



Sergey Tkachenko

candidate of law science,
doctoral candidate, associate professor
of «Social technologies and law»
department of the Samara state university of
communication lines (Russian, Samara)

**MYTH ABOUT THE “FOOLISH” LEGISLATOR
IN THE RUSSIAN JURISPRUDENCE**

Annotation

In the ninetieth years a full-scale reception of the western right took place, completely changed domestic legal system. The purposes of reform are completely achieved by ruling elite. However by virtue of essentially missing with declared purposes, the certain political legal myths have been generated. One of them is a myth about a “foolish” legislator.

It is known, that in 90th years Russia has built its legal system due to full-scale reception of foreign law. However during the estimation of the results of such reception, forecasting of the further legal events it is necessary to take into consideration an ideological component of reception. Ignoring of the ideological component of reception, data of the reception’s content only for «improvement of legal system» does not allow to understand the reasons of reception both the past, and the present, with its contents, purposes and tasks. The ideology of the recipient, donor, and often a joint ideology of donor and recipient forms a required ideological component of reception, being expressed in a scientific substantiation and expediency of refusal from the legal past and adopting the “advanced” legal technologies of foreign origin. This substantiation can be expressed in attempts of modernization of law and state, in various forms of reception,

accompanying by the latent internal political “revolution”, the latent or open expansion of the donor, demonstration of continuity with legendary empire of the past (Ancient Rome) or affinity to the “civilized” states of the present (the USA, the countries of Europe).

Accordingly, in processes law reception it is obviously necessary to reveal its ideological basis behind public political legal slogans and mottos. It allows to distinguish from modernization of law its pseudo-form which is called decorative reception. The typical example of decorative reception shows the Russian state of 90th years, where during the state - legal crisis (since 1990) was realized full-scale reception of western cultural and legal values without high-grade analogues in the past.

Decorative reception appears as a saving idea for ruling elite about adoption of legal “goods” of more advanced civilizations at the

moment of state - legal and economic crisis. In this case the political legal ideology plays the major role, switching public attention to the future positive changes, thus forcing down the revolutionary heat and natural aspiration of a society to real modernization.

For this purpose such myths as inability of existing legal system to manage its functions and a myth about the advanced western legal technologies as panacea for the salutary future of Russia were implanted into public consciousness. The given political legal myths have successfully managed these tasks. They prepared public consciousness for the necessary viewpoint of legal reforms perception, armed the public with patience and gave a hope for the future prosperity and stability. In our days, after 16 years of expectations, another myth is created.

So, the root of the legal troubles of Russia is in “thoughtless”, “mechanical”, “blind” copying by the legislator of the western legal experience, ideas, principles, institutes, norms, terminology.

In the majority Russian researchers idealize Russian legislator, considering, that all negative results for the Russian society are from thoughtlessness. Total corruption, dependent “independent” judicial authority, “lawful state” for elite, constant and in this connection uncontrolled political elite, etc. are explained by thoughtlessness. Thoughtlessness of the legislator, original legal “dullness” is expressed in reappraisal of legal mentality of Russians which in its majority is not ready for democracy. And consequently there is no civil society in Russia and there is nobody to control elections and political activity of public figures.

This myth is a rescue for Russian scientists. Otherwise it is necessary to write and to tell the truth, and this deprives of an opportunity to defend the dissertation, to climb up the service ladder, etc. Concerning the knocked down by the new, “modernized” western - Russian law

of actually deprived Russian people, scientists of humanities show an open Russophobia, expressed in theories of legal nihilism of Russia, which essence is in inability of Russians for law, i.e. for a civilization.

So, A. Lukianov marks, that Westerners copy the foreign legislation in Russia, «without comprehension of what they do. They began to copy the ready norms which exist in the USA, translate them into Russian, thinking that is enough to work. Actually the highest juridical amateurishness was showed here. Any competent lawyer, especially who is engaged in the foreign law, knows that it is impossible to combine incompatible. To copy and to transfer transatlantic experience on the Russian ground it is impossible». [1]

It is curious that researchers even think equally conjuring the legislator from «thoughtless copying of judicial system from other countries»: «World experience gives convincing proofs of an amazing variety of judicial bodies. The judicial system of any country developing in the natural way is original and unique. History denies the efficiency of thoughtless copying of judicial system of other countries and justifies its adoption only in certain elements and details» [2]; «the History denies blind copying of judicial system and legal proceedings of other countries, justifying their adoption in separate elements and details. Modern judicial reform in Russia should be focused on domestic historical legal experience which integral part was made by judicial reform of 1864 both in the country as a whole, and in its separate regions» [3].

S.V. Ermolenko speaks about “mechanical” activity of the legislator: «mechanical loan of international legal principles, institutes and norms which it is difficult to intertwine in « a system fabric » the Russian legal validity, quite often causes contradictions during realization of the Russian laws and other statutory acts» [4].

Has surpassed all in research of “nonsense” of legislator B.A. Fishermen which is convinced, that «monkey, blind belief in perfection of borrowed institutes do not give expected effect. Development of another’s experience should be creative, critical and organic» [5].

Researchers are convinced, that the ruling elite of Russia adheres to sights only the West-European theorists, repeats the western concept of a democratic lawful state. However such position of ruling elite renders on a society more likely negative influence to what the modern situation of alienation of political «tops» and societies from each other testifies. Activity of the government of Russia for today has not led to essential positive changes, on the contrary, has aggravated existing political, social and economic contradictions between a society as a whole and ruling elite. The principal cause of failures in this plan is connected to thoughtless copying the western political and social device without taking into account specificity of the basic types of a society - collectivist and individualist [6].

J. Krasnov thinks, that «having started the fundamental dismantle of the old statehood, the Russian reformers had no methodology of the updating corresponding to the Russian historical and legal traditions which is necessary for effective reforming of domestic statehood. In the result there is speculative character of the reforms of the statehood, their low efficiency, blind copying of the western samples. The absence of fundamental scientific reserves in studying of the specificity of the domestic state became an essential brake in the practice of Russian reforms. That is why the major task of the modern science of the theory and history should become the elucidation of features and tendencies of the domestic state and law development, studying the Russian statehood as the independent historical phenomenon having its own logic of development which is cannot be

understood only on the basis of the analysis of its separate institutes, relations and ideological doctrines» [7].

The phenomenon of the law reception is expressed in that fact that it is impossible here to assume thoughtlessness of the legislator basically as it is done by numerous Russian scientists. The ruling elite always pursues its own purposes adopting institutes of law. Adopted institutes keep its “western” construction, but the contents are absolutely another “domestic” here. The ideological aspect of reception as a legal phenomenon is shown in it. The ruling elite of Russia created the legal safety of its position under the mask of democratic transformations. In the result, in spite of the fact that Constitution of Russia can be characterized as a charter of the western law expansion, to live in Russia is not safely for Russian people. The huge number of obvious and unobvious facts testifies it: crime rate, absence of economy (except of raw economy), prisons are hammered by poor people with the maximal terms of punishments, etc. The law of employment was substituted for the new serf system. Without having an opportunity of legal protection a bar (as a direct management), ordinary workers of policy go on hunger strikes, address the President. In response, criminal cases concerning complainants were opened, by an old Russian principle «the first whip is for the informer».

It is necessary to pay attention to one more indisputable fact which is the destabilizing influence of the West (USA) on Russia. The indisputable fact of the USA domination as a basic donor and ideologist of legal reforms is admitted proudly in the Russian scientific literature. So, for example, it is expressed, that «Russian proceduralists are looking in transoceanic direction» [8] in search of legal wisdom. And “proseduralists” are not exception in the legal environment. Other representatives

of law and other Russian social sciences turned their eyes to the «transoceanic territory» in hope to find not only required transatlantic wisdom but also other powerful material benefits.

Only separate researchers mark unwillingly the fact of the voluntary - compulsory reception in Russia. V. Litvinenko's remark is completely fair, he writes that «the tendency of intrusion of the general (case) law, which is characteristic for England and the USA and some other countries is traced. This system has a number of advantages among which should be marked out: flexibility, elasticity of legal regulation; fast reaction of the right to the varying social conditions; overcoming of stagnancy of the statute law and legal dogmatism; priority of the right with respect to the law; introduction of a counterbalance legislative to conservatism. But this system of law cannot be set up by us without regard for deep and proof historical traditions» [9].

However it is only a recognition of particulars; a fact in issue of that full-scale рецепция the western right in the Russian legal system is carried out with the help, i.e. under the vigilant control over the USA, is not noticed, as a rule, by anybody from representatives of a legal science. Are nevertheless “enlightenment” of representatives of other humanities. So, A. S. Kuzmin has fairly noted, that «do not miss an opportunity to take advantage of this situation of the country of liberal democracy, using Russia as a source of cheap natural and human resources for maintenance of prolongation of a life of the western civilization which is taking place on the verge of exhaustion of own resources of life-support» [10].

A number of the Russian researchers deny on principle all kinds of suspicious concerning the influence of donor on a course Russian reception. L. Kosals and R. Ryvkina are convinced that in modern negativity of the attitude to the West an extremely historical Soviet tradition is

guilty: «For communists the West was a hostile «capitalist environment». The population was brought up in the spirit of it hatred. Ideologists of the CPSU drew the West in black tones, without being ashamed of direct disinformation. The false image of the West became embedded in the mass consciousness, formed a negative attitude of the population to the West. And only a small part of the Soviet people who were abroad knew how actually people lived in Europe and in the USA. However both named conceptions «special way» and hostile «capitalist environment» have deeper psychological roots. The psychological «root of the problem» is the presence of steady “inferiority complex” before the West in Russia which roots leave deep into histories» [11]. It is thought that even if there was any similar complex, after the acquaintance with the population of the West and its real life, he has quickly disappeared without serious consequences by the majority of Russians.

Why had the Russian legal reforms based on the advanced western technologies choked? The answer is obvious. Strong Russia is not necessary for anybody except for Russians. It's not a secret that modernizations of the XX th century of the countries bordering with USSR was carried out with the generous economic help of the USA. The purpose is obvious - to create a jumping-off place against the USSR.

By present time it is known the fact that the basic role during the reforming of Japan have played the occupational authorities of the USA. The initiatives of the American side were often not coordinated, and were offered to the Japanese side as obligatory. These rules, introduced from the outside, and orders were in the certain sense external institutional factors. They influenced strong on the economy, and they gave important signals to economic agents who built a line of the behavior in view of these new restrictions and opportunities. Subsequently on this basis actually

Japanese rules and norms which fixed the arisen institutes in practice were developed. [12]

However till now researchers in the field of law “do not notice” that fact that modernization of Japan occurred for the ideological reasons, namely - the Japanese state was considered by the USA as a jumping-off place against the USSR. Here it isn't talked about any voluntariness of the reception of the western legal values. The Japanese researchers state that in these purposes persons who were earlier in a category of “undesirable personnel» had been admitted again on official posts of Japan. Bypassing the constitutional principle, which had ruled out any rearmament, Forces of self-defense had been created, and the monarchic system once considered as a source of all troubles connected with the state Shinto, began to be praised again in ennobled and constitutional form [13].

Thus, the ideological component of the law reception naturally leads to the active creation of myths, hiding the true purposes and problems of legal reforms based on reception of other culture's elements. It is offered to specify the definition of law reception: reception represents a loan and introduction of ideas, legal institutes, norms, terminology of the foreign right under the recipient's and (or) donor's ideology. The given definition will allow to expand the frameworks of a political-legal phenomenon of law reception studying by Russian scientific organization.

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