Article

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New Legal Tradition: Paradigms of Developments in Technology

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Abstract: This paper looks at the influence of the developments in technology on the evolution of the legal map of the world and the individual elements thereof through the prism of the philosophy of law, general theory of law, and comparative law. The analysis is based on the comparative legal and comparative historical methods. The author comes to the conclusion that the maxims of the Fourth Industrial Revolution have led to the emergence of a new legal tradition, and outlines the key characteristics of this tradition. The analysis of the aforementioned tradition is preceded by a look at the legal traditions already explored in the history of legal thought, the key position among which is occupied by the Western legal tradition. The "symptoms" of the new legal tradition described in the paper represent not only a certain stage in the development of global jurisprudence (albeit being at an initial phase), but also an element of the civilizational evolution of a universal social order. Like any previously non-actualized phenomenon, the new legal tradition does not only give new attributes and characteristics to the legal world, but also generates discussions about further paths of its own development. The final section of the paper deals with the problematic areas of the evolution of the new legal tradition.

***Keywords*:** law; evolution; tradition; technologies; foreign (non-Russian); international

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Contents

I. Introduction

Continuity and renewal are two properties of human existence, which — year after year, century after century, millennium after millennium — manifest themselves in the legal space as well. The "new tradition" oxymoron pertains to more than one phenomenon in social practice. In the field of art, for example, the foundation for new traditions was laid by the movement of French impressionists in the 19th century, giving new impetuses to the links of continuity in this area of social practice. In the modern world, the Fourth Industrial Revolution has served as a powerful catalyst for the evolution of social subsystems of different qualitative orientations. It changed not only the world of objective things around us — creating new technologies and (or) accelerating certain developments in technology, giving us a new perspective of the foundations of communication between people, but also transformed the subjective component of human existence.

Undoubtedly, the developments in technology have had an impact on the legal systems of the contemporary world and the homogeneous entities thereof. The symptoms of the new legal tradition are multifaceted, interdependent to a certain extent, and manifest themselves both in legal theory and in legal practice. Their assessment requires both a synchronic and a diachronic comparative analysis of the corresponding phenomena and processes.

This paper provides an assessment of the legal tradition as a framework in the history of legal thought (I); identifies the symptoms of the new legal tradition in connection with the development of new technologies (II); and deliberates on the evolution of the new legal tradition (III).

II. Legal Traditions in History of Legal Thought

The Oxford Dictionary defines "tradition" as the transmission of beliefs, statements, customs, etc., from generation to generation; the fact of being passed on in this way, especially by tradition.[1] The French Le Petit Robert[2] points out that "tradition", on the one hand, can be interpreted as a material transfer or a fulfillment of an obligation to hand something over, and, on the other hand, as information orally transmitted from generation to generation.

The most elaborate doctrine of legal traditions is offered by the works dedicated to the Western legal tradition. The work by Harold J. Berman entitled *Law and Revolution, the Formation of the Western Legal Tradition* is highly noteworthy in this respect. It is a truly life-long book. Berman began writing it in 1938, and finished it in 1983. According to Berman, the Western legal tradition originates from the so-called Papal Revolution.[3] The Papal Revolution, which started in 1075 with the Dictates of Pope Gregory VII (in Latin *Dictatus Papae)* and culminated in 1122 with the Concordat of Worms, took place for the sake of the so-called freedom of the Church. It was a revolution against the subordination of the clergy to emperors, kings and feudal barons, a revolution for the establishment of the Roman Church as an independent corporate political and legal entity under the aegis of the papacy. The duality of the spiritual and the secular jurisdictions, as well as the plurality of secular jurisdictions, resulted in a fierce rivalry, which brought about not only the rule by law, but also the rule of law. The claims of each jurisdiction met obstacles from the other jurisdiction. This is the fundamental feature of the Western legal tradition, a feature that persisted in one form or another for eight hundred years. It was the source of the development of law and the source of freedom (Berman, 1998).

[1] For details, see: https://www.oed.com/search/dictionary/?scope=Entries&q=tradition [Accessed 01.08.2024].

[2] Le Petit Robert Dictionnaire de la langue française. Paris, 1992, p. 1994.

[3] A term coined by the German historian and philosopher Eugen Rosenstock-Huessy.

The start of formation of the Western legal tradition, according to Berman, was triggered by the idea of law as a separate subject. He points out that, for the first time in the West, law was considered separately from theology, and economics, and politics; for the first time something definite, deserving the name "law", appeared. This law had its own professional guardians, called lawyers, and its own texts (publications). Before 1050 there were no law-related compilations or legal treatises in Europe, however, there were compilations of customs or canons. There was no legislative process in its current sense, although kings issued laws from time to time (Berman, 1998, p. 11).

Berman also looks at the issues related to the crises of the Western legal tradition. He links them to an unprecedented crisis of legal values and legal thought, stating that before 1914 the West was the center of the world, one might even say that the West created the world, for the West was the first to understand that there existed such a thing as the whole world, and sent its soldiers and missionaries to conquer it. However, in his opinion, in 1993, the world undoubtedly becomes the center, and the West becomes one of the elements thereof, one of the partners in the gradual creation of the global technology, the global economy, the global culture, and the global legal order (Berman, 1998, p. 13).

Assessing Berman's point of view mentioned above, it should be noted that his conclusions with regard to the matter under consideration feature a somewhat idealized vision of the Western legal tradition. The time of emergence of the Western legal tradition is certainly significant, but the humanity existed long before the famous Papal Revolution. However, Berman was absolutely right in saying, "Because the age is ending, we are now able to discern its beginnings". And these historical beginnings of the Western legal tradition are brilliantly demonstrated in his work.

As for the analysis of the palette of various legal traditions of the past and the present, it is undoubtedly quite comprehensively covered by comparative law. The comparative vector of various legal traditions originated primarily within the framework of the Anglo-American and Canadian teachings on the State and law. *Legal Traditions of the World: Sustainable Diversity in Law* by Patrick Glenn is one of the classical

works on comparative law assessing various legal traditions of the past and present.

S.I. (Stacie) Strong remarks the following in this regard, "In 1998, the International Academy of Comparative Law named Professor Glenn's newest book, then in manuscript form, the winner of the grand prize at the XV International Congress of Comparative Law. In so doing, the Academy made no mistake, for this is an exceptional and eminently readable book. Combining a historically accurate analysis with a distinctly contemporary sensibility, Glenn invokes not only jurisprudential concepts as he explains the different legal traditions, but religious and sociological ideas as well. It is difficult to imagine an interdisciplinary team of authors taking on a project of this scope, but Glenn, working alone, successfully integrates strands of thought from these different disciplines into a single cohesive whole" (Strong, 2001, pp. 421–423).

In terms of the scale and the depth of the analyzed material, the aforementioned work by Glenn can be compared to *A Study of History* by Arnold Toynbee. The common ground for both works is the culture-and-value based approach used when studying the social practices of various peoples and communities (Bell, 2001, p. 6).[4]

Patrick Glenn, consistently pursuing the line of the culture-and-value based approach in jurisprudence, emphasized, "The principal problem with contemporary theories of the State is that they have become largely founded on positivist philosophy, or more precisely on non-critical or non-normative legal positivism, which saw positive law and state structures as facts, requiring no justification but simply description" (Glenn, 2009, p. 513).

S.I. Strong, while being quite enthusiastic in her positive assessments of Glenn's work, still criticizes it a bit, remarking that "the book's brilliance belies its slightly slow beginning". In our opinion, the "slight-

[4] The culture-and-value based approach in comparative law is used in works on legal culture as well. Among the most notable of such works are, certainly, those by Pierre Legrand and Csaba Varga. The theory of comparative law also features separate studies devoted to the distinction between the notions of legal culture and legal tradition. For instance, in the opinion of Professor Bell, these concepts represent a whole (culture) and a part (tradition). It was this methodology of distinction that he applied when analyzing the French legal culture.

ly slow beginning" (by which the general theoretical aspects of the legal tradition portrayed in the first paragraphs of the work are meant) is the very essence, the core, the centerpiece of the work, without which the entire work would be impossible. The lack of such a description in the work could be compared with the lack of the general part in civil codes structured according to the pandect system, i.e., the lack of general provisions means the lack of the basic principles for developing the provisions of the specific part.

When characterizing the theory of tradition, Glenn noted that the theory of tradition should therefore not be thought of as a present, or perhaps even a future construction, but rather as a present device or method for thinking traditions (Glenn, 2007, p. 4). According to Glenn, the key feature of tradition is the transmission, i.e., the involvement of the past in the present, the need for continuous reference to the traditional heritage of the past in a given social context.

In our opinion, Patrick Glenn described very aptly in his work entitled *Tradition in Religion and Law* (for details, see Glenn, 2009, pp. 503–519) the process of the embracing of tradition, "Transmission beyond an initial hearer is impossible without some form of memory, or recording; and what is transmitted is no longer what was heard in its original form, but what is remembered" (Glenn, 2009, p. 504). The core of the book *Legal Traditions of the World: Sustainable Diversity in Law* consists of seven chapters that discuss different traditions. Beginning with the chthonic tradition, the book continues with the Talmudic tradition, the civil law tradition, the Islamic tradition, the common law tradition, the Hindu tradition, and the Asian tradition (for details, see Strong, 2001, pp. 421–423). As we can see, Patrick Glenn's view of the legal tradition is primarily diachronic. As a consequence, the overwhelming majority of legal traditions described in his book have a close connection with religion.

In addition to Patrick Glenn's landmark work, works on the legal traditions of individual countries and legal communities (for details, see Sinitsina, 1987, pp. 44–57; McEldowney and O'Higgins, 1990, p. 249) as well as on the historical forms of various legal traditions (Duxbury, 1989, pp. 241–260) have become widespread in comparative law. However, none of the aforementioned works provides an assessment of the

new legal tradition, which is gradually "generating buzz" in connection with the intensification of advances in science and technology in various spheres. The new legal tradition is set outside of any specific environment — be it countries, unions thereof, or individual regions, — but obviously keeps in step with the time that brings this tradition about.

The extent to which it penetrates social environments is astonishing and defies the standards of classical comparative studies where the "outpacing" advanced legal systems (the so-called great contemporary legal systems) and legal systems lagging behind have always existed. For instance, in some countries of the East women are still not allowed to drive, however, at the same time cryptocurrency is actively used there, and the relevant legal regimes for such a use are established.

While the Western legal tradition was triggered by the Papal Revolution, the new legal tradition was triggered by technologies reaching a qualitatively new phase of development. The technologies which brought about the emergence of a new legal tradition can be divided into two large groups:

— the technologies that change the world around us (most vividly manifested in digitalization of processes and systems);

— the technologies that change us (such as, for instance, genetic technologies).

The new legal tradition is at the initial stage of its development. However, its symptoms are already noticeable. What are they?

III. New Legal Tradition — Answers

The new legal tradition manifests itself in several aspects of the existence of law simultaneously. First of all, we observe the emergence of new variables on the legal map of the world that have a direct impact on its evolution. Such variables include *lex genetica* (the term coined by the author. — M.Z.), i.e., the system regulating the issues of genetic tests and genetic therapy, as well as the social consequences thereof; digital law — a regulatory framework formed in the sphere of application or through application of digital technologies; and *lex sportiva*. These variables have both their own unique legal and social nature, and some common features. First, the peculiarities of the scope of legal regulation

of these variables predetermined the synthetic nature of law formation for such variables, such nature of law formation being, among other things, of a non-classical extra-state [extra-governmental] nature. Secondly, the aforementioned variables manifest the dialectics of the new (as compared with the decentralized period in the development of legal systems) particularism and universalism of law. Thirdly, at the moment these variables complement the national systems of law, which act as classical objects on the legal map of the world. However, in the future the evolution of these variables might lead the global legal space to a large-scale transformation of the legal map of the world (e.g., the development of digital law might result in the emergence of a new global legal order, where nation-and-state and culture-and-value features of the legal phenomenon as such would be completely or partially erased). The list of the new variables is not complete and exhaustive. The new social realities and challenges of the external environment might drive the emergence of other new variables on the legal map of the world (Zakharova, 2022b).

Second, the legal science is witnessing the emergence of new forms of symbolization used in the present-day world. As Professors Antoine Garapon and Jean Lassègue point out, the digital age brings about a new global writing system with only numbers, rather than letters or words, as the base. Therefore, the digital age brings about its own pure, wordless order (Garapon and Lassègue, 2018, p. 27).

Third, the list of creators of law is augmented by new actors. One of such phenomena brought about by the development of digitalization has been metaphorically named *Google Law* in international publications. Obviously, the aforementioned transnational corporation is not the only one trying to get into the good old "kitchen" of law. The first attempts of that kind can be traced back to the mid-20th century with John Horty considered to be a pioneer (Paliwala, 2010, pp. 11–20). In 1955, he used the text retrieval technology for computer-based processing of law-related texts at the University of Pennsylvania.[5] In 1963, Stuart Nagel published a paper where he put forward the idea of using

[5] Text retrieval is defined as the matching of a given user query against a set of texts.

mathematical correlations to predict the outcome of court proceedings from a scientific point of view (Nagel, 1963, p. 1006). In 2006, Lawrence Lessig proposed mechanisms for law creation using computer codes (Lessig, 2006). It should be noted that the above examples most clearly reflect the tendency of erasing boundaries between the human and the non-human as an object of the material world (Zakharova, 2022b). Fourth, we are witnessing the emergence of new forms of interaction between law and ethics. That brings to mind the words of Vladimir Solovyov who wrote at the beginning of the 20th century that law is an ethical minimum. Nowadays, these minimums are expanding. If we look at law and morality from the point of view of the circular model of the German mathematician Leonhard Euler, we can see that the intersecting zones of social regulation of law and ethical norms are expanding, and sometimes are supplemented in a truly bizarre way. Such transformations are visible, for instance, in the 1994 French Bioethics Law, as well as in the December 2017 report by the French National Commission for Information Technology and Civil Liberties (CNIL) entitled *The Ethical Matters Raised by Algorithms and Artificial Intelligence*.[6] This document, among other things, introduces the principle of reflexivity, implying that the constant development and the unpredictability of artificial intelligence (AI) require methodical, consultative and regular verification by all stakeholders, including the ethical education of all those involved in AI development and use (Zakharova, 2022b).

Fifth, we can observe new concepts of ensuring the force and effect of normative prescriptions. The classical "obligatory — optional" dichotomy contained in publications on the theory of State and law does not lose its relevance, however, at the same time, it can be supplemented with new facets and shades in connection with the emergence of new legal phenomena. A vivid example in this regard are the phenomena of "*soft law"* and *lex electronica*.

[6] For details, see: Commission Nationale De L'informatique Et Des Libertés (CNIL), Comment Permettre À L'homme De Garder La Main? [How to keep mankind in control?]. Dec. 2017. Available at: https://perma.cc/B3KD-63B5 [Accessed 07.08.2021].

In the first instance, we deal with the concept of graduated relative or diverse normativity. The proponents of this approach point out, among other things, that soft law is a penumbra of law, since, while being obviously not mandatory from the legal point of view, it gives rise to specific legal (rather than simply political or other practical) consequences. It is also important to keep in mind that soft law, due to the institution of hardening, may gradually transform into hard law (for details, see Zakharova, 2022b).

In the second instance, we see that the progress in science and technology leads to the emergence of a system of legal norms of an international nature that regulate the relations arising in connection with transnational transactions in the electronic information environment. This system of norms is established by the participants in such relations for internal use and is applied by arbitrators when resolving disputes arising from such relations, taking into account the intentions of the parties and comparative legal analysis that factors in the current situation in the sphere of electronic commerce. This process results in the creation of a system of normative prescriptions that are formed by a self-regulating sector of the economy, rather than by the government or supranational institutions, as well as in creation of jurisdictional institutions for resolving disputes in this subject area (Demin, 2017).

Sixth, justice as a segment of the functional element of legal systems of the world is acquiring new features. The most noticeable in this regard is the development of two practices: transparency and predictive justice (Zakharova, 2022b). The transparency of the contemporary justice has a diverse nature and sources. The latter, in particular, include integrational justice; various manifestations of the "legal Esperanto"; forum shopping; social solidarity of a new type leading to a horizontal control over normative prescriptions.[7] Predictive justice is only gaining ground on social platforms on the current legal maps of the world at

[7] For instance, the EU has a (regularly updated) practice of announcing "unfriendly" tax jurisdictions. In 2019, the EU Ministers of Finance updated the list of non-cooperative tax jurisdictions and included 15 countries in the "black list". Three jurisdictions were transferred to the "grey list". The list is based on the EU's concerns about tax transparency, good governance, real economic activity and the existence of a zero corporate tax rate.

the moment. While the European jurisdictional platforms are rather cautious about the introduction of this institution, the American ones are using it quite actively. The aforementioned institution is based on the LegalTech technology, and cannot be called "justice" in the exact sense, since its functionality does not include dispute resolution as such. The task of predictive justice is to create algorithms for rapidly analyzing a huge number of situations that allow predicting the outcome of a dispute or, at least, assessing the chances for success. The advantage of introducing this institution is obvious: the possibility to validate a court ruling from a scientific point of view. Its main disadvantages can be summarized in the metaphorical formula "100 judges in one ruling". In other words, a law enforcement officer is to some extent limited in the freedom of decision-making due to the use of the previous practices for legal cases that predictive justice can provide (Zakharova, 2022b).

There are also certain discussions regarding the reference points, or benchmarks, serving as a basis for analyzing previous legal practices in predictive justice. Firstly, the question as to who or what should set these reference points (a human being or a machine) remains unresolved.[8] Secondly, the problem of their qualitative and quantitative characteristics remains unresolved as well.[9] Thirdly, the following dilemma arises: is it possible to develop a universal pool of reference points for analysis and apply them in legal systems of various nature in terms of grouping, or should these reference points be divided based on the principle of the legal system's belonging to a certain homogeneous group or based on thematic blocks of certain groups of cases, etc.? (Zakharova, 2022b).

Seventh, we can talk about the emergence of a new group of subjective human rights, the so-called human rights of the "postmodern" era when, as Tamara Meshcheryakova rightly pointed out, people began to actively create themselves rather than being content with the paradigms of a predetermined existence (Meshcheryakova, 2010, p. 97).

[8] At the moment, the reference points (benchmarks) for analysis are set by human beings.

[9] The already known practices have seen the use of such reference points of previous court decisions as oral arguments of the parties, the deadline for judgements (court rulings), compliance/non-compliance with the principle of fairness in judgements (court rulings).

The most typical examples of this group of human rights are somatic rights and, in particular, the right to have a child using assisted reproductive and genetic technologies. In the opinion of some researchers, the emergence of this group of subjective rights leads to the *formation of a "new" right* (the courts single out a separate subjective right based on the interpretation of "traditional" norms with regard to fundamental rights). For instance, when considering cases on protection of the right to have a child using assisted reproductive and genetic technologies, the judicial authorities in the sphere of constitutional control prefer the approaches of progressive interpretation and the "new" right formation, since they both show the court's response to the changes in society, and allow timely constitutional protection of the right to have a child using assisted reproductive and genetic technologies (Posadkova, 2023).

A number of countries took a synthetic bio-legal stance with regard to the regulation of the aforementioned group of human rights. The most vivid example of this vector of social regulation is the 1994 French Bioethics Law. This reform essentially became the most large-scale, resonant and liberal as compared to the previous reforms of the Bioethics Law. Undoubtedly, the broadest discussion was brought about by the new provision of the Law regarding the expansion of the list of the subjects of law entitled to resort to the technological opportunities offered by in vitro fertilization (IVF). By the time when the Law was adopted, several European countries had already stepped on the path of liberalization of the IVF use. In ten European countries (Portugal, Spain, Ireland, the UK, Belgium, Holland, Luxembourg, Denmark, Sweden, and Finland), IVF has been allowed for same-sex couples and single women. In 7 countries (Estonia, Latvia, Croatia, Bulgaria, Greece, Cyprus, and Hungary), IVF is allowed for single women, but not for same-sex couples. On the other hand, in Malta and Austria, IVF is allowed for same-sex couples, but not for single women (Zakharova, 2022a).

Eighth, the active diffusion of BioLaw in the national legal systems of various countries necessitated the introduction of new reception models associated with the horizontal continuity of biolegal norms and regulations. In our opinion, we should talk about the reception based on a model that can metaphorically be called a "carrot version 2.0"

(the term by the author. — M.Z.). Such a metaphorical description and disclosure of the essence of the reception suggests that, in addition to the diffusion of normative prescriptions as such (the visible part of the carrot, i.e., its tops), various social and bioethical components of the practical real-life implementation of a particular norm (the part of the carrot invisible to the human eye, but no less important for the carrot's integrity, i.e., its taproot) should be taken into account as well.

In our view, a case in point with regard to the implementation of this reception model is the position of Switzerland in relation to the third gender recognition. Switzerland is well-known to take a fairly liberal position with regard to the recognition and protection of somatic human rights. At the same time, in December 2022, it became known that Switzerland refused to recognize a third gender. This was stated in a document issued by the Swiss Federal Council and published on the website of the country's government. It pointed out that the Swiss are not ready to abandon the traditional model of gender identity — the one which assumes the existence of only male and female genders. The document said that the principle of two genders (sexes) remains deeply rooted in Swiss society.[10] A similar reception model seems to be operational in relation to other extremely sensitive and complex institutions of BioLaw. For instance, France is facing the introduction of the institution of euthanasia at the moment (Haddadi, 2023).

Ninth, it is important to pay attention not only to the internal patterns of the legal phenomenon development, but also to its external manifestations associated with various features of the legal technique. For instance, we are witnessing the emergence of a new legal framework in the field of legal regulation of innovations — namely, *"rules from exceptions"* (RFEs; the term coined by the author. — M.Z.). A representative example of RFEs in the Russian Federation is the introduction of an *experimental legal regime* in the constituent entity of the Russian Federation, the city of federal significance Moscow, from 1 July 2020 following the amendments to Art. 6 and 10 of the Federal Law "On Personal Data" dated 24 April 2020. In foreign law, the examples of RFEs can be found in the sphere of medical law, such as: 1) Hospital Exemption; and 2) Point-of-Care Manufacture (POC).

[10] For details, see: https://lenta.ru/news/2022/12/21/switzerlandcoservative/?ysclid=lkmq1p9bow830578673 [Accessed 03.09.2024]. (In Russ.).

The *hospital exemption* scheme was introduced into the European practice with the adoption of the landmark EU Regulation No. 1394/2007 *Advanced Therapy Medicinal Products (ATMP)* [in French: *Médicaments de thérapie innovante (MTI)*]), which, in its turn, should be read and interpreted in direct connection with Directive 2001/83/EC some of the provisions of which it amended. According to Regulation No. 1394/2007, the *hospital exemption* applies exclusively to ATMPs. In fact, advanced therapy medicinal products "prepared on a non-routine basis according to specific quality standards, and used within the same Member State in a hospital under the exclusive professional responsibility of a medical practitioner, in order to comply with an individual medical prescription for a custom-made product for an individual patient" are not covered by the European pharmaceutical legislation: they are excluded from the scope of Directive 2001/83/EC.[11]

Unlike the *hospital exemption* scheme, which has been actually practiced in the EU countries for 15 years, *point-of-care* (POC) *manufacture* is an initiative only announced in the UK, but currently not implemented at the legislative level. If this initiative is established as legislation, the UK will become the first country to introduce this scheme into the national legal framework, as its official government sources state.[12] As for the further prospects for the introduction of RFEs in Russian law, in our view, it is possible with the formation of a legal model for chimeric antigen receptor T (CAR-T) cell therapy regulation.

Tenth, last but not least, the manifestations of the new legal tradition can be observed in the educational segment of the jurisprudence. The present-day higher education institutions are at the opposite point of evolutionary growth than the university model of the 19th century described by Immanuel Kant in his work *The Conflict of the Faculties* (1798): scientific (scholarly) knowledge is not differentiated, but, on the contrary, integrated in an interdisciplinary manner. In the context of the formation of a new legal tradition, interdisciplinarity becomes an important element of its cognition and assessment of its development prospects.

[11] Para. 2 Art. 28 of the Regulation amending Art. 3 of Directive 2001/83/EC.

[12] For details, see: https://www.gov.uk/government/case-studies/horizon-scanning-case-study-point-of-care-manufacture.

Professor Ludmila Mikeshina made a very good point in this respect saying that with the advent of postmodernism, the essence of cognitive practices changes (or should change), that "complementarity, harmonization, simultaneity instead of opposition or along with it", and "the legitimacy of not one, but several paradigms (multi-paradigmality)", as well as "other techniques that require analytical work not limited to identifying the opposites", are recognized (should be recognized) (Mikeshina, 2005). However, the new legal tradition poses no fewer questions than gives answers to the global legal community.

IV. New Legal Tradition — Questions

The first question that, by all means, arises in the event of a new evolving legal tradition is the question of the consequences brought about by it. Obviously, such consequences can be found in the system of our reflections of legal existence, which, in turn, inevitably lead to a certain crisis of theoretical jurisprudence. The crisis lies in the ever-increasing gap between the phenomena described by the language of theoretical knowledge and the empiricism of the real legal world.

The way out of the crisis, in our opinion, might be to include not only the individual manifestations of the new legal tradition in certain segments of law (whether these are individual branches of law, or other structural components inherent in the legal systems of the world, such as, for example, the "law of personal status" and the "law of power norms" in Islamic law, or the "common law" and the "law of equity" in English law) and in the international and regional legal standards, but also to introduce the new legal tradition as an integral entity into the general theoretical body of jurisprudence (theory of law, philosophy of law, history of legal thought).

Just as important is the second question of the timing of the establishment ("rooting") of the new legal tradition in the global legal practice and the determinants of such timing. First of all, these determinants lie in the plane of objectification of innovative technologies as such. In other words, we could hardly talk, for instance, about the legal and bioethical issues of IVF or its more advanced version (the so-called "three-parent baby") when the technology itself had not yet been implemented in global practice and in individual countries.

However, we should take into account not only the objective background for the emergence of the new legal tradition, but also the subjective perceptions thereof. On the one hand, the authors who talk about the emergence of a post-modern era human being are right (Meshcheryakova, 2010, p. 97). On the other hand, the current population of the world is over 8 billion people among which the so-called new people (the post-modern era people or *Homo economicus*) can be observed. But is every person in the 8-billion population a post-modern era person? Obviously not. On the one side of civilizational growth, Elon Musk would like, for example, to make the most of the achievements of bioinformatics (in a way authorized by law) to modify the nature of the human being. On its other side, a hypothetical Sherpa on Everest, while probably having certain elements of the new legal tradition within their legal system, wants and is able to use it minimally.

It is also obvious that the new legal tradition is not a phenomenon of one speed. In other words, we are dealing with a new legal tradition of different speeds (by analogy with the phenomenon of "Europe of different speeds"), where the impulses of this speed in different national legal orders as well as in international and regional integration formations are determined by a number of factors. First of all, these factors are associated with the peculiarities of the structure of national legal systems. In our opinion, the inductive legal systems of the Anglo-Saxon legal world can potentially respond more quickly to changing conditions of the external environment, including those connected with the development of innovative technologies, than the deductive systems of the continental legal world. In addition, the cultural, and, in some cases, religious origins of various legal orders, undoubtedly, influence the rate at which the new legal tradition is gaining ground. As for integration formations, in our view, the formations with closer integration ties (such as the European Union) have a more noticeable potential with regard to embracing the individual elements of the new legal tradition, since they are able to develop common standards of legal regulation and introduce them into the zone of the imperative, rather than advisory practice. For instance, this was the case of Regulation No. 1394/2007 *Advanced Therapy Medicinal Products (ATMP)*.

The fourth question is who should reveal the patterns of the development of the new legal tradition? This is the next question that

inevitably arises when analyzing it. In our opinion, we should definitely avoid holding on to the maxims such as "the philosophy of law is only a matter for lawyers" or "the philosophy of law is only a matter for philosophers" when dealing with the aforementioned question. The new legal tradition is a complex, multidimensional, multilayered phenomenon. Therefore, in order for the revealed patterns to be as true and accurate as possible, we need to be guided by the maxims of interdisciplinarity without engaging in excessive "privatization" of this issue in one or another separate sector of knowledge.

The fifth question that necessarily arises when analyzing the new legal tradition is whether it carries the potential of a means or of an end [a purpose]? Does it complement the existing legal realities of different countries and unions thereof, or has it already become a new reality in and of itself? This question needs to be answered taking into account the classical trichotomy that Cicero wrote about in his early work *De Inventione* when characterizing *prudentia*: memory, intelligence, and foresight.

We need to answer this question in the zone of the due [the proper], but we are experiencing serious difficulties in the zone of the existent for a number of reasons. The first of such reasons is the diverse (in qualitative terms) nature of the present-day technologies. The second reason is the fact that the new legal tradition is the legal tradition of different speeds. And, finally, the new legal tradition is only emerging, therefore, further vectors of its development and transmission in time and space are not yet clear enough.

In our view, artificial intelligence carries the biggest potential in terms of transforming the new legal tradition into a new legal reality. In this case, the world may face the so-called "Mrs. Davis" effect.[13] Its deployment in social reality is capable of potentially transforming the legal map of the world into a kind of monochromatic mass, where there will no longer be Jewish law and Muslim law, Scandinavian law and Anglo-Saxon law, Roman law and German law, etc., but only the law of "Mrs. Davis". However, at the moment, this assumption looks like a utopia.

[13] "Mrs. Davis" is a metaphorical name for artificial intelligence used in the TV series of the same title.

V. Conclusion

Innovative technologies have entered and gained ground in the social practices of the global community, individual countries and the citizens thereof. Today, things like searching for a perfect life partner based on genetic compatibility, surrogate motherhood and IVF, Mark Zuckerberg's metaverse or "life" after death in the form of avatars of deceased people are no longer seen as something unrealistically fantastic (see, e.g., the French *Digital Republic Law*).

The new legal tradition is one of the manifestations of the global world Patrick Glenn wrote about. This global world is striving to become the central point around which the identical legal traditions of the West, East, North, and South revolve. Undoubtedly, the new legal tradition is unfolding in unison with, and sometimes under the influence of the impulses of the postmodern era, the goal of which, according to Jean-François Lyotard, is the destruction of the metanarrative mechanism of legitimation, a departure from the totality of the universal and a return to the intrinsic value of the individual (Velikanov, 2007).

The reactions to the emergence of the new legal tradition are very diverse. There might be no reaction at all, or, rather, some kind of disregard. From our point of view, this is akin to having your head in the sand, and is hardly constructive. In some instances, a state of frustration is observed. As pointed out by Valery Zorkin in his publication on the future of law in the context of digitalization, the frustration experienced by people and society in this case is due to the changes in the ways of communication and the postmodern atomization of society resulting from such changes.[14] In our opinion, the most constructive reaction to the new legal tradition is awareness and recognition.

The above conclusions with regard to the new legal tradition are drawn in the framework of legal ontology, epistemology and, to some extent, legal futurology. Professor Irina Umnova-Konyukhova made a very good point in this respect saying that "in the current era, futurology has transformed the doctrine of futurism as a principle and methodology of cognition into a science that deals with forecasting and modeling

[14] For details, see: Rossiyskaya Gazeta, 15.04.2020 https://rg.ru/amp/2020/04/15/zorkin-pravo-budushchego-eto-te-zhe-vechnye-cennosti-svobody-i-spravedlivosti.html [Accessed 01.09.2024]. (In Russ.).

future evolutionary processes" (Umnova-Konyukhova, 2023). At the moment we are only at the initial phase of understanding the patterns of the new legal tradition development. However, new times may give us new answers and ask us new questions about and with regard to the new legal tradition.

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