrowed and adapted. In the course of such drafting, more and more architectural concepts are used, while the principles and methods of design are moved to the field of regulation of social interactions. This grants the architectural metaphor "constitutional design" the status of a legitimate legal concept. For that matter, various other metaphors, such as "constitutional convention", "constitutional thought", "constitution building", "constitutional life", etc. have taken roots – we got used to them and forgot that they do not originate from the legal language. Scientific terms very often descend from metaphors describing technical, cultural, physical, and even daily life phenomena [18, pp. 25–43].

Apart from helping to see the institutions of state and philosophical doctrines through the aesthetics of architecture and mathematics, the concept of constitutional design can be used to engineer various phenomena of social reality, economics, and law.

The technocratic component of the constitutional design concept echoes the much more successfully promoted theory of mechanism (and particularly economic mechanism) design. Eric Maskin, recognized 2007 Nobel laureate with Leonid (Leo) Hurwicz and Roger Myerson "for having laid the foundations of mechanism design theory", describes the constitution of a country as the most fundamental layer. "You can think of a country's Constitution as the most fundamental layer. A Constitution is itself a mechanism which prescribes what authorities can and cannot do, how they can be removed from office, and how other authorities can constrain their power"[1]. In this case, the "design layer" is meant because it is the state and its bodies that author most of the social mechanisms.

Especially promising is the adoption by the jurisprudence and social sciences of the main notion of the mechanism design theory – the notion of "reverse design". Developers of constitutions, constitutional and legal institutions and models should, in the first place, shape the "desirable image of the future state and society" [46], set their objectives, and then, as though getting back to the current reality, design the procedures, institutions and mechanisms, by means of which those objectives are to be achieved.

Constitutional Design / Constitutional Model

The concept of constitutional design has been developed mostly by representatives of the Anglo-Saxon legal tradition [see: 65, 52, 59, 55, 56, 71, 60, 62, 66, 51, 64]. The Russian authors "overuse" this term to a much smaller extent, preferring the term "institutional design", which shifts the focus from the analysis of the constitutional architecture to the system of political institutions [1, pp. 129–133; 3, pp. 159–180; 7, pp. 6–15; 16, pp. 29–45; 26, pp. 134–137; 30, pp. 214–247; 31, pp. 81–84; 34, pp. 87–97; 39, pp. 46–704; 40, pp. 246–253; 41, pp. 72–76]. In this approach, the consideration of constitutional design is normally confined to reflections on the proportions, in which the Russian

[1] See: "Any area of economic life is ripe for mechanism design theory". Interview with 2007 Nobel laureate in Economics Eric Maskin on game theory subdiscipline. Available at: http://serious-science.org/eric-maskin-mechanism-design-theory-1833 (accessed 02.03.2018).

model combines numerous features of the presidential and parliamentary government systems [27].

The Russian law science continues to rely upon the proven social formation-based approach to the classification of the models of national and social development. Here is a brief description of this approach based on the analysis of the classification system suggested by Y. A. Yudin [48, p. 49]: Bourgeois constitutions (Stage 1) yield to socialist constitutions (Stage 2) – thus, the continuous process of constitutional development is interrupted as a result of the establishment in Russia of a totalitarian socialist society and the state of "proletarian dictatorship". Later comes the age of postcolonial constitutions ushered in by the decolonization and creation in Asia, Africa, Latin America and Oceania of 130+ new states. And finally, at the end of the 20th century, the era of postsocialist constitutions is entailed by the collapse of colonial and authoritarian regimes in the majority of socialist and developing countries as they choose the course of democratic transformation. Each of these four stages has a corresponding constitutional model – i.e. bourgeois and socialist constitutions, constitutions of the first and second waves of Stage 3 (the period of decolonization and adoption by new states of their constitutions), and the postsocialist constitutional model.

Despite the traditional character of the formation-based view on constitution-related aspects of the development of human society and its significance to the Russian legal science, this approach fails to explain what differs bourgeois constitutions from socialist ones, and postcolonial constitutions from those postsocialist from the perspective of the constitutional and legal doctrine. Are they based on the same or different statutory concepts? Do the differences between social and economic formations really result in differences in constitutional and legal matter? Can it be true that we are returning to the primacy of ideology in the analysis of political and legal phenomena?

Without getting into specifics of the social formation theory and its background, it would be fair to say that it is becoming more and more difficult to categorize modern states based on their social or economic structure. Countries with different political regimes and economic systems may use the same or similar constitutional frameworks, while those that are close to each other, in terms of their level of social and economic development, structure of economy, and political regime, may choose different constitutional models due to the differences between their legal traditions or history of their legal systems.

The detailed definition of "constitutional model" suggested by N. Y. Khabrieva and V. E. Tchirkin provides that constitutions should be classified based on analysis of new constitutional and legal institutions, rather than changes in the world's social or political landscape. "Constitutional model is the phenomenon that emerges at a certain stage of the development of mankind, rather than individual country (although it can and does emerge in a specific country, whose citizens – i.e. authors of constitution – have identified, discovered and embraced the challenges of development)" [38, pp. 43–49; 44, pp. 15–16; 14]. It is the advent of new constitutional and legal doctrines and institutions that triggers changes in statutory concepts and development of new types of constitutional design.

"The modern state is a very complex construction consisting of many systems that have to be in tune with one another. One can compare the state with a large commercial aircraft. The commercial aircraft carries its passengers through space, whereas the state carries its passengers – the people – through time. If the aircraft is badly designed and has a tendency to crash now and then, one tries to rectify the deficiency of the design and does not blame the pilot and the passengers. With states one is inclined to blame the politicians or the people who have chosen them, instead of designing state systems that are as safe as possible and that will give their passengers a better chance of survival if they crash", – says Hans-Adam II, the reigning Prince of Liechtenstein [45, p. 133].

The Image of State and Age

The purpose of design is to make a useful and practical thing beautiful. Therefore, any consideration of constitutional design inevitably brings to understanding of the aesthetics of constitutional acts, their beauty and style, of how the images of states or historical eras are portrayed in documents.

The study and comparison of constitutional and legal models of different states in different historical periods can be based on a wide range of methods. In the first place, one should read the text of the supreme law and then, depending on his or her expertise, emotional intelligence and associative thinking capability, he or she will see a certain image of the country (state and society) in question, image of the age this law belongs to. Thus, reading the preambles of two domestic constitutions, one can sense the spirit of times, in which they were adopted, as well as political regimes they were intended to characterize:

"The Great October Socialist Revolution, made by the workers and peasants of Russia under the leadership of the Communist Party headed by Lenin, overthrew capitalist and landowner rule, broke the fetters of oppression, established the dictatorship of the proletariat, and created the council (Rus.: Soviet) state, a new type of state, the basic instrument for defending the gains of the revolution and for building socialism and communism. Humanity thereby began the epoch-making turn from capitalism to socialism. After achieving victory in the Civil War and repulsing imperialist intervention, the Soviet government carried through far-reaching social and economic transformations, and put an end once and for all to exploitation of man by man, antagonisms between classes, and strive between nationalities. The unification of the Soviet Republics in the Union of Soviet Socialist Republics multiplied the forces and opportunities of the peoples of the country in the building of socialism. Social ownership of the means of production and genuine democracy for the working masses were established. For the first time in the history of mankind a socialist society was created. The strength of socialism was vividly demonstrated by the immortal feat of the Soviet people and their Armed Forces in achieving their historic victory in the Great Patriotic War".

Preamble of the 1997 Constitution of the Soviet Union

"We, the multinational people of the Russian Federation, united by a common fate on our land, establishing human rights and freedoms, civic peace and accord, preserving the historically established state unity, proceeding from the universally recognized principles of equality and self-determination of peoples, revering the memory of ancestors who have conveyed to us the love for the Fatherland, belief in the good and justice, reviving the sovereign statehood of Russia and asserting the firmness of its democratic basic, striving to ensure the well-being and prosperity of Russia, proceeding from the responsibility for our Fatherland before the present and future generations, recognizing ourselves as part of the world community, adopt the CONSTITUTION OF THE RUSSIAN FEDERATION".

Preamble of the 1993 Constitution of the Russian Federation

The emotional makeup, legal categories and rhetorical patterns used, as well as references to specific historic events portray the image of the age and the state of that age. The vividness and visuality of such images do prove the applicability of the term "design" to the constitutional and legal matter. Thus, reading the preamble of the Constitution of the USSR one can clearly see symbols and images of the Soviet period: the red flag with sickle and hammer, the five-pointed star, the Victory Banner, the austere style of revolutionary avant-garde. The same text can call up the imagery of bloody revolutions and civil wars, dekulakization and Stalin's political repressions. The preamble of the Russian Constitution calls for restoration of the state and human dignity, infuses hope for better future, creates visual images of the thousand-year history and state traditions of the Russian people. The 1993 Constitution of the Russian Federation is not about the country of the early 1990s – it is about the country looking into the future.

Clearly, any associations and images are strictly personal and subjective. However, the aesthetics of the constitutional landmarks of a specific historical period, as well as the associations called by them, can be shared by millions of people. By means of its supreme law, the state declares to its citizens and the international community: "This is the way we see ourselves and our country. This is what we want to achieve as a country. This is the way we want the world to see us. To attain this end, we do not just rely on the rule of law, but also enshrined this image in our Supreme Law".

The 25 years that have passed since the adoption of the existing Constitution of the Russian Federation is sufficient time to make judgements about the journey we have made, evaluate our achievements and mistakes.

The civilizational choice of Russia, whose Supreme Law proclaims as a goal putting in place a democratic social state governed by the rule of law, is obvious. The 1993 Constitution of the Russian Federation established the framework of government institutions, which are key for the development of the state, and thus fulfilled its dual constituent function: first, new government institutions were created, and; second, some of the legacy

institutions were updated, and their legitimacy was confirmed.

The 1993 RF Constitution established the democratic model of government based on the functional division of powers. The essence of the constitutional rule lies in the fact that the constitution and associated statutory acts set forth constitutional doctrines and establish formal legal institutions – i.e. legal statuses and organizational structures.

Considering our constitution the "desired image of our future", we consciously agree that many of its provisions are highly declarative, which may add the flavor of fictitiousness. This in turn means that we admit that the image of the country portrayed by the supreme law, the design of the state and legal model stipulated by it may be tremendously far from reality, which leads to its comparison with Potemkin Villages or "window dressing". Thus, reflecting on the Soviet period, Patrice Gelard says that it "could have resulted in a new constitutional model based on principles fundamentally different from those of the Western constitutional law, but failed to do so", and characterizes the democratic provisions of the Soviet constitutions as stage scenery and "Potemkinism" [58, p. 27].

One of the major cases of such a difference between the desired, imaginary constitutional design and the actual situation in the state and society is the portrait of the Soviet Union drawn by the country's 1936 Constitution. While the 1918 RSFSR Constitution and the 1924 USSR Constitution were pretty straightforward in stipulating the principles of "proletarian dictatorship", envisaged disenfranchisement, insisted on "complete denial of the barbaric policy of the bourgeois civilization", and called for a "global revolution", the supreme law adopted in 1936 and known in history under the infamous name "Stalin's Constitution", was characterized by many cultural workers and even Western legists as a document which brings Russia back to democratic values and attitudes [23, pp. 122–138; 21, pp. 28–38]:

"The Soviet Union is bifacial. When in struggle, the face of the Union is austere mercilessness, which blazes through any opposition. When in creation, its face is democracy, which is proclaimed by the Constitution as its end goal. And the fact of adoption of the new Constitution by the Extraordinary Congress right in the period between the two trials – those of Zinoviev and Radek – symbolizes it"(Lion Feuchtwanger, preeminent German writer) [42].

"This Constitution shows to the whole world that the Soviet Union has had a decisive victory over the ossified remains of the old system. It is the establishment of the true democracy... It is the actualization of the great slogans, which previously only existed in the dreams of the mankind – liberty, equality and fraternity" (Romain Rolland, French writer, Nobel Prize laureate [35, p. 40]).

These words are about the constitution which was adopted not just between two state trials (those of Zinoviev and Radek), but during one of the most sinister periods in the Russian history – the period of mass political repressions, the GULAG, wholesale slaughter of peasants, and the Holodomor (famine genocide). The authors of the 1936 Soviet Constitution managed to create an attractive image of the state: from the perspective of content, it can be called one of the most progressive constitutions, given the rights it granted, including socio-economic rights (right to labor, right to rest and leisure, old age and disability pension entitlement, right to free education of all types, including higher education, and free healthcare) and political rights (universal, equal and direct elections to all state bodies by way of secret voting, freedom of religion, speech, press, gathering and meetings, personal immunity, and privacy of correspondence). Even the principles of federation set forth by this Constitution appear quite democratic. Even the All-Union Communist (Bolshevik) Party is mentioned in it only once, in Article 126, which calls it "the vanguard of the working people in their struggle for the reinforcement and development of the socialist system" and "the leading core of all working people's organizations". It was expected that the 1937 elections to the Supreme Council of the USSR would be competitive, and that the ballot paper developed and approved by the Political Bureau of the All-Union Communist (Bolshevik) Party would only be used half a century later – at the 1989 elections.

From Constitution of State to Constitution of Society

Even the most severe critics of the Communist (Bolshevik) regime, which gained foothold during the collapse of the Russian Empire and the Civil War that followed, cannot deny the revolutionary character of the effect on the constitutional and legal doctrine produced by first Soviet constitutions. It is a satisfaction to know that one of the Soviet constitutions – namely the 1918 Constitution of

the RSFSR – left its mark in history as one of the first constitutional acts that was not confined exclusively to the declaration of a sovereign state and regulation of relationships between different branches of power. In general terms, it was a breakthrough, which can be defined as the transition from the first constitutional design model – the model of the "state's constitution" – to the new concept of the "constitution of society".

However, for fairness' sake it should be admitted that the priority here belongs to another revolutionary constitution – the Constitution of the Mexican United States as of 5 February 1917. It was the Constitution of Mexico that proclaimed for the first time a wide range of social and economic rights for citizens, including the 8-hour working day, minimal wage level, entitlement to social benefits, a weekly day off, limitation of the employment of women and children (adolescents), annual holiday entitlement, and maternity leave for women. As to the political rights, the Constitution of Mexico granted the right to establish labor unions and go on strike.

The slight disappointment caused by another constitution having the upper hand can be compensated for by understanding that if two different countries with different political regimes situated on different continents and existing in different social and economic conditions end up with very similar types of constitutions, it may be a pattern indicative of the advent of a new constitutional design. From now on, constitutions are destined to regulate key social interactions, reflect the approach of the state to political, socio-economic and cultural rights of people and citizens, illuminate development prospects of a country and society. Therefore, from the standpoint of content, these two supreme law models deserve special attention of those studying the history of constitution building. The adoption of the 1917 Constitution by Mexico and 1918 Constitution by the Soviet Russia marked the transition to the second stage in the establishment of the modern constitutional system.

The Constitutions of Mexico and Russia were followed by the 1919 Constitution of the Weimar Republic, 1920 Constitution of the Austrian Republic, and 1921 Constitution of the Czechoslovak Republic – all these constitutions also granted social and economic rights to citizens and reflected the new doctrines of sovereignty of people's rule, social justice, and liberty.

Universalization and Development of Comparativism

The time immediately following World War II is one of the most interesting periods in the history of constitutional design. This period is characterized by the adoption of a very large number of constitutions, their frequent changing, search for new ways to reflect social phenomena. It is also characterized by the rise of comparativism due to the fact that universalization had already become a topic for discussion, while there were no templates for such universalization. Different countries reached this stage in different economic and political circumstances and, what is much more important, in different statuses, from the perspective of the outcomes of the recent war – some of them were victorious Powers, allies in anti-Hitler coalition, while others were defeated nations, satellites of Germany and Japan. Among the unique characteristics of this period was the division of the spheres of influence between the West and East within the framework of the Yalta-Potsdam system of international relations.

The shaping landscape of constitutional modeling was greatly enriched with the advent of a number of countries with a very interesting history of development of their legal systems in general and constitutional and legal doctrines in particular. Those countries included France (1946 Constitution), Italy (1946 Constitution), and Germany (1949 Supreme Law). A series of constitutional acts were passed in countries of Western (controlled by the USA) and Eastern (controlled by the USSR) Europe.

Naturally, the influence of the victorious Powers on the constitution-making process was not limited to the influence of their legal doctrines and existing constitutions. For example, the American constitution designers played a significant role in the modeling of the supreme laws of Japan (where their pressure was the biggest), Germany and Italy [24]. Soviet legalists openly influenced the development of constitutions by the states that over the next four decades were part of the People's Democracies bloc [5; 8; 13; 15]: Yugoslavia (1946 Constitution), Czechoslovakia (1948 Constitution), Romania (1947 and 1952 Constitutions), Poland (1947 Minor (Lesser) Constitution and 1952 Constitution of the Polish People's Republic), Hungary and German Democratic Republic (1949 Constitutions).

Most interesting for the analysis of the constitutional trends of this period are the Basic Law

for the Federal Republic of Germany and the Constitution of Japan – the constitutional acts of two states that did not only lose World War II (the history of mankind is a long chain of wars, in which some countries declared themselves victors, while others were seeking to minimize the cost of loss). Probably for the first time in the human history the defeated states, beside their territorial losses, financial costs and deprivation of political rights, were convicted of crimes against humanity, and their leaders appeared before an international tribunal. But even in such circumstances these countries, destroyed and humiliated, needed to develop a constitutional and legal framework of their future, and present the image of this future to the rest of the world.

Japan made attempts to keep intact the 1889 Constitution of the Empire of Japan, known as Meiji Constitution, but Major General Courtney Whitney and Lieutenant Colonel Milo Rowell, on behalf of the US Military Government, drafted and presented to the Japanese Parliament a new constitution, which was in many ways based on the doctrine of American constitutionalism. The American version of the Japanese constitution included a sizable and detailed list of human rights and liberties, and it is important to note that it was not a copy of the provisions of the US Constitution, which is pretty short-spoken in this sense. Instead, it was based on the US case law of that period. Today, the Supreme Court of Japan, in terms of its structure, is a complete copy of the Supreme Court of the United States [69, p. 322]. It is believed that many postwar constitutions are based on the American judicial review concept, for which the mechanisms and practices of this concept were adjusted to meet the requirements of the respective countries' legal systems.

At the same time, some researchers point out that the Soviet constitutional doctrine was also taken into account. For example, it is believed that the equality of genders set forth by the Japanese Constitution was borrowed from the 1936 Constitution of the Soviet Union [17]. Moreover, while admitting the role of the USA in the development of Japan's supreme law, the Japanese still claim that the Constitution of Japan as of 3 May 1947 is just a series of amendments to the Meiji Constitution.

Germany, a country with a great legal culture, which gave its name to the Romano-Germanic law, was in no position to get back to the achievements of its constitutional and legal thought, since it was the design of the Weimar Constitution that had enabled Hitler's democratic rise to power and legitimized the fascist regime. Moreover, the Weimar Constitution played the role of the constitution of the Third Reich. Although to a limited extent, but it remained effective until 5 June 1945, when the power was shifted to the Allied Control Council. Germany, a country with a great legal culture (intended repetition), was in no position to call its supreme law "constitution"! In order to avoid constitutional entrenchment of the Division of Germany, minister-presidents of the eleven Lands of the western occupation zone flatly refused not only to call it "constitution", but also to hold a referendum on its adoption, despite the demands of the Trizonia states.

The text of the Basic Law for Germany is a kind of paragon in terms of governmental optimism and governmental responsibility[1]:

"Preamble:

…The entire German people is called upon to accomplish, by free self-determination, the unity and freedom of Germany.

Article 23 (1) For the time being, this Basic Law shall apply in the territory of the Laender Baden, Bavaria, Bremen, Greater Berlin, Hamburg, Hesse, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Schleswig-Holstein, Wuerttemberg-Baden and Wuerttemberg-Hohenzollern. It shall be put into force for other parts of Germany on their accession.

Article 116

(1) Unless otherwise regulated by law, a German within the meaning of this Basic Law is a person who possesses German nationality or who has been accepted in the territory of the German Reich as of 31 December 1937 as a refugee or expellee of German stock or as the spouse or descendant of such person.

(2) Former German nationals who between 30 January 1933 and 8 May 1945 were deprived of their nationality for political, racial or religious reasons, and their descendants, shall be regranted

[1] Cited by: Basic Law for the Federal Republic of Germany as of May 23, 1949.

citizenship on application. They shall not be considered to have lost citizenship insofar as they took up residence in Germany after 8 May 1945 and have not expressed a wish to the contrary.

Article 146

This Basic Law shall become invalid on the day when a constitution adopted in a free decision by the German people comes into force."

Intended to be a provisional document, in the era of national humiliation, the Basic Law for the Federal Republic of Germany proclaimed the goal of German reunification and adoption of a constitution of a unified state. Despite obvious accusations of revanchism, it contained provisions for its expansion to the other German Lands (for the first time, those provisions were enforced on 1 September 1957, when Saarland was returned to Germany based on the results of a referendum and in accordance with the Treaty of Luxemburg, an agreement between Germany and France; in autumn 1990 they were used as a legal tool to reintegrate the GDR). Most importantly, this Law pronounced Germans all those who had been committed to the German state in the past and were committing their future to it, and set forth the responsibility of Germany to such people.

This spirit of state optimism and state responsibility deserves full respect, and there is another factor drawing special attention of the Russian law experts to the 1949 Basic Law for Germany and 1947 Constitution of Japan – these constitutional acts were adopted by countries that had suffered a terrible political disaster, collapse of state, and territorial losses, and existed in the situation of a severe economic crisis.

This story was in many ways repeated by Russia in the early 1990s, when the 1993 Constitution of the Russian Federation was adopted. Just one thing to bear in mind – Russia did not see itself as a losing party in its competition against the West. While the Russians rejoiced at "their victory over the totalitarian communist rule", the rest of the world was reinforced in the view that Russia had lost the Cold War with all the consequences that come with such a loss.

Regretfully, at that stage of development of the constitutional map of the world, when new decolonized countries got down to writing their supreme laws, the pace of progress of the constitutional and legal design based on new constitutional and legal ideas was not maintained. Quite often, new independent states would simply copy key provisions of the constitutions of their former mother countries or other states, failing to examine seriously any alternatives [64, p. 96].

Thus, the very fact of adoption of constitutions by a number of Middle East states in the period between the two world wars (1923 Constitution of Egypt, 1924 Constitution of Iraq, 1926 Constitution of Lebanon, 1928 Constitution of Transjordan, 1930 Constitution of Syria, and 1939 Constitution of Kuwait) is believed to be proof of their semi-colonial status. Presumably, their own historical experience could not have resulted in this type of regulation of state, political and socio-economic interactions. "In the years of European colonial dominations, constitutions were only drafted based on West European standards (for example, the Egyptian Constitution was based on the 1831 Constitution of Belgium, the Constitution of Lebanon was a copy of the French Constitution of 1875, the Constitution of Iraq repeated provisions of several European constitutions, etc.)" [36, p. 11].

Similarly, the countries of Eastern Europe and new independent states that emerged on the territory of the former Soviet Union could not avoid the temptation to copy available best practices when designing their post-socialist constitutions. Compared to the 19th and even 20th century, today, those drafting constitutions for their respective countries on different continents have access to much more data that may be necessary to examine and take into account the advantages and disadvantages of the constitutional models tested by the leading countries.

Thus, "Google opened an electronic archive comprising constitutions of many countries. "According to Google, this initiative is intended to help the states in designing their constitutions", says BBC. It is pointed out that this information resource will be particularly useful to the countries that recently experienced a political or military conflict. For instance, president of Tunisia Moncef Marzouki, who had attended the official opening of the archive in New York, said that his country would be its active user. The Tunisian political actors have been unable to agree upon their new constitution draft, which became so necessary after the 2011 Revolution…"[1]

[1] See, for example: *The Kommersant Daily*. September 24, 2013. Available at: www.constituteproject.org.

Quite often, the process of designing a modern constitution resembles playing with Lego building blocks, and the choice of those blocks is very much like shopping in an IKEA store – one of the symbols of globalization:

"Depending on the theoretical register, the global constitution might be referred to as the global reservoir or archive, the collective constitutional consciousness or repertoire, or, for that matter, supermarket. Whatever the designation, the market etc. results from a myriad of transfers: Standardized items are registered, stored, exhibited and available for purchase to constitution-makers around the world. At this IKEA market for constitutional building materials, whoever is about to frame, amend or revise a constitution may – and generally does – tap the vocabulary, 50 grammar, style, and design characterizing the modern idiom. The buyer may shop for a complete political regime, such as a constitutional monarchy or a parliamentary democracy, or items more limited in scope, such as a rights catalogue, a two-chamber system, an institutional arrangement for constitutional review or a presidential system, or only a single item, such as the political-question doctrine or the right to equal treatment. And shoppers have the choice between finished products, prêt à porter, disassembled parts to be put together at home, or inspirational ideas requiring a high degree of constructive elaboration.

Once on the shelves of the IKEA market, globalized constitutional items generally do not refer to their (original) production site. Very much like NIKE sneakers not carrying a notice "produced by children in the sweatshops of Mumbai", a constitution would not be labeled "ideological product of the landowning elite". Rights catalogues, models of representative democracy, systems of judicial review, values, amendment rules, and so on are held in store at constitution IKEA as bare descriptions of institutions or texts of provisions gleaned from constitutional documents" [56, p. 14].

The seeming pragmatism of the described constitutional design model pretty poorly disguises the civilizational arrogance and scientific snobbery – let so called "old democracies" play with the grand theory of constitutional law and philosophy of constitutionalism, "new democracies" should only select from this model the modules they need to come up with a certain constitutional text. If we get back to the style of "furniture metaphors" above, we will clearly see that, like furniture components from IKEA store shelves cannot be used to make noble wood furniture, "prefabricated institutional modules" found at a "constitutional warehouse" are not good enough to come up with a constitution of state and society, people's constitution. Every country, every people, whether big or small, every society, whether developed or developing, rich or just engaged in the primary accumulation of capital, has its own history, traditions and achievements, its own errors and pride, its own future image.

Blind copying, incompatible with the level of development of the economy and society, failing to meet the countries' individual needs, leads to contradictions between the constitutional reality and written constitution, in which case the latter is what Ferdinand Lassalle called just "a sheet of paper".

"If you have in your garden an apple-tree and proceed to hang on it a label which declares: "This is a fig-tree", have you thereby transformed the tree into a fig-tree? You have not, even though you should gather all your servants and all the inhabitants of the country around and have them all declare aloud with due solemnity: "This is a fig-tree"; the tree will remain what it always has been.

And when the next year comes around, the truth will come out. The tree will bear apples and not figs. Quite similar, as we have seen, is the case with the constitution. What is written on this sheet of paper is of no value at all if it does not correspond to the real condition of affairs, to the actual alignment of forces" [19].

The negative consequences of this temptation to copy are much less significant than those of another trend, which is becoming increasingly obvious, – the trend of "constitutional missionary work". "If the nineteenth was the century of Christian missionaries, the twenty-first may become the century of constitutional missionaries", says Donald L. Horowitz [62, p. 16], probably, considering himself to be such a missionary, and viewing the American constitutional school as a missionary center destined to expand its model to other countries. The promotion of "constitutional democracy" is supported by embassies and non-governmental organizations, and envisages the use of tools such as "flower revolutions" and direct military intervention.

Such promotional efforts contradict both the principles of international law and views of true comparativism, according to which drafting of

modern constitutions must be based on a serious international comparison. The word "international" means that participation of international experts and practitioners is envisaged and encouraged, while the word "comparison" means that in designing a constitution one should compare and take into account the experience of other countries that found themselves in similar circumstances.

This approach was used to develop the Constitution of the Russian Federation in 1993. Any approach based on international comparison is so obvious that it allows politically motivated authors to assert that at least constitutional institutions and theories were borrowed. This primitive approach is perfectly characterized by Patrice Gelard, a heavily cited French state law expert, who identified percentage shares of the Western influence on the Russian Constitution as follows: the French Constitution – 50%; the US Constitution – 30 %; the heritage of the Russian Empire – 20%" [47, pp. 52–53].[1]

The similarity of the Russian and French constitutional doctrines has become common belief. Possibly, it echoes the famous enlightenment of Marie-Henri Beyle (Stendhal), who was part of Napoleon's imperial cortege during the whole Russian campaign of 1812:

"Ah, my dear fellow, have you lost all your money, or can you be in love with some little actress?" said prince Korasoff to Julien Sorel. "The Russians imitate French ways, but always at a distance of fifty years. They have now (1830) reached the days of Louis XV".

No point in complaining about national humiliation. First of all, most likely, Stendhal was taking hard the loss of France in the war, and, second of all, the "French ways" are so attractive and pleasant, that imitating them, even with a 50-year delay, is not blameworthy.

From the legal theory standpoint, one can agree with this opinion to the same extent as the achievements of the French constitutional doctrine can be found fundamental in the development of key concepts and theories of the constitutional law. After all, the French Declaration of the Rights of Man and of the Citizen, 1789, served as the basis of all the 16 French Constitutions[2] and continues to be one of the three parts of the supreme law of France (along with the Preamble of the 1946 Constitution and the main body of the 1958 Constitution of the French Republic).

At the same time, the similarity of many models does not mean that they were all borrowed. Apart from being theoretically unsubstantiated and failing to reflect actual historical events, assertions that all constitutional acts (whether Russian or foreign) are "hybrid" in nature are extremely dangerous, as they imply that the constitutional and legal system of a country is a chaotic set of state and legal institutions, varying in terms of origin and controversial in terms of content.

Despite this obvious danger, it should be admitted that there are some constitutional institutes that are more responsive to the borrowing of foreign elements, including, in the first place, the systems of judicial review and constitutional justice, as well as the electoral franchise, especially in some types of electoral systems. The analysis of the modern electoral legislation of many countries brings us to the conclusion that in each of those countries the desire to improve the electoral system by means of frequent replacement of electoral models and introduction of different approaches to the formation of the bodies of state authority reduces public confidence in the electoral system and the state bodies formed on the basis of elections. Similarly, very seldom borrowed institutions prove to be successful if they are not incorporated seamlessly in the existing models of state government. Institutes developed and tested in a different state and legal model can only be successfully borrowed if it is done taking into account the level of development of the constitutional theory, and if they are compatible with and meet the interests of the leading political and social agents.

It is also important that such political and social agents clearly understand that even similar legal frameworks and state institutions, while looking alike in terms of their legal confirmation, in real life may work very differently– seemingly universal legal doctrines may be read and felt differently

[1] Patrice Gelard, Dr. of Political Science, Dr. of Slavic Studies at the University of Paris, Senator.

[2] The exact number of French Constitutions is quite questionable. Different authors name between 14 and 17 constitutions and constitutional charters which were in effect. With constitutional acts that were never made effective this figure can reach 22.

by different peoples. The point is that, instead of being just a decoration on the statehood facade, such universal institutions should truly play the role of loadbearing structures. Although the function of decorations should not be underestimated too.

Beauty in Constitutional Terms

The beauty of constitutional design can be at its finest if the text of the supreme law is characterized by comprehensiveness and profoundness with the minimal use of legal formulas and doctrines. It is achieved by adhering to the principle of minimalism in constitutional design – brevity of provisions on constitutional regulation, simplicity and clarity of legal forms. The provisions of a constitution must be easily understandable (at least at the basic level) by each and every citizen. Excessive theoretical complexity, affectation of style or cumbersomeness of wording inevitably result in difficulties in understanding and therefore growing distrust.

The very concept of constitution as a supreme law intended to regulate key social interactions implies pursuit of brevity. The texts of constitutions designed as a framework document providing for sovereignty of the people's rule and establishing forms and bodies of government are very short – the Constitution of the United States of America comprises 7 Articles and 21 Sections added by ten Amendments. Moreover, contrary to the expectations, one will not find in the text of the US Constitution terms such as "sovereignty", "democracy", or "people's rule".

Those studying the essence of constitutions as political and legal documents normally describe them as a statutory law, corpus of legal acts or constitutional conventions. It is known that not all constitutions have the format of a single legal document. For instance, the Constitution of Austria comprises 14 constitutional acts, the Israeli Constitution consists of 12 legal acts plus the Agreement on the Gaza Strip, the Swedish Constitution consists of 5 legal acts. The United Kingdom, which is usually referred to as a country with no written constitution, nevertheless has numerous legal acts that make up the country's "unwritten constitution", although they are not codifying statutes. On top of the constitutional conventions, some of which are included in the written law, there are other very important acts, such as the Great Charter (1215), the Petition of Rights (1628), the Bill of Rights (1689), the Act of Settlement (1701), two Acts of Parliament (1911 and 1949), the Peerage Act (1963), the Race Relations Act (1968), the Representation of the People Acts (1949 and 1969), the Local Government Act (1972), and many more. The number of British constitutional documents mentioned in the works by different authors varies between 10 and 350.

In Sweden, the role of constitution is played by four laws: the Instrument of Government (1974), the Act of Succession (1810), the Freedom of Press Act (1949), and the Fundamental Law on Freedom of Expression (1991). A similar system exists in New Zealand, which does not have a unified constitutional document either. The absence of a single code-based constitutional law in Israel is convincingly explained by orthodox Jews, according to whom the Jewish people already has a Supreme Law in the form of the Ten Commandments given to Moses by God.

Even at a glance, monolithic constitutions often have a complex structure. For example, the Constitution of the French Republic consists of a) the Constitution as such (1958); b) the Declaration of the Rights of Man and of the Citizen (1789); and c) the Preamble of the 1946 Constitution.

In the Russian history, such complexity characterized the 1918 Constitution of the RSFSR, which included as its first section the "Declaration of Rights of the Working and Exploited People", and the 1924 Constitution of the USSR, which comprised two sections: Section 1 – "Declaration of the Formation of the Union of Soviet Socialist Republics", and; Section 2 – "Treaty on the Establishment of the Union of Soviet Socialist Republics". The 1992 Constitution of Lithuania, which is currently in effect, consists of the constitutional law "On the Lithuanian State" as of 11 February 1991, and the constitutional law "On Non-Alignment of the Lithuanian Republic with Post-Soviet Eastern Blocs".

The brevity of the US Constitution was passed over to the Constitution of Japan, which consists of 103 articles – slightly less than in the Constitution of Norway (112). Quite often, it is explained by the high level of constitutional creativity and legal consciousness in modern states. Even more compact are the Constitutions of Yemen (57 articles) and Saudi Arabia (82 articles). The "founding fathers" of these constitutions successfully escaped the temptation of "constitutional graphomania".

This definition of the process of "bulking" of constitutional texts after World War II was suggested by Giovanni Sartori [70, p. 199], who uses as examples the 1950 Constitution of India (395 articles plus a list of detailed annexes) and the 1988 Constitution of Brazil that hits record numbers having the size of a hefty telephone book – almost 42 thousand words making up 245 articles split into nine sections and 83 articles of transitional provisions. The 1988 Constitution of Brazil "promised heaven on earth but ended up hurting the poor"[1]. Indeed, the Constitution of Brazil is full of "warmheartedness" and "kind" to all – it grants the indigenous peoples recognition of their social organization, customs and traditions, languages and religions, as well as the right to the lands which are traditional areas of their inhabitance; it also grants free public transport services to senior citizens (65+ years of age), subsidies to orphans and abandoned children, exemption from criminal liability to those under 18 years of age, prohibition of cruelty to animals, etc. The Constitution of Nigeria hardly fits in its 331 articles. The hugeness of the Mexican Constitution can only be explained by the wish of its authors to include in it the basics of virtually all classical branches of law.

There is no explanation why some authors of constitutional texts opt for a laconic design, while others prefer "constitutional graphomania", as there are no identifiable dependencies between the level of social and economic development and the level of development of constitutional schools or political systems. It would not be right to say that the brevity of a constitutional text is a sign of developed democracy or that its heftiness is an attribute of developing states. Thus, the records set by Brazil and India could have been beaten by the draft of the EU Constitution as of 9 October 2004. Its draft comprised 448 articles and more than 60,000 words. This attempt to adopt the most voluminous constitutional text in the world failed after it had been voted down in France and the Netherlands.

In fact, the size of the text is not the most important point. Much more important is the requirement to concentrate in constitutional acts only those provisions that regulate key social interactions. The constitutional theory considers as such the relations of sovereignty, ownership, freedom, and authority.

It should be emphasized that the classical constitutional designs are not rigid either – their content is continuously reviewed and updated. Thus, quite often Postwar constitutions enriched the then existing established constitutional concepts with new content and meaning. For example, one of the most influential and, probably, most controversial concepts used as basis by the majority of models of democracy is the theory of sovereignty of the people's rule. In Russia, all the discussions on the people's rule are typically boiled down to the rights of the people, popular sovereignty.

In this context, it may be very interesting to test this theory on the 1947 Constitution of Japan, which sets forth that the sovereignty of the people's rule is a common principle shared by the whole mankind. Establishing a monarchy, the Japanese Constitution, nevertheless, contains in its Chapter 1 a provision no European monarchy can afford – even the Emperor's status is "determined by the will of the people, in whom the power resided". Similarly, no European constitution has an article devoted to the rights and duties of the people. It is this way that Chapter 3 of the 1947 Constitution of Japan is entitled – "Rights and Duties of the People". The duties of the people are detailed in Article 12 of the Japanese Constitution.

"The freedoms and rights guaranteed to the people by this Constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare".

Another cornerstone in the building of the modern society is the "sacred right of property". From our life experience we know that property encumbers (the encumbrances faced by a proprietor are not limited to taxes, which in certain cases translate into luxury taxes, insurance fees, etc.; they also include the costs related to maintaining the serviceability, safety and operability of property (see Article 210 of the Civil Code of the RF). The developers of the 1949 Basic Law for Germany articulated it as follows: "Property obliges. Possessing property means serving the public good".

[1] Antonio Britto, Brazilian welfare minister, on the 1988 Constitution of Brazil, cited by: The Economist. October 9, 1993. P. 45.

They also introduced a provision saying that the state has the right to deprive proprietors of their property according to the law, including nationalization of land, public resources and means of production, if necessary "for the public wealth" (Article 15).

It is these four blocks of social interactions (sovereignty, property, liberty, and power) that should be established by a supreme law. Inclusion of any other provisions should be considered constitutional redundancy.

Numerous and frequent exceptions to this rule are either justified by the importance of certain questions for the country's nationhood or economy (e.g., taking into account special importance of the Nile and Suez Canal for the Egyptian economy, the 2014 Constitution of Egypt contains articles devoted to the protection of these natural and engineering objects), or considered as curiosities of history (for example, the 1999 Constitution of Switzerland introduces special taxation of carburetor engines, and details (in Swiss Francs) the rates of the one-time tax to be paid by owners of heavy goods vehicles over 3.5 tons (Article 196, Chapter 2 "Transitional Provisions"); the 1988 Constitution of Brazil establishes the procedure for sale of liquid and gas fuels (Paragraph 7, Article 34, Transitional Constitutional Provisions Act). Quite often, constitutional redundancy is caused by good intentions, like in the case of the 2014 Constitution of Egypt – in order to guarantee financial support for the social sphere development, it introduces targets for government expenditures on healthcare (at least 3% of the GDP, Article 18), education (at least 4% of the GDP, Article 19), higher education (at least 2% of the GDP, Article 21), and R&D (at least 1% of the GDP, Article 23).

Yet most of the constitutional acts tend to demonstrate simplicity in terms of both structure and content, which does not rule out the use of lofty language, reference to religious values, historical experience, symbols and marks of national pride. Most spread are references to the Holy Trinity in constitutions of Christian states, and the "name of God" in those of Islamic states.

While the 1975 Constitution of Greece limits itself to the dedication "In the name of the Holy and Con-Substantial and Indivisible Trinity", the 1937 Constitution of Ireland contains a full-fledged invocation,

"In the Name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred,

We, the people of Éire,

Humbly acknowledging all our obligations to our Divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial…"

As a matter of fact, the Greek Constitution has yet another reference to the Holy Trinity, mentioning it in the text of the President's oath of office,

"I do swear in the name of the Holy and consubstantial and Indivisible Trinity to safeguard the Constitution and the laws, to care for the faithful observance thereof, to defend the national independence and territorial integrity of the Country, to protect the rights and liberties of the Greeks and to serve the general interest and the progress of the Greek People".

Constitutions of some Muslim countries use categories such as "pride of Arabic and Islamic heritage" (Article 8, Constitution of Qatar), or "Islamic social justice" (Article 7, Constitution of Yemen), while the Egyptian Constitution reads that the purpose of education is to "build the Egyptian character" and "maintain national identity" (Article 19), and defines Egypt as follows: "Egypt is part of the Arab nation and enhances its integration and unity. It is part of the Muslim world, belongs to the African continent, is proud of its Asian dimension, and contributes to building human civilization". (Article 1 "Nature of the Republic", Constitution of Egypt).

The 1992 Basic Law of Government (Constitution) of Saudi Arabia reads the following,

"The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God's Book and the Sunnah of His Prophet, God's prayers and peace be upon him…"

The oath of office is taken "in the name of God" by heads of state, cabinet members and parliament members (constitutions of Algeria, Egypt, Syria, Iraq, and other Arab states).

An interesting example of going to the roots is set by the Constitution of Mongolia. Demonstrating not too much of the national color in terms of wording and structure, in its last article (Article 70) this document specifies its effective date, which is chosen based on recommendations of Lamaism astrologists [9, p. 184]:

"The Constitution of Mongolia shall enter into force at 12.00 hours on the 12th of February of 1992, or at the hour of Horse on the prime and benevolent ninth day of Yellow Horse of the first spring month of Black Tiger of the year of water Monkey of the Seventeenth 60-year Cycle".

Regretfully, the trend of universalization of constitutional texts is making the use of such

national ornaments a very rare phenomenon. Some optimism is encouraged by the analysis of the most recent constitutions. Constitutions of the 21st century display more attention to national identities; their texts are enriched with colorful metaphors and symbols that may be difficult to translate into other languages. Even in the context of this trend, the 2014 Constitution of Egypt differentiates itself proclaiming in its Preamble:

"Egypt is the gift of the Nile[1] for Egyptians and the gift of Egyptians to humanity.

With its unique location and history, Egypt is the Arab heart of the world. It is the meeting point of world civilizations and cultures and the crossroads of its maritime transportation and communications. It is the head of Africa on the Mediterranean and the estuary of its greatest river: the Nile.

This is Egypt, an immortal homeland for Egyptians, and a message of peace and love to all peoples.

In the outset of history, the dawn of human conscience arose and shone forth in the hearts of our great ancestors, whose goodwill banded together to found the first central State that regulated and organized the life of Egyptians on the banks of the Nile. It is where they created amazing wonders of civilization, and where their hearts looked up to heavens before earth knew the three Abrahamic religions.

Egypt is the cradle of belief and the banner of glory of the revealed religions.

On its land, Prophet Moses – to whom Allah spoke –grew up and on Mount Sinai, the Revelation of Allah shone on his heart and Divine message descended. On its land, Egyptians harbored in their bosoms Virgin Mary and her baby and offered thousands of martyrs in defense of the Church of Jesus, Peace Be Upon Him. When the Seal of the Messengers Mohammad (Peace and Blessings Be Upon Him) was sent to all mankind to perfect the sublime morals, our hearts and minds were opened to the light of Islam, and we, labeled the best soldiers on Earth fighting for the cause of Allah, disseminated the message of truth and sciences of religion across the world."

Criteria for Constitutional Design Analysis – Empiric and Aesthetic Rules

Constitutional design cannot be selected on a "one size fits all" basis – it is not possible to address all the possible situations or meet the requirements of different countries with the same set of principles or technologies. Neither can it be defined as a model constitutional architecture that, once developed, can be used on a plug-and-play basis. Nevertheless, many researchers name several fundamental principles to be followed in designing a constitution. We have summarized the ideas of leading authors studying constitutional design, which helped us to come up with a list of criteria for the analysis of this phenomenon:

1. First of all, it should be underscored that "it is not about models used in country studies …, or classification based on constitutional structure, methods of adoption or amendment, or legal properties of a constitution. It is about a broader and more essential approach… Constitutional model characterizes a certain social and political approach to the subject, content and methods of constitutional regulation of social interactions, as well as to the use for this purpose of various constitutional and legal institutions" [44, p. 16].

2. Constitutional design is deemed to be a way to establish a system of linkages between political views, ideas, political culture of the society, government and social institutions. According to Adam Przeworski, even minimalistic concepts of democracy do not remove the need to think about institutional design [68, pp. 12–17].

The key questions to be addressed by constitutional design are as follows: Is it true that constitutions are crucial for future development, and that individuals really can make their life better by agreeing to follow a certain set of rules? [52, p. 104]. These questions posed by K. L. Dougherty and J. Edward are answered by R. D. Congleton and B.P. Swedenborg: constitutional designs can potentially improve democratic governance by better aligning the equilibrium strategies of elected officials with the shared long-term policy interests of the electorate [50, pp. 1–40]. A similar answer is suggested by Donald S. Lutz, according to whom constitutional design requires special attention to the structure of public interests and character of citizens' interest groups, as well as consideration of its implications for future generations [66, p. 206].

3.) Constitutional design is determined by political and cultural values of the state and society. According to R. Simeon, it is the process and outcome of establishment and structuring of institutions and norms in a way that promotes and facilitates management of specific values and restrains

[1] Stating that *"Egypt is a gift of the Nile"*, the Constitution of Egypt echoes the classical definition by the historian Herodotus of Halicarnassus, who lived in the 5th century BC.

behaviors that can undermine them [72, pp. 241–261]. An "axiom in politics" is the proposition according to which the people should never authorize their rulers to do any thing which, if done, would operate to their injury. This axiom is also a "precautionary master principle of constitutional design aiming to preclude even the possibility that constitutional power would be abused"[1].

4. Constitutional design always results from discussion and analyses of the following questions: Which tasks and functions do the state and its institutions perform best of all? What are their prerogative powers? What can be devolved to the entities of the civil society, business, or finance? The procedure of vesting power and functions in specific state institutions is also very important for understanding of the concept of constitutional design.

J. M. Buchanan and G. Tullock suggest, that constitutional design is a kind of comparison of public and private spending on a wide range of activities performed in order to identify within this wide range those activities, which should be constitutionally assigned to the state [49].

5. An important principle of constitutional design is the requirement that a constitution should be written by those people who will have to live in accordance with its provisions, rather than a team of third-party experts. Similarly, it should be approved by those who will have to live according to it, rather than philosophers and thinkers. Another principle of constitutional design dictates that in implementing institutions of popular sovereignty one should not strive for the best result which is possible in given circumstances, since such an ideal political system will not be able to work on the Earth, and any attempt to build it will only give rise to fanaticism, rather than justice [66, p. 186].

6. However, the core of the constitutional design theory is in the development of an institutional framework conducive to attainment of social welfare goals. One of the proponents of this approach is Jean-Jacques Laffont [20], who describes constitutional design as *"optimization of expected social welfare"*, and suggests that the institutions which ensure the movement of the society towards these goals, various state government bodies can be formed only and exclusively on an electoral basis [63, pp. 649–669].

Therefore, in developing principles of constitutional design special attention should be paid to the procedures based on which the bodies of state power are created, and to the rules they are expected to follow (e.g., rules of voting and conduct of elections, regulations, traditions, customs, and practices).

At the same time, we can agree that there are very few empirically established rules of constitutional design [72, pp. 241–261]. A list of legal and technical rules of constitutional design was developed by Marianna Klochko and Peter Ordeshook:

– Rule 1 says that ideally constitutional provisions ought to reflect social consensus, while being "simple and concise, unencumbered by legalistic complexity."

– According to Rule 2, "any constitution ought to make as few changes in those [democratic] traditions as possible."

– Rule 3 says that "Constitutions should focus on the design of those institutions and rights minimally necessary to ensure society's ability to coordinate to those policy goals identified through such mechanisms as democratic elections." In other words, the use of a constitution as a tool of social engineering may undermine its role as a tool of political coordination.

– Finally, Rule 5, which is the last one on the list, says that "the writing and ratification process of a constitution should be separate enterprises. The preparation of the document should occur outside of public view, while its subsequent ratification should involve as broad a segment of society as possible."[2]

The requirement to keep constitutional provisions "simple and concise" is explained by one of the basic attributes of constitution as a supreme law – its sustainability. The sustainability of constitution is not ensured by internal safeguards incorporated in its text, such as complexity of reviewing, amendment, or revision procedures. It is ensured by the fact that at a very early stage of design only

[1] Vermeule A. Precautionary principles in constitutional law. Available at: http://jla.oxfordjournals.org/content/early/2012/05/22/jla.las003.full.pdf (accessed 02.04.2018).

[2] Klochko M., Ordeshook P. C. Toward a General Theory of Constitutional Design. *The 2nd joint conference "Initial conditions and the transition economy in Russia: the weight of the past in comparative perspective"*. Houston, 2001. Available at: http://www.uh.edu/~pgregory/conf/Law.PDF (accessed 02.04.2018).

those concepts, institutions, doctrines and provisions are included about which there is general agreement (if not consensus) of leading political and social actors. It is desirable that such agreed upon provisions be as understandable as possible.

As we know from the history of the state (constitutional) law, there are provisions that are set forth once and for all not being subject to any revision. Such provisions cannot be changed even if there is people's will to do so. By the way, it is in this way that the Constitution of Greece enshrines the special status of the Greek Orthodox Church, which is also undisputable and not subject to revision.

In the Federal Republic of Germany not subject to change are: the federal form of government, principles of collaboration of lands in the area of legislation, as well as a number of fundamental principles, such as protection of human dignity, inviolability and undeniability of human rights, democratic and social character of state, sovereignty of the people, right to [physically] resist anybody who attempts to change the constitutional order, if no other means are available. Similar approaches are used by other countries. For example, in France and Italy not subject to revision are the provisions on the republican form of government, while in Greece undisputable are the articles that establish the country's form of government as parliamentary republic, as well as key principles, such as respect for and protection of the individual, equality before the law, personal freedom, freedom of religion, and division of powers.

The requirement of stability (sustainability of content), including the provisions that define the political system, comes into a natural collision with the dynamism of modern life. Joseph Brodsky in his 1986 Nobel Lecture highlighted this problem in the following brilliant manner:

"Political system, structure of the society, like any other system, is by definition a past tense form, which is trying to foist itself on the present (and quite often on the future) ... Philosophy of the state, its ethics, let alone its aesthetics, always belong to yesterday" [4, v. 2, p. 453].

Aesthetics of a constitution is the question of its harmony with the society and political system in different periods of its operation. The question is, if it is really possible to strive for such harmony, while accepting the "yesterday's" character of any state aesthetics enshrined in the constitution, or it would be more prudent to admit such lagging behind and put up with it. The answers to this question offered by leading political scientists vary. A. A. Mishin says, "Albeit formulated by an artist, it is a rather accurate description of the uncontestable fact that any constitutional system, even the best for its time, may suddenly start retarding progress and hindering the development of society, if it is unable to change and adapt to new economic, political and other conditions." [25, p. 49]

Consoling is that constitutional provisions do not determine the political regime, which is pointed out by French social scientist M. Duverger, "Any constitution draws more than one government structure, and the choice of structure depends on the current alignment of forces. Different political regimes can... function in the same legal framework" [53, p. 10]. Indeed, during the 25 years of existence of its 1993 Constitution, Russia has seen different political regimes with very different models of presidential rule, tested all constitutionally allowable principles of "forming" of the Council of Federation of the Federal Assembly of the RF, different approaches to building a system of executive power, etc. The new history of Russia of the late 1990s knows examples of government system and models of division of power being changed due to various factors, including influence of a certain oligarch group, awareness or even health condition of the head of state, etc.

According to V. A. Mau, "The authoritarian character of the Russian Constitution is quite formal. Although it vests sweeping powers in the President, the President is not always an inherent active factor of political, let alone economic, life. The President can but does not have to be active." [22, p. 301]. Constitutions do not only grant the necessary flexibility to the political system – the same constitutional text can be used as a basis to design various development paths for institutions of parliamentarism, bodies of executive power, and judicial system.

Substantiating the importance of constitutional design for the state and society, Tom Ginsburg suggests that "good designs can facilitate democracy and tame religious radicals; they can encourage executive turnover and promote responsive adjustment to new circumstances through constitutional amendments. Bad designs, on the other hand, can exacerbate intercommunal conflict and perpetuate unjust outcomes for women; they can block transitions to superior institutions; and they can clog channels of citizen redress through the courts" [73, p. 10].

At the same time, this "art-deco" approach to the interpretation of constitutional design comes into contact and even collision with the institutional view of this phenomenon, which implies that "Constitutional design is the way in which connections are made between political ideas, political culture, and institutional development for the most practical purposes." [54, p. 23] This visible contradiction appears quite dialectic and allows viewing constitutional design from two mutually supplementary perspectives:

1) As a system of political and legal doctrines, constitutional and institutional models, varying schemes of division of power, structures of government and political regimes. In fact, from this perspective, constitutional design is seen as a conceptual category, set of phenomena essential for a particular state and society.

2) As an architecture or structure of a supreme law, traditional or tailored form of presentation of the constitutional and legal matter, its description in legal documents. This includes the images and symbols that illustrate such constitutional and legal matter, selected style and narrative form of constitutional content. At the same time, one should not understate the importance of form not only as a way to present content but also as an inherent value.

No doubt, modern democratic constitutional design has undergone significant changes. Thorough comparison of modern constitutions reveals numerous interesting facts, including, on the one hand, major differences between constitutional concepts (designs) and, on the other hand, borrowing by constitution designers of various approaches and even formulas – i.e. migration of constitutional ideas. However, it is unacceptable to transform the constitution making process into Saturday shopping at an IKEA store.

Reflecting on the notion of "constitutional design" and its derivatives, one ends up with philosophical musings on constitutional meanings of the verbs "to be" and "to seem", perception of the constructive beauty of law and its reflection in the mirror of real life. Logical, beautiful legal structures may be distorted to the extent of ugliness in the course of enforcement. However, like with other phenomena of human life, the beauty of constitutional models and structures cannot be boiled down to a certain universal standard. No ideal template for constitutional and legal matter exists or can exist, since constitutional design is intended to reflect the people's historical experience, characterize the current condition of the state, and introduce the vision of its future.

Afterword – On Constitutional Design without Metaphors

At Venice Architecture Biennale 2014, Austria exhibited "Plenum. Places of Power" – its reflections on the effect the exteriors of parliament buildings can have on society, and vice versa. About 200 snow-white 1:500 scale models of parliament buildings were displayed on snow-white walls. Analysis of interdependencies between the level of democracy of a political regime and the arrangement of parliament facilities was left by the hosts to the discretion of visitors. In 2016, David Mulder van der Vegt and Max Cohen de Lara, partners of Amsterdam-based XML architect firm, published a book entitled "Parliament"[1], in which they discuss linkages between the architecture of parliament chambers in different countries and the political process in those countries. As a result of their study, they identified the phenomenon of "architectural DNA" and came to the conclusion that the shape of the chamber is quite representative of the essence of the country's political system. They distinguish five types of chamber interiors: "circle", "semicircle", "horseshoe", "opposing benches", and "classroom"[2].

[1] See: http://www.parliamentbook.com/ (accessed 10.04.2018).
[2] How architecture reflects the political regime: a large-scale analysis of parliamentary halls. Available at: https://archi.ru/news/71048/ (accessed 10.04.2018). .

One of the predecessors of the abovementioned architects is Cyril N. Parkinson:

"WE ARE ALL familiar with the basic difference between English and French parliamentary institutions; copied respectively by such other assemblies as derive from each. We all realize that this main difference has nothing to do with national temperament, but stems from their seating plans… So the British instinct is to form two opposing teams, with referee and linesmen, and let them debate until they exhaust themselves. The House of Commons is so arranged that the individual Member is practically compelled to take one side or the other before he knows what the arguments are, or even (in some cases) before he knows the subject of the dispute… If the benches did not face each other, no one could tell truth from falsehood- wisdom from folly- unless indeed by listening to it all. But to listen to it all would be ridiculous, for half the speeches must of necessity be nonsense… In France the initial mistake was made of seating the representatives in a semicircle, all facing the chair. The resulting confusion could be imagined if it were not notorious. No real opposing teams could be formed and no one could tell (without listening) which argument was the more cogent… But the semicircular chamber allows of subtle distinctions between the various degrees of tightness and leftness. There is none of the clear-cut British distinction between rightness and wrongness…" [28, pp. 28–29].

It is entirely possible that the choice of the French Chamber of Deputies as a model for the chamber of the State Duma of the Russian Empire in St. Petersburg's Tavrichesky Palace lead to French-like complications in the party-building process of pre-revolutionary Russia. Despite the fact that *"in a chamber seating 560 each deputy had a soft seat upholstered in goat skin with a reading easel from pale oak, and "F. Meltzer and Co." had met the requirement not to make niches for inkpots in drop-leaf tables (Otherwise, they will throw inkpots at each other!)"* [10; 29, pp. 95–107], the State Duma failed to escape criticism from all sides attracted by its inability to both give practical effect to the ideas of those who had facilitated its creation and development, and meet the aspirations of different strata of society that considered it to be a tool of state rebuilding.

The design of the chamber of the Supreme Council of the USSR and Supreme Council of the RSFSR, arranged in 1933–1934 by way of merging two 19th-century chambers – Andreevsky and Aleksandrovsky, was illustrative of the total absence of any parliamentarian founding. The chamber was divided into two unequal rectangular parts. The smaller part was designed for the Presidium, whose authority was emphasized by a marble statue of Vladimir Lenin in a high white niche in the background, while the lower and bigger one consisted of six straight sections with deputies' seats. The chamber had no room for half-tones of *"leftism"* or *"rightism"*. It was important to make sure that the Presidium members would be able to see if any hand failed to be raised to join unanimous voting *"IN THE AFFIRMATIVE"*. In the terminology of Dutch architects, this arrangement is called *"schoolroom"* – Presidium members (teachers) give deputies (students) tasks and listen to their answers.

Rectangularity (albeit with slight curvatures) was used in the design of the chamber of the State Duma of the Russian Federation arranged in the former building of *"Gosplan"* (the State Planning Committee under the Council of Ministers of the USSR at 1, Okhotny Ryad, Moscow), when it was redesigned to meet parliamentarian needs in 1994. Possibly, it is this flaw of design that gave rise to the aphorism *"Parliament is not the place for discussions"*. Experts in the area of parliamentarian design and architecture of parliamentarism are looking forward to seeing the chamber of the State Duma of the Russian Federation after its renovation, which is to be completed in 2018. This project envisages making a transparent dome on top of the parliament building roof (hard to say if it is going to contribute to higher transparency of parliament members' activities), as well as full rearrangement of the chamber to enable semicircular seating of the deputies[1].

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[1] The roof of the State Duma will be domed. And the deputies will be seated in a semicircle. *The Kommersant Daily.* February 6, 2018.

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