

【Research Article】

**Global Constitutionalism under Stress:
Russian Constitutional Reform as a Turning Point and Model of the Legal
Transformation in Asia**

Andrei N. Medushevskiy *

Abstract

Global constitutionalism became the main theoretical ground, form and practical instrument for the international legal integration after the end of the Cold War in the era of the “triumphant liberalism”. Based on classic Western liberal values and principles of human rights it emphasized the role of international constitutional law and courts as a principally new form of supranational regulation trespassing the national borders, identities and state sovereignty. Up to now this trend took its practical implementation mainly in the Western part of the world (European Union) and partly associated regions (Latin America), but demonstrated growing difficulties in Eurasia (Post-Soviet region), and Asia.

The Asian region, in spite of great difference between more than 50 respective countries, demonstrated the growing common trend to legal fragmentation and state-oriented constitutional agenda. That resulted in visible asymmetry of the Asian constitutional development: the absence of the common Asian legal identity; priority of hierarchy in international system over state equality principle; the rebirth of Westphalian concept of sovereignty instead of post-national concept, the search for separate national legal identities. This variety of constitutional forms deeply rooted in colonial and post-colonial past of different Asian regions, cultures, nationalist beliefs, and current pragmatic interests.

In systematic and very clear form this new trend and its theoretical background represented in the Russian constitutional reform of 2020. The Russian Constitution of 1993 as adopted after the collapse of USSR and Communism in 1991, became one of the most liberal and pro-Western

* Andrei Medushevskiy, Dr., is a professor at the Higher School of Economics in Moscow, where he teaches Legal Philosophy, Comparative Constitutional Law and Political Science. He is Chairman of the Scientific Advisory Board of the reputed Russian journal “Comparative Constitutional Law” and the leading expert of the International Institute of Law and Public Policy, the author of 20 books and more than 500 articles in Russian and international learned journals.

legal acts of that period, but later appeared to be transform by different revisions towards conservative constitutional authoritarianism. This evolution of liberal constitutionalism in the form of legal retraditionalization, legitimized as anti-globalist restoration of national sovereignty, formed the crucial challenge for both Eurasian and Asian constitutional development – the necessity to make decisive choice between global constitutionalism and the protective constitutionalism as two opposite forms of adaptation to legal globalization in process.

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I. Introduction

On the current stage of global development, many conventional ideas adopted earlier as a universal values, common standards or even as irreversible embodiment of the “common sense” demonstrate a strange paradox of eroding cognitive sustainability. They are still at presence in academic discourse and political agenda of international community and governments but lost a great part of their explicative force and practical importance for the real policy-makers in different regions of the world. This fate more or less characterizes the whole block of classic liberal legacy formed in the period of great revolutions of XVII-XIX-th centuries in the so called Western hemisphere of the world to become the theoretical ground of the liberal democracy in XX-th century, especially after the end of the Cold war. Ideology, theory and language of constitutionalism were formulate in a framework of this holistic vision of its role, substance and main building blocks – democracy, rule of law, human rights. The essence of global legal development according this outlook consists in the

adoption of these premised common rules, institutes or practices of international constitutionalism in order to create universal constitutional establishment. Establishment, presumably more faire and effective¹.

In this idealistic vision, all attempts to rethink this paradigm in critical and more pragmatic terms which taking place in many regions of the world means the “twilight of constitutionalism” – skepticism about the very idea of transnational constitutional guarantees in their authentic vision, the movement to illiberal democracy, populism and authoritarianism². The clash between global constitutionalism and global authoritarianism in this logic is the crucial aspect of this complex dilemma. Leading authoritarian countries—including China, Iran, Russia, Saudi Arabia, and Venezuela—have developed new tools and strategies to contain the spread of democracy and challenge the liberal international political order. At the same time, the advanced democracies have retreated, failing to respond to the threat posed by the authoritarians³. This fundamentalist logic, as binding constitutionalism with liberal democracy, is perhaps irreproachable from theoretical point of view providing instruments for the clear and precise distinction between “normal” and “abnormal” forms of constitutionalism, healthy and pathological legal behavior of political regimes, and providing criteria for finding deviances on that road. Meanwhile, theoretical integrity of any abstract concept does not automatically imply the integrity of explanation, which presume more diversified view on different forms, historic periods and regional specificity of constitutional experience in its connection with social reality.

From this point of view, the whole system of established criteria, based on ideology rather than on pragmatic vision, could become ineffective: exception could become rule, deviance tends to becomes norm, and norm appeared to be deviance or a kind of abstract ideal model, which stay in a sharp divorce with political or legal reality⁴. For understanding Asian constitutionalism the simple value-oriented approach is not productive, because the result of investigation is in some way premised by the research hypothesis itself with quite predictable outcome – by definition this type of constitutionalism differ from Western ideal model, demonstrate more variability, deviances and inconsistencies regarding the adoption of the rule of law standards. There is nothing new in this conclusion. More interesting is the question about cognitive motivation and internal logic of decision-making process in the adoption of different constitutional strategies and forms of their implementation

¹ Lang A.F., Wiener A. (eds.). *Handbook on Global Constitutionalism*. Cambridge: Edward Elgar Publishing, 2017.

² Dobner P., Loughlin M. (eds.). *The Twilight of Constitutionalism?* Oxford: Oxford University Press, 2010.

³ Diamond L., et al. *Authoritarianism Goes Global: The Challenge of Democracy*. Baltimore: John Hopkins University Press, 2016. P. 5-7.

⁴ Brozek B., Stanek J. (eds.). *Russian Legal Realism*. Springer, 2018.

in the real world of international and domestic politics. Why this logic of constitutional engineering⁵ is so mobile, and whether cognitive motives are really matter for projecting structures, incentives and outcomes of constitutional process of different global regions, countries? From this comparative point of view we will try to understand the role of the 2020 Russian constitutional reform for the Eurasian, Asian and global constitutional development.

II. Integration and fragmentation as two opposing trends in international constitutionalism

Global constitutionalism apparently become the main theoretical ground, form and practical instrument for the international legal integration developed after the end of the Cold War in the era of the “triumphant liberalism”. Based on classic Western liberal values and principles of human rights it emphasized the role of international constitutional law and courts as a principally new form of supranational regulation trespassing the national borders, identities and state sovereignty⁶. The practical implementation this trend has found in the creation of the European Union – new communitarian project, realized after the collapse of the Soviet Union – another integration project pretended to be the universal matrix of the global integration based on Marxist philosophy and Soviet theory of law.

Integration project of EU predisposes the gradual adoption of the common European legal standards by all member-states through the constitutionalization process fulfilling in order to create supra-national unity, capable to transform the nascent confederation into federation – United States of Europe, and in ideal to become a model for the world-wide constitutional settlement⁷. The constitutionalisation means the commitment of all involved states to adopt the convergence process of international and national constitutional law in order to create new form of the European and international legal regulation – global, transnational or international constitutional law (European law is the main example)⁸. The structure of these regulation is based on three main levels - global constitutionalism; regional constitutionalism; bilateral framework. The third concept is a moderate formula for the description of constitutionalism in a proper sense as synthesis of international and domestic norms in one legal framework. Main prospects of this development are associated with the

⁵ Sartori G. *Comparative Constitutional Engineering. An Inquiry into Structures, Incentives and Outcomes*. London: Palgrave, 2002.

⁶ Medushevskiy A. *Global Constitutionalism and Legal Fragmentation*// *Studia Iuridica Lublinensia*, 2021. Vol. 30 (4). P. 393-440; Medushevskiy A. *Global Constitutionalism: Integration or Fragmentation of International Relations during an Economic Recession*// *Social Sciences*, 2021. Vol. 52, N. 2. P. 47-66.

⁷ Klabbers J., Peters A., Ulfstein G. (eds.). *The Constitutionalisation of International Law*. Oxford: Oxford University Press, 2009.

⁸ Koskeniemi M. *From Apology to Utopia: The Structure of the Legal*. Cambridge: Cambridge University Press, 2006.

concept of multilateral constitutionalism, which grounded on three fundamental characteristics - legitimacy, authority, validity⁹. They forms as well the basis of the global governance regime as a system of generally adopted norms of international, constitutional and administrative law.

Up to now this trend took its practical implementation mainly in the Western part of the world (European Union) and partly in associated regions or countries (Latin America), but demonstrated growing difficulties in Eurasia (Post-Soviet region), and Asia. The crucial obstacle to its implementation seems to be not fundamental values (hypothetically be common to all participants of the international dialog) but interests – economic, security, and political priorities of different world regions and the so called great powers like USA, Russia, China, India as well as involved regional state-unions. In this context the potential of integration process in international constitutionalism seems to be not great as well as the mediating role of the United Nations Organization, it's Security Council, and the International Court of Justice often incapable to resolve aggravating polarization of the world political actors. Actually, the UN Charter, which has been interpret by some authors as a prototype of the world constitution¹⁰, does not play this role.

Fragmentation in international affairs – is another competing trend in global legal development. In reality, the actual stage of global development demonstrates the prevalence of fragmentation over integration, the predominance of national interests over international values, and the growing intention of developing countries to reconsider the dominant system of international law. The theoretic background of anti-globalist constitutional agenda was create by various intellectual currents -Critical school, New Approach to International Law (NAIL) or the Third World Approach to International Law (TWAIL)¹¹. All of them represent the current trend of legal globalization as theoretically contradictory, morally unacceptable and even dangerous as practical tool. This Critical approach to international law involves rethinking of its theory and methodology¹², the rejection of its traditional reading, reconsideration of the changing place of global regions, correction of historical disproportions, and the search for its target-oriented transformation. That reevaluation should have place in the interests of global regions, which historically were exclude from international process in the period of

⁹ Bhandari S. *Global Constitutionalism and the Path of International Law*. Leiden: Brill-Nijhoff, 2016.

¹⁰ Fassbender B. *The United Nations Charter as the Constitution of the International Community*. Leiden. Nijhoff, 2009.

¹¹ См.: Mutua M. What is TWAIL? // *American Society International Law Proceedings*, 2000. Vol. 94. P. 31-40; Gathi J. TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography// *Trade, Law and Development*, 2011. Vol. 3. N. 1. P. 26-48.

¹² Okafor O.C. *Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?*// *International Community Law Review*, 2010. Vol. 10. P. 371-378.

Europe-centrism, imperialism and colonialism¹³. All that provide a very emotional reaction in the deliberations about unfair character of international law¹⁴ as a system of “false universalism”¹⁵. This international system seems to critics unfair and interpreted as created by Western countries in order to keep their dominance over non-European parts of the world, including Asia region.

III. Global East: Asian constitutionalism in search of identity

The idea of Global East and protection of its special interests in competition with the Global North or global West is, perhaps, the main item in the rethinking of the mainstream program of international constitutionalism. In this context, the place of Asian region is very important. Is it part of the global constitutionalism or is it an alternative concept, based on principally different identity, values and traditions as well as on another vision of international law and its future?

The actual debate about integrity of Asian constitutionalism is not complete. The legal concept of critical school contraposes Global West and Global East. The Global East (or Global South) could be interpreted in more broad sense (include all non-Western countries) and in more narrow sense (include typical geographical regions)¹⁶. In this narrower sense, the Asian region means the original “Asian approach to international law” or “Asian vision” of constitutionalisation, oriented on the limitation of Western domination in constitutional debates¹⁷. In this context, different concepts of Asian constitutionalism includes various definitions of global constitution, its Asiatic implications and categorical apparatus for the practical delimitation of the border between Asian and Western constitutionalism and prospects for their future relations¹⁸.

There are two contrasting positions in the current debate about the Asian legal identity. One group of experts thinks that common Asian approach to the international law really exists or eventually

¹³ Anghie A. *Imperialism, Sovereignty and Making of International Law*. Cambridge: Cambridge University Press, 2004; Pahuja S. *Decolonising International Law: Development, Economic Growth and the Politics of Universality*. Cambridge: Cambridge University Press, 2011.

¹⁴ Ramina L. Framing the Concept of TWAIL: Third World Approach to International Law// *Revista Justica do Direito*, 2018. 32 (1). P. 5-26.

¹⁵ Xavier S. 2015. *False Universalism of Global Governance Theories: Global Constitutionalism, Global Administrative Law, International Criminal Institutions and the Global South*. PhD Dissertations. 20. 2015. Accessed: <http://digitalcommons.osgoode.yorku.ca/phd/20>

¹⁶ Maldonado D.B. (ed.). *Constitutionalism of the Global South*. Cambridge: Cambridge University Press. 2013.

¹⁷ Aydin C. *The Politics of Anti-Westernism in Asia: Visions of World Order in Pan-Islamic and Pan-Asian Thought*. New-York: Columbia University Press, 2007.

¹⁸ Suami T., Kumm M., Peters A., and Vanoverbeke D. (eds.). *Global Constitutionalism from European and East Asian Perspectives*. Cambridge: Cambridge University Press, 2018.

possible¹⁹. The Asian region, in spite of great difference between more than 50 respective countries, demonstrated the growing trend to legal unification in terms of common vision of the global challengers. The ground of this position includes seven arguments - concepts diffusion, uniform identity, collective interests, uniform norms and facts, common process, uniform outcomes²⁰.

Another group of experts does not agree with this approach, because Asian legal systems are very different²¹. They emphasize another trend — fragmentation, and state-oriented constitutional agenda in Asia. That resulted in the visible asymmetry of the Asian constitutional development: the absence of the common Asian legal identity; priority of hierarchy in international system over state equality principle; the rebirth of Westphalian concept of sovereignty in its authentic meaning instead of post-national concept, the search for separate national legal identities²².

Typology of Asian constitutional models is possible on the ground of different criteria. The most important of them for our research is their potential place in a system of global constitutionalism under formation. Classification of models of Asian constitutional settlements reveals variety of their adaptation strategies to global constitutionalism. Schematically, five main types could be represent:

1) *Assimilation*. In Japan – constitutionalism is by-national product, the hybrid of American and local traditional culture, a unique system of absolute pacifism (art. 9)²³. This concept is interpret by some authors even as a constructive program for the civil society of the whole North-Eastern Asia region (the so-called Northeast Asia Regional Action Agenda (Tokyo Agenda), declared in 2005 as a common platform for the group of countries as a strategy of global constitution promotion²⁴.

2) *Gradual transformation of the national tradition*. India is perhaps the best example of country with a huge variety of legal traditions historically based on different confessional values, which were reevaluate according common Anglo-Saxon (British) constitutional standards, but with careful regard on stability, peaceful development and modernization purposes²⁵.

3) *Successful catch-up modernization*. After many constitutional experiments, South Korea, according many observers, fulfilled this option by creation of constitutional democracy and

¹⁹ Jin-Hyun Paik, Seok-Woo Lee, Kevin Y.L. Tan (eds.). *Asian Approaches to International Law and the Legacy of Colonialism*. Routledge, 2012.

²⁰ Bhandari S. *Global Constitutionalism and the Path of International Law*. Leiden: Brill-Nijhoff, 2016.

²¹ Chimni B.S. *Is There an Asian Approach to International Law: Questions, Thesis and Reflections// Asian Yearbook of International Law*. 2008. Vol. 14. P. 249-265.

²² Belov M. (ed.). *Global Constitutionalism and Its Challenges to Westphalian Constitutional Law*. London: Hart, 2018.

²³ Higuchi Y. (ed.). *Five Decades of Constitutionalism in Japanese Society*. Tokyo: University of Tokyo Press, 2001.

²⁴ Kimijima A. *Global Constitutionalism and Japan's Constitutional Pacifism*, 2011. P. 43-60. Available at: http://www.ritsumei.ac.jp/ir/isaru/assets/file/journal/23-3_03_Kimijima.pdf

²⁵ *The Constitution of India. With Selective Comments* by P. M. Bakshi. New Delhi: Universal Law Publishing Co., 2003.

independent constitutional justice ²⁶.

4) *Uneven constitutional modernization* ²⁷. The adoption of the universal legal standards at Philippines and Indonesia in the era of triumphant liberalism of 1990-s confronted later with the phenomenon of divided society ²⁸, or the growing trend to conservative restoration in the form of national special way ²⁹ and constitutional populism ³⁰.

5) *Full rejection of Western constitutionalism* in favor of the legal self-determination. China is an open adversary of the global constitutionalism, the last protagonist of Westphalian system in its classic form and supporter of sovereignty and authoritarian government. Liberal constitutionalism in that concept seems to be a kind of Trojan horse introduced in the country by its Western enemies. China produced alternative vision of constitutionalism, based on original Asian values – Confucian and Marxist principles instead of human rights; priority of economic and social rights instead of civil and political rights; education (or informed participation) instead of democratic elections and meritocracy instead of democracy. Chinese approach to global constitutionalism often interpreted by Western scholars as “revisionist”, “deviant” and “exceptional” because it stay in a sharp contradiction with the set of rules and moral priorities, which are normally associated with the global constitutionalism in formation ³¹.

This variety of constitutional forms deeply rooted in colonial and post-colonial past of different Asian regions, cultures, nationalist beliefs, and current pragmatic interests. The degree of pro-Western transformation depends on the role of USA and Britain traditions of dominance in different countries of that region if not come from much deeper heritage of Western colonialism – British, Dutch, Spanish, and Portugal, Russian or Soviet empires. In this context, typology should involve a group of undemocratic countries, which reject not only global constitutionalism, but as well constitutionalism as such, realizing different concepts of undemocratic development in forms of theocracy (Iran), totalitarianism (North Korea), ethno-confessional domination (Myanmar) or staying in the area of imitative or pretended constitutionalism (Thailand), demonstrating the special place of constitutions

²⁶ Kang-nyeong Kim. *Korean Politics and Diplomacy in the Global Society*. Shinji Press, 2011.

²⁷ Piccone T. *Five Rising Democracies and the Fate of the International Liberal Order*. New-York: Brookings Institution Press, 2016.

²⁸ Choudhry S. (ed.). *Constitutional Design for Divided Societies: Integration or Accomodation?* New York: Oxford University Press, 2008.

²⁹ See, for example, Reynolds C.J. (ed.) *National Identity and its Defenders: Thailand Today*. Bangkok: Silkworm books, 2002.

³⁰ Daly T.G. *Democratic Decay in ‘Keystone’ Democracies: The Real Threat to Global Constitutionalism?* *International Journal of Constitutional Law* (2017). Available at: <http://www.i-connectblog.com/2017/05/democratic-decay-in-keystone-democracies-the-real-threat-to-global-constitutionalism-i-connect-column/>

³¹ Carrai M.A. *Global Constitutionalism and the Challenge of China’s Exceptionalism// Global Constitutionalism without Global Democracy?* Ed. by C. Coradetti and G.Sartor. Working Paper LAW 2016/21. Badia Fiesolana: European University Institute. 2016. P. 95-113.

in authoritarian regimes ³².

This multifarious development opens the way to quite different role of “Asian values” in the global constitutional agenda transformation. Asia as a global region could play different roles in the formation of global constitutionalism – to be recipient or designer of global constitutional settlement.

IV. The unstable place of Eurasian Post-Soviet constitutionalism in international power-game

The so-called Post-Soviet constitutional transformation demonstrates very clearly the conflict between two opposite impulses – integration of the regional countries in a framework of Western type of global constitutionalism, and fragmentation – the search of their own separate ways for stability and preservation of the ruling elites in power ³³. The constitutional development of Post-Soviet area in a narrower sense (former republics of the USSR) has some particular characteristics in comparative perspective:

1) Uneven character of Post-Soviet constitutionalism in all countries of the region, which proclaimed their independence only after the collapse of the USSR and had no constitutional traditions in their history. The situation, perhaps, comparable with new post-colonial states in other parts of the world standing in front of similar challengers to their statehood, sovereignty and national identity.

2) The great variability of the constitutional models under consideration in the formative period, which illustrates the “privilege of retardation” phenomenon. That means: theoretical possibility to adopt different foreign models, to transplant them voluntary from more advanced/conservative countries or, rather, to dispose historical possibility for the experiment with them without any critical regard to their historical origin, based on different legal cultures.

3) Unpredictable and controversial selection of constitutional priorities –from their partial corrections to adoption of models, which earlier were already reject as inadmissible. The result is the eclectic hybridization of constitutional blocks taken from different constitutional settlements which in different countries obtaining their own way of life.

4) The multiplicity of constitutional amendments to each adopted constitution, taken often without great respect to the formal procedures of amending process which demonstrates the absence of deeply rooted constitutional culture of respective countries.

³² Ginsburg T., Simpser A. (eds.). *Constitutions in Authoritarian Regimes*. Cambridge: Cambridge University Press, 2014.

³³ Fruhstorfer A. Hein M. (eds.). *Constitutional Politics in Central and Eastern Europe*. Berlin: Springer, 2016.

5) The absence of the stable constitutional design (system of government) – the permanent search of the balance of power's process motivated more by political than legal logic and combined with the deficits of the neutral constitutional justice. A part of this instability is a precarious role of constitutional justice, which is far from sustainable position and real independence in most countries of the Post-soviet region.

6) The unresolved question of finality for the crucial constitutional and judicial solutions: after the adoption of every new constitution or amendment the debates normally has not coming to end providing new bulk of projects and proposals. This “constitutional game” looks like a form of political self-identification for political parties or groups in power rather than a coherent and substantive legal discourse.

7) The acute necessity for all countries of Post-Soviet area to coordinate their constitutional experiments with the position of global actors in the region – Russia, USA, European Union, China as well as with the position of their neighboring countries like Turkey, Iran and Afghanistan.

The separation of ways in the regional constitutional development makes it possible to identify three main strategies:

First. The so-called “color revolutions” - the direct and sometimes law-breaking search of parliamentary alternative to the Russian model, which has been established itself after the collapse of USSR in Russia and many other countries of the region (color revolutions in Moldavia, Georgia, Kirgizia, Ukraine before 2014, Armenia in 2016);

Second. The gradual “step by step” constitutional reform strategy undertaken by the authoritarian governments for their self-preservation in power in the form of transition from more presidential to the mixed (presidential-parliamentary) system of government (Kazakhstan, Uzbekistan after 2014 including recent constitutional amendments and public debates on their implementation in 2022-2023);

Third. The establishment of the rigid mechanical legal stability by avoiding substantive constitutional reforms or by the presence of quasi-reforms fulfilled by the use of cosmetic changers (Azerbaijan, Belorussia, Turkmenistan, Uzbekistan before 2014), and otherwise, bloody coups and revolutions without any regard to the established constitutional guarantees and procedures (Kirgizia 2010 and 2020-2021, Ukraine 2014, the failed coup attempt in Kazakhstan in January 2022 with subsequent constitutional reform process) ³⁴.

³⁴ Medushevskiy A.N, Tendentsii postsovetskikh politicheskikh rejimov v svete noveisheiy volny konstitucionnykh popravok [Post-Soviet Political Regimes in the Light of Current Amendments Wave] // Social Sciences and Contemporary World [Obschestvennye nauki i sovremennost']. 2018, № 2. P.49-65.

Reciprocal influence of two factors - the constitutional design and the political regime, - is the subject of vivid debates in legal as well as in political science literature of all Post-Soviet region³⁵. The change in the system of government (for example, the move from presidential to more parliamentary one) could be a proof of the real regime liberalization, but otherwise it could symbolize the deterioration of democracy if used only for protection of the established elites or clans in power. It could be as well both in one: constitutional reforms, undertaken in support of parliamentary system, could be initiated by the ruling elite and president in order to reproduce his power as prime minister resulting in a deeper political transformation (as it was in Georgia and later in Armenia). This interconnection of the legal and political parameters of the reform agenda reveals the important common characteristics of the unstable constitutional modernization process in the region under consideration and the role of Russian constitutional model as the main positive or negative orientation for all Post-Soviet constitution-makers.

V. Russian 2020 Constitutional reform in comparative perspective

Anti-globalist political turn became both the result and vehicle of fragmentation process in the international constitutionalism. In systematic and very clear form this new trend and its theoretical background were represented in the Russian constitutional reform of 2020³⁶. The Russian Constitution of 1993 as adopted after the collapse of USSR and Communism in 1991, became one of the most liberal and pro-Western legal acts of that period, but later appeared to be transformed by different revisions towards conservative legal populism³⁷ and constitutional authoritarianism. Psychological factors for that reportedly grounded in historical traditions of the Russian statehood³⁸, Soviet mental

³⁵ See more about that debate in our publications: 1) Political Regimes of Central Asia: Constitutional Reforms in a Framework of Authoritarian Modernization// The Soviet Legacy and Nation-Building in Central Asia. APRC Proceedings Series, Seoul, 2011. N. 4. P. 5-28; 2) Konstitutsionnaia reforma v Turkmenistane: perechod k demokratii ili modernizatsia avtoritarisma? [Constitutional Reform in Turkmenistan: Transition to Democracy or Modernization of Authoritarianism?]/Comparative Constitutional Review [Sravnitel'noe Konstitutsionnoe obozrenie], 2008, № 6 (67). C. 5-16; 3) Revolutsia v Kirgizii: itogi I perspektivy konstitutsionnykh preobrazovaniy [Revolution in Kirgizia: results and prospects of Constitutional Transformation // Comparative Constitutional Review [Sravnitel'noe Konstitutsionnoe obozrenie], 2011, № 1 (80). C.13-33; 4) Konstitutsionnyi kontrol' I politicheskiy vybor v obshestvakh perechodnogo tipa: k problem legitimnosti sudebnykh resheniy na postsovetском prostranstve [Constitutional Control and Political Choice in Transition Societies: Towards Legitimacy of Judicial Decisions in Post-soviet Region] //Zanger. Law Messenger of the Kazach Republic [Zauezp. Vestnik prava respubliki Kazachstan], 2011, № 1 (114). C. 11-17; 5) Constitutional Transformations in Post-Soviet Region: Results of Previous Studies// Armenian Journal of Political Sciences, 2017, 1 (16). P. 81-112.

³⁶ Konstitutsia Rossiyskoiy Federatsii s Poslednimi Izmeneniami na 2022 god [Constitution of the Russian Federation with Recent Changes held on 2022]. Moscow: Ecsmo, 2022.

³⁷ Crawford C. et al. (ed.). Populism as a Common Challenge. Berlin-Moscow: ROSSPEN. 2017.

³⁸ Bodin P.-A., Hedlund S., Namli E. (eds.). Power and Legitimacy – Challenges from Russia. London and New York: Routledge, 2012.

stereotypes³⁹, original combination of formal and informal practices⁴⁰, but motivated as well by difficulties and mistakes of transformative period⁴¹.

Being designed as a temporal constitutional settlement for the transitional period, Russian Constitution produced the original synthesis of liberal legal guarantees (based on the international human rights treaties), and rather authoritarian construction of the presidential power interpreted as the main force and the guardian of irreversibility of the democratization process. Formally the adopted form of government was similar to the presidential-parliamentary model of the French Fifth Republic but avoided some important checks and balances of this system. In reality, this construction paved the way to the system of plebiscitary authoritarianism with overrepresented presidential power and personified rule. This “authoritarian component” of the Russian constitutional and political system was the main problem for all Post-Soviet political debates, and kept staying at place as the main theme for all current projects of the constitutional modernization.

Key innovations produced by Russian 2020 constitutional amendments continued this authoritarian backslide but represented it in a new form, more systematic, structured and cohesive⁴². In sum, they reflected three broad areas of regulation actualized in the context of globalization/fragmentation competition.

The first one is the new approach to international law. The priority of the ratified international treaties over national legislation, as fixed in Constitution, stay at its place but according to the new redaction all decisions of international courts made on the basis of these treaties could be overruled by the national Constitutional Court if only they contradict Russian Constitution or public order of the country. The result is a new interpretation of human rights – gradual movement from the absolute guarantee of the natural or fundamental rights priority towards their more conditional interpretation formed in the context of obligations of the person to the state if not to political regime. The long story of debates between ECHR and the Russian Constitutional Court over many politically sensitive cases

³⁹ Plotnikov N. (Hrsg.). *Gerechtigkeit in Russland. Sprachen, Konzepte, Praktiken*. München: Wilhelm Fink, 2019. S. 423-460

⁴⁰ Medushevskiy A.N. 2019. Russian Constitutional Development: Formal and Informal Practices// BRICS Law Journal. 2019. Vol. VI. Issue 3. Special Issue: Russian Constitutionalism: 25th and 100th Anniversaries of the 1993 and 1918 Constitutions. P. 100-127.

⁴¹ *Osnovy Konstitutsionnogo prava Rossii: Dvadsat' Let Razvitiia* [Fundamentals of the Russian Constitutional Law: Two Decades of Development]. Moscow: ILPP, 2013. Res Publica: Russkiy respublikanism ot srednevekov'ia do konca XX veka [Res Publica: The Russian Republicanism from the Middle Ages to XX century]. Moscow: NLO, 2021.

⁴² Analysis of 2020 Russian constitutional amendments see in our publications: 1) Konstitutsionnaia reforma 2020 s pozitsii teorii legitimnosti [Constitutional Reform of 2020 in a framework of Legitimacy Theory]// Theoretic and Applied Jurisprudence [Teoreticheskaia i prikladnaia jurisprudentsia], 2020. № 4. C. 15-30; 2) Konstitutsionnye popravki v Rossii 2020 kak politicheskii project pereustroystva gosudarstva [Constitutional Amendments in Russia as a Political project of the State Transformation] // Public Politics [Publichnaia politika], 2020. T.4. №1. C. 43-66; 3) Perechod Rossii k konstitucionnoy dictature: razmyshleniya o znachenii reformy 2020 goda [The Move of Russia to Constitutional Dictatorship: Reflections on Russian 2020 Constitutional Reform]// Comparative Constitutional Review [Srvnitel'noe konstitucionnoe obozrenie], 2020. T. 136. № 3. C. 33-50.

now came to its logical end than Russia definitely withdraw from European Council and jurisdiction of ECHR.

The second area of constitutional changes concerns with ideological priorities in domestic regulation. This attitude to international law in terms of countries' legal protection from negative global trends transformed the role of the national legal tradition reconsidered by Reform as a ground for the national legal order. Constitutional reform agenda fixed new cognitive orientations in terms of time, space and the sense of life – common history, language, shared religious and patriotic feelings, traditional gender priorities, traditional family values, respect to older generations and others to provide the sense of common national identity. New social contract is a part of this ideological construction. It has been ground on solidarism instead of liberal market economy – loyal citizenship based on social guaranties provided by the state in terms of minimal wages, indexation of salaries and pensions on the inflation level, etc. What is important – the reintroduction of some Soviet-kind stereotypes as for example, the guiding role of the state in social policy standards implementation, the role of the universal education standards, and protection of the “working people”. Identity, hence, is construct on basis of convergence of the legal and extra-legal criteria incorporated to the text of the revised constitutional norms. Pluralism as a constitutional principle was not remove. Still, conservatism has been officially proclaim as quasi-official doctrine of the state.

The third area of regulation reflects the concept of the strong statehood in international and domestic policy. The main preoccupation of reformers become the protection of the sovereignty – as national and state sovereignty. In the context of Reform, that means the reevaluation of three important items:

1) Reestablishment of the legal continuity of the Russian Federation with the USSR and cultural (political) continuity with the Russian Empire, broken by the Revolution of 1917 and the collapse of the state in 1991;

2) Declaration of non-changeable character of the national borders and prohibition of any discussions on that matter (it is possible to debate only the right to integrate, but not the right to leave the Russian state for any territories);

3) “Nationalization of elites” – the system of restrictions for the highest officials in terms of double citizenship, possibility to have accounts in foreign banks, etc. Plus, the declared protection of Russian citizens all over the world against all kinds of discrimination or pressure of any kind. This important in the context of official declaration that the whole zone of Post-Soviet region is an area of the Russian political responsibility.

VI. Russian statehood in the process of current transformation

The legal theory of proclaimed constitutional amendments is the unitary concept of the federal state and its main institutes. This concept is represented by the “unity of the system of public power” principle, introduced to revised text of the Constitution. For contemporary Russian legal regulation, that means constitutional transformation in five main areas:

1) New interpretation of federalism in order to make it more centralized and prevent any potential conflicts between three levels of regulation – federal, subjects of federation and local self-government units by their incorporation in one vertical of the state public power.

2) Reconsideration of bicameralism in order to transform the upper chamber of parliament (Council of Federation) in a least dangerous institute at the whole architecture of coordinated state. This target achieved by transformed principles of formation of this institute making it more loyal to presidential power.

3) Reestablishment of the local self-government as a part of the unified power vertical in a framework of “unity of the system of public power”.

4) Reinterpretation of the separation of power’s principle in the triangle – State Duma, Government, President, in terms of their functional efficiency, centralization and coordination by federal administration. In the ideal, they should be treated as united system, separated only by their functional role in a state machinery, headed and coordinated by presidential power.

5) Dubious role of the Constitutional justice in treatment of constitutionality of international obligations, federal legislation (including acts of subjects of federation) and even treatment of draft laws on constitutional amendments. From the one hand, Constitutional Court received the new prerogative of preliminary control of laws and became the important institute in final conflict resolution between Duma and President on legislative matters. From the other hand, many of these new competences could be realized by Court only on the initiative of presidential power, which as well received new prerogatives in formation of Constitutional Court, nomination and denomination of judges which made the Court more dependable on behalf of the President ⁴³.

The special area of constitutional transformation, perhaps the most important one, reflects the changing place of the presidential power itself. 2020-es Russian Constitutional reform demonstrates the further evolution of the system of government - from the mixed system to quasi-presidential system.

The system of government originally adopted in the Russian constitution, has been constructed on

⁴³ Konstitutsionnyi Sud Rossii: Osmyslenie Opyta [Russia’s Constitutional Court: Rethinking its Experience]. Moscow: Tsentr Konstitutsionnykh Issledovaniy, 2022.

the model of Fifth French republic (1958) but consequently eliminated some important checks and balances of this form. It gradually transformed its nature through the past 30 years to become the quite original system, combining elements of mixed and presidential systems. Here, the president has huge legislative prerogatives, control over the government, but can dissolve the Parliament as well. All these lines of institutional coordination are concentrate in the hands of the all-powerful head of the state playing in reality the role of latent monarch⁴⁴. Personified character of that power has been emphasize by amendments in the transition of power question tactical solution. The mandate of the President was formally limited by two cadences, but the actual President (V. Putin) could stay in power two more cadences a cause of that constitutional reform fact itself – theoretically, until 2036.

The new meta-constitutional status of the Russian President is the most characteristic feature of this transformation. In spite of important prerogatives of the Russian president, which were already fixe in the original text of 1993 Constitution treating him as head of the state, guarantor of the Constitution and human rights, his real power grown substantially by consequent modification of constitutional legislation, judicial interpretation and political practice of two passed decades. Besides that, in 2020 the President received new and very important symbolic and real prerogative - as protector of civil peace and agreement, the guardian of countries' sovereignty, independence and integrity, the promoter of functional cohesion of the whole system of public power (art. 80). This formula makes him the crucial element of meta-constitutional regulation in the country and outside it – in representation and promotion of ideological and symbolic image of the state in international affairs.

VII. Conclusion: The importance of the new Russian constitutional concept for Eurasia legal constellation

The unstable perspectives of global constitutionalism in its classic Western or liberal understanding opens the way for the transnational experimentation process – elaboration of new models of constitutionalism based on principally different pictures of the past and future, and the place of global regions in the international, regional or local governance. This experimentation process reveals quite different concepts of globalization and fragmentation, implying symmetry or asymmetry in international relations, legal identity and forms of adaptation to new reality of legal globalization

⁴⁴ Medushevskiy A. Vozrojdenie Imperii? Rossiyskaia konstitutsionnaia reforma 2020 na fone globalnykh izmeneniy [The Revival of the Empire? The Russian Constitutional Reform against the Background of Global Change] // Messenger of Europe [*Vestnik Evropy*], 2020. T. 53/54. C. 82-97. Available at: <http://www.vestnik-evropy.ru/issues/the-revival-of-the-empire-russian-constitutional-reform-2020-against-the-background-of-global-change.html>

regarding reconsideration or modification of established constitutional forms and standards.

The Asian region, in spite of some common cognitive attitudes, intentions and reactions on global changes, demonstrated the great difference between more than 50 respective countries, and the growing trend to legal fragmentation and state-oriented constitutional agenda. That resulted in visible asymmetry of the Asian constitutional development: the absence of the common Asian legal identity; priority of hierarchy in international system over the respect to presumed state equality principle; the rebirth of Westphalian concept of sovereignty instead of post-national or transnational concept, the search for separate national legal identities. This variety of constitutional forms deeply rooted in colonial and post-colonial past of different Asian sub-regions, cultures, nationalist beliefs, and current pragmatic interests. The crucial problem of this new development consists in the possibility to find some reliable combination between high standards of international constitutionalism and stable governance in order to maintain cultural values and traditions, regional and national interests, including the enforcement of modernization and pragmatic realpolitik agenda.

In this comparative context, the Russian 2020 constitutional transformation demonstrates an important turning point in the legal globalization debate. This transformation has been realized in the form of constitutional reform, which formally did not break with fundamental liberal values (fixed in unchangeable chapters 1, 2 and 9) promoting the legal continuity of the country since 1993. From the other side, the whole bulk of amendments (to chapters 3-8) demonstrated a juridical coup from substantive as well as procedural point of view. More than 50 articles were changed in direct or indirect way, the whole logic of constitutional expectations was redefined, as well as amending procedures, which has been substantially revised during the process of reform itself. The old constitutional form has been filled out by new normative substance, reflecting changed legal and political priorities in a very consistent representation.

That constitutional transformation does not mean the simple rejection of transnational constitutionalism but the clear proposal of its alternative version, based on the adoption of the world's fragmentation – inevitable asymmetry of global regions guided by most powerful countries. That form of international constitutionalism concentrates not on values rather on interests of global actors in prevision of the forthcoming reconfiguration of global spheres of influences. The new legitimacy formula of the Russian political regime combines three guiding principles. Limited functional adoption of international law in the strict accordance with national (regional) sovereignty protection; restoration of highly centralized system of public power in neo-imperial ideology style; and the over-represented institute of imperial president, which becomes the meta-constitutional symbol and driving force of the political regime in domestic and international relations.

The essence of the whole system could be describe in terms of protective constitutionalism, constitutional authoritarianism (constitutional dictatorship), or authoritarian legalism. Authoritarian nature of this political system obviously makes it incompatible with established international liberal democracy standards but does not exclude its pragmatic efficiency in forthcoming international power game. Thus, the Russian reform formed the crucial challenge for both Eurasian and Asian constitutional development – the necessity to make decisive choice between offensive and defensive legal strategies - global liberal constitutionalism and the global protective constitutionalism - as two opposite forms of adaptation to the legal globalization in process.