

ON THE CONSTITUTIONAL MODEL OF THE RUSSIAN ECONOMY

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The article focuses on the analysis of the constitutional model of the Russian economy, including its conceptual underpinnings, fundamental principles, and overall design. Particular attention is paid to the problem of so-called “conflicting values” that are equally recognized by the constitutional foundation of the Russian economy. For example, the values of economic freedom and the usefulness of state regulation, and the importance of supporting competition and guaranteeing of social justice, are discussed as examples of conflicting principles. The authors conclude there is no irresolvable conflict. These equal constitutional values (i.e. the principles of economic freedom and the social nature of the state) create a “corridor of opportunities” which the state’s socioeconomic policy is balancing within in order to contribute to stability and sustainable development. It is noted in the article that the welfare state constitutional model becomes ineffective in modern conditions. In practice, excessive state social commitments lead to the exhaustion of the sources of growth, and to the slowdown and deterioration of human capital. The implementation of the concept of the workfare state is considered as the most promising. Furthermore, the authors show that the idea of the “neutrality” of the Constitutional Court in an assessment of economic regulations facilitates unlimited state expansion into the economy, provokes economic inequality and the decline of guarantees of economic liberties, and, as a result, leads to an economic slowdown.

Keywords: Russia; constitution; constitutional economics; economic federalism; social state; economic rights; economic justice.

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Introduction: Conceptual Underpinnings of the Constitutional Model of the Russian Economy

The *impact of constitutional provisions on economic reality* is perhaps one of the most complicated and promising research subjects for both theory and practice.

Economists, legal scholars, and political scientists consider these issues from different perspectives. Economists went beyond the boundaries of "ordinary" economic analysis of constitutions and created a new discipline, i.e. constitutional economics (the term was born in the early 1980s in the United States). This research program examines how constitutional rules (principles, institutions) affect the freedom of choice and the activities of economic and political agents. In addition to analyzing constitutional provisions as external constraints, they are trying to determine the origin of these rules.

As is widely known, one of the founders of constitutional economics was the American economist, Nobel laureate (1986) James M. Buchanan (1919–2013).¹ Together with his colleague Gordon Tullock (1922–2014) and other members of the Virginia school of Economics,² he made an exceptional contribution to the

¹ See, for example, the historical essay on this topic in the discussion papers: Viktor J. Vanberg, *Constitutional Political Economy*, Freiburger Diskussionspapiere zur Ordnungsökonomik 15/06 (2015) (May 3, 2018), available at <http://hdl.handle.net/10419/118597>.

² See Francesco Parisi et al., *Gordon Tullock and the Virginia School of Law and Economics*, 28(1) Constitutional Political Economy 48 (2017).

development of public choice theory,³ which has extended economic methods to issues traditionally related to the political sphere. By developing these ideas, constitutional economists direct their interest

to the working properties of rules and institutions within which individuals interact, and the processes through which these rules and institutions are chosen or come into being.⁴

In modern Russia, the ideas of constitutional economics entered into scholarly discourse around the mid-1990s. This period saw a surge of positivism in Russian socio-economic sciences, so the constitutional economics theory transferred to Russian soil without its philosophical and methodological background. The Western intellectual heritage was not close to the worldview of a large part of Russian scholars formed in the Soviet socio-cultural and political reality. Leaving aside the issues of economic philosophy, Russian legal scholars and economists focused on applied problems related to the analysis of the impact of constitutional principles on an economy in transition. Among other things, experts who backed the Russian reformers highly appreciated the idea that the establishment of the economic rules and limits in the constitution (the Fundamental Law) could contribute to the rule of law in Russia, the transition to a market economy, and economic development.

As pointed out by Pyotr Barenboim and Natalya Merkulova in their essay, dedicated to the 25th anniversary of constitutional economics,

We believe that one of the ways for the Rule of Law and economic development to expand beyond the business and corporate law perspective is through adopting fundamental principles resulting from constitutional and institutional analysis. The constitutional approach is not purely theoretical and is meant to be utilized to serve more practical tasks discussed within the Rule of Law concept.⁵

As a result, Russia has gradually developed a new discipline based on the approaches and methods of institutional economics and constitutional law, i.e. *konstitutsionnaya economica*.

This Russian term sounds similar to the English "constitutional economics." Therefore, in order to underline the difference between the Western and Russian

³ The public choice theory emerged in the 1940s and was developed in the 1960s.

⁴ James M. Buchanan, *The Domain of Constitutional Economics*, 1(1) *Constitutional Political Economy* 1 (1990).

⁵ Pyotr Barenboim & Natalya Merkulova, *25th Anniversary of Constitutional Economics: The Russian Model and Legal Reform in Russia in The World Rule of Law Movement and Russian Legal Reform* 161 (F. Neate & H. Nielsen (eds.), Moscow: Yustitsinform, 2007).

approaches, Russian literature often uses the terms Constitutional Economic Theory or Constitutional Political Economy to specify the intellectual heritage of Buchanan and his followers, and the term Constitutional Economics to specify the Russian research tradition.⁶ The Russian model of the constitutional economics analyzes the constitutional and legal prerequisites for the effective development of an economy; studies the impact of economic crises on the state's constitutional institutions, as well as the impact of constitutional crises on the economy; explores the consequences of the globalization of the international economy for the constitutional processes in individual countries, etc. Furthermore, as noted in the work by Barenboim and Merkulova already cited, constitutional economics became a basis for legal reform in Russia as well as in post-Soviet and other transitional countries. This discipline provides a practical methodology for evaluating legislation, especially budget legislation.

The most comprehensive works in the field of constitutional economics belong to the renowned Russian scholars Pyotr Barenboim, Gadis Gadzhiev, Vladimir Laftitskiy, Vladimir Mau, Veniamin Yakovlev, and others.⁷

Few people remember this today, but the question of the "level" of a legal act which aims to establish the new model of the Russian economy, was discussed between Russian experts and experts of the Council of Europe. The papers of the Moscow seminar (January 1993) with the participation of representatives of the Venice Commission (European Commission for Democracy through Law)⁸ gives vivid evidence. The Russian experts defended the position that the Fundamental Law only has the proper level of legal value to enshrine the basis of the new economic order and to foster economic transition.

⁶ See, e.g., Белокрылова О.С. Конституционная политическая экономия в контексте теории и практики // Вопросы регулирования экономики. 2014. № 5(1). С. 6–12 [Olga S. Belokrylova, *The Constitutional Political Economy in the Context of Theory and Practice*, 5(1) Journal of Economic Regulation 6 (2014)].

⁷ See, e.g., Гаджиев Г.А., Баренбойм П.Д., Лафитский В.И., Мау В.А., Захаров А.В., Мазаев В.Д., Кравченко Д.В., Сырунина Т.М. Конституционная экономика [Gadis A. Gadzhiev et al., *Constitutional Economics*] (G.A. Gadzhiev (ed.), Moscow: Yustitsinform, 2006); Гаджиев Г.А. Конституционные принципы рыночной экономики // Развитие основ гражданского права в решениях Конституционного Суда Российской Федерации [Gadis A. Gadzhiev, *The Constitutional Principles of the Market Economy in Development of the Fundamentals of Civil Law in the Decisions of the Constitutional Court of the Russian Federation*] (Moscow: Yurist, 2004); Конституционная экономика и антикризисная деятельность центральных банков: Сборник статей [Constitutional Economics and Anti-Crisis Activities of the Central Banks: Collection of Articles] (S.A. Golubev (ed.), Moscow: LUM, 2013); Болдырев О.Ю. Конституционное право и экономика: поиск методологии и бегство от идеологии // Конституционное и муниципальное право. 2015. № 4. С. 9–14 [Oleg Yu. Boldyrev, *Constitutional Law and Economics: Search of Methodology and Escape from Ideology*, 4 Constitutional and Municipal Law 9 (2015)]; Самгуллин В.К. Экономический потенциал конституции // Конституционное и муниципальное право. 2015. № 4. С. 6–8 [Venir K. Samigullin, *The Economic Potential of the Constitution*, 4 Constitutional and Municipal Law 6 (2015)].

⁸ The European Commission for Democracy through Law, better known as the Venice Commission, is an advisory body of the Council of Europe created in 1990 for the purpose of providing constitutional assistance in Central and Eastern Europe.

The basic question to be asked is whether the economy should be regulated within the rigid framework of the Constitution, and if so to what extent, or if it would not be better left to ordinary law. The Russian participants considered that the Constitution should contain at least the fundamental provisions protecting the weak against the possible abuses of a free market economy.

On the same line of thought, the Constitution should contain provisions guaranteeing the protection of social rights, even though the Courts would not be in a position to apply them directly. It should be remembered that this was part of the Russian tradition, and that the people would not understand a different approach.⁹

The constitutional model of the Russian economy is based on the concept of sustainable development, equal protection of all kinds of property, and the combination of advantages associated with the market and state regulation. On the whole, it is consistent with the *welfare state* model. The selection of this particular economic concept is determined by the *social nature of the state*, which is established by Art. 7(1) of the Constitution of the Russian Federation. This implies that the state is obligated to build such a system for distributing social wealth that would ensure a dignified life and free personal development of every citizen as well as support for vulnerable social groups.

In the Russian Constitution, in their organic unity, practically all norms and provisions have a bearing on the country's socioeconomic system, establishing the basic principles and the logic of its development. At the same time, no separate chapter is expressly devoted to the economic agenda as such; instead, entire text of the Basic Law relates to it, including its preamble.

The Constitution establishes the basic principles of the economic system, enshrines the most important economic rights, defines the economic functions of the bodies of state power, and regulates the most significant issues of the functioning of individual institutions that are directly involved in the implementation of economic policy.

The most important conceptual feature of the current Russian Constitution is political and economic *liberalism*. At the same time, it contains the entire complex of ideas and principles developed by the democratic tradition of the last two centuries. The Venice Commission mentioned as a positive fact that the Russian Constitution has eliminated the difference between the "classical" human rights that include

⁹ *Transition to a New Model of Economy and Its Constitutional Reflections: Proceedings of the UniDem Seminar Organized in Moscow on 18 and 19 February 1993 in Co-operation with the Supreme Soviet of the Russian Federation, the Moscow State University, the Constitutional Court of Russia, the Constitutional Commission, the Ministry of Foreign Affairs and the Parliamentary Centre of the Supreme Soviet 28* (Strasbourg: Council of Europe Press, 1993).

civil and political rights, and the economic, social and cultural rights. According to international experts, enshrining a wide range of economic, social, and cultural rights in the Basic Law is a positive and progressive fact, as it reflects the traditions of Russia's previous constitutional development and

in a sense, is a working people's social achievement not to be given up, particularly since the said rights were recognized in the international legal instruments concerned with the human rights.¹⁰

In practice, the new Russian Constitution was the first to attempt to ensure the organic unity of the *liberal principles of Natural Law with the social tradition of contemporary times*.

This was reflected in an extremely condensed form in the economic provisions of Chapters 1 and 2 of the Constitution, which contain the fundamental principles of the state, social and political system and may not be changed other than by changing the entire Basic Law.

1. Key Principles

The most important principles underpinning the constitutional model of the economic system of the Russian Federation are economic sovereignty and economic security of the state; a single monetary system; multiple forms of ownership, including private, state (federal and that of constituent entities of the Russian Federation), and municipal; the social function of ownership; the market economy; state regulation of economic activity; free enterprise and freedom of other types of economic activity; labor rights and liberties; free competition; economic and budgetary federalism; an effective tax and budget system; pursuing the goal of a reduction in social disparity; promoting the national economy; and providing conditions for the effective integration of the Russian economy in the global economy.

The entire logic of the Russian Constitution is based on a *combination of the principles of freedom and responsibility*. The ideas of freedom are implemented through ensuring pluralism in the political (multipartyism and political freedom), economic (pluralism of the forms of ownership and freedom of enterprise), and ideological (inadmissibility of recognizing any ideology as prevailing) spheres.

The Constitution of the Russian Federation specifies the following basic economic rights and liberties:

- the freedom to perform economic activities (Art. 8(1));
- the right to the free movement of goods, services and financial resources (Arts. 8(1), 74);

¹⁰ Cited from *Bumruk H.B. Верность Конституции* [Nikolay V. Vitruk, *The Commitment to the Constitution*] 48–49 (Moscow: Russian Academy of Justice, 2008).

- the guarantees of equal recognition and protection of any forms of ownership, including private ownership (Art. 8(2));
 - the freedom of movement and the freedom to choose a place in which to stay and reside (Art. 27);
 - the freedom of labor (Art. 37(1 and 2));
 - the freedom to choose an occupation, including choosing between entrepreneurship (self-employment) and employment (Arts. 34(1), 37(1));
 - the freedom of enterprise (Art. 34(1));
 - supporting the competition and protecting free competition (Arts. 8(1), 34(2));
 - the legislative guarantees of protection of private ownership rights (Art. 35(1));
 - the freedom of creative activities (Art. 44(1));
 - the guarantees of legislative protection of intellectual property (Art. 44(1));
- etc.

The rights to the freedom of movement, freedom of enterprise, and freedom of contract are of particular importance. It is the implementation of these constitutional norms that makes political, economic and individual rights and liberties an indispensable part of public practices rather than a mere declaration.

2. The Free Market Economy

The free market economy provides the most important foundation for the constitutional system of the Russian Federation. The creators of the Russian Constitution aimed to provide “competitive advantages” for the implementation of the new model of the economic order. Constitutional provisions designed to promote market transition combine guarantees of personal and economic freedoms, social responsibility, and obedience to the rule of law by the state. As noted by the researchers, a distinguishing feature of the 1993 Constitution is the supremacy of *actual* understanding of the principles of free market economy over their *formal* understanding.¹¹ Indeed, both the notion of “market economy” proper and a section expressly devoted to the country’s economic system are formally lacking in the Constitution of the Russian Federation. This is an objective fact that reflects a certain political and ideological compromise. The fact is that the ideas of the free market and market economy do not rank among the values shared by the majority of the Russian citizens. Moreover, even after many decades since the beginning of the reforms, the very terms “market” and “market economy” still remain semantically non-neutral.

As noted by Prof. Sergey Stepashin, for a considerable part of the population, market reforms are directly associated with personal social failure and profound

¹¹ See e.g., Степашин С.В. Конституционный аудит [Sergey V. Stepashin, *Constitutional Audit*] 178–194 (Moscow: Nauka, 2006); Gadzhiev et al. 2006.

social upheaval while the term “market” became synonymous with the “shock reforms” and the subsequent serious social and economic problems.¹² This does not mean that the market and market methods are bad as such. The problem is that the application of objectively neutral economic knowledge (methodologies, tools and standard technologies) in a concrete social context often leads to the formation of an emotional, and often disapproving, attitude towards both the knowledge itself and those who apply this knowledge. In case of the shock methods used to “restart” the Russian economy in the early 1990s, the lingering echo of extremely negative social consequences led to bitter resentment of not only the model of market relationships but even of the words from the liberal vocabulary among a part of Russian society.

Nevertheless, the development of the private sector and the rational use of market instruments for regulating economic relationships are objectively beneficial and necessary for the modernization of the Russian economy.

As declared by the President of the Russian Federation, Vladimir Putin, in his Address to the Federal Assembly on 12 December 2012,

the economic freedom, private property, competition and *a modern market economy* [emphasis added], rather than state capitalism, must comprise the core of the new model of growth.¹³

Article 8 of the Constitution of the Russian Federation contains a rather exhaustive description of the *principles of the market economy* reflected in its main characteristics: the guarantees of the rights of ownership; the freedom of enterprise; the support of competition; and the unity of economic space. Among the most important functions of the state that determine the limits of its possible intervention in economics, the Constitution first and foremost emphasizes fundamental liberal values such as protection of property and support of competition.

Other elements of the market economy that are directly enshrined in the Constitution of the Russian Federation are property, enterprise and labor. At the same time, the economic function of the state is essentially transformed: instead of managing the national economy in the context of the nationalization of property, the state becomes a regulator of economic relationships, retaining its function of managing public property only (federal property or property belonging to constituent entities of the Russian Federation).¹⁴

¹² Stepahshin 2006, at 184.

¹³ Послание Президента Российской Федерации Федеральному Собранию Российской Федерации, 12 декабря 2012 г. [Presidential Address to the Federal Assembly of the Russian Federation, 12 December 2012] (May 3, 2018), available at <http://eng.kremlin.ru/transcripts/4739>.

¹⁴ See Эбзеев Б.С. Человек, народ, государство в конституционном строе Российской Федерации [Boris S. Ebzeev, *Man, people, state in the constitutional system of the Russian Federation*] 405 (Moscow: Yurizdat, 2005).

3. The State's Regulatory Role

Although there is no direct statement of the importance of the state's regulatory role in the Russian Constitution which is based on the ideas of civil society detached from the state, this role is, nevertheless, obvious and reflected in many provisions of the Basic Law. For instance, it is the state that regulates the institution of property, labor and principles of distribution; establishes the minimum wage and the taxes; forms and spends the state budget; and pursues the state investment policy.

It should also be mentioned that there is no public consensus concerning not only "market values" but also over the values of the "welfare economy," state paternalism, and the limits of state intervention in economic life in contemporary Russia.

For instance, self-supporting constituent entities often regard the extended social commitments of the state and the policy of state paternalism as a cause of social dependency and civil passivity. It is obvious, however, that a socially-responsible economy is a normatively endorsed benefit for a significant part of the populace and, therefore, enshrining this principle in the Basic Law became one of the key underlying elements of the new social consensus.

The social nature of the state, declared in Art. 7(1) of the RF Constitution, implies that the state is obliged to create a development model that would guarantee the principles of social equality, solidarity and mutual responsibility.

The Constitution of the Russian Federation reflects the idea of the *social function of property*. This follows from the abovementioned principle of the welfare state as well as from a systemic interpretation of provisions of Art. 9, which establishes that the land and other natural resources may be in private, state, municipal and other forms of ownership (Art. 9(2)) but, at the same time, stipulates that they should be used and protected in the Russian Federation as the basis for the life and activity of the peoples living in the territories concerned (Art. 9(1)). The social function of property also follows from Art. 35(3), which allows for the forcible alienation of property for state needs, Art. 36(2), according to which the private owners of land may freely exercise their powers as long as it does not cause damage to the environment or infringe upon the rights and lawful interests of other persons; while Art. 34(2) of the Constitution of the Russian Federation forbids any economic activity aimed at monopolization and unfair competition.¹⁵

As noted above, there is also no public consensus on the permissible "depth of immersion"¹⁶ of the state in economic regulation. According to the ideas of constitutionalism, the Basic Law should establish the limits of state interference in economic life, and, first and foremost, in the private sector of the economy. However, due to the historical features of the Constitution of 1993, these limits

¹⁵ Ebzeev 2005, at 407.

¹⁶ A quote from Gadis Gadzhiev, a Russian Constitutional Court judge.

were not defined strictly and unambiguously. As is well known, the Constitution of Russia arose in a time of opposition between political elites and competition between ideas about the model of the new social and economic order, about the purposes of social development and the ways to achieve the same. In the context of the escalation of the political struggle and civil confrontation, the Constitution was designed primarily to provide a basis for the restoration of social unity and harmony. That is why the Constitution enshrined the most general principles and declarations, accepted by all political opponents, to create the core for consensus but did not specify the details to avoid a new burst of conflicts. The frame and procedural nature of the Constitution also stems from the fact that this document was developed in the situation of transition and, therefore, it objectively could not contain a detailed description of the institutions that were still in the process of formation.

Being an instrument of “compulsion to consensus,” the Constitution of 1993 provides the rules and tools for the establishment of a new system of state power based on the principles of division of powers and their mutual deterrence. Furthermore, the Basic Law provides a set of efficient mechanisms and algorithms to maintain the proper balance of powers, to maintain social harmony, and to prevent and resolve possible conflicts at various levels. It is noteworthy that the mentioned mechanisms and algorithms have no political overtones. It does not matter who the current president, chairman of the federal government, or head of the region is. The persons may change, but the procedures resulting in consent remain standard and work effectively.

However, even if the authorities and political elites agree to follow the established constitutional procedures, this does not give a 100% guarantee of the successful implementation of constitutional principles. A political and legal culture, respect for the rule of law, and unity in understanding the ideas of the Basic Law are even more critical factors for success.

When the first State Duma appeared in Russia, Pyotr Stolypin¹⁷ wrote about the crucial importance for the branches of power to find a common language. He believed that such a “common language” should be found in the unified understanding of national and state objectives.¹⁸ In fact, a constitution adopted by all branches of government and by political forces is created precisely to ensure “a unified understanding of national and state objectives.” This understanding was particularly important in an era of large-scale societal transformation, when the country is choosing a new trajectory for development.

¹⁷ Pyotr Stolypin (1862–1911) was a Russian statesman, reformer and Prime Minister from 1906 to 1911.

¹⁸ *Столыпин П.А. Нам нужна Великая Россия. Полное собрание речей в Государственной думе и Государственном совете. 1906–1911* [Pyotr A. Stolypin, *We Need a Great Russia. A Full Collection of Speeches in the State Duma and the State Council. 1906–1911*] 62–65 (Moscow: Molodaya Gvardiya, 1991).

Unfortunately, even today, such a unified understanding of constitutional principles has not yet developed. Although, for constitutional experts, the principles and logic setting the limits for state intervention are apparent. According to the Russian Constitutional Court judge Gadis Gadzhiev,

almost all constitutional norms that establish economic freedom, the rights of citizens in the economic sphere, the limits of their restrictions genetically related to civil law... The state, by establishing, in the Constitution, the rules on its functions in the economy, undertakes a new constitutional obligation.

If the state guarantees to protect fundamental economic rights, it is obliged to be reasonable in its application of restrictive legal tools.¹⁹ This also means that constitutional provisions set the limits for state intervention and presence in the area of private entrepreneurship, as well as the personal lives of citizens.

Since society and political elites did not fully perceive the ideas of constitutionalism, a lack of unity in the understanding of the constitutional principles leads to a lack of agreement in the interpretation of norms establishing the limits of state intervention in the economy. As a result, practice shows that the scope of state regulation is continually expanding, while the volume of economic freedoms is decreasing.

Nevertheless, the expert position that constitutional provisions are “guilty” in the situation when “courts and practice have the opportunity to evaluate such rules in their interests”²⁰ (in other words, interpret them in favor of the state) is, at least, naive, because it mixes causes and consequences. The conclusion saying that the “ambivalence” of the norms of the Constitution became the basis for “neutrality” declared by the Russian Constitutional Court in the assessment the economic policy pursued by the state²¹ demonstrates a similar substitution of cause and consequence.

As practice shows, this kind of “neutrality” is a political and legal choice that ultimately affects the economy. The current “depth of immersion” of the state in the economy is beginning to interfere with economic development. As President Vladimir Putin noted in his Address to the Federal Assembly on 1 March 2018,

¹⁹ *Гаджиев Г.А. Экономическая Конституция. Конституционные гарантии свободы предпринимательской (экономической) деятельности // Конституционный вестник. 2008. № 1(19). С. 249–263 [Gadis A. Gadzhiev, *Economic Constitution. Constitutional Guarantees of Freedom of Entrepreneurial (Economic) Activity*, 1(19) Constitutional Bulletin 249 (2008)].*

²⁰ *Нефедов Д.В. Экономическая теория как основание конституционного толкования // Правоведение. 2013. № 5(310). С. 220 [Dmitriy V. Nefyodov, *Economic Theory as a Foundation of the Constitutional Interpretation*, 5(310) Jurisprudence 215, 220 (2013)].*

²¹ Gadzhiev 2008, at 251.

In order for the economy to work in full force, we need to radically improve the business climate, and ensure the highest level of entrepreneurial freedoms and competition. I want to outline a principled position here. The state's share in the economy should gradually decline.²²

In fairness, we have to note that the decision of the courts to side with the state and large corporations is a widespread phenomenon. In fact, the Russian courts are going, with some delay, through the same evolutionary path as the economic justice of the United States. American legal history knows a period called the "Lochner era" (1897–1937). It was a time when the U.S. Supreme Court found it necessary and useful to strike down economic regulations adopted by a state if these laws were held to be infringing on economic liberty or private contract rights. But, since the end of the Lochner era, the concept that "the Constitution generally should leave economic policy decisions to the legislative and executive branches"²³ has prevailed in the USA.

According to the American Professor Martha T. McCluskey, this approach has led to the fact that the American Dream gradually disappears because the principles of freedom and equal economic opportunity are no longer protected by the Constitution and the courts:

Not only has the U.S. Supreme Court turned away from the constitutional protection of those with modest resources, but it also has increasingly (though often subtly) used the Constitution to limit political branches' discretion to promote equality.²⁴

The author considers it is time for an ambitious constitutional vision of economic justice and the creation of mechanisms to ensure constitutional protections against economic inequality.

4. Economic Federalism

Yet another key principle of the organization and functioning of the state, social and economic system in Russia is *federalism*, which is reflected in many provisions of the Constitution of the Russian Federation. One of the fundamental principles of federalism is the unity of economic space (Art. 8(1)), supported by the provisions of Art. 74(1) stating that

²² Послание Президента Российской Федерации Федеральному Собранию Российской Федерации, 1 марта 2018 г. [Presidential Address to the Federal Assembly of Russian Federation, 1 March 2018] (May 3, 2018), available at <http://www.kremlin.ru/events/president/news/56957#sel=155:1:1kp,155:4:vpk>.

²³ Martha T. McCluskey, *Constitutional Economic Justice: Structural Power for "We the People,"* 35 *Yale Law & Policy Review* 271 (2016).

²⁴ *Id.*

No customs borders, duties, levies, or any other barriers to the free movement of goods, services, or financial means shall be permitted in the territory of the Russian Federation.

Among other federalist provisions we can mention the equality of rights of the constituent entities of the Russian Federation (Art. 5(1 and 4)), the principle of a single monetary system (Art. 75(1)), the unity of the system of executive bodies in the Russian Federation at the federal and regional levels within the exclusive jurisdiction of the Russian Federation and the RF's powers concerned with the matters within the joint competence of the Russian Federation and its constituent entities, which allows a uniform and cohesive policy to be pursued across the entire country (Art. 77(2)).

An important principle of federalism consists in the participation of constituent entities of the Russian Federation in decision-making concerned with the federal budget; federal taxes and levies; financial, currency, monetary and customs regulation; and the issue of money. To implement this principle, the Constitution enshrined mandatory consideration by the Chamber of Regions (the Federation Council) of the relevant federal legislation adopted by the State Duma of the Federal Assembly of the Russian Federation (Art. 106(a, b, c)).

The constitutional model of *economic federalism* enables the effective implementation of the principle of "unity in multitude." On the one hand, the exclusive competences of the Russian Federation include establishing a legal framework for the single market; financial, currency, monetary and customs regulation; the issue of money; pricing policy guidelines; federal economic agencies including federal banks (Art. 71(g)); as well as determining the basic principles of federal policy and federal programs concerned with the country's economic development (Art. 71(f)). On the other hand, the constituent entities of the Russian Federation enjoy full state power and freedom of choice (including in the field of economic decision-making) outside the exclusive jurisdiction of the Russian Federation and the RF's powers concerned with the matters within the joint competence of the Russian Federation and its constituent entities (Art. 73). The Constitution thus provides a framework for creating a mechanism for fine-tuning the strategy and tactics of the federal socioeconomic policy to the specific needs of concrete constituent entities of the Russian Federation, so as to ensure the equal standards of wellbeing and development possibilities across the entire country.

5. The State's Tax and Budget System

The Constitution of the Russian Federation also enshrines the fundamental principles for the state's *tax system*. In particular, it is established that the federal taxes and levies are within the exclusive jurisdiction of the Russian Federation (Art. 71(h))

while the general principles of taxation and levying in the Russian Federation are within the joint jurisdiction of the Russian Federation and its constituent entities (Art. 72(i)). According to the Constitutional Court of the Russian Federation,

taxes are the most important source of budget revenue at the expense of which compliance with, and protection of, citizens' rights and liberties, as well as the exercising of the state's social function, shall be ensured (Arts. 2 and 7 of the Constitution of the Russian Federation). Without the proceeds of tax payments to the budget, the financing of enterprises fulfilling the government contracts, as well as public health institutions, education, army, law enforcement agencies, etc., would be impossible, as would the payment of wages to public-sector employees.²⁵

The Constitution obliges everyone to pay the legally established taxes and levies, at the same time, establishing a rule under which the laws introducing new taxes or deteriorating the taxpayers' position shall have no retroactive effect (Art. 57).

Draft laws introducing or abolishing taxes and exemptions from the payment thereof may only be introduced following a resolution of the Government of the Russian Federation (Art. 104(3)) while, as already mentioned, the tax laws adopted by the State Duma are subject to obligatory consideration by the Federation Council of the Federal Assembly of the Russian Federation (Art. 106(b)).

The constitutional codification of the principles of *budgetary relationships*, and the definition of the place, role, and functions of the *state budget* comprises an essential element of the fundamentals of the economic system. All modern constitutions contain requirements to include all the state's revenue and expenditure in the budget. This is a general principle, the observance of which is strictly controlled in every country.

The Constitution of the Russian Federation only establishes general principles for the budget and budgetary relationships, giving enough latitude in the complicated process of formation of the country's budget system that is best suited for addressing the socioeconomic development objectives and contemporary challenges.

Under the Basic Law, the federal budget is the exclusive competence of the Russian Federation (Art. 1(h)). The federal budget is developed and submitted for the State Duma's approval by the Government of the Russian Federation, which then

²⁵ See Постановление Конституционного Суда Российской Федерации от 23 декабря 1997 г. № 21-П "По делу о проверке конституционности пункта 2 статьи 855 Гражданского кодекса Российской Федерации и части шестой статьи 15 Закона Российской Федерации 'Об основах налоговой системы в Российской Федерации' в связи с запросом Президиума Верховного Суда Российской Федерации," Собрание законодательства РФ, 1997, № 52, ст. 5930 [Ruling of the Constitutional Court of the Russian Federation No. 21-P of 23 December 1997. The Case of Testing the Constitutionality of Paragraph 2 of Article 855 of the Civil Code of the Russian Federation and Part Six of Article 15 of the Law of the Russian Federation "On the Fundamental Principles of the Tax System in the Russian Federation" in Connection with the Request of the Presidium of the Supreme Court of the Russian Federation, Legislation Bulletin of the Russian Federation, 1997, No. 52, Art. 5930].

works to ensure the execution of the budget approved by federal law, and submits the annual report to the parliament (Art. 114(a)).

Any draft laws making provisions for the expenditures covered by the federal budget may only be introduced to the State Duma following a resolution of the Government of the Russian Federation (Art. 104(3)).

The federal laws adopted by the State Duma and concerned with the federal budget issues are subject to obligatory consideration by the Council of the Federation (Art. 106(a)).

To control the execution of the federal budget, the Federation Council and the State Duma form the Accounts Chamber whose composition and operating procedures are controlled by federal law (Art. 101(5)). The Accounts Chamber, acting on behalf of the taxpayers and in the best interests of society, appears in parliament to present its evaluation of the draft budget and report the results of the audit of budget execution.

The Budget Code of the Russian Federation regulates budgetary relationships in more detail.²⁶ In particular, the Budget Code defines the budget in general terms as a form of generation and disbursement of monetary assets intended for financial backing for the objectives and functions of the State and local self-government (Art. 6).

As a legal category, the budget is:

- the national fund of public monetary assets created to meet the government expenditure;
- the state's financial plan specifying its revenue and expenditure;
- the principal (main) financial plan in the country since, apart from the state budget, other financial plans also exist such as the plans of enterprises, agencies, and organizations (balance sheets, budget estimates);
- the object of budgetary legal relationships, reflected in the legal budgetary provisions.

As a financial category and a link in the country's financial system, the state budget is a special form of redistribution relationships, associated with a part of a national income being transferred into the ownership of the state (or a constituent entity of the Russian Federation) and utilized to meet the needs of the entire society and its individual territorial entities. The budget redistributes national income and a part of national wealth between the territorial entities and national economy sectors. More than other links of the financial system, the redistribution of national income using budgetary methods is determined by the needs of extended reproduction in general and the objectives facing the society at each stage of its historical development.

²⁶ Бюджетный кодекс Российской Федерации от 31 июля 1998 г. № 145-ФЗ, Собрание законодательства РФ, 1998, № 31, ст. 3823; 2018, № 1 (ч. 1), ст. 18 [Budget Code of the Russian Federation No. 145-FZ of 31 July 1998, Legislation Bulletin of the Russian Federation, 1998, No. 31, Art. 3823; 2018, No. 1 (Part 1), Art. 18].

The budget is a public law category, normatively consolidated and exclusively used to express the national interest, and, therefore, relationships in this sphere are mainly regulated by the binding norms.

The Budget Code of the Russian Federation also provides a legislative definition of the notion of the "*budget system of the Russian Federation*." Such system understood as a combination of federal budget, the budgets of constituent entities of the Russian Federation, municipal budgets, and the budgets of the state extra-budgetary funds, which is based on the economic relationships and state structure of the Russian Federation and regulated by the RF legislation.

The following main constitutional and legal principles underpin the budget system of the Russian Federation:

- the unity of the country's budget system;
- the autonomy of budgets, i.e. budgets of different levels having their own sources of revenue and enjoying a right to determine how to disburse this revenue;
- transparency and accountability of the government bodies' activities as regards budget formation and execution;
- delimitation of revenue and expenditure between the levels of the budget system of the Russian Federation;
- budget balance (ensuring the matching of expenditure against revenue, as well as the development and implementation of measures aimed to increase budget revenue and cut budget expenditure);
- effectiveness and economy of the use of budget funds;
- coverage of total (aggregate) expenditure;
- budget validity (the budget ought to be based on reliable indicators of the forecast of socioeconomic development of a territory and the realistic estimates of budget revenue and expenditure); and
- budget funds targeting.

6. Mechanisms for Guaranteeing the Stability of the Monetary System

One of the important aspects of the constitutional model of Russia's economy is the *principle of independence of the Central Bank of the Russian Federation*, enshrined in the Basic Law. According to Art. 75(2) of the RF Constitution, the main function of the Central Bank of the Russian Federation, performed independently of other bodies of state power, is protecting and ensuring stability of the ruble. According to Art. 75(1), only the Central Bank is entitled to issue money in Russia.

The idea of central banks being independent from the executive and legislative bodies of state power first emerged in the late 19th century but began to be implemented in constitutional and legal reality in the second half of the 20th century.

Rather than with the theoretical matters, the constitutional codification of the principle of independence of the Bank of Russia was largely associated with the

practical need to create additional mechanisms to guarantee the stability of the monetary system of the young state that was compelled to carry out reforms in a situation of financial and economic crisis that had erupted in the last few years of the USSR's existence.

As is well known, the profound budgetary and financial crisis inherited from the Soviet Union produced a very negative impact on the development of the new model of Russia's economy. At the same time, the crisis was so protracted largely because of the lack of consistency in the policies of the different branches of the new Russia's power in the early 1990s. Any positive effect of the Government's measures aimed at reducing inflation and promoting macroeconomic stabilization often came to naught because of the inflationist policy of the deputy corps. This process was particularly vividly manifested in 1992–1993 when the Supreme Soviet of the Russian Federation could directly intervene in the Central Bank's financial policy.

Therefore, enshrining the independent status of the Bank of Russia in the constitution reduces the risks of political expediency affecting the stability of the country's monetary and credit system as well as the banking sphere, and helps curb inflation.

Conclusion: "Conflicting" Constitutional Values as a Source of Development

To sum up, the Constitution of 1993 has some inherent traits, which seem contradictory, at first glance. On the one hand, it is a rigorous codification of fundamental principles, including a complicated procedure for making amendments to the text of the Constitution. On the other hand, it is the absence of prohibitions on the broadest political and legal creativity within the existing constitutional limits.

Some economists consider it a serious problem that the current Russian Constitution equally defends the principles of economic freedom and, at the same time, the social nature of the state. For instance, there exists an opinion that the first two chapters of the Constitution

contain more liberal provisions than other sections. The implementation of the liberal principle declared in the Fundamentals of the Constitutional System and Individual Rights and Freedoms becomes difficult when it comes to the concrete problems in the functioning of the economic and political system. This is caused by the conflict between liberalism declared by the Constitution and the actual possibilities for its implementation in the post-socialist society. This gap is clearly discernible if we consider the authorities of the bodies of state power (including those associated with the adoption of regulatory legal acts) to interfere with the freedom of economic activity, being governed by various "public" interests. Such interests, first and foremost,

include the state's constitutional obligation to guarantee social protection to the populace.²⁷

The problem of *social justice* is another difficult problem. It is well known that the interpretation of the principle of justice depends on the worldview and concrete stage in the development of a society. This principle may be understood both as ensuring maximum material equality of all members of society; as preventing an excessive gap between the rich and the poor; creating equal start conditions for each individual; as the state's obligation to provide support to the most vulnerable groups; and as provision of a minimum set of basic social guarantees to all citizens. The right choice of "criteria of justice" and the effective practical implementation of a suitable policy provides an important basis for the stability of democratic systems because a profound social inequality undermines the political and economic stability of society, while an excessive concentration of public resources in the hands of a minority destroys the principles of democracy and creates a barrier to steady social and economic development.

In fact, however, there is no irresolvable conflict between the principles of economic freedom and the social nature of the state. These values are equal; they create a "corridor of opportunity" within which the state's socioeconomic policy is balancing. On the one hand, it is extremely important to find the right balance between the provision of the conditions of freedom for the development of private initiative, and social responsibility; between the interests of free individual and the interests of society. On the other hand, it is no less important to maintain the right balance between achieving social justice for individual groups, and the need to ensure the incentives for the development of the economy in the best interests of the whole society.

Continuous expansion of the social functions of the state increases the risk of the country falling into the *trap of paternalism*, thus reducing the chances for the country's successful transition to the model of innovational development. A strongly paternalistic society does not, objectively, need any changes and innovations: a stable and guaranteed access to a slice of public cake (even if it is not too big) is much more important than a possibility to act independently and risk for a possible (although not guaranteed in advance) increase of the level of one's own and one's family's wellbeing. Paradoxical as it may seem, maintaining the situation when a great number of citizens receive various benefits from the public sector is advantageous for bureaucracy whose "bureaucratic rent" continuously increases due to public sector growth.

Practically no doubt remains today that the welfare state model in its pure form is not sufficiently effective. The facts indicate that, when the state's social commitments fall outside the bounds of what reasonable and fair, this leads to the exhaustion of

²⁷ Gadzhiev et al. 2006, at 31–32.

the sources of growth, slowdown, and deterioration of human capital due to growing welfare mentality.

Therefore, the concept of a *workfare state* is gaining ground.²⁸ According to this approach, solely partnership and mutual responsibility of the state and its citizens can be a source of the growth of social welfare: a modern social state must only provide for the basic needs of the individuals (minimum subsistence level, education, health care, infrastructure, etc.) while the citizens must invest their own labor in the development of society to receive their proportional shares of public benefits.²⁹ The concept of a workfare state rejects the welfare mentality and the citizens' propensity for free rider behavior,³⁰ and expects higher civil conscientiousness and social activity from each citizen.

Only an *effective state working in partnership with free and responsible citizens* is able to address the problem of combining market methods with a socially responsible economy.

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²⁸ See, e.g., Christopher Deeming, *Foundations of the Workfare State – Reflections on the Political Transformation of the Welfare State in Britain*, 49(7) Social Policy & Administration 862 (2015); Zoltán Lakner & Katalin Tausz, *From a Welfare to a Workfare State: Hungary in Challenges to European Welfare Systems* 325 (K. Schubert et al. (eds.), Heidelberg; New York; Dordrecht; London: Springer, 2016); Alice Kessler-Harris, *The Workfare State: Public Assistance Politics from the New Deal to the New Democrats*, 104(1) Journal of American History 260 (2017), and others.

²⁹ See, e.g., Хабриева Т.Я., Чиркин В.Е. Теория современной конституции [Taliya Ya. Khabrieva & Veniamin E. Chirkin, *The Theory of Modern Constitution*] 195–198 (Moscow: Norma, 2003).

³⁰ The *free rider problem* was first mentioned in the works of the American political economist Mancur L. Olson (1932–1998). The essence of the free rider problem is that the citizens usually do not want to bear the costs of generating public benefits but want to enjoy these benefits.

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